

2-14-2017

State v. Jaskowski Clerk's Record Dckt. 44772

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

STATE OF IDAHO,

Plaintiff/Appellant,

vs.

BRODY L. JASKOWSKI,

Defendant/Respondent.

**Supreme Court No. 44772
Case No. CR-2016-269**

CLERK'S RECORD ON APPEAL

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

HONORABLE MITCHELL W. BROWN

Sixth District Judge

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. Box 83720
Boise, ID 83720-0010
Attorney for Plaintiff/Appellant

KELLY KUMM
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Attorney for Defendant/Respondent

State of Idaho vs. Brody L Jaskowski

Date	Code	User	Judge
4/18/2016	NCRF	SARAH	New Case Filed - Felony
	PROS	SARAH	Prosecutor assigned Steven A. Wuthrich
	CRCO	SARAH	Criminal Complaint
	AFFD	SARAH	Affidavit of Probable Cause
	REQU	SARAH	Request for Bond
	ORDR	SARAH	Order Finding Probable Cause Order Setting Bond
	WARI	SARAH	Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Jaskowski, Brody L
	XSEA	SARAH	Case Sealed
	HRSC	SARAH	Hearing Scheduled (Arraignment 04/18/2016 02:00 PM)
	ARRN	SARAH	Hearing result for Arraignment scheduled on 04/18/2016 02:00 PM: Arraignment / First Appearance
	XUNS	SARAH	Case Un-Sealed
	ORDR	SARAH	Order of Commitment
	WART	SARAH	Warrant Returned Defendant: Jaskowski, Brody L
		SARAH	Arraignment Minute Entry/Log/Order
	BNDS	SARAH	Bond Posted - Surety (Amount 20000.00)
4/19/2016	HRSC	SARAH	Hearing Scheduled (Preliminary 04/26/2016 03:00 PM)
		SARAH	Notice Of Hearing
4/26/2016	SUBR	SARAH	Subpoena Returned- Ronald Van Harper
	SUBR	SARAH	Subpoena Returned- Blake A. Wells
	WAVE	SARAH	Waiver of Statutory Time for Preliminary Hearing
	MOTN	SARAH	Motion to Continue
	ORDR	SARAH	Order to Continue
	CONT	SARAH	Hearing result for Preliminary scheduled on 04/26/2016 03:00 PM: Continued
	HRSC	SARAH	Hearing Scheduled (Preliminary 05/11/2016 03:00 PM)
		SARAH	Notice Of Hearing
4/28/2016	STIP	SARAH	Stipulation for Substitution of Counsel
	APER	SARAH	Defendant: Jaskowski, Brody L Appearance Stratton P Laggis
5/3/2016	SUBR	KAREN	Subpoena Returned/ Blake Wells
	SUBR	KAREN	Subpoena Returned/Ronald Harper
	REQU	KAREN	Request for Discovery
5/10/2016	CONT	SARAH	Continued (Preliminary 05/18/2016 03:30 PM)

State of Idaho vs. Brody L Jaskowski

Date	Code	User		Judge
5/10/2016		SARAH	Notice Of Hearing	R. Todd Garbett
5/13/2016	SUBR	SARAH	Subpoena Returned- Blake Wells	R. Todd Garbett
	SUBR	SARAH	Subpoena Returned- Ronald Van Harper	R. Todd Garbett
5/18/2016	MINE	SARAH	Minute Entry and Order Holding Defendant to Answer and Commitment	R. Todd Garbett
	BOUN	SARAH	Hearing result for Preliminary scheduled on 05/18/2016 03:30 PM: Bound Over (after Prelim)	R. Todd Garbett
	CHJG	SARAH	Change Assigned Judge	Mitchell W Brown
5/20/2016	HRSC	SARAH	Hearing Scheduled (Arraignment 06/02/2016 09:00 AM)	Mitchell W Brown
5/31/2016	MOCT	KAREN	Motion To Continue Arraignment Hearing	Mitchell W Brown
	MINE	KAREN	Minute Entry & Order for hearing held on May 19, 2016	Mitchell W Brown
	ORDR	KAREN	Order to continue Arraignment Hearing	Mitchell W Brown
	CONT	KAREN	Continued (Arraignment 06/16/2016 09:00 AM)	Mitchell W Brown
	INFO	KAREN	Criminal Information	Mitchell W Brown
6/7/2016	APER	KAREN	Defendant: Jaskowski, Brody L Appearance Kelly Kenneth Kumm	Mitchell W Brown
	CONT	KAREN	Continued (Arraignment 06/17/2016 09:00 AM)	Mitchell W Brown
		KAREN	Notice Of Hearing	Mitchell W Brown
6/17/2016	DCHH	KAREN	Hearing result for Arraignment scheduled on 06/17/2016 09:00 AM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated:	Mitchell W Brown
	APNG	KAREN	Hearing result for Arraignment scheduled on 06/17/2016 09:00 AM: Appear & Plead Not Guilty	Mitchell W Brown
	PLEA	KAREN	A Plea is entered for charge: - NG (137-2732(c)(1) {F} Controlled Substance-Possession of)	Mitchell W Brown
6/20/2016	NOSV	KAREN	Notice Of Service Plaintiff's Discovery	Mitchell W Brown
6/27/2016	MINE	KAREN	Minute Entry & Order for hearing held on June 17, 2016	Mitchell W Brown
	ORDR	KAREN	Order for Jury Trial	Mitchell W Brown
7/26/2016	MOTN	JANET	Motion For Preliminary Hearing Transcript	Mitchell W Brown
	MOTN	JANET	Motion To Compel Discovery	Mitchell W Brown
	NOTC	JANET	Notice of Hearing On Motion to Compel Discovery	Mitchell W Brown
	HRSC	JANET	Hearing Scheduled (Motion 09/15/2016 09:00 AM) Motion to Compel Discovery	Mitchell W Brown
	ORDR	SARAH	Order For Preliminary Hearing Transcript	Mitchell W Brown
	NOTC	SARAH	Notice of Service Plaintiff's Supplemental Response to Discovery	Mitchell W Brown

State of Idaho vs. Brody L Jaskowski

Date	Code	User	Judge
7/26/2016	OBJE	SARAH	Objection to Motion to Compel Discovery Mitchell W Brown
8/1/2016	NOTC	JANET	Amended Notice of Hearing on Motion to Compel Discovery Mitchell W Brown
	CONT	KAREN	Continued (Motion 08/18/2016 09:00 AM) Motion to Compel Discovery Mitchell W Brown
8/2/2016	HRSC	KAREN	Hearing Scheduled (Pretrial Conference 09/15/2016 09:00 AM) Mitchell W Brown
	HRSC	KAREN	Hearing Scheduled (Jury Trial 10/03/2016 09:00 AM) Mitchell W Brown
8/18/2016	GRNT	KAREN	Hearing result for Motion scheduled on 08/18/2016 09:00 AM: Motion Granted Motion to Compel Discovery Mitchell W Brown
	DCHH	KAREN	District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: Mitchell W Brown
8/19/2016		KAREN	Plaintiff's Second Supplemental Response to Discovery Mitchell W Brown
	NOSV	KAREN	Notice of Service Plaintiff's Second Supplemental Response to Discovery Mitchell W Brown
8/29/2016	MINE	KAREN	Minute Entry & Order for hearing held on August 18, 2016 Mitchell W Brown
	ORDR	KAREN	Amended Order for Preliminary Hearing Transcript Mitchell W Brown
9/6/2016		KAREN	Preliminary hearing transcript lodged Mitchell W Brown
9/14/2016	MOCT	KAREN	Motion To Continue Trial Mitchell W Brown
	MOTN	KAREN	Motion to Suppress Evidence Mitchell W Brown
	MOTN	KAREN	Motion to Appear Telephonically Mitchell W Brown
9/15/2016	DCHH	KAREN	Hearing result for Pretrial Conference scheduled on 09/15/2016 09:00 AM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: Mitchell W Brown
		KAREN	State's Request for Discovery Mitchell W Brown
9/21/2016	HRVC	JANET	Hearing result for Jury Trial scheduled on 10/03/2016 09:00 AM: Hearing Vacated Mitchell W Brown
	MINE	KAREN	Minute Entry & Order for hearing held on Sept 15, 2016 Mitchell W Brown
9/23/2016	HRSC	KAREN	Hearing Scheduled (Motion to Suppress 10/20/2016 09:00 AM) Mitchell W Brown
9/30/2016	MEMO	KAREN	Memorandum in Support of Motion to Suppress Evidence Mitchell W Brown
	RESP	KAREN	Response To Request For State's Discovery Mitchell W Brown
10/11/2016	MOCT	KAREN	Motion To Continue Mitchell W Brown

State of Idaho vs. Brody L Jaskowski

Date	Code	User		Judge
10/11/2016	MEMO	SARAH	Memorandum in Opposition to Motion to Suppress	Mitchell W Brown
10/12/2016	SUBR	JANET	Subpoena Returned / Blake Wells	Mitchell W Brown
	SUBR	JANET	Subpoena Returned / Ronald Van Harper	Mitchell W Brown
10/18/2016	STIP	KAREN	Stipulation to State's Motion to Continue	Mitchell W Brown
	CONT	KAREN	Continued (Motion to Suppress 11/17/2016 01:30 PM)	Mitchell W Brown
	ORDR	KAREN	Order to Continue	Mitchell W Brown
10/31/2016	SUBR	SARAH	Subpoena Returned - Blake Wells	Mitchell W Brown
	SUBR	SARAH	Subpoena Returned- Ron Harper	Mitchell W Brown
11/17/2016	DCHH	KAREN	Hearing result for Motion to Suppress scheduled on 11/17/2016 01:30 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated:	Mitchell W Brown
11/26/2016	MINE	KAREN	Minute Entry & Order for hearing held on Nov 17, 2016	Mitchell W Brown
12/15/2016	MINE	SARAH	Amended Minute Entry and Order	R. Todd Garbett
12/24/2016	ORDR	KAREN	Memorandum Decision and Order on Defendant's Motion to Suppress Evidence	Mitchell W Brown
12/26/2016	HRSC	KAREN	Hearing Scheduled (Status 01/05/2017 09:00 AM)	Mitchell W Brown
		KAREN	Notice Of Hearing	Mitchell W Brown
	PROS	KAREN	Prosecutor assigned John Olson	Mitchell W Brown
1/5/2017	DCHH	KAREN	Hearing result for Status scheduled on 01/05/2017 09:00 AM: District Court Hearing Held Court Reporter:none Number of Transcript Pages for this hearing estimated:	Mitchell W Brown
1/8/2017	MINE	KAREN	Minute Entry & Order for hearing held on Jan 5, 2017	Mitchell W Brown
1/11/2017	NOTA	KAREN	NOTICE OF APPEAL	Mitchell W Brown
	APSC	KAREN	Appealed To The Supreme Court	Mitchell W Brown

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, Idaho 83261
Telephone: (208) 945-1438
Fax: (208) 945-1435
Prosecuting Attorney
Bear Lake County
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 18 PM 1:36

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

STATE OF IDAHO,

Plaintiff,

-VS-

BRODY JASKOWSKI,

Defendant.
.....

Case No. CR 2016- 269

CRIMINAL COMPLAINT

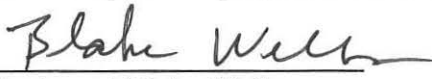
COUNT I: POSSESSION OF A
CONTROLLED SUBSTANCE - I.C.
§37-2732(c)(1); FELONY

PERSONALLY APPEARED before me this date, April 18, 2016,
Lieutenant Blake Wells, City of Montpelier Police Department, who being first duly sworn
complains and says:

COUNT I: That the Defendant, BRODY JASKOWSKI, on or about the 15th day of April,
2016, in the County of Bear Lake, State of Idaho, did unlawfully possess a controlled
substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance.
POSSESSION OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1); FELONY

All of which is contrary to the form of the statute in such case made and provided and against the
peace and dignity of the State of Idaho.

This Complainant prays that Defendant be dealt with according to law.


Lieutenant Blake Wells

Subscribed and sworn to before me this date: April 18th, 2016


R. Todd Garbett
Sixth District Magistrate Judge

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, Idaho 83261
Telephone: (208) 945-1438
Fax: (208) 945-1435
Prosecuting Attorney
Bear Lake County

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 18 PM 1:36

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

.....

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

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY JASKOWSKI,

Defendant.

Case No. CR-2016- 269

AFFIDAVIT OF PROBABLE CAUSE

.....

State of Idaho

ss.

County of Bear Lake

COMES NOW, Lieutenant Blake Wells, and being first duly sworn upon his oath,
deposes and represents to the Court as follows:

- 1) My name is Blake Wells, and I am a Law Enforcement Officer for City of Montpelier Police Department.
- 2) Based on my investigation as more fully set forth in the reports and information attached hereto and incorporated herein, I am informed and have probable cause to believe that BRODY

JASKOWSKI has committed the following crime(s):

COUNT I: That the Defendant, BRODY JASKOWSKI, on or about the 15th day of April, 2016, in the County of Bear Lake, State of Idaho, did unlawfully possess a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance.
POSSESSION OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1); FELONY

THEREFORE, I am hereby requesting that:

- () Warrant be issued for the arrest of BRODY JASKOWSKI.
- ☒ Defendant, who has been arrested without warrant, be detained and required to post bond prior to release.
- () Summons in Lieu of Arrest Warrant be issued

Dated: April 18, 2016

Blake Wells
Lieutenant Blake Wells

SUBSCRIBED AND SWORN to before me this date: April 18, 2016

R. Todd Garbett
R. Todd Garbett
Sixth District Magistrate Judge

MONTPELIER POLICE DEPARTMENT
534 Washington
Montpelier, ID 83254
208-847-1324

Report # 1600494

Officer: Lt. Blake Wells

Date: April 15, 2016

Narrative:

On April 15, 2016, I saw a black Nissan pickup with Idaho plates 1F47743 in Pioneer Apartment parking lot near 8th and Monroe Street. I had received information on an earlier date that Brody Jaskowski drives a vehicle matching the description of this vehicle. Brody recently had a warrant for his arrest in Bear Lake County.

I contacted Bear Lake County Sheriff's office I ran the license plates and the plates returned to the last name of Jaskowski. Dispatch informed me that there was a warrant for Brody's arrest. I also know that Brody was on probation with Probation Officer Harper. I contacted Officer Harper and advised him that I had located a vehicle that was most likely being driven by Brody. Officer Harper confirmed that Brody was on probation and asked that I stop vehicle and make contact with Brody for him.

While talking to Officer Harper, the black Nissan pickup pulled out of the parking lot and turned north on 8th Street. As the vehicle passed by where I was parked, I personally recognized the driver as being Brody Jaskowski.

I pulled out onto the roadway behind the Nissan. I activated my emergency lights and the vehicle came to a stop on the right side of the road just north of 8th and Garfield Street. As I was walking up to the vehicle, dispatch advised me that the warrant had just recently been recalled by the court and was no longer active.

I made contact with Brody at the driver's side of the vehicle. I asked for his driver's license, registration and proof of insurance. Brody handed me his Utah driver's license and vehicle information. I told Brody that I had stopped him because dispatch had told me that he had warrant and his probation officer had asked me to stop him. I talked to Brody about the warrant. Brody informed me that he had someone go to the court house and pay his fines for him. I told Brody that dispatch had just informed me that it had been recalled. I then told Brody that Officer Harper wanted to talk to him and that he was on his way to the scene.

I talked to Brody about his driver's license. He informed me that he lives in Franklin, Idaho but still had a Utah driver's license. Brody told me that he did not believe that his driver's license was suspended, but it could be for not paying child support.

I returned to my patrol vehicle and ran a driver's check on Brody. His license came back as "denied" out of Utah. Officer Harper arrived on scene. I asked Brody to step out of the vehicle. I informed Brody that his license was showing denied and issued a citation to him for not having a current and valid driver's license.

MONTPELIER POLICE DEPARTMENT
534 Washington
Montpelier, ID 83254
208-847-1324

Report # 1600494

Officer Harper then began talking to Brody about probation issues. Officer Harper then told Brody that he was going to search him and his vehicle. Officer searched Brody and then began searching the vehicle. I stood next to Brody and talked to him.

Officer Harper advised me that he had found some drug paraphernalia and asked me to place Brody in handcuffs. I handcuffed him and then placed him in my patrol car. I then approached Officer Harper. He showed me the paraphernalia that he had found. It was a glass tube with brown residue.

Officer Harper then asked me to assist him in searching the rest of the vehicle. I began searching the vehicle and located a glass pipe with white residue and another small glass tube with brown residue on the carpet under the center console. The glass pipe with white residue is a pipe which is commonly used to smoke methamphetamine.

I took pictures of the pipe and the tube and then collected them for evidence. I asked dispatch to dispatch the next list wrecker to come get the vehicle. Wilks Towing responded and took possession of the vehicle.

I then transported Brody to the Montpelier Police Department. At the department, I advised Brody of his Miranda Rights and asked him if he understood them. Brody said that he understood his rights and agreed to talk to me.

I asked Brody about the paraphernalia and his drug use. Brody admitted that he had used the glass meth pipe to smoke meth, and that he would most likely test positive for meth in his urine. Brody said that he had not used the small tubes with the brown residue. He also told me that he takes Adderall and most likely would test positive for amphetamine.

I used a field test kit and tested the glass pipe. The pipe tested presumptive positive for methamphetamine. The glass tube was not field tested and both items will be sent to the ISP forensic lab for further testing.

Officer Harper issued an agents warrant and I served the warrant on Brody. Officer Harper had Brody provide a urine sample which tested presumptive positive for methamphetamine, amphetamines, and opiates.

I took the citation that I had issued to Brody previously and added the charge of possession of drug paraphernalia with intent to use. I then advised Brody that I would be filing a report with the prosecutor's office to charge him with possession of methamphetamine. Deputy Knutti responded to the Montpelier Police Department and took custody of Brody. He was then transported to the Caribou County Jail.

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, Idaho 83261
Telephone: (208) 945-1438
Fax: (208) 945-1435
Prosecuting Attorney
Bear Lake County

.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 APR 18 PM 1:36
CINDY GARNER, CLERK
DEPUTY _____ CASE NO

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

STATE OF IDAHO,

CASE NO. CR 2016- 269

Plaintiff,

REQUEST FOR BOND

vs.

BRODY JASKOWSKI,

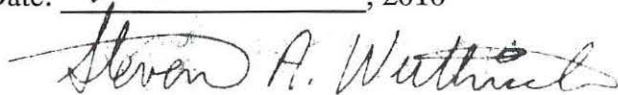
Defendant.

.....

COMES NOW Prosecuting Attorney for Bear Lake County, Idaho and hereby requests
bond in the sum of \$30,000.⁰⁰ be set for defendant, BRODY JASKOWSKI, charged
with the following public offenses, to wit:

COUNT I: METHAMPHETAMINE, a Schedule II controlled substance. POSSESSION
OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1); FELONY

Date: 4-18, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, Idaho 83261
Telephone: (208) 945-1438
Fax: (208) 945-1435
Prosecuting Attorney
Bear Lake County

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 18 PM 1:36

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

.....

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

STATE OF IDAHO,

CASE NO. CR 2016- 269

Plaintiff,

ORDER FINDING PROBABLE CAUSE

vs.

ORDER SETTING BOND

BRODY JASKOWSKI,

Defendant.

.....

THE COURT having examined the Affidavit of Probable Cause with the attached
investigative reports by Lieutenant Blake Wells and Request for Bond by Prosecuting Attorney,
and being duly advised in the premises,

NOW THEREFORE the Court finds that there is probable cause to believe that the
Defendant, BRODY JASKOWSKI, committed the following crimes:

COUNT I: POSSESSION OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1);
FELONY

IT IS THEREFORE ORDERED that:

() Warrant be issued for the arrest of BRODY JASKOWSKI.

☒ Defendant, who has been arrested without warrant, be detained and required to post bond prior to release.

☐ Summon is lieu of Warrant for Arrest

IT IS FURTHER ORDERED that:

☒ Bond is set in the amount of \$10,000⁰⁰.

☐ Bond will be set at arraignment.

☐ Other:

Date: April 18th, 2016



R. Todd Garbett
Sixth District Magistrate Judge

SIXTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BEAR LAKE
7 East Center/P.O. Box 190
Paris, ID 83261
(208)945-2208 ext#6

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 18 PM 4:23

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

STATE OF IDAHO,

Plaintiff,

vs.

Brody L Jaskowski

Defendant.

DOB: [REDACTED]

Case No: CR-2016-269 and
CR-2014-1191

ORDER OF COMMITMENT

TO THE SHERIFF OF BEAR LAKE COUNTY:

IT IS HEREBY ORDERED that the above named Defendant be received into your custody and there detained by you as follows:

☒ Until bond is posted in the sum of \$ 20,000.00.


☐ For days.

☐ Until further Order of the Court.

☒ To be transported back to Bear Lake County on April 26, 2016, at 3:00 pm, for Preliminary Hearing.

☐ Other: .

Dated this 18th day of April, 2016.


R. TODD GARBETT
Magistrate Judge

6th JUDICIAL DISTRICT, STATE OF IDAHO, COUNTY OF BEAR LAKE
ARRAIGNMENT MINUTE ENTRY/LOG/ORDER

STATE v. **Brody L Jaskowski**

Case No. : CR-2016-0000269

DOB: [REDACTED] Date: 4/18/2016

Address: 109 North 3rd East Franklin ID 83237

Judge: R. Todd Garbett

DEFENDANT having been charged with the following:

COUNT 1: Controlled Substance-Possession of AMENDED:

This matter came before the Court on April 18, 2016, at the hour of 2:20 P.m.

Defendant: ☒ Appeared ☐ Failed to Appear ☐ Bench Warrant Issued & Bond Forfeiture Ordered

☒ Advised of all rights and penalties per ICR 5, including right to remain silent, that statements may be used against him/her, right to bail, right to counsel, appointment of Public Defender as provided by law, Preliminary Hearing.

☒ Advised of Charges ☐ Waived Counsel ☐ Requested PD ☒ Private Attorney

Plea: ☐ Guilty to Counts: ☐ Not Guilty to Counts: ☐ Dismissed Judge Init. ☐ No Contact Order with:

Ordered: The Prosecuting Attorney and Defendant, with attorney, if any, are ordered to appear for a

☐ **Pre-Trial Conference**

☐ **Sentencing**

☒ **Preliminary Hearing**

on the 26th day of April, 2016, at 3:00 o'clock P.m., before the Honorable R. Todd Garbett in the Bear Lake County Courtroom, 7 East Center, Paris, Idaho.

Bail: ☒ Bond \$ 10,000⁰⁰ ☐ Remanded to Custody of Sheriff
☐ **Ordered Released** ☐ **Own Recognizance**

IT IS FURTHER ORDERED that Defendant shall abide by the following conditions;

Violation of which may result in the revocation of Defendant's Own Recognizance Release or Bail:

- (1) Defendant shall maintain contact with his/her attorney and shall provide attorney of his/her current telephone number and address;
- (2) Defendant shall appear on time and prepared for all scheduled court proceedings;
- (3) Defendant shall not violate the law;
- (4) Defendant shall not drive any motorized vehicle without a valid driver's license and current insurance;
- (5) Defendant shall not possess or use any alcohol, illegal drugs or controlled substances not prescribed by a medical doctor;
- (6) Defendant shall not enter any establishment deriving its primary income from the sale of alcohol;
- (7) Defendant shall submit to random blood, breath and/or urine analysis upon the request of the Court or any law enforcement official;
- (8) Defendant shall not associate with any individuals who are on probation/parole or involved in criminal activity.

IT IS SO ORDERED.

JUDGE [Signature] **Date** 4-18-16

Received by Defendant [Signature]

Sixth Judicial District Court, State of Idaho
In and For the County of Bear Lake
7 East Center
Paris, Idaho 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 19 AM 10:42

CINDY GARNER, CLERK

Case No: CR-2016-0000269

NOTICE OF HEARING

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant

DOB: [REDACTED]

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

Preliminary Tuesday, April 26, 2016 03:00 PM
Judge: R. Todd Garbett
Courtroom: Bear Lake County Courtroom-Paris

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 Tuesday, April 19, 2016.

Defendant: Brody L Jaskowski

Faxed ☒ Hand Delivered _____
to Caribou jail

Prosecutor: Steven A. Wuthrich

Mailed _____ Hand Delivered ☒

Dated: Tuesday, April 19, 2016
CINDY GARNER
Clerk Of The District Court

By:

Sarah [Signature]
Deputy Clerk
DOC22 7/96

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 19 AM 11:10
Paper ID: 20160025610

CINDY GARNER, CLERK

PERSONAL RETURN OF SERVICE

DEPUTY _____ CASE NO _____

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
WARRANT OF ARREST

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 18TH DAY OF APRIL 2016.

I HEREBY CERTIFY THAT, ON THE 18TH DAY OF APRIL 2016, AT 1:45 O'CLOCK P.M., I, GREGG KNUTTI, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** BRODY LEE JASKOWSKI *****

PERSONALLY AT: 109 N 3RD E FRANKLIN ID 83237

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 18TH DAY OF APRIL 2016.

BRENT R. BUNN
SHERIFF

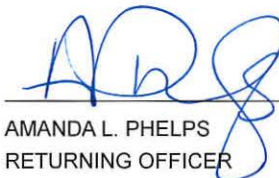
SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



GREGG KNUTTI
SERVING OFFICER

BY


AMANDA L. PHELPS
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

ORIGINAL

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, Idaho 83261
Telephone: (208) 945-1438
Fax: (208) 945-1435
Prosecuting Attorney
Bear Lake County

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
BEAR LAKE CO.
2016 APR 18 PM 1:30
CINDY GARNER, CLERK
2016 APR 18 PM 1:30
DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY JASKOWSKI,

Defendant.

Case No. CR 2016-269

ARREST WARRANT

DEPUTY _____ CASE NO.

CINDY GARNER, CLERK

2016 APR 19 AM 11:10

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR PEACE OFFICER OF THE
STATE OF IDAHO:

A COMPLAINT, upon oath, having been this day laid before me by Chief Russell Roper,
City of Montpelier Police Department, stating that the following crimes have been committed in
the County of Bear Lake, Idaho:

COUNT I: POSSESSION OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1);
FELONY

and accusing BRODY JASKOWSKI thereof, the above-named Defendant, and probable cause

having been found,

YOU ARE, THEREFORE, commanded to forthwith arrest the said Defendant named above and bring the Defendant before me at my office in said County of Bear Lake or in case of my absence or inability to act, or arrest outside of this county, before the nearest available magistrate within the judicial district where the Defendant is arrested.

Dated at my office in said County of Bear Lake, this date, April 18th, 2016.



R. Todd Garbett

\$10,000⁰⁰ Bond or _____ Bond will be set at arraignment

MP Felony _____ Misdemeanor _____ Day Only MP Day or Night



Sixth Judicial District Court, State of Idaho
In and For the County of Bear Lake

7 East Center
Paris, Idaho 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant.

DOB: [REDACTED]

2016 APR 19 AM 10:42

CINDY GARNER, CLERK

Case No: CP-2016-0000269 CASE NO

NOTICE OF HEARING

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

Preliminary Tuesday, April 26, 2016 03:00 PM
Judge: R. Todd Garbett
Courtroom: Bear Lake County Courtroom-Paris

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 Tuesday, April 19, 2016.

Defendant: Brody L Jaskowski

Faxed ☒ Hand Delivered ☐
to Caribou Jail

Prosecutor: Steven A. Wuthrich

Mailed ☐ Hand Delivered ☒

FYI
Jaskowski posted
bond and was
released from Jail
Caribou County Jail
04/18/2016 @ 2:52 hrs
Sheriff M. Haderlie

Dated: Tuesday, April 19, 2016
CINDY GARNER
Clerk Of The District Court

By: Sarah [Signature]
Deputy Clerk
DOC22 7/98

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

BEAR LAKE SHERIFF'S OFFICE

BRENT R. BUNN
(208) 945-2121

P.O. BOX 365
PARIS, ID 83261

2016 APR 26 AM 10:59
Paper ID: 201600274

PERSONAL RETURN OF SERVICE

DEPUTY _____ CASE NO. _____

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 22ND DAY OF APRIL 2016.

I HEREBY CERTIFY THAT, ON THE 25TH DAY OF APRIL 2016, AT 11:49 O'CLOCK A.M., I, ROBERT PELTO, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** WELLS, BLAKE A *****

PERSONALLY AT: 534 WASHINGTON ST MONTPELIER ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 25TH DAY OF APRIL 2016.

BRENT R. BUNN
SHERIFF

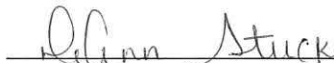
SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



ROBERT PELTO
SERVING OFFICER

BY



DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 APR 22 A 10:32

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

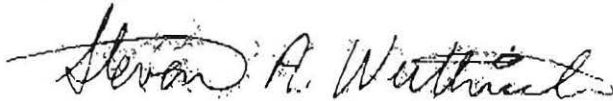
.....
To: Lieutenant Blake Wells
Montpelier Police Department

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 APR 26 AM 10:59
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the **26th day of
April 2016, at 3:00 p.m.** in the Bear Lake County Courtroom, Paris, Idaho. You are
further notified that if you fail to appear at the place and time specified above that you
may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: April 22, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE

P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 26 AM 10:09
Paper ID: 201600275

PERSONAL RETURN OF SERVICE

CINDY GARNER, CLERK

DEPUTY _____ CASE NO. _____

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 22ND DAY OF APRIL 2016.

I HEREBY CERTIFY THAT, ON THE 25TH DAY OF APRIL 2016, AT 11:55 O'CLOCK A.M., I, ROBERT PELTO, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** RONALD VAN HARPER *****

PERSONALLY AT: 557 MAIN ST BERN ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 25TH DAY OF APRIL 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



ROBERT PELTO
SERVING OFFICER

BY



DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 APR 22 A 10:32

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

.....
To: Ron Harper
Probation

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 APR 26 AM 11:00
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the **26th day of
April 2016, at 3:00 p.m.** in the Bear Lake County Courtroom, Paris, Idaho. You are
further notified that if you fail to appear at the place and time specified above that you
may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: April 22, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

S. CRISS JAMES
 Attorney at Law
 P.O. Box 474 - 25 West Center
 Soda Springs, Idaho 83276
 Telephone: (208) 547-4758
 Facsimile: (208) 547-4782
 Idaho State Bar #4836

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 APR 26 AM 11:34

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

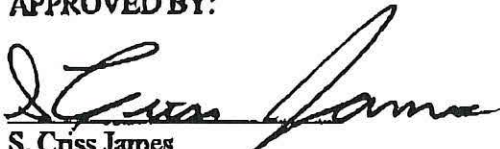
CASE NO: CR-2016-269


WAIVER OF STATUTORY TIME
 FOR PRELIMINARY HEARING

COMES NOW, the Defendant in the above entitled matter, acting individually and by and through his attorney of record, S. Criss James, hereby waives the statutory time for which the Preliminary Hearing must be held in the above entitled matter.

DATED this 26 day of April, 2016.

APPROVED BY:


 S. Criss James
 Attorney for Defendant


 BRODY JASKOWSKI

S. CRISS JAMES
Attorney at Law
P.O. Box 474 – 25 West Center
Soda Springs, Idaho 83276
Phone: (208) 547-4758
Facsimile: (208) 547-4782
Idaho State Bar # 4836

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 26 AM 11:34

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

CASE NO: CR-2016-269


MOTION TO CONTINUE

COMES NOW, the Defendant, by and through his Attorney of record, S. Criss James, hereby moves the court for a continuance of the Preliminary Hearing scheduled for Tuesday, the 26th day of April, 2016 at 3:00 o'clock p.m.

This Motion is based on the Defendant desires to obtain private counsel. Additionally the Public Defender did not receive this case until the afternoon of April 25, 2016 and he has had insufficient time to prepare for this hearing. The Defendant has signed a waiver of his statutory time to have this hearing come before the Court within 21 days. Said waiver is attached.

The Defendant has contacted Prosecution Attorney concerning this matter.

DATED THIS 26th day of April, 2016.


S. Criss James
Attorney for Defendant

CERTIFICATE OF MAILING


I hereby certify that on the 26 day of April, 2016, I mailed/served a true copy of the foregoing document to the Attorney(s)/Person(s) listed below by the following method.

Attorney(s)/Person(s):

Steven A. Wuthrich
Bear Lake County Prosecuting Attorney

Method of Service:

Fax: 945-1435

By: 
For S. Criss James

S. CRISS JAMES
Attorney at Law
P.O. Box 474 – 25 West Center
Soda Springs, Idaho 83276
Phone: (208) 547-4758
Facsimile: (208) 547-4782
Idaho State Bar # 4836

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 26 PM 3:57

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.


CASE NO: CR-2016-269

ORDER TO CONTINUE

Upon the submission of the above Motion to Continue and the Court being fully advised in
the premises and good cause appearing therefore,

IT IS HEREBY ORDERED that the Preliminary Hearing set for 3:00 o'clock p.m., on the
26th day of April, 2016, is hereby continued until the 11th day of May, 2016, at 3:00 p.m. 3:00 p.m.
7:00 a.m. at the Bear Lake County Courthouse, in Paris, Idaho, or as soon thereafter as counsel can be
heard.

IT IS SO ORDERED this 26th day of April, 2016.


The Honorable R. Todd Garbett
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 26th day of April, 2016,, a true and correct copy of the foregoing document was served on the Attorney(s)/Person(s) of records by the method indicated:

ATTORNEY(S)/PERSON(S):

S. Criss James
Bear Lake Public Defender
P.O. Box 474
Soda Springs, Idaho 83276

Steven A. Wuthrich
Bear Lake County Prosecuting Attorney

METHOD:

Hand-deliver

Hand-deliver

Clerk of Court

By: *Sarah Cottle*
Deputy Clerk

Sixth Judicial District Court, State of Idaho
Paris and For the County of Bear Lake
7 East Center
Paris, Idaho 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 26 PM 3:57

CINDY GARNER, CLERK

Case No: CR-2016-0000269
DEPUTY _____ CASE NO

NOTICE OF HEARING

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant

DOB: [REDACTED]

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

Preliminary Wednesday, May 11, 2016 03:00 PM
Judge: R. Todd Garbett
Courtroom: Bear Lake County Courtroom-Paris

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 Tuesday, April 26, 2016.

Defendant: Brody L Jaskowski

Mailed _____ Hand Delivered ☒

Private Counsel:

Mailed _____ Hand Delivered _____

Prosecutor: Steven A. Wuthrich

Mailed _____ Hand Delivered ☒

Dated: Tuesday, April 26, 2016
CINDY GARNER
Clerk Of The District Court

By:

Sarah H. H.
Deputy Clerk
DOC22 7/96

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 APR 28 AM 8:40

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

Kelly Kumm
Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Telephone: (208) 232-4051
Facsimile: (208) 232-2880

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

vs.

Brody Jaskowski,

Defendant.

Case No. CR-2016-0000269

**STIPULATION FOR SUBSTITUTION
OF COUNSEL**

Criss James Attorney for the Defendant, BODY JASKOWSKI, and Kelly Kumm of
KUMM & REICHERT, PLLC, hereby stipulate and agree that Kelly Kumm shall be substituted
as counsel for Brody Jaskowski, in all further proceedings in the above-entitled action.

Criss James

Criss James
Attorney at Law

Stella Lypri For:

Kelly Kumm
Attorney for Defendant

4/27/16
Date

4/27/16
Date

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 27th day of April, 2016, I caused a true and correct copy of the forgoing **STIPULATION FOR SUBSTITUTION OF COUNSEL** to be delivered to the party named below, as follows:

Steven Wuthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile

Kelly Kumm For:
Kelly Kumm

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 MAY -3 PM 12:17

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

Case No. CR-2016-0000269

REQUEST FOR DISCOVERY

PLEASE TAKE NOTICE that the defendant, BRODY JASKOWSKI, by and through his attorney, Kelly Kumm of **KUMM & REICHERT, PLLC**, and pursuant to Rule 16(b) of the Idaho Rules of Criminal Procedure, hereby requests discovery and inspection of the following information, evidence and materials:

1. Statement of Defendant. Permit defendant to inspect and copy or photograph, any relevant written or recorded statements made by 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 his agent and the recorded testimony of defendant before a grand jury which relates to the offense charged.

2. **Statements of Co-Defendant.** Permit the defendant to inspect and copy or photocopy any written or recorded statements of 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. The term co-defendant is intended to include any co-defendants charged in the same complaint or information as the defendant or any person charged with a crime in a separate pleading but otherwise included in the same incident or series of acts that lead to defendant's charge.

3. **Defendant's Prior Record.** Furnish defendant a copy of defendant's prior criminal record, if any, as is then or may become available to the prosecuting attorney.

4. **Documents and Tangible Objects (UNREDACTED COPIES).** Permit defendant to inspect and copy or photograph unredacted copies of all books, papers, documents, reports, photographs, tangible objects, buildings or places or copies or portions thereof which are in the possession, custody or control of the prosecuting attorney or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to defendant.

5. **Reports of Examinations and Tests.** Permit 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, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence. This request also extends to any and all

notes, graphs, charts or other preliminary data or findings of any type or kind performed during and in the course of such scientific testing, or which in any way relates to the results of such tests provided.

6. **Prosecution Witnesses.** Furnish to defendant a written list of names and addresses of all persons having knowledge of relevant facts who may be called by the state as a witness at trial together with any record or prior felony convictions of any such person which is within the knowledge of the prosecuting attorney or his agents.

7. **Rebuttal Witnesses.** Pursuant to Wardius vs. Oregon, 412 U.S. 470 (1973) provide a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the prosecuting attorney as witnesses at trial to rebut testimony of any defense witness, expert witness, witness in support of alibi defense, or to rebut any other defense testimony or evidence disclosed as required by law pursuant to Idaho Criminal Rule 16(c) or other provision of law. Please specify what evidence and/or defense witness the rebuttal witness is expected to rebut. If the rebuttal witness is expected to provide expert testimony, please provide all information requested in paragraph eight (8) below.

8. **Expert Witnesses.** Provide a written summary or report of any testimony the state intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of Idaho Code § 18-207.

9. **Police Reports.** Furnish to defendant unredacted copies of all reports and memoranda in the prosecuting attorney's possession which were made by a police officer or investigatory agent (including victim-witness coordinators employed either by a law enforcement agency or the prosecutor's office) in connection with the investigation or prosecution of the case.

10. **Handwritten Notes.** Furnish to defendant any and all original handwritten notes or memoranda of any agents of the state of Idaho who participated in any way in the investigating, arresting or prosecuting the defendant in this case. This request applies whether or not the original handwritten notes or memoranda have subsequently been included in another written report.

Furnish to defendant the original handwritten notes or memoranda of any agent of the government regarding any of the statements made by prospective witnesses, whether or not the original notes have subsequently been included in other written reports.

11. **Brady Materials.** Furnish to defendant any and all other, further or additional material of whatever type or kind, which is or may be exculpatory, which tends to negate the guilt of the accused as to the offense charged, which would tend to reduce the punishment therefore, or which is otherwise discoverable within the meaning of Brady vs. Maryland, 373 U.S. 83 (1963), including, but not limited to the following;

- (a) The results of tests, experiments, examinations, searches or seizures, which produced evidence favorable to the defendant or failed to produce evidence tending to incriminate the defendant;
- (b) A description of any evidence in this case which the government has intentionally or inadvertently destroyed or, for whatever cause, no longer has within its possession. Brady vs. Maryland, 373 U.S. 83 (1963);
- (c) Any evidence, information, testimony, transcripts, or statements indicating that any prospective prosecution witness on any occasions has given false, misleading, or contradictory information regarding the charges at bar or any other matter to any person, including those involved in law enforcement and their agents or informers, or has engaged in perjury before any court;

(d) Any evidence, information testimony, transcripts, or statements indicating that any prospective prosecution witness has given a statement which contradicts that of another potential prosecution witness; and

(e) Any evidence, information, testimony, transcripts, or statements indicating that any witness is biased or prejudiced regarding the defendant or any case in any way. United States vs. Bagley, 47. U.S. 667 (1985)

12. **Dispatch Tapes.** Furnish defendant with tape recorded copies of any and all calls made to or from any law enforcement dispatch center in connection with this case. **IT IS PARTICULARLY IMPORTANT THAT THE PLAINTIFF RESPOND TO THIS REQUEST AS SOON AS POSSIBLE, GIVEN THAT THE TAPES OF DISPATCH CALLS ARE ROUTINELY ERASED, DESTROYED OR OTHERWISE MADE UNAVAILABLE AFTER THIRTY (30) DAYS.**

This request extends to and includes, but is not limited to the following:

(a) Calls made by any person who is a law enforcement officer or in the employ of any law enforcement agency, to dispatch for the purpose of reporting a crime, or their belief that a crime had happened, was happening, or was about to happen.

(b) Calls made by any person who is a law enforcement officer or in the employ of any law enforcement agency, to dispatch for the purpose of making any report whatsoever concerning the conduct or activity of this defendant, whether or not the person believed that such conduct constituted a crime.

(c) Calls made by dispatch to any law enforcement officer or person in the employ of any law enforcement agency, in response to, in connection with, or as a result of any call or calls received by dispatch from any person or persons


(whether or not the person making such call into dispatch was a law enforcement officer or person in the employ of any law enforcement agency.)

13. Other Crime(s) Evidence. Inform defense counsel, in writing, as to whether or not the state of Idaho intends to introduce any evidence of "other crimes, wrongs or acts" in addition to the crimes charged against the defendant. If so, provide the following:

- (a) The date(s), time(s) and place(s) of the crime(s), wrong(s), or act(s);
- (b) A description of the crime(s), wrong(s) or act(s) involved;
- (c) The names, addresses and telephone number of all individuals involved in the crime(s), wrong(s), or act(s) as either principals, accomplices, victims or witnesses; and
- (d) The purpose of which the state of Idaho intends to introduce such evidence. (See Rule 404 of the Idaho Rules of Evidence.)

DATED this 2nd day of May, 2016.

KUMM & REICHERT, PLLC


Kelly Kumm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2016, I caused a true and correct copy of the foregoing **REQUEST FOR DISCOVERY** to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Kelly Kumm

KUMM & REICHERT, PLLC
Attorneys at Law

Kelly Kumm
Shane T. Reichert
Stratton P. Laggis

TO: Bear Lake County
FAX NO: (208) 945-2780
DATE: May 3, 2016
RE: State vs Jaskowski
PAGES TO FOLLOW: 7



MESSAGE:

Please file the following
Request for Discovery

Thank you
Denise

CONFIDENTIALITY

NOTE: Information contained in this transmittal is privileged and confidential.

Transmittal of the material, which follows by fax, is not intended to waive, compromise or modify the confidentiality of this communication under the attorney-client privilege or as the work product of the attorney. This transmittal is privileged and confidential, and the use or disclosure of this material by anyone other than the addressee is prohibited.

If you have received this communication in error, please call the office number below and we will arrange for its return at our expense.

1305 East Center Street
Pocatello, Idaho 83201

Telephone (208) 232-4051
Facsimile (208) 232-2880
www.krlawfirm.com

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
Paper ID: 201600286
2016 MAY 9 AM 11:17

PERSONAL RETURN OF SERVICE

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 28TH DAY OF APRIL 2016.

I HEREBY CERTIFY THAT, ON THE 2ND DAY OF MAY 2016, AT 3:26 O'CLOCK P.M., I, SPENCER CLEMENTS, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** RONALD VAN HARPER *****

PERSONALLY AT: 557 MAIN ST BERN ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 3RD DAY OF MAY 2016.

BRENT R. BUNN
SHERIFF


SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



SPENCER CLEMENTS
SERVING OFFICER

BY



DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE CO.

CLERK'S OFFICE

CASE NO. CR-2016-269 APR 28 A 11:18

STATE OF IDAHO,

Plaintiff,

SUBPOENA

vs,

BRODY L. JASKOWSKI,

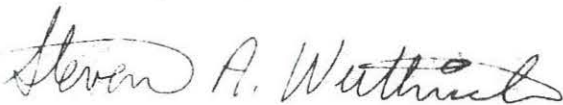
Defendant.

.....
To: Ronald Van Harper
557 Main St.
Bern, ID 83254

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing prosecuted by the STATE OF IDAHO against BRODY L. JASKOWSKI on the 11th day of **May 2016, at 3:00 p.m.** in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that if you fail to appear at the place and time specified above that you may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: April 27, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

Paper ID: 201600287 AM 11:17

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

PERSONAL RETURN OF SERVICE

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 28TH DAY OF APRIL 2016.

I HEREBY CERTIFY THAT, ON THE 2ND DAY OF MAY 2016, AT 7:10 O'CLOCK P.M., I, JOHN MARTINEZ, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

*****WELLS, BLAKE A*****

PERSONALLY AT: 534 WASHINGTON ST MONTPELIER ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 3RD DAY OF MAY 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY

John Martinez

JOHN MARTINEZ
SERVING OFFICER

BY

Deann Stucki

DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 APR 28 A 11:18

CASE NO. CR-2016-269

STATE OF IDAHO,

Plaintiff,

SUBPOENA

vs,

BRODY L. JASKOWSKI,

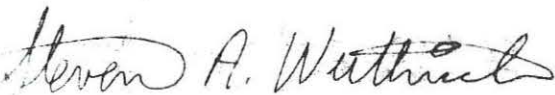
Defendant.

.....
To: Blake Wells
534 Washington
Montpelier, ID 83254

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing prosecuted by the STATE OF IDAHO against BRODY L. JASKOWSKI on the 11th **day of May 2016, at 3:00** p.m. in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that if you fail to appear at the place and time specified above that you may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: April 27, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

Sixth Judicial District Court, State of Idaho
in and For the County of Bear Lake
7 East Center
Paris, Idaho 83261

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant.

DOB: [REDACTED]

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 MAY 10 AM 11:20

CINDY GARNER, CLERK

Case No: CR-2016-0000269
DEPUTY _____ CASE NO

NOTICE OF HEARING

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

Preliminary Wednesday, May 18, 2016 03:30 PM
Judge: R. Todd Garbett
Courtroom: Bear Lake County Courtroom-Paris

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 Tuesday, May 10, 2016.

Private Counsel:

Faxed ☒ Hand Delivered ☐

Stratton P Laggis
1305 East Center Street
Pocatello ID 83201

Prosecutor: Steven A. Wuthrich

Faxed ☒ Hand Delivered ☐

Dated: Tuesday, May 10, 2016
CINDY GARNER
Clerk Of The District Court

By:

Sarah Wuthrich

Deputy Clerk
DOC22 7/96

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE

P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 MAY 13 AM 10:52

Paper ID: 201600315

CINDY GARNER, CLERK

DEPUTY. CASE NO.

PERSONAL RETURN OF SERVICE

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 11TH DAY OF MAY 2016.

I HEREBY CERTIFY THAT, ON THE 12TH DAY OF MAY 2016, AT 3:05 O'CLOCK P.M., I, BART HESLINGTON, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

*****WELLS, BLAKE A*****

PERSONALLY AT: 534 WASHINGTON ST MONTPELIER ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 13TH DAY OF MAY 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



BART HESLINGTON
SERVING OFFICER

BY



DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 MAY 11 P 2:44

CASE NO. CR-2016-269

STATE OF IDAHO,

Plaintiff,

SUBPOENA

vs,

BRODY L. JASKOWSKI,

Defendant.

To: Blake Wells
534 Washington
Montpelier, ID 83254

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 MAY 13 AM 10:52
CINDY GARNER, CLERK
DEPUTY CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing prosecuted by the STATE OF IDAHO against BRODY L. JASKOWSKI on the 18th day of **May 2016, at 3:30 p.m.** in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that if you fail to appear at the place and time specified above that you may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: May 11, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

2016 MAY 13 AM 10:52
Paper ID: 201600316

CINDY GARNER, CLERK

PERSONAL RETURN OF SERVICE

DEPUTY _____ CASE NO. _____

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 11TH DAY OF MAY 2016.

I HEREBY CERTIFY THAT, ON THE 12TH DAY OF MAY 2016, AT 3:15 O'CLOCK P.M., I, BART HESLINGTON, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** RONALD VAN HARPER *****

PERSONALLY AT: 557 MAIN ST BERN ID 83254

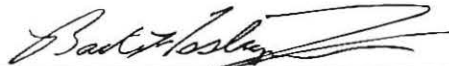
WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 13TH DAY OF MAY 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY


BART HESLINGTON
SERVING OFFICER

BY


DEANN STUCKI
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 MAY 11 P 2:44

CASE NO. CR-2016-269

STATE OF IDAHO,

Plaintiff,

SUBPOENA

vs,

BRODY L. JASKOWSKI,

Defendant.

.....
To: Ronald Van Harper
557 Main St.
Bern, ID 83254

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 MAY 13 AM 10:52
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth Judicial District in and for the County of Bear Lake, as a witness in a Preliminary Hearing prosecuted by the STATE OF IDAHO against BRODY L. JASKOWSKI on the 18th day of **May 2016, at 3:30 p.m.** in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that if you fail to appear at the place and time specified above that you may be held in contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: May 11, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

<u>05-18-16</u>	DATE	TIME
<u>Sarah W. H.</u>	DEPUTY	CLERK
		CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE
MAGISTRATE'S DIVISION

THE STATE OF IDAHO,)	
Plaintiff,	)	CASE NO. CR-2016-269
)	
vs.	)	MINUTE ENTRY AND ORDER
	)	HOLDING DEFENDANT TO
BRODY L. JASKOWSKI,	)	ANSWER AND COMMITMENT
)	
Defendant.)	
)	

DATE: May 18, 2016

APPEARANCES: Steve Wuthrich, Bear Lake County Prosecutor
Kelly Kumm, Counsel with and for the Defendant

MATTER BEFORE THE COURT: Preliminary Hearing

A Preliminary Hearing having been waived and the Court determining that a public offense has been committed, and that there is probable or sufficient cause to believe that the Defendant committed such offense;

IT IS THEREFORE ORDERED:

- 1) That the Defendant be held to answer in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake upon the following charges:

Count One –POSSESSION OF A CONTROLLED SUBSTANCE § 37-2732(c)(1);
FELONY

- 2) The Defendant appear at the time and place set by the District Court for arraignment on the Information filed by the Prosecuting Attorney.

- 3) Defendant is to be released on his/her own recognizance.

MINUTE ENTRY & ORDER HOLDING
DEFENDANT TO ANSWER & COMMITMENT

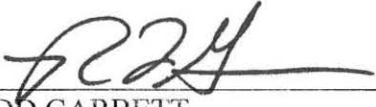
1

IT IS FURTHER ORDERED that the **BAIL** in this matter is set as ordered with the Defendant being advised that the following conditions are attached to said release, to wit:

- (1) Defendant shall keep in touch with his/her attorney and shall keep his/her attorney advised of his current telephone number and address;
- (2) Defendant is required to appear on time and prepared for all scheduled proceedings;
- (3) Defendant shall not violate any laws of the City, County, State or Federal government where the potential penalty could be in excess of \$150.00 during the period of said release;
- (4) Defendant shall not drive any motorized vehicle without a valid driver's license;
- (5) Defendant shall not possess or use any alcohol and/or drugs not prescribed by a medical doctor;
- (6) Defendant shall not frequent any establishment where the primary source of income is from the sale of alcohol;
- (7) The Defendant shall submit to random blood, breath and/or urine analysis upon the request of the Court or any law enforcement official;
- (8) The Defendant shall not associate with any individuals who are on probation/parole or involved in criminal activity.

4) The Clerk of the Court shall file a copy of this Order, documentation of the posting of bail, and, any financial disclosure and application for the services of the Public Defender, with the District Court.

DATED this 18th day of May, 2016.



R. TODD GARBETT
Magistrate Judge

CERTIFICATE OF TRANSFER

I hereby certify that the following items were this date transferred to the District Court in and for the County of Bear Lake.

- ✓ 1. A copy of the Order Holding Defendant to Answer;
- ✓ 2. Documentation of the posting of bail with the Magistrate Court.
- _____ 3. A copy of the defendant's appointment for the Public Defender.

MINUTE ENTRY & ORDER HOLDING
DEFENDANT TO ANSWER & COMMITMENT

_____ 4. Prosecuting Attorney's Information.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of May, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bear Lake County Prosecutor

Hand Delivery

Kelly Kumm
Attorney at Law
1305 East Center St
Pocatello, ID 83201

U.S. Mail

CINDY GARNER
Clerk of the District Court

By 
Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

05-18-16

DATE

TIME
CLERK

Sanahatta

DEPUTY

CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY L. JASKOWSKI,
Defendant.

CASE NO. CR-2016-269

ORDER FOR HEARING

IT IS HEREBY ORDERED that the following matter is set for
hearing:

MATTER: ARRAIGNMENT HEARING

DATE: JUNE 2, 2016 **TIME:** 9:00 o'clock A.M.

PLACE: Bear Lake County Courthouse, Paris, Idaho.

The Court shall be notified within seven (7) days hereof of
any pre-existing schedule conflict. No other motion for
continuance will be considered except upon written motion and
hearing pursuant to notice and attended by counsel and the
parties.

DATED this 18th day of May, 2016.

Mitchell W. Brown

MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 20th day of May, 2016, I mailed/served a true and correct copy of the foregoing document on the attorney(s)/person(s) listed below by mail, with the correct postage, thereon or causing the same to be hand delivered.

ATTORNEY (S) /PERSON (S) :

Steven A Wuthrich
Bear Lake Co Prosecutor
PO Box 190
Paris, ID 83261

Hand Delivery

Kelly Kumm
Attorney at Law
1305 East Center St
Pocatello, ID 83201

U.S. Mail

CINDY GARNER, CLERK



Deputy Clerk

Steven A. Wuthrich
Bear Lake County Prosecuting Attorney
P.O. Box 190
Paris, Idaho 86101
(208) 945-1438
Fax: (208) 945-1435
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 MAY 31 AM 9:56

CINDY GARNER, CLERK

DEPUTY _____ CASE NO. _____

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

STATE OF IDAHO,

Case No. CR-2016-269

Plaintiff,

CRIMINAL INFORMATION

vs.

BRODY JASKOWSKI,

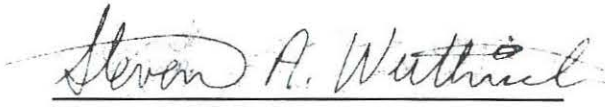
Defendant.
.....

The Bear Lake County Prosecuting Attorney alleges by this Information that BRODY JASKOWSKI has committed a criminal offense as more fully set forth herein.

COUNT I: That the Defendant, BRODY JASKOWSKI, on or about the 15th day of April, 2016, in the County of Bear Lake, State of Idaho, did unlawfully possess a controlled substance, to-wit: METHAMPHETAMINE, a Schedule II controlled substance.
POSSESSION OF A CONTROLLED SUBSTANCE - I.C. §37-2732(c)(1); FELONY

All of which is contrary to the form of the statute in such case made and provided.

DATED this 31st day of May 2016.


Steven A. Wuthrich
Bear Lake County Prosecuting Attorney

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone: (208) 232-4051
 Facsimile: (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 MAY 31 PM 1:53

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

STATE OF IDAHO,)	
	)	Case No. CR-2016-269
Plaintiff,)	
)	
vs.	)	MOTION TO CONTINUE
	)	ARRAIGNMENT HEARING
BRODY L. JASKOWSKI,)	
)	
Defendant.)	
_____)	

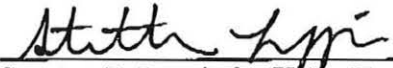
The defendant, BRODY L. JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, moves this court to continue the Arraignment Hearing scheduled in this matter for June 2, 2016 at 9:00 a.m. to a time and date convenient to court and counsel.

This motion is based on the grounds and for the reasons as follows:

1. That primary counsel is out of state; and
2. All other attorneys in the firm have prior scheduled conflicts.

RESPECTFULLY SUBMITTED this 31st day of May, 2016.

KUMM & REICHERT, PLLC


Stratton P. Laggis for Kelly Kumm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2016, I caused a true and correct copy of the foregoing **MOTION TO CONTINUE ARRAIGNMENT HEARING** to be delivered to the party named below, as follows:

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, ID 83261
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Stratton P. Laggis for Kelly Kumm

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 MAY 31 PM 4:02

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

Kelly Kumm
Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Telephone: (208) 232-4051
Facsimile: (208) 232-2880

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY L. JASKOWSKI,

Defendant.

Case No. CR-2016-269

**ORDER TO CONTINUE
ARRAIGNMENT HEARING**


The court having reviewed the defendant's Motion to Continue Arraignment Hearing and all other pleadings and documents on file herein, and good cause appearing therefore;

IT IS HEREBY ORDERED that the defendant's Motion to Continue Arraignment Hearing is hereby **GRANTED**.

IT IS HEREBY ORDERED that the Arraignment Hearing is hereby scheduled for June 16, 2016 at 9:00 a.m.

IT IS SO ORDERED.

RESPECTFULLY SUBMITTED this 31st day of May, 2016.


Honorable Mitchell W. Brown
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2016, I caused a true and correct copy of the foregoing **ORDER TO CONTINUE ARRAIGNMENT HEARING** to be delivered to the party named below, as follows:

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201
Facsimile: (208) 232-2880

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, ID 83261
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Deputy Clerk

Sixth Judicial District Court, State of Idaho
and For the County of Bear Lake
7 East Center
Paris, Idaho 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant.
DOB: [REDACTED]

Case No: CR-2016-0000269

2016 JUN -7 AM 9:42

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

NOTICE OF HEARING

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

Arraignment Friday, June 17, 2016 09:00 AM
Judge: Mitchell W Brown
Courtroom: Bear Lake County Courtroom-Paris

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 Tuesday, June 7, 2016.

Defendant: Brody L Jaskowski

Mailed _____ Hand Delivered _____

Private Counsel:

Faxed 232-2880 ✓ Hand Delivered _____

Kelly Kenneth Kumm

1305 East Center
Pocatello ID 83201-5796

Prosecutor: Steven A. Wuthrich

Mailed _____ Hand Delivered ✓

Dated: Tuesday, June 7, 2016

CINDY GARNER
Clerk Of The District Court

By:

[Signature]
Deputy Clerk
DOC22 7/96

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, ID 83261
208-945-1438
Prosecutor for Bear Lake County
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 JUN 20 PM 12:56

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

-VS-

BRODY LEE JASKOWSKI,

Defendant.

Case No. CR-2016-269

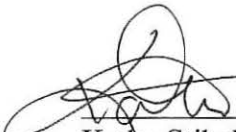
NOTICE OF SERVICE

PLAINTIFF'S
DISCOVERY

.....
The undersigned hereby certifies that on this date, June 20th, 2016, a true and correct copy of the following Plaintiff's Response to Discovery was served by

Kelly Kenneth Kumm
Attorney at Law
1305 East Center St.
Pocatello, Idaho 83201
Fax:

(/) Mailed



Kathy Stibal
Legal Assistant
Bear Lake County Prosecutor

63 of 196

NOT GUILTY to the charge of: **POSSESSION OF A CONTROLLED SUBSTANCE**, to wit: Methamphetamine, I.C. §37-2732(c)(1), a Felony, as described in the Criminal Information.

IT IS HEREBY ORDERED that this case is hereby set for **JURY TRIAL** before the undersigned District Judge on **OCTOBER 3, 2016, AT THE HOUR OF 9:00 A.M.**, on a “to follow” basis.

IT IS FURTHER ORDERED that this case is hereby set for **PRE-TRIAL CONFERENCE** on **SEPTEMBER 15, 2016, AT THE HOUR OF 9:00 A.M.**

IT IS FURTHER ORDERED that this case is hereby set for **FURTHER PROCEEDINGS** on **AUGUST 18, 2016, AT THE HOUR OF 9:00 A.M.**

IT IS FURTHER ORDERED that BAIL in this matter shall remain as previously set in the amount of \$20,000.00. The Defendant is currently released on a surety bond and Court advised the Defendant that his release shall be subject to his compliance with the following conditions, to wit:

- (1) Defendant shall keep in touch with his attorney and shall keep his attorney advised of his current telephone number and address;
- (2) Defendant shall not leave the State of Idaho during said release without prior knowledge and permission of his attorney. He shall not be out of state overnight without prior permission of the Court;
- (3) Defendant is required to appear on time and prepared for all scheduled proceedings;
- (4) Defendant shall not violate any laws of the City, County, State or Federal government where the potential penalty could be in excess of \$150.00 during the period of said release;
- (5) Defendant shall not drive any motorized vehicle without a valid driver's license;
- (6) Defendant shall not possess or use any alcohol and/or drugs not prescribed by a medical doctor;
- (7) During the term of release, the Defendant shall not frequent any establishment where the primary source of income is from the sale of alcohol;

- (8) Defendant shall submit to random blood, breath and/or urine analysis upon the request of the Court or any law enforcement official;
- (9) Defendant shall not associate with any individuals who are on probation/parole or involved in any criminal activity.

The Court admonished the Defendant to comply with all the terms and conditions of release and to appear at any further proceedings as required.

DATED this 27th day of June, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Steven A. Wuthrich
Bear Lake County Prosecutor

Hand Deliver

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Facsimile: 232-2880

Bear Lake County Sheriff

Hand Deliver


Deputy Clerk

6/27/2016

DATE

TIME
CLERK

KW

DEPUTY

CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STATE OF IDAHO

Plaintiff,

vs.

BRODY JASKOWSKI

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Case No: CR-2016-0000269

ORDER FOR JURY TRIAL

IT IS HEREBY ORDERED:

This cause is set for trial and pre-trial schedule as follows:

TRIAL: JURY

DATE: Monday, October 3, 2016 at 09:00 AM,

PLACE: Bear Lake County Courthouse

SETTING POSITION: First Setting

ESTIMATED NUMBER OF DAYS: Two (2) Days

MULTIPLE SETTINGS: In the event this cause is one of two or more set for the same date and time, it is the responsibility of counsel to inform themselves of their position upon the trial calendar. In the event a case cannot be tried on the date indicated, every effort will be made to reset at the next available courtroom opening.

NOTICE OF CONFLICT IN SCHEDULE: The Court will be notified **within fourteen (14) days hereof** of any pre-existing schedule conflict. No other motion for continuance will be considered except upon written motion and hearing pursuant to notice and attended by **counsel and the parties**, together with a written waiver of Speedy Trial rights signed by Defendant(s) and approved by Defendant(s) counsel.

The following pre-trial schedule will be followed:

- 1. DISCOVERY COMPLETION:** The discovery cut-off date is **twenty-eight (28) days before trial**. Discovery requests shall have been served sufficiently in advance of this date to require responses to such requests to be filed by this date. Motions for compulsion, sanctions and/or

extensions will be filed in advance of this date.

2. MOTION DEADLINE: Except as otherwise specifically provided by the Idaho Criminal Rules, motion cut-off date is twenty-eight (28) days before trial. In addition to other requirements of the Rules or Orders of this Court, if any, all motions filed with this Court must be supported by a memorandum of position and authorities, which shall be concise and direct. Adverse parties shall oppose in the same manner. Failure of the moving party to file will be deemed a waiver of the motion. Failure of the adverse party to file will be deemed consent to sustaining the motion.

3. ATTORNEYS PRE-TRIAL CONFERENCE AND ORDER: Attorneys' pre-trial conference shall be held and a pre-trial report prepared and filed as provided by this Court's separate order, if any. If none issued, each party shall furnish the Court, and other party, not less than 14 days prior to trial, a list of all witnesses, except rebuttal, and a list of all exhibits. Pretrial motions are set for September 15, 2016, at 09:00 a.m.

4. POINTS AND AUTHORITIES: Pre-trial **POINTS AND AUTHORITIES** are required on all substantives; procedural or evidentiary issues anticipated and shall be filed not less than fourteen (14) days prior to date of trial.

5. JURY INSTRUCTIONS AND VERDICT FORMS: Each party shall file requested **JURY INSTRUCTIONS** and **PROPOSED VERDICT FORMS** not less than fourteen (14) days prior to date of trial.

Dated this 27th day of June, 2016.


MITCHELL W BROWN
DISTRICT JUDGE

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 28th day of June, 2016, I mailed/served a true copy of the Order for Jury Trial on the attorney(s)/person(s) listed below by mail with correct postage or causing the same to be hand delivered.

Attorney(s)/Person(s):

Steven A. Wuthrich
1011 Washington St., Ste 101
Montpelier ID 83254

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Method of Service:

Hand Delivered

Facsimile: 232-2880

CINDY GARNER,
Clerk Of The District Court

By: 
Deputy Clerk

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 JUL 26 AM 8:30

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 BRODY JASKOWSKI,)
)
 Defendant.)
 _____)

Case No. CR-2016-0000269

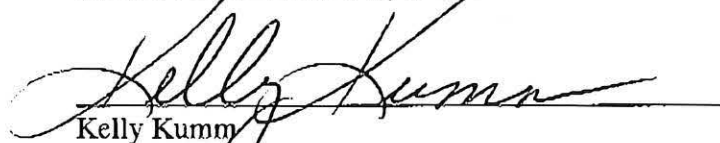
**MOTION FOR PRELIMINARY
 HEARING TRANSCRIPT**

The defendant, BRODY JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC** moves the court for an order for the preparation of the transcript of the Preliminary Hearing held in this matter on May 18, 2016, before the Honorable R. Todd Garbett.

The defendant further requests that all fees and costs for the preparation of the transcript be paid at county and/or state expense as the defendant is indigent and without funds to pay for the same.

RESPECTFULLY SUBMITTED this 25th day of July, 2016.

KUMM & REICHERT, PLLC


Kelly Kumm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2016, I caused a true and correct copy of the foregoing **MOTION FOR PRELIMINARY HEARING TRANSCRIPT** to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Kelly Kumm

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 JUL 26 AM 8:30

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

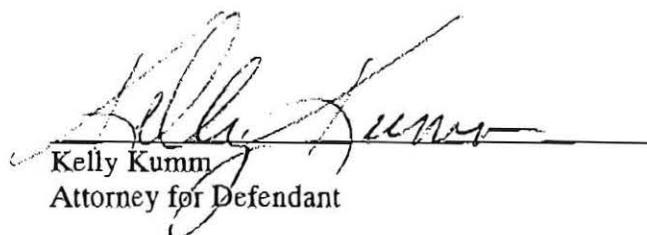
STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR-2016-0000269
vs.)	
	)	MOTION TO COMPEL
BRODY JASKOWSKI,	)	DISCOVERY
)	
Defendant.)	
_____)	

The defendant, BRODY JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, respectfully moves the court for an order to compel the state of Idaho (hereinafter referred to as "State") and its attorney, Steven Wurthrich, to provide defendant's counsel with responses to his request for discovery. This motion is made for the reasons and on the grounds as follows:

1. The defendant served his Request for Discovery on the State on or about May 2, 2016.
2. The State filed a tardy response on June 20, 2016. The failure to file a timely response constitutes a waiver of any objections to the discovery requests pursuant to Idaho Criminal Rule 16(f)(2).
3. The State failed to respond to, or provide, a number of critical items, such as the names of potential witnesses, dispatch tapes, and reports of examinations or tests.
4. The above-mentioned items are of a time-sensitive nature, specifically any dispatch tapes, as their preservation is of paramount concern.
5. The defendant requests the court to order the State to respond to the defendant's Request for Discovery in full, to prohibit the introduction of any evidence at trial which was not disclosed in the State's response and prescribe such other sanctions as are reasonable and appropriate under the circumstances.
6. The defendant also requests that the State be required to pay the defendant's attorney's fees and costs incurred in filing this motion as an additional sanction pursuant to Idaho Criminal Rule 16(f)(2).

RESPECTFULLY SUBMITTED this 25th day of July, 2016.

KUMM & REICHERT, PLLC


Kelly Kumm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2016, I caused a true and correct copy of the foregoing **MOTION TO COMPEL DISCOVERY** to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
☐ By Hand Delivery
☒ By Facsimile


Kelly Kumm

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 JUL 26 AM 8:30

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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


STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2016-0000269
)	
vs.	)	NOTICE OF HEARING ON
	)	MOTION TO COMPEL
BRODY JASKOWSKI,	)	DISCOVERY
)	
Defendant.)	
_____)	

TO: THE STATE OF IDAHO AND ITS ATTORNEY, STEVEN WUTHRICH.

NOTICE IS HEREBY GIVEN that the defendant's **MOTION TO COMPEL DISCOVERY** will be heard on **Thursday September 15, 2016 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Mitchell W. Brown.

DATED this 25th day of July, 2016.

KUMM & REICHERT, PLLC


 Kelly Kumm
 Attorney for Defendant

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 JUL 26 AM 11:44

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

Kelly Kumm
Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Telephone (208) 232-4051
Facsimile (208) 232-2880

Attorney for Defendant

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

Case No. CR-2016-0000269

**ORDER FOR PRELIMINARY
HEARING TRANSCRIPT**

The court having reviewed the defendant's Motion for Preliminary Hearing Transcript and all documents and pleadings on file herein, and good cause appearing therefore;

IT IS HEREBY ORDERED that the transcript of the Preliminary Hearing held in the above-entitled matter on May 18, 2016 before the Honorable R. Todd Garbett shall be prepared and delivered to the defendant's counsel.

IT IS FURTHER ORDERED that the State of Idaho shall pay all fees and costs associated with the preparation of the transcript.

Dated July 26, 2016. *Michael W. Brown*

CLERK'S
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2016, I caused a true and correct copy of the foregoing **ORDER FOR PRELIMINARY HEARING TRANSCRIPT** to be delivered to the parties named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
☐ By Hand Delivery
☒ By Facsimile

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Fax No. (208) 232-2880

- ☐ By U.S. Mail
☐ By Hand Delivery
☒ By Facsimile

Court Reporter
Bear Lake County Courthouse

- ☒ By U.S. Mail
☐ By Hand Delivery
☐ By Facsimile

Sarah Hille


Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2016, I caused a true and correct copy of the foregoing **NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY** to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Kelly Kumm

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, ID 83261
208-945-1438
Prosecutor for Bear Lake County

.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 JUL 26 PM 3:49
CINDY GARNER, CLERK
DEPUTY _____ CASE NO

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

STATE OF IDAHO,

Plaintiff,

-VS-

BRODY LEE JASKOWSKI,

Defendant.

Case No. CR-2016-269

NOTICE OF SERVICE

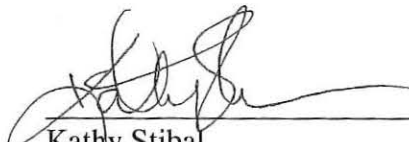
PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO DISCOVERY

.....

The undersigned hereby certifies that on this date, July 26th, 2016, a true and correct copy of the following Plaintiff's Response to Discovery was served by

Kelly Kenneth Kumm
Attorney at Law
1305 East Center St.
Pocatello, Idaho 83201
Fax:

~~()~~ Mailed


Kathy Stibal
Legal Assistant
Bear Lake County Prosecutor

Steven A. Wuthrich
P.O. Box 190
Paris, Idaho 83254
Prosecuting Attorney for
Bear Lake County
(208)945-1438

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 JUL 26 PM 3:49

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

.....

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

STATE OF IDAHO,

Case No. CR-2016-269

Plaintiff,

-vs-

**OBJECTION TO MOTION TO
COMPEL DISCOVERY**

BRODY JASKOWSKI,

Juvenile,

.....

COMES NOW the State of Idaho through Prosecuting Attorney Steven A. Wuthrich and
objects to Defendant's MOTION TO COMPEL DISCOVERY for the following reasons:

1. That the State and its Attorney Steve A. Wuthrich provided all the materials that
the Bear Lake County Prosecutor's Office had at the time.
2. Although the potential witnesses were not specified, they are on the Montpelier
Police Report #31600494 of Lt. Blake Wells, and have been specifically
identified in Supplemental Response dated July 26, 2016.
3. The discovery request from Kelly Kumm, Kumm & Reichert, PLLC, far exceeds
the scope format of I.C.R. (16)(a); DISCOVERY AND INSPECTION:
 - a. Dispatch Tapes: dispatch is through Bear Lake County, such dispatch
records are equally available to the defendant as to the prosecuting

Objection to Motion

State v. BRODY JASKOWSKI

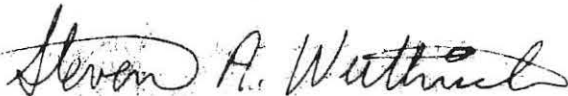
attorney. NEVERTHELESS, The State and its Attorney Steve A.

Wuthrich have at this time provided the defense counsel with a copy of the dispatch tape in a supplemental discovery response dated the 26th day of July 2016.

- b. Handwritten Notes. None known at this time.
- c. Other Crime(s) Evidence. The Bear Lake County Prosecutor is no longer capable of providing criminal history of Defendants without a Court Order. The issuing body has forbidden dissemination of NCIC reports without a court order or the requestor, or said requestor, in this case Bear Lake County Sheriff's Office, will be blocked from receiving said reports. That being said the State is not aware of any Rule 404(b) evidence in this case.
- d. Tape Recordings. A copy of all tape recordings have already been provided.

For the foregoing reasons, the motion should be denied.

Date: July 26, 2016



Steven A. Wuthrich
Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2016, I mailed/served a true and correct copy of the foregoing upon each of the following attorney(s)/person(s)/individual(s) listed below by facsimile, U.S. mail with correct postage thereon or causing the same to be hand delivered.

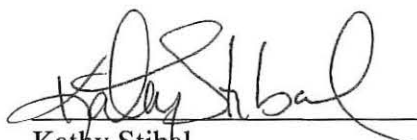
ATTORNEY(S) /PERSON(S):

KELLY KUMM
Kumm & Reichert
1305 Center Street
Pocatello, Idaho 83201

208-232-2880

METHOD OF SERVICE:

☐ Hand Delivered
☒ Facsimile
☐ Mailed
☐ Emailed


Kathy Stibal
Legal Assistant

Objection to Motion

State v. BRODY JASKOWSKI

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Defendant

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 AUG -1 PM 2:30

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

Case No. CR-2016-0000269


AMENDED
NOTICE OF HEARING ON
MOTION TO COMPEL
DISCOVERY

TO: THE STATE OF IDAHO AND ITS ATTORNEY, STEVEN WUTHRICH.

NOTICE IS HEREBY GIVEN that the defendant's **MOTION TO COMPEL DISCOVERY** currently scheduled to be heard on Thursday September 15, 2016 at 9:00 a.m., is rescheduled and shall be heard on **Thursday, August 18, 2016, at 9:00 a.m.** or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Mitchell W. Brown.

DATED this 15th day of August, 2016.

KUMM & REICHERT, PLLC



 Kelly Kumm
 Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2016, I caused a true and correct copy of the foregoing **AMENDED** NOTICE OF HEARING ON MOTION TO COMPEL DISCOVERY to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Fax No. (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile



Kelly Kumm

Steven A. Wuthrich (ISB #3316)
Prosecuting Attorney
P.O. Box 190
Paris, ID 83261
Phone: 208-945-1438
Fax: 208-945-1435
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 AUG 19 AM 11:03

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

STATE OF IDAHO,

Case No. CR-2016-269

Plaintiff,

-VS-

BRODY LEE JASKOWSKI,

PLAINTIFF'S SECOND
SUPPLEMENTAL
RESPONSE TO DISCOVERY

Defendant.
.....

COMES NOW the State of Idaho by Prosecuting Attorney Steven A. Wuthrich and submits the following SECOND SUPPLEMENTAL RESPONSE TO DISCOVERY pursuant to the format of I.C.R. (16)(a).

1. Defendant's Prior Record. Furnish defendant a copy of defendant's prior criminal record, if any, as is then or may become available to the prosecuting attorney.

Answer No. 1: See accompanying reports.

2. Reports of Examinations and Tests. Permit 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, the existence of which is known

or is available to the prosecuting attorney by the exercise of due diligence. This request also extends to any and all notes, graphs, charts or other preliminary data or findings of any type or kind performed during and in the course of such scientific testing, or which in any way relates to the results of such tests provided.

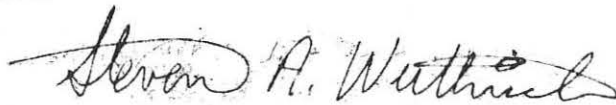
Answer No. 2: See accompanying reports.

3. OTHER INFORMATION:

- a. None at this time

The Plaintiff objects to any request for discovery other than that specifically provided for in Rule 16, Idaho Criminal Rules, on the grounds that said matters are not subject to discovery except as provided by said rule.

DATED this 19th day of August, 2016.



Steven A. Wuthrich
Bear Lake County Prosecutor

Steven A. Wuthrich (ISB #3316)
P.O. Box 190
Paris, ID 83261
208-945-1438
Prosecutor for Bear Lake County
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 AUG 19 AM 11:03

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

STATE OF IDAHO,

Plaintiff,

-VS-

BRODY LEE JASKOWSKI,

Defendant.

Case No. CR-2016-269

NOTICE OF SERVICE

PLAINTIFF'S SECOND
SUPPLEMENTAL
RESPONSE TO DISCOVERY

.....
The undersigned hereby certifies that on this date, August 19th, 2016, a true and correct copy
of the following Plaintiff's Response to Discovery was served by

Kelly Kenneth Kumm
Attorney at Law
1305 East Center St.
Pocatello, Idaho 83201
Facsimile: 208-232-2880

 FACSIMILE


Kathy Stibal
Legal Assistant
Bear Lake County Prosecutor

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 AUG 29 AM 9:08

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

Register #CR-2016-0000269-FE

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY L. JASKOWSKI,

Defendant.

MINUTE ENTRY & ORDER

On August 18, 2016, Stratton P. Laggis, counsel for the above-named Defendant appeared in Court for hearing on the Defendant's Motion to Compel Discovery. The Defendant was not present. Steven A. Wuthrich, Bear Lake County Prosecuting Attorney, appeared on behalf of the State of Idaho. The court reporter was Rodney M. Felshaw and the court clerk was Karen Volbrecht.

The Court heard argument from respective counsel on the Defendant's Motion to Compel Discovery. The Defendant advised that most of the issues addressed in the Motion to Compel Discovery have been resolved except the State has not provided the Defendant's prior criminal record nor the printouts or chromatograms from the State Forensic Lab. The Defendant also

Case No. CR-2016-0000269-FE

MINUTE ENTRY & ORDER

Page 1

requested attorney fees. The State objected to the Defendant's request for attorney fees.

Based upon the information before the Court;

IT IS HEREBY ORDERED the Defendant's Motion to Compel is GRANTED in part and DENIED in part. The State shall provide copies of the NCIC report related to the Defendant's criminal history and of the State Forensic Lab printouts/chromatograms to the Defendant within ten (10) days of this hearing. The Defendant's request for attorney fees is DENIED.

IT IS FURTHER ORDERED that the Defendant shall submit to a drug and alcohol test to determine if he is in compliance with his release. The results of the drug and alcohol test shall be provided to the court clerk's office by 5:00 p.m. on August 19, 2016.

DATED this 29th day of August, 2016.

A handwritten signature in cursive script, reading "Mitchell W. Brown", written in black ink.

MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of August, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bear Lake County Prosecutor
Steven A. Wuthrich

Hand Deliver

Kelly K. Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Facsimile: 232-2880


Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 AUG 29 AM 9:33

CINDY GARNER, CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
DEPUTY _____ CASE NO.
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 BRODY JASKOWSKI,)
 Defendant.)
 _____)

CASE NO. CR-2016-0000269
*****AMENDED*****
ORDER FOR PRELIMINARY
HEARING TRANSCRIPT

The Court having further reviewed the Defendant's Motion for Preliminary Hearing Transcript requesting that all fees and costs for the preparation of the transcript be paid at county and/or State expense and determining that the Defendant has retained private counsel and there has been no showing of indigence status by the Defendant;

IT IS HEREBY ORDERED that the Defendant's Motion that the transcript of the Preliminary Hearing be prepared at the county and/or State's expense is DENIED. The Defendant shall bear the costs associated with the preparation of the preliminary hearing transcript.

DATED this 29th day of August, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 29th day of August, 2016, I mailed/served a true and correct copy of the foregoing document on the attorney(s)/person(s) listed below by mail, with the correct postage, thereon or causing the same to be hand delivered.

ATTORNEY(S)/PERSON(S):

Steven A. Wuthrich
Bear Lake County Prosecutor

Hand Deliver


Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Facsimile (208) 232-2880

Rodney M. Felshaw
Court Reporter

Email: rodney.felshaw@gmail.com

CINDY GARNER, CLERK



Deputy Clerk

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone: (208) 232-4051
 Facsimile: (208) 232-2880

Attorney for Brody L. Jaskowski

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 SEP 14 PM 3:47

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)	
	)	Case No. CR-2016-269
Plaintiff,)	
)	
vs.	)	MOTION TO CONTINUE TRIAL
)	
BRODY L. JASKOWSKI,)	
)	
Defendant.)	
_____)	

The defendant, BRODY L. JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, moves this court for its order to continue the Jury Trial currently scheduled in this matter for October 3, 2016 at 9:00 a.m. to a time and date convenient to court and counsel. This motion is based on the grounds and for the reasons as follows:

1. After hearing on the defendant's Motion to Compel Discovery on August 18, 2016, counsel for the defendant received a second (2nd) supplemental discovery response from the State on August 19, 2016.

Motion to Continue Trial


Page 1 of 2

2. The defendant is in the process of consulting an expert regarding the information provided in the State's second (2nd) supplemental discovery response.

3. The defendant has filed a Motion to Suppress contemporaneously with this motion.

RESPECTFULLY SUBMITTED this 14th day of September, 2016.

KUMM & REICHERT, PLLC


Stratton P. Laggis
For: Kelly Kumm
Attorney for Brody L. Jaskowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2016, I caused a true and correct copy of the foregoing **MOTION TO CONTINUE TRIAL** to be delivered to the party named below, as follows:

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, Idaho 83261
Facsimile: (208) 847-1230

☐ By U.S. Mail
☐ By Hand Delivery
☒ By Facsimile


Stratton P. Laggis

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone: (208) 232-4051
 Facsimile: (208) 232-2880

Attorney for Brody L. Jaskowski

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 SEP 14 PM 3:47

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)	
	)	Case No. CR-2016-269
Plaintiff,)	
)	
vs.	)	MOTION TO SUPPRESS
	)	EVIDENCE
BRODY L. JASKOWSKI,)	
)	
Defendant.)	
_____)	

The defendant, BRODY L. JASKOWSKI (hereinafter referred to as "Jaskowski"), by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, respectfully moves the court for its order suppressing all evidence seized following the unconstitutional stop of Jaskowski on April 15, 2016. This motion is brought pursuant to Idaho Criminal Rules 12 and 41, the Fourth, Fifth, and Sixth Amendments of the Constitution of the United States of America, and Article I, Sections 13 and 17 of the Constitution of the State of Idaho.

Jaskowski reserves the right to submit a Memorandum in Support of Motion to Suppress Evidence based upon the documents and records in this matter and following the testimony and evidence presented at the hearing to be scheduled in this matter on the above-entitled motion.

RESPECTFULLY SUBMITTED this 14th day of September, 2016.

KUMM & REICHERT, PLLC



Stratton P. Laggis

For: Kelly Kumm

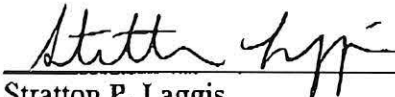
Attorney for Brody L. Jaskowski

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 14th day of September, 2016, I caused a true and correct copy of the foregoing **MOTION TO SUPPRESS EVIDENCE** to be delivered to the party named below, as follows:

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, Idaho 83261
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile



Stratton P. Laggis

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 1305 East Center Street
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 Telephone: (208) 232-4051
 Facsimile: (208) 232-2880

Attorney for Brody L. Jaskowski

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 SEP 14 PM 3:47

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)	
	)	Case No. CR-2016-269
Plaintiff,)	
)	
vs.	)	MOTION TO APPEAR
	)	TELEPHONICALLY
BRODY L. JASKOWSKI,)	
)	
Defendant.)	
_____)	


The defendant, BRODY L. JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, moves this court for its order allowing the undersigned to appear telephonically for the Pretrial Conference currently scheduled in this matter for September 15, 2016 at 9:00 a.m. This motion is based on the grounds and for the reasons as follows:

1. Counsel for the defendant filed a Motion to Continue Trial and a Motion to Suppress contemporaneously with this motion.

2. The primary purpose of the Pretrial Conference will concern scheduling matters for the above-mentioned motions.

RESPECTFULLY SUBMITTED this 14th day of September, 2016.

KUMM & REICHERT, PLLC



Stratton P. Laggis
For: Kelly Kumm
Attorney for Brody L. Jaskowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2016, I caused a true and correct copy of the foregoing **MOTION TO APPEAR TELEPHONICALLY** to be delivered to the party named below, as follows:

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, Idaho 83261
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile



Stratton P. Laggis

Steven A. Wuthrich (ISB #3316)
Prosecuting Attorney
Bear Lake County
P.O. Box 190
Paris, ID 83261
(208) 945-1438
Fax: (208)-945-1435
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 SEP 15 PM 2:24
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

CASES NO. CR-2016-269

Plaintiff,

-VS-

STATE'S REQUEST
FOR DISCOVERY

BRODY L. JASKOWSKI,

Defendant.
.....

TO THE ABOVE-NAMED Defendant:

PLEASE TAKE NOTICE that the under signed, pursuant to Rule 16 of Idaho Criminal Rules, requests discovery and inspection of the following:

1. DOCUMENTS AND TANGIBLE OBJECTS: Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, video tapes, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which the Defendant intends to introduce in evidence at trial.
2. REPORTS OF EXAMINATIONS AND TESTS: The Prosecution hereby requests the Defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce in evidence at the trial, or which were prepared by a witness who the Defendant intends to call at the trial when the results or reports related to testimony of the witness.

3. DEFENSE WITNESSES: The Prosecution requests the Defendant to furnish the State with a list of names and addresses of witnesses the Defendant intends to call at trial.

4. MATERIAL INFORMATION: The Prosecution hereby requests the Defendant to furnish the Prosecution with any material information within the Defendant's possession or control, or which hereafter comes into your possession or control, which tends to negate the guilt of the defendant as to the offense charged or which would tend to reduce the punishment therefore.

5. AFFIRMATIVE DEFENSES AND ALIBIS: The Prosecution hereby requests that the Defendant furnish the Prosecution with any information regarding real and/or affirmative defenses, including information as to Defendant's alibis, conduct of witnesses for the prosecution, the citing officer, or other peace officer or agent of the prosecuting attorney that the Defendant intends to introduce at trial.

Date: September 15, 2016

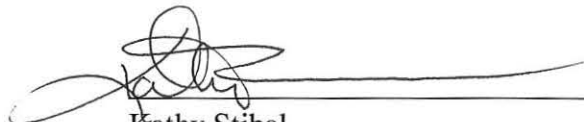


Steven A. Wuthrich
Prosecutor for Bear Lake County

CERTIFICATE OF MAILING/FACSIMILE

I HEREBY CERTIFY that I cause to have served via Facsimile a true and correct copy of the foregoing Answers to Discovery on this 15th day of September, 2016 to the following:

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Fax: (208) 232-2880



Kathy Stibal
Bear Lake County Prosecutor Assistant

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

9/21/2016

DATE

TIME
CLERK

DEPUTY

CASE NO.

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

Register #CR-2016-0000269-FE

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY L. JASKOWSKI,

Defendant.

MINUTE ENTRY & ORDER

On September 15, 2016, Stratton P. Laggis, counsel for the above-named Defendant appeared by telephone for a Jury Pre-trial Conference. The Defendant was not present. Steven A. Wuthrich, Bear Lake County Prosecuting Attorney, appeared on behalf of the State of Idaho. The court reporter was Rodney M. Felshaw and the court clerk was Karen Volbrecht.

The Court reviewed the prior proceedings noting the Defendant filed a Motion to Continue Trial, Motion to Suppress Evidence and Motion to Appear Telephonically on September 14, 2016. Counsel was admonished by the Court that the Defendant shall be present at any future hearings unless expressly excused by the Court in advance of the hearing. The Court also advised Defendants' counsel that any requests to appear telephonically must be filed at least 48 hours in

Case No. CR-2016-0000269-FE

MINUTE ENTRY & ORDER

Page 1

advance of the hearing. The Court further noted the Motion to Suppress was not accompanied by a supporting memorandum or a motion sufficiently describing the legal basis for the suppression motion “to give the opposing party [or the Court] reasonable notice of the issues.” *See* Idaho Criminal Rule 12(c).

The Court addressed the Defendant’s Motion to Continue and informed the parties that the Court has a double setting for the current trial date of October 3, 2016. The State did not object to the motion to continue but requested the Defendant waive speedy trial. Counsel for the Defendant stated he was not prepared to waive speedy trial as he had not discussed that issue with lead counsel Kelly Kumm. Based upon the discussion and the information before the Court;

IT IS HEREBY ORDERED that the Defendant’s Motion to Appear Telephonically is GRANTED.

IT IS FURTHER ORDERED the Defendant’s Motion to Continue Trial is GRANTED.

IT IS FURTHER ORDERED that the Court finds that the Defendant has waived his right to speedy trial based upon the Defendant’s Motion to Continue filed on September 14, 2016, and in accordance with I.C. §19-3501(3).

IT IS FURTHER ORDERED that the Defendant shall submit an amended motion to suppress and/or supporting memorandum within fourteen (14) days (by September 29, 2016) which provides “the evidence sought to be suppressed and the legal basis for its suppression sufficiently to give the opposing party [and the Court] reasonable notice of the issues” in accordance with I.C.R. 12(c). The State shall have fourteen (14) days (by October 13, 2016) to file its response, if any.

The Defendant shall file his reply brief, if any, on or before October 17, 2016.

IT IS FURTHER ORDERED the Defendant's Motion to Suppress shall be set for hearing on Thursday, October 20, 2016, at 11:00 a.m.

IT IS FURTHER ORDERED that the Defendant shall submit to a drug and alcohol test by 5:00 p.m. on Thursday, September 15, 2016, to determine if he is in compliance with his release. The results of the drug and alcohol test shall be provided to the court clerk's office by 5:00 p.m. on September 16, 2016.

DATED this 21st day of September, 2016.

A handwritten signature in black ink, reading "Mitchell W. Brown". The signature is written in a cursive style with a horizontal line underneath the name.

MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of September, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bear Lake County Prosecutor
Steven A. Wuthrich

Hand Deliver

Kelly K. Kumm
Stratton P. Laggis
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Facsimile: 232-2880


Deputy Clerk

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone: (208) 232-4051
 Facsimile: (208) 232-2880

Attorney for Brody L. Jaskowski

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 SEP 30 AM 8:41

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR-2016-269
vs.)	
	)	MEMORANDUM IN SUPPORT
BRODY L. JASKOWSKI,	)	OF MOTION TO SUPPRESS
	)	EVIDENCE
Defendant.)	
_____)	

I. STATEMENT OF THE CASE

A. Nature of the Case

On or about April 15, 2016, Montpelier police officer Blake Wells stopped the defendant, Brody Jaskowski (hereinafter referred to as "Jaskowski"). (Tr. at p.9, ll.1-7). Officer Wells testified that he had been informed by his dispatch that there was a warrant for Jaskowski's arrest. (Tr. at at p.8, ll.13-14.) However, while approaching the vehicle, Officer Wells learned

that the warrant had been recalled. (Tr. at p.9, l.9-11.) Officer Wells did not observe traffic infractions which would form the basis for the traffic stop. (Tr. at p.22, l.20-21.) Officer Wells testified he had also been asked by Jaskowski's probation officer to stop Jaskowski. (Tr. at p.8, l.19-21.) Officer Wells indicated that it is his policy to stop a vehicle whenever requested to do so by a probation officer. (Tr. at p.23, l.13-14.) Officer Wells testified that he was not aware of any specific reason why the probation officer wanted to talk with Jaskowski. *Id.* at ll. 17-18. Officer Wells' final approach to Jaskowski's vehicle was based solely upon the probation officer's request to talk with Jaskowski for whatever reason. (Tr. at p.22, l.17-18; p.30, l.23-25; p.31, l.1-7.)

Ron Harper was Jaskowski's misdemeanor probation officer at the time of this stop. (Tr. at p.44, l.9-10.) Harper specifically requested that Officer Wells stop Jaskowski so Harper "could come and visit with (Jaskowski)." *Id.* at l.2-8. Upon Harper's arrival at the scene, however, there was no discussion with Jaskowski. Instead, Harper initiated a "probation search of the vehicle." (Tr. at p.46, l.6-7; p.10, l.2-6.) Harper located a glass tube with dark brown residue in it under the driver's seat. (Tr. at p.46, l.9-10.) Shortly thereafter, Officer Wells found a pink pipe underneath the center console of the vehicle on the floor. (Tr. at p.10, l.17-19.) Wells used an unnamed field test kit to determine that residue in the pink pipe was presumptively positive for methamphetamine. (Tr. at p.11-16.) Jaskowski later admitted to having used the pipe to smoke methamphetamine. (Tr. at p.16-17.) Harper advised that he had "heard that (Jaskowski) had possibly been using drugs" However, even without that information, Harper acknowledged he would have requested to have Jaskowski pulled over. (Tr. at p.48-49.)

At the preliminary hearing, Officer Wells testified that he had field tested the pink pipe he had located in the vehicle. This field test returned a result to Officer Wells that the substance

in pipe was presumptively methamphetamine. *Supra*. Officer Wells testified that he had taken a very brief amount of training at the Bannock County Sheriff's Office in Idaho as to how to administer these field tests. Officer Wells could not recall whether the field test employed on this occasion was the narc test or NIK test. (Tr. at p.12.) Officer Wells' conclusions as to the identity of the controlled substance was permitted over numerous objections. (Tr. at p.11-16.)

B. Nature of Proceedings.

On April 18, 2016, Jaskowski was charged by Criminal Complaint with one (1) count of possession of a controlled substance, methamphetamine. On April 15, 2016, he was served with a citation charging him with one (1) count of failing to have a current and valid driver's license and a second count of possession of drug paraphernalia. A preliminary hearing was held on May 18, 2016, before the Honorable R. Todd Garbett. At the conclusion of that preliminary hearing, Jaskowski was bound over to District Court for arraignment. Jaskowski filed a Motion to Compel Discovery on or about July 25, 2016. The state objected to the motion. A hearing was conducted on that motion and the state was ordered to provide additional discovery.

II. ISSUES

A. Was Officer Wells and/or Officer Harper authorized to stop Jaskowski's vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski?

B. Does the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop?

C. Did the state of Idaho adequately meet its burden of proof at the preliminary hearing with the introduction of a field test conducted by the officer with no scientific foundation concerning the reliability of the test?

III. ARGUMENT

A. Officer Harper did not have a reasonable basis to perform a warrantless search of Jaskowski's vehicle.

Both the 4th Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution protect the people's right to be secure from unreasonable searches and seizures. State vs. Nunez, 138 Idaho 636, 639-640, 67 P.3d 831, 384-835 (2003). Further, searches and seizures performed without a valid warrant are presumed to be unreasonable and violate those constitutional provisions. *Id.* at 640, 835. In turn, warrantless searches are per se unreasonable unless the search falls within an exception of the warrantless requirement. California vs. Acevedo, 500 U.S. 564, 580, 111 S. Ct. 1982, 1991 (1991); State vs. Klingler, 143 Idaho 494, 496-497, 148 P.3d 1240, 1242-1243 (2006). For the state to overcome the presumption that a warrantless search is unreasonable, it must show "(1) the search fell within a well recognized exception to warrant requirement and (2) the search is reasonable in light of all the surrounding circumstances." State vs. Wheeler, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010). State vs. Klingler, *supra*, discusses the state of Idaho case law with regards to probation searches. Klingler clearly holds that, while probationers are not entitled to the same protections of the 4th Amendment as ordinary citizens, the state is still obligated to establish a reasonable grounds or basis standard for a warrantless parole search. *Supra* at 1243, citing State vs. Anderson, 140 Idaho 484, 486, 95 P.3d at 635, 637 (2004). See also State vs. Vinson, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983). A condition of probation requiring the probationer to submit to searches significantly diminishes the probationer's reasonable expectation of privacy. United States vs. Knights, 534 U.S. 112, 121, 122 S. Ct. 587, 592-93, 151 L.Ed.2d 497, 506-07 (2001).

Establishing that a search is reasonable ordinarily requires that the government demonstrate probable cause to a neutral magistrate and obtain a particularized warrant authorizing the search. State vs. Turek, 150 Idaho 745, 250 P.3d (Ct. App. 2011), *citations omitted*. One exception to this warrant requirement is when voluntary consent to search is given. Schneckloth vs. Bustamonte, 412 U.S. 218, 222, 93 S. Ct. 2041, 2045, 36 L.Ed. 854, 859-60 (1973). In Idaho, it has been held that a probationer's consent to search incorporated as a condition of probation provides justification for a warrantless search. State vs. Purdum, 147 Idaho 206, 208-9, 207 P.3d 182, 184-5 (2009).

Here, Jaskowski was on misdemeanor probation for a prior DUI. (CR-2014-000119). The Judgment of Conviction placed Jaskowski on eighteen (18) months of supervised probation and required him to follow terms of a misdemeanor supervision agreement. Paragraph 9 of that Agreement reads as follows:

I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings **at the request of** my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time day or night. I understand that any Alcohol, evidence, and/or contraband will be confiscated, and new charges can be filed in the event of criminal activity.

Here, there is no evidence the requisite consent was granted by Jaskowski. A prior district court has found that this provision **requires** the defendant to consent to the search and does not expressly permit searches without consent. The Court of Appeals affirmed that ruling in State vs. Turek, 150 Idaho 745, 747, 250 P.3d 796, 798 (Ct. App. 2011). In other words, this condition of probation is not a complete waiver of 4th Amendment privileges and a defendant can deny consent under these conditions at the risk of violating his terms of probation. *Id.* at 745, 800. According to Turek, the state must conform its search to the limitations placed upon the

right granted by the consent. *Id.* citing to State vs. Ballou, 145 Idaho 840, 849, 186 P.3d 696, 705 (Ct. App. 2008). Turek advances several policy arguments why the scope of such probation searches must be limited, including the privacy of others. Turek also pointed out several cases from other jurisdictions that had concluded that the language is unambiguous and clearly expressed and cannot be modified to allow nonconsensual searches.

In the case at bar, Officer Harper testified clearly that the only basis for the stop was because he “hadn’t seen him for a while.” (Tr. at p.49, l.1-5.) Both Officers Wells and Harper testified unequivocally that they pull over probationers travelling in a vehicle merely upon the request of the probation officer, without more. Harper did testify that there had either been a warrant out for a while but also testified that he knew the warrant had been recalled. (Tr. at p.48, l.13-17.) Finally, Office Harper made a vague reference that he had “heard that” Jaskowski had been “possibly been using drugs.” *Id.* However, there was no foundational basis for that statement. Officer Harper failed to testify when that statement was made, who made the statement or provide any indication as to the reliability of any statement. Jaskowski submits that merely wanting to speak to a probationer or using the fact that the probation officer had not seen the probationer for sometime does not constitute a reasonable basis for a traffic stop. See also Tr. at p.53, l.1-3. Officer Harper acknowledged that Jaskowski was not violating probation at the time. Office Harper made it clear that, while he had talked to Jaskowski on the phone, he had not seen Jaskowski “face-to-face.” (Tr. at p.52, l. 20-25).

Jaskowski submits that the mere need to see the probationer face-to-face is not sufficient to request a warrantless search of the vehicle. Certainly, Office Harper could have employed any other numerous means of seeing Jaskowski face-to-face other than performing a warrantless search of his vehicle. Indeed, had Officer Harper merely showed up at the scene to see

Jaskowski face-to-face, and no search was conducted of the vehicle, there would likely be no charges filed. Officer Harper went far beyond his need to see Jaskowski face-to-face. Rather than talking with Jaskowski and establishing a reasonable suspicion, Officer Harper immediately proceeded with a search of the vehicle. That search was unconstitutional.

B. A recalled warrant.

Jaskowski contends that his constitutional rights were violated to the extent the state would argue they had a right to seize Jaskowski based upon a warrant that had been issued and later recalled. An officer is justified in stopping a person to investigate a possible criminal behavior if articulable facts known to the officer give rise to a reasonable suspicion that the person has committed or is about to commit a crime. State vs. Gomez, 136 Idaho 480, 483, 36 P.3d 833 835 (Ct. App. 2001), citing United States vs. Brignoni Ponce, 422 U.S. 873,884, 95 S. Ct. 2574, 2581, 45 L.Ed.2d 607, 618 (1975); Terry vs. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 8889 (1968); State vs. Rawlings, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992). In Gomez, the defendant was seized based upon the detectives' belief that he had seen the defendant's name on a warrant sheet some three (3) to four (4) months prior. No evidence was submitted to establish whether an active warrant existed at the time of the stop. Consequently, the court held there was no reasonable basis for the stop.

Officer Wells acknowledged at the preliminary hearing that he was aware the warrant had been recalled before approaching Jaskowski's vehicle. The issuance of a warrant which has been recalled cannot form a reasonable basis for a traffic stop.

C. The state failed to meet its burden of proving a controlled substance was present.

During the preliminary hearing, the state attempted to introduce the results of a field test performed on a pink pipe obtained in the invalid search. The court sustained an objection to those results but allowed the state to ask further foundational questions. Those questions established that Officer Wells had been trained to conduct field tests by the Bannock County Sheriff's Office and that he followed the procedures under which he had been trained. Wells further testified that the field test he conducted had been consistent with lab results in the past. Officer Wells testified that he was not a scientist nor a chemist and did not know what the reliability or validity of the field test kit used was. In other words, Wells performed the test although he could not recall the specific type of test performed and could not testify as to how or why the test produced the result that it did. He could not testify whether the result was reliable other than to say it was consistent with lab tests which were not in evidence.

The Rules of Evidence apply in preliminary hearings. The state is required to prove substantial evidence upon every material element of the events charged. Idaho Criminal Rule 5.1(b). That rule specifically allows for a report of scientific examinations of evidence by state or federal agencies or officials or by state certified laboratories. *Id.* The state's evidence on whether the substance on the pipe was a controlled substance or not consisted solely of the uncorroborated testimony of Officer Wells. There was no visible evidence of the test nor was there any scientific foundation laid for Officer Wells' testimonial opinion that the substance was methamphetamine.

Jaskowski submits that while field tests may be permissible to establish the cause necessary to arrest, they are not sufficient to form the "substantial evidence" needed to establish the identity of the controlled substance. Jaskowski submits that the evidence on this issue was

wholly uncorroborated and should not be admitted. Without such evidence, this matter should have been dismissed at the preliminary hearing.

IV. WONG SUN – EXCLUSION OF EVIDENCE

Jaskowski makes two (2) principle arguments. First, the seizure or stop of Jaskowski by Officer Wells was unconstitutional as there were no articulable facts needed to form a reasonable basis for the stop. However, assuming this court finds that the stop was reasonable to allow Officer Harper to meet with Jaskowski face-to-face or to speak with him, the search of his vehicle without a reasonable basis is also unconstitutional despite any alleged 4th Amendment waivers.

In the event this court determines either the seizure or the resulting search were unconstitutional, Jaskowski urges this court, as a remedy, to find that any evidence obtained as a result of the unconstitutional ruling should be suppressed. Wong Sun vs. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L.Ed.2d 441, 455 (1963). See also, State vs. Bainbridge, 117 Idaho 245, 247 250, 787 P.2d 231, 233-36 (1990); State vs. Zavala, 134 Idaho 532, 5 P.3d 993 (Ct. App. 2000); State vs. Luna, 126 Idaho 235, 88 P.2d 265 (Ct. App. 1984).

The confiscated property should be suppressed, along with any statements which Jaskowski made to the officers after the unconstitutional stop and search.


V. SUMMARY

Officers Wells and Harper exceeded any reasonable basis for the stop and search of Jaskowski and his vehicle. All of the evidence accumulated by the state subsequent to that illegal search/seizure should be suppressed and excluded. In the alternative, this matter should be dismissed because the magistrate judge improperly determined an adequate basis for the

introduction of testimony from Officer Wells regarding the identification of a controlled substance.

RESPECTFULLY SUBMITTED this 29th day of September, 2016.

KUMM & REICHERT, PLLC


Kelly Kumm
Attorney for Brody Jaskowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2016, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE** to be delivered to the party named below, as follows:

Steven A. Wuthrich
Bear Lake County Prosecutor
PO Box 190
Paris, Idaho 83261
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile


Kelly Kumm

Kelly Kumm
 Idaho State Bar No. 3252
KUMM & REICHERT, PLLC
 1305 East Center Street
 Pocatello, Idaho 83201
 Telephone (208) 232-4051
 Facsimile (208) 232-2880

Attorney for Brody L. Jaskowski

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2016 SEP 30 AM 8:41

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR-2016-0000269
vs.)	
	)	RESPONSE TO STATE'S
BRODY L. JASKOWSKI,	)	REQUEST FOR DISCOVERY
)	
Defendant.)	
_____)	

TO: STEVEN WUTHRICH, BEAR LAKE COUNTY PROSECUTING ATTORNEY.

The defendant, BRODY L. JASKOWSKI, by and through his attorney of record, Kelly Kumm of **KUMM & REICHERT, PLLC**, submits the following responses to the State's Request for Discovery.

OBJECTION TO GENERAL DEFENSE PRODUCTION

The defendant initially and generally objects to providing information to the state pursuant to Idaho Criminal Rule 16(c) which would compel the defendant to provide information against him and to produce privileged and protected work product.¹ Indeed, prosecution discovery must be denied if the trial court determines that the matters to be disclosed will conceivably "lighten the burden" which the prosecution bears in bringing about a conviction of the accused, meaning, and turning over evidence that may be used to convict the defendant. *See e.g., Posner v. Superior Court*, 107 Ca.App.3d 928, 932-933 (Cal. Ap. 1980). This is so because:

In criminal prosecutions, it is controlling that the accused has the always present right to remain silent. Further, the defendant is protected and given sanctuary by the presumption of innocence, until the prosecution, at the trial, has made a prima facie case against him. The prosecutorial burden is basic to our system. The blanket disclosure of names and addresses of witnesses may, albeit ever so slightly, tend to lighten this burden of the People.

Id.

Indeed, "the [S]tate's information gathering advantage belies the contention that discovery rights between the prosecution and defendant should be coextensive. [Instead], it would be a mockery of due process if the state could, in addition to relying on its infinitely more effective position as an investigating body and its superior resources, compel the defendant to

¹ The work-product doctrine was first recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495, 509-11 (1947) and "shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case." *United States v. Ary*, 518 F.3d 775, 782-83 (10th Cir. 2008) (quoting cases). "In performing his various duties ... it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. *Id.* at 783 (quoting *Hickman*, 329 U.S. at 510). "Work-product protection extends to the production of material assembled by an attorney in preparation for impending litigation." *Id.* (quoting case) (quotation omitted), "The protection also applies to materials prepared by an attorney's agent, if that agent acts at the attorney's discretion in creating the documents." *Id.* *See also, U.S. v. Nobles*, 95 S.Ct 2160, 2169 (1975).

lighten the prosecution's burden of proving its case through the discovery process."

Commonwealth v. Brinkley, 480 A.2d 980, 990 (Pa. 1984) (Nix, C.J., concurring).

Thus, the defendant respectfully objects to providing general reciprocal discovery to the state in this case.

SPECIFIC RESPONSES

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

1. **RESPONSE:** The defendant complies with this request and indicates that it is unknown at this time what exhibits will be used at the trial of this matter. This response will be supplemented should further information become known.

2. **REPORT OF EXAMINATIONS AND TESTS:** The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intend to introduce in evidence at the trial, or which were prepared by a witness who the defendant intends to call at the trial when the results or reports related to testimony of the witness.

2. **RESPONSE:** The defendant objects to the extent that this request seeks discovery of work product and information protected by Idaho Criminal Rule 16(f) and/or privileged information in violation of the defendant's Fifth and Sixth Amendment Rights. The

defendant will comply with this request to the extent any documents are unobjectionable, when such information becomes known and available.

3. **DEFENSE WITNESSES:** The prosecution requests the defendant to furnish the state with a list of names and addresses of witnesses the defendant intends to call at trial.

3. **RESPONSE:** Mr. Jaskowski intends to call the following as witnesses at the trial of this matter. He reserves the right to supplement this list should other information become known.

- a) Gene Perkins, Dispatcher
Montpelier Police Department
- b) Sheriff Brent Bunn
- c) Lieutenant Blake Wells
- d) Ronald Harper
Judicial Enforcement Officer
Bear Lake County
- e) Brody L. Jaskowski
c/o **KUMM & REICHERT, PLLC**
- f) Any witness called by the plaintiff.

4. **MATERIAL INFORMATION:** The prosecution hereby requests the defendant to furnish the prosecution with any material information within the defendant's possession or control, or which hereafter comes into your possession or control, which tends to negate the guilt of the defendant as to the offense charged or which would tend to reduce the punishment therefore.

4. **RESPONSE:** In complying with this request, the defendant asserts this request is beyond the scope of Idaho Criminal Rule 16(c). The defendant further objects to this request on the grounds that the request seeks discovery of work product and defense theories which would

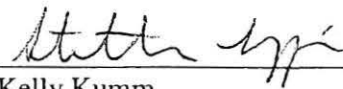
violate the defendant's right to remain silent. The defendant also objects on the basis that this request is vague and ambiguous.

5. **AFFIRMATIVE DEFENSES AND ALIBIS:** The prosecution hereby requests that the defendant furnish the prosecution with any information regarding real and/or affirmative defenses, including information as to defendant's alibis, conduct of witnesses for prosecution, the citing officer, or other peace officer or agent of the prosecuting attorney that the defendant intends to introduce at trial.

5. **RESPONSE:** In complying with this request, the defendant asserts this request is beyond the scope of Idaho Criminal Rule 16(c). The defendant further objects to this request on the grounds that the request seeks discovery of work product and defense theories which would violate the defendant's right to remain silent. The defendant also objects on the basis that this request is vague and ambiguous.

DATED this 29th day of September, 2016.

KUMM & REICHERT, PLLC



Kelly Kumm
Attorney for Brody L. Jaskowski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2016, I caused a true and correct copy of the foregoing **RESPONSES TO STATE'S REQUEST FOR DISCOVERY** to be delivered to the party named below, as follows:

Steven Wurthrich
Bear Lake County Prosecuting Attorney
1011 Washington Ste. 101
Montpelier, Idaho 83254
Facsimile: (208) 847-1230

- ☐ By U.S. Mail
- ☐ By Hand Delivery
- ☒ By Facsimile



Kelly Kumm

Steven A. Wuthrich (ISB #3316)
Bear Lake County Prosecuting Attorney
P.O. Box 190
Paris, Idaho 83261
(208) 945-1438
.....

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 11 PM 3:28

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

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

STATE OF IDAHO,

Plaintiff,

CASE NO: CR-2016-269

vs.

BRODY JASKOWSKI,

MOTION TO CONTINUE

Defendant.

.....

COMES NOW, Steven A. Wuthrich, and moves to continue the MOTION TO
SUPPRESS HEARING in this case scheduled for OCTOBER 20th, 2016 on the basis that the
witness, Ronald Harper, Judicial Enforcement Officer, has a training class for the Misdemeanor
Probation Officers on the same date.

DATED this 11th day of October, 2016.



Steven A. Wuthrich
Bear Lake County Prosecutor

CERTIFICATE OF SERVICE

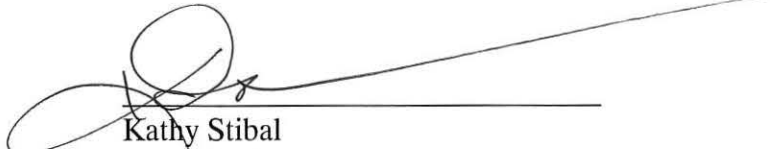
I HEREBY CERTIFY that on the 19 day of October, 2016, I mailed/served a true and correct copy of the foregoing upon each of the following attorney(s)/person(s)/individual(s) listed below by facsimile, U.S. mail with correct postage thereon or causing the same to be hand delivered.

ATTORNEY(S) /PERSON(S):

METHOD OF SERVICE:

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Fax: (208) 232-2880

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Kathy Stibal
Legal Assistant
Bear Lake County Prosecutor

STEVEN A. WUTHRICH, ISB #3316
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Paris, Idaho 83261
Telephone: (208)945-1438
Fax: (208)945-1435
Prosecuting Attorney
Bear Lake County

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 11 PM 4:03

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

ORIGINAL

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

STATE OF IDAHO,)	
	)	Case No. CR-2016-269
Plaintiff,)	
	)	MEMORANDUM IN OPPOSITION TO
v.	)	MOTION TO SUPPRESS
)	
BRODY JASKOWSKI,)	
)	
Defendant.)	
)	

COMES NOW the State, by and through Bear Lake County Prosecutor, Steven A. Wuthrich, and in opposition to the Motion to Suppress hereby files its Memorandum in Opposition as follows:

FACTS

1. Officer Blake Wells ("Wells"), a thirteen year veteran of the Montpelier Police Department (Tr. p. 6, LL. 13-17),¹ had occasion to interact with the Defendant, Brody Jaskowski, a person whom Officer Wells knew from school, (Tr. p. 6, LL 21-25), on the 15th day of April, 2016. (Tr. p. 7, LL. 11-14.)
2. Officer Wells saw a vehicle matching the description of one he was told that Jaskowski was driving. (Tr. p. 7, LL. 14-17.)
3. Wells ran the plates on the vehicle and the vehicle came back to a Jaskowski. (Tr. p. 7, LL.

¹The transcript in this case is the transcript of preliminary hearing held on May 18, 2016.

17-19.)

4. Wells contacted dispatch because he knew that Jaskowski had a warrant for his arrest. (Tr. p. 7, LL. 19-20.)
5. Dispatch informed Wells there was a warrant for Jaskowski's arrest. (Tr. p. 8, LL. 13-14.)
6. Prior to stopping Jaskowski, Wells also contacted Officer Ron Harper (Bear Lake County Probation Officer) ("Harper"), (Tr. p. 43, LL. 6-13), on the phone and was asked to stop Jaskowski. (Tr. p. 8, LL. 9-21.)
7. As the Defendant's vehicle left where it was parked and drove by Wells, Wells initiated the stop, ultimately coming to rest around 8th and Garfield Steets. (Tr. p. 8, L. 23; p. 9, L. 4.)
8. As the officer was approaching the vehicle, he was informed the warrant had been withdrawn. (Tr. p. 8, LL. 9-11.)
9. The officer continued to approach the vehicle, made contact with Brody Jaskowski, told him why he was stopped, and asked for identification and vehicle information. (Tr. p. 9, LL. 13-16.)
10. Upon running Jaskowski's licence, it came back as denied. While the officer wrote out the citation Officer Harper arrived at the scene. (Tr. p. 9, LL. 17-23.)
11. Officer Wells served the Defendant the citation and Harper began to talk with him. (Tr. p. 10, LL. 1-3.)
12. Harper thereafter began searching the vehicle, (Tr. p. 10, L. 5), then asked Wells to place him in custody. (Tr. p. 10, L. 9.)
13. Wells placed Defendant in Wells' vehicle and joined Harper in the search of Defendant's vehicle. (Tr. p. 10, LL. 13-15.)

14. Wells found a “pink cloth [sic] pipe”² commonly used to smoke meth, and a tube pipe under the center console. He recognized both items as drug paraphernalia. (Tr. p. 10, LL. 17-25.)
15. Wells field tested the pink pipe which tested presumptive positive. (Tr. p. 11, LL. 4-9.)
16. Wells testified he was (1) trained as to the procedure to use the test, (Tr. p. 14, LL. 19-21), (2) that he took a course on the protocols at the Bannock County Sheriff’s Office, (Tr. p. 15, LL. 1-2), and (3) that he was generally familiar with the protocols for use of a NIK or narc test, (Tr. p. 15, LL. 7-9.)
17. Wells has used the test “probably in the fifties or higher [sic] more cases.” (Tr. p. 15, LL. 19-22.) In Wells’ past experience the field tests were generally reliable³ and consistent with past history, showing that the field test results were substantiated by lab results. (Tr. p. 16, LL. 3-11.)
18. Wells followed the protocols for the field test and it showed a presumptive positive result for methamphetamine. (Tr. p. 16, LL. 12-20.)
19. Wells subsequently talked to Brody Jaskowski who told Wells he had smoked meth out of that pipe as recently as two days prior to the traffic stop. (Tr. p. 16, LL. 21-25; p. 17, LL. 1-5.)
20. Harper attested that Defendant was on probation with him, (Tr. p. 44, LL. 9-10), and qualified the probation agreement admitted as State’s Exhibit “1”. (Tr. p. 44, LL. 13-25; p. 45, LL. 1-15.) That document provides in paragraph 9:

²The transcript is in error in this regard; it should say “glass pipe”.

³I.R.E. Rule 901(b)(9) permits authentication of a process by “describing a result or system used to produce a result and showing that the process or system produces an accurate result.”

I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time day or night. I understand that any Alcohol evidence, and/or contraband will be confiscated, and new charges can be filed in the event of criminal activity.

21. Harper acknowledged he told Wells to place Jaskowski in wrist restraints and asked Wells to aid him in the search. (Tr. p. 46, LL. 13-16.)
22. Harper saw Wells discover a pipe that looked like it was used for methamphetamine, with white residue in it. (Tr. p. 46, LL. 19-24.)
23. Harper himself discovered a glass tube with dark brown residue. (Tr. p. 46, LL. 9-11.) After completing the search, they had Defendant's vehicle towed and went to the police station. (Tr. p. 47, LL. 9-11.)
24. Harper observed Wells read Jaskowski his rights and then question him, whereupon Jaskowski admitted he had used meth, he said, four to six days previously. (Tr. p. 47, LL. 17-19.)
25. Harper drug tested the Defendant who tested positive for methamphetamine, which Harper believes means he had used within one day. (Tr. p. 47, LL. 20-22.)
26. When questioned as to why Mr. Harper wanted Jaskowski pulled over, Harper attested he was looking for Jaskowski as he had "heard that he could possibly have been using drugs," which was one of the reasons he wanted to visit with him. (Tr. p. 49, LL. 1-3.) Even if he hadn't heard that, he would have asked Wells to pull him over because Harper hadn't seen him in a while. (Tr. p. 49, LL. 3-5.)
27. Harper attested it's his normal practice to ask officers to pull probationers over. (Tr. p. 49, LL. 6-9.)

28. Subsequent to the preliminary hearing, State lab results were received verifying the residue in the pipe was methamphetamine. (See Exhibit "A" hereto.)
29. Both officers Wells and Harper identified the Defendant, Brody Jaskowski. (Tr., p. 7, LL. 2-10; p. 43, LL. 16-21.)
30. Both officers identified that the stop and search took place in Bear Lake County, Idaho. (TR. p. 9, L. 3; Tr. p. 47, LL. 12-14.)

ISSUES

- A. Was the officer justified in stopping the Defendant based upon the signed consent of his probation agreement and Harper's request?
- B. Was the officer justified in stopping the Defendant based upon the probation officer's reasonable suspicion?
- C. Are alleged errors in admitting evidence at preliminary hearing a basis to suppress evidence?

ARGUMENT AND AUTHORITIES

- A. The officer was justified in making the stop solely upon the consent contained in the probation agreement.

The officer was justified in making the stop based on his knowledge and the facts at the time, and upon request of the probation officer. The Defendant cites *State v. Klingler*, 143 Idaho 494, 148 P.3d 1240 (2006), for the proposition that "*Klingler* clearly holds that, while probationers are not entitled to the same protection of the 4th Amendment as ordinary citizens, the State is still obligated to establish a reasonable grounds or basis standard for a warrantless parole search." (*Memorandum in Support*, p. 4.) *Klingler* does not stand for that proposition. In *Klingler*, the defendant was originally on probation and had signed a consent agreement similar to the one in this case. *Klingler's*

probation was revoked, the sentence reinstated, and he was put back on “unsupervised probation” but nothing in the court’s directive of unsupervised probation re-addressed the issue of consent searches. Therefore, the Klingler court held that he had not consented to search because the judge failed to incorporate that provision into his unsupervised probation. The Court nevertheless found the search valid because the probation officer had “reasonable suspicion” that Klingler was involved in drug activity.

Such is not the case here. Here, the Defendant was placed on supervised probation and consented to being searched. His consent was fully in effect at the time of the stop. Moreover, the officer believed, at the time he initiated the stop, that the Defendant had a warrant out for his arrest. The officer was notified, as he approached the vehicle, that the warrant had been rescinded, so he proceeded to interact with the Defendant based on the request of the probation officer. The consent in this case clearly extends to peace officers or the designee of the probation officer, of which Wells was both. The consent in this case implies “with or without Probable Cause; any time day or night.” The consent in this case applies specifically to searches of the defendant’s “person, personal property...automobiles....” The consent in this case is actually broader than many of the Idaho cases.⁴

In *State v. Cruz*, 144 Idaho 906, 909, 174 P.3d 876, 879 (Idaho App. 2007), it cites:

The United States Supreme Court has recently analyzed the constitutionality of warrantless searches of parolees and probationers under the general Fourth Amendment approach of examining the totality of the circumstances. *See Samson v.*

⁴*State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Idaho App. 2011), analyzes two cases, *State v. Gawron*, 112 Idaho 841, 736 P.2d 1295 (1987) and *State v. Purdum*, 147 Idaho 206, 207 P.3d 182 (2009). In *Gawron*, while the defendant was not present the officers broke a lock on a garage, as well as a tool box wherein they found items determined to be the proceeds of burglary. In *Purdum*, the officer was not acting at the request of the probation officer. Both of these cases are clearly distinguishable from the present circumstance. Jaskowski was present, and the officer was acting at the request of the probation officer.

California, 547 U.S. 843, —, 126 S.Ct. 2193, 2197, 165 L.Ed.2d. 250, 256 (2006); *United States v. Knights*, 534 U.S. 112, 118, 122 S.Ct. 587, 590, 151 L.Ed.2d 497, 504 (2001). Whether a search is reasonable is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. *Samson*, 547 U.S. at —, 126 S.Ct. At 2197, 165 L.Ed.2d at 256; *Knights*, 534 U.S. at 118.19, 122 S.Ct. At 591-92, 151 L.Ed.2d at 504-05.

In *Knights*, a probationer challenged a warrantless search of his residence. The Supreme Court noted that the probationer's expectation of privacy was significantly diminished by a condition of his probation whereby he was subject to a search of his person or residence, without a warrant or reasonable cause, by any probation officer or law enforcement officer at any time. The Court held that, when an officer has "reasonable suspicion" that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable. *Knights*, 534 U.S. at 121, 122 S.Ct. At 592, 151 L.Ed.2d at 506. The Supreme Court declined to decide, however, whether the probation condition so diminished, or completely eliminated, the probationer's reasonable expectation of privacy that a search unsupported by individualized suspicion would have been reasonable. *See id.*, 534 U.S. at 120 n. 6, 122 S.Ct. At 592 n. 6, 151 L.Ed.2d at 505 n. 6.

In *Samson*, the Supreme Court addressed the constitutionality of a search of a parolee on a public street conducted by an officer who possessed no individualized suspicion of the defendant, other than his knowledge that the defendant was a parolee. The parolee had agreed to a search condition, set forth by California law, whereby he was subject to search or seizure by a parole officer or other peace officer at any time, with or without a search warrant and with or without cause. *See* Cal. Penal Code Ann. § 3067(a) (West 2000). The Supreme Court held that a completely suspicionless search of the parolee on a public street was reasonable because the parolee's diminished expectation of privacy was outweighed by the state's substantial interest in supervising parolees. *See Samson*, 547 U.S. at —, 126 S.Ct. at 2197-02, 165 L.Ed2d at 256-61. The parolee did not have an expectation of privacy that society would recognize as legitimate because of his status as a parolee, including the broad search condition. *Id.*, 547 U.S. at —, 126 S.Ct. at 2199, 165 L.Ed.2d at 258. While the Supreme Court reasoned that parolees have even fewer expectations of privacy than probationers, it disavowed the proposition that parolees, like prisoners, have no Fourth Amendment rights, *id.*, 547 U.S. at — & n 2, 126 S.Ct. at 2198 & n. 2, 165 L.Ed.2d at 257 & n.2, and recognized California's prohibition against "arbitrary, capricious or harassing" parole searches. *Id.*, 547 U.S. at —, 126 S.Ct. at 2202, 165 L.Ed.2d at 262. [*emphasis added*]

In affirming the search done in *State v. Purdum*, 147 Idaho 206, 207 P.3d 182 (2009) the

Idaho Supreme Court noted that the language “at any time and at any place” used in Purdum’s probation agreement was analogous to the “random” language used in *State v. Gawron*, 112 Idaho 841, 736 P.2d 1295 (1982) and constituted a waiver of his right to be free from warrantless searches. *Purdum*, *supra* at 207 P.3d 186.

In *State v. Turek*, *supra*, the Idaho Appellate Court imposed a requirement that the State at least notify the defendant prior to search of an outbuilding on his property. That agreement contained the “request of” language similar to the one at bar, but did not specify outbuildings as does this case. In any event, residences have always contained a higher Fourth Amendment scrutiny than vehicles.

Here, Jaskowski was at least notified, if not specifically requested to consent to search at the time. The Court in *Turek* could have imposed a “Simon says” requirement that searches of probationers are per se illegal unless consent is given at the time (as did some of the authorities cited in *Turek*), but the Court declined to do so. Consent given in the probation agreement is sufficient if notice is given and does not require reaffirmation of the consent at the time of the search.

While the Idaho Supreme Court has said that conditions of probation , especially a waiver of a Fourth Amendment right, cannot be implied, *State v. Klingler*, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006), an officer must be able to temporarily detain a probationer in order to effectuate this search condition. Any other reading would render the provision a nullity. *See, Brown v. State*, 127 P. 837, 844 (Alaska Ct. App. 2006) (if a probationer’s conditions of probation authorize suspicionless searches of the probationer’s person, an officer who wishes to exercise this authority has the right to stop and temporarily detain the probationer in order to conduct the search.) *State v. Purdum*, IDCCR 33073 (Idaho App. Jan. 23, 2008). [emphasis added]

B. Officer Wells was justified in making the stop at the request of the probation officer alone, as the probation officer had reasonable cause for such request.

As was stated in *Klingler*, *supra* at 148 P.3d 1243-44:

. . .this Court has held that “nonconsensual warrantless searches of

probationers and their property by probation or parole officers constitute an exception to the warrant requirement independent of consent.” *Anderson*, 140 Idaho at 486, 95 P.3d at 637. The reasonable grounds standard for a warrantless parole search requires less proof than probable cause. *Id.* In *Anderson*, this Court held that a convicted felon admitted to bail pending appeal has a lesser degree of liberty and a resulting reduced expectation of privacy; thus, police only needed a reasonable basis to conduct a warrantless search of his home. *Anderson*, 140 Idaho at 487, 95 P.3d at 638. In support of its decision in *Anderson*, the Court cited an Eighth circuit opinion that compares persons out on bail to persons on probation, holding that “a convicted person awaiting sentence is no longer entitled to a presumption of innocence or presumptively entitled to his freedom. . . . As with the parole and probation cases, there is a heightened need for close supervision of the convicted person’s activities to protect society and the releasee himself, and the releasee is entitled only to conditional liberty. . . .” *Id.* (citing *United States v. Killa*, 3 F.3d 1201 (8th Cir. 1993)). It is difficult to see any justification for holding that a convicted person out on bail pending appeal would have a lesser degree of liberty and privacy than a convicted felon on unsupervised probation. We see no principled basis for making such a distinction and hold that probationers, supervised or unsupervised, have the same reduced expectation of privacy.

Furthermore, the probation department needs to be able to assure compliance with probation in an expedited fashion without the necessity of probable cause. The delay inherent in obtaining a warrant would make it difficult for probation officials to respond quickly to evidence of misconduct and “reduce the deterrent effect that the possibility of expeditious searches otherwise creates.” *Griffin v. Wisconsin*, 483 U.S. 866, 877, 107 S.Ct. 3164, 3170, 97 L.Ed.2d 709, 719-20 (1987). Thus, a warrantless search of an unsupervised probationer’s residence may be conducted upon reasonable grounds. [*emphasis added*]

The Supreme Court of the United States has held that an unsubstantiated tip provided by a police officer, whether based on firsthand knowledge or not, may be sufficient grounds to support a probationer search. *Griffin*, 483 U.S. at 879-880, 107 S.Ct. at 3171-72, 97 L.Ed.2d at 721-22. In *Griffin*, the Court held that a Wisconsin regulation allowing searches of probationers based upon “reasonable grounds,” as interpreted by the Wisconsin Supreme Court, satisfied the Fourth Amendment. 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). The regulation permitted a probation officer to conduct a warrantless search of a probationer’s residence if the officer’s supervisor approved and there were “reasonable grounds” to believe the probationer possessed contraband. *Id.* at 870, 107 S.Ct. At 3167, 97 L.Ed.2d at 715.

In *Griffin*, the supervisor of Griffin’s probation officer received information from a detective that there “were or might be” guns in Griffin’s apartment. *Id.* at 871, 107 S.Ct. At 3168, 97 L.Ed.2d at 715-16. The Court held the anonymous tip from the detective constituted “reasonable grounds” under the regulation. In support of its

conclusion, the Court reasoned that police may be unwilling to disclose their confidential sources to probation personnel. Further, because the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, the Court concluded that the mere likelihood of facts justifying the search constitute reasonable grounds.

In the case at bar, Officer Harper had heard that the Defendant could possibly be using drugs, but did not disclose the source of that information. Because the consent alone is valid, we do not reach the “reasonable suspicious” requirement. However, even if the Court reaches this issue, there is reasonable suspicion in this case.

C. The standard of review on a preliminary hearing is in favor of the magistrate court.

A reviewing court will not substitute its judgment for that of the magistrate as to the weight of the evidence. The court will overturn a magistrate’s finding of probable cause to believe the defendant has committed an offense only upon a showing that the magistrate abused his discretion. *State v. Ruggiero*, 156 Idaho 662, 330 P.3d 408 (2014). Even if the magistrate errs in relying on evidence at the preliminary hearing that is ultimately determined to be inadmissible, the error is not ground for vacating a conviction where the defendant receives a fair trial and is convicted, and there is sufficient evidence to sustain the conviction. *State v. Mitchell*, 104 Idaho 493, 660 P.2d 1336 (1983). Cert. denied, 461 U.S. 934, 103 S. Ct. 2101, 77 L.Ed.2d 308 (1983).

Where, at a fair trial, the accused is found guilty upon sufficient evidence to sustain the verdict, the judgment will not be overturned for defects in proof at the preliminary hearing. *State v. Streeper*, 113 Idaho 662, 747 P.2d 71 (1987).

Accordingly, ruling upon the admission of the evidence from the magistrate in this case would be more of an advisory opinion than anything else. Subsequent to the preliminary hearing, the State laboratory results were received confirming that the substance in the pipe was if fact

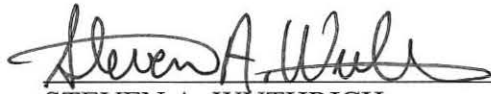
methamphetamine. There was ample testimony and foundation for admission of the field test by Officer Wells,⁵ but that issue has been rendered moot since the evidence that will be submitted at trial will be a State forensic laboratory technician utilizing State protocols. Accordingly, this Court should decline to render any advisory opinion as to the admissibility of field tests.

Even if the Court were inclined to so rule, there is more than ample foundation for the magistrate to have admitted the evidence below, and there is no indication that he abused his discretion.

CONCLUSION

For the foregoing reasons the evidence should not be suppressed and trial on the merits should proceed in this matter.

DATED THIS 11 day of October, 2016.


STEVEN A. WUTHRICH
Prosecutor for the County of Bear Lake

⁵I.R.E. Rule 901(b)9 allows authentication of a process or system by “describing a process or system and showing that the process or system produces an accurate result.” *See and compare* Tr. p. 15, 16.

CERTIFICATE OF MAILING/FACSIMILE

I hereby certify that on 11th day of October, 2016 I caused to have served upon the following party by fax a true and exact copy of the foregoing Memorandum:

Kelly Kumm
1305 E. Center
Pocatello, ID 83201
Fax: 232-2880

Judge Brown
Fax: 547-2147

_____

EXHIBIT “A”



IDAHO STATE POLICE FORENSIC SERVICES

615 W. Wilbur Ste B
Coeur D'Alene, ID 83815-7785
Phone: (208) 209-8700

Fax: (208) 209-8612

FORENSIC CONTROLLED SUBSTANCE ANALYSIS REPORT

Case Agency(s): MONTPELIER POLICE DEPARTMENT	Agency Case No(s).: 2016-00494	Laboratory Case No.: P2016-0963
Date(s) of Offense: 4/15/2016	Investigating Officer(s): Blake Wells	Report No.: 1
Date Evidence Accepted: 4/20/2016	Analyst: Christina Rayner	
Case Name(s): Suspect - BRODY L JASKOWSKI		

Lab Item #	Agency Exhibit	Description	Conclusions and Interpretations	Additional Information
1	P5146	Smoking device with residue.	Methamphetamine (CII)	

DISPOSITION OF EVIDENCE:

All items will be returned to the submitting agency.

REMARKS:

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Christina Rayner

Christina Rayner / Forensic Scientist

Issue Date: **06/03/2016**

Idaho State Police Drug Restitution

As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant, **BRODY L JASKOWSKI** in the amount of **\$100** in association with Laboratory Case No. **P2016-0963**. This amount is based upon the testing of the sample(s) submitted to this laboratory. The amount requested reflects a portion of the cost incurred to the laboratory during the analysis of drug evidence.

Test	Cost
Controlled Substance Analysis (1 sample(s) @ \$100 ea.)	\$100

Please present this restitution request form and a copy of the laboratory report to the court at the time of sentencing.

Please make checks payable to: Forensic Services
700 South Stratford
Meridian, Idaho 83642-6202

Thank you for your cooperation in this matter.

Sincerely,



Anne Nord
Coeur d'Alene Laboratory Manager
Forensic Services

CRC

CONTROLLED SUBSTANCE ANALYSIS NOTES

Case: P2016-0963

Examiner: Christina Rayner

Dates of analysis: 06/03/2016 to 06/03/2016

Packaging Information

Item 1-pink glass pipe with white residue

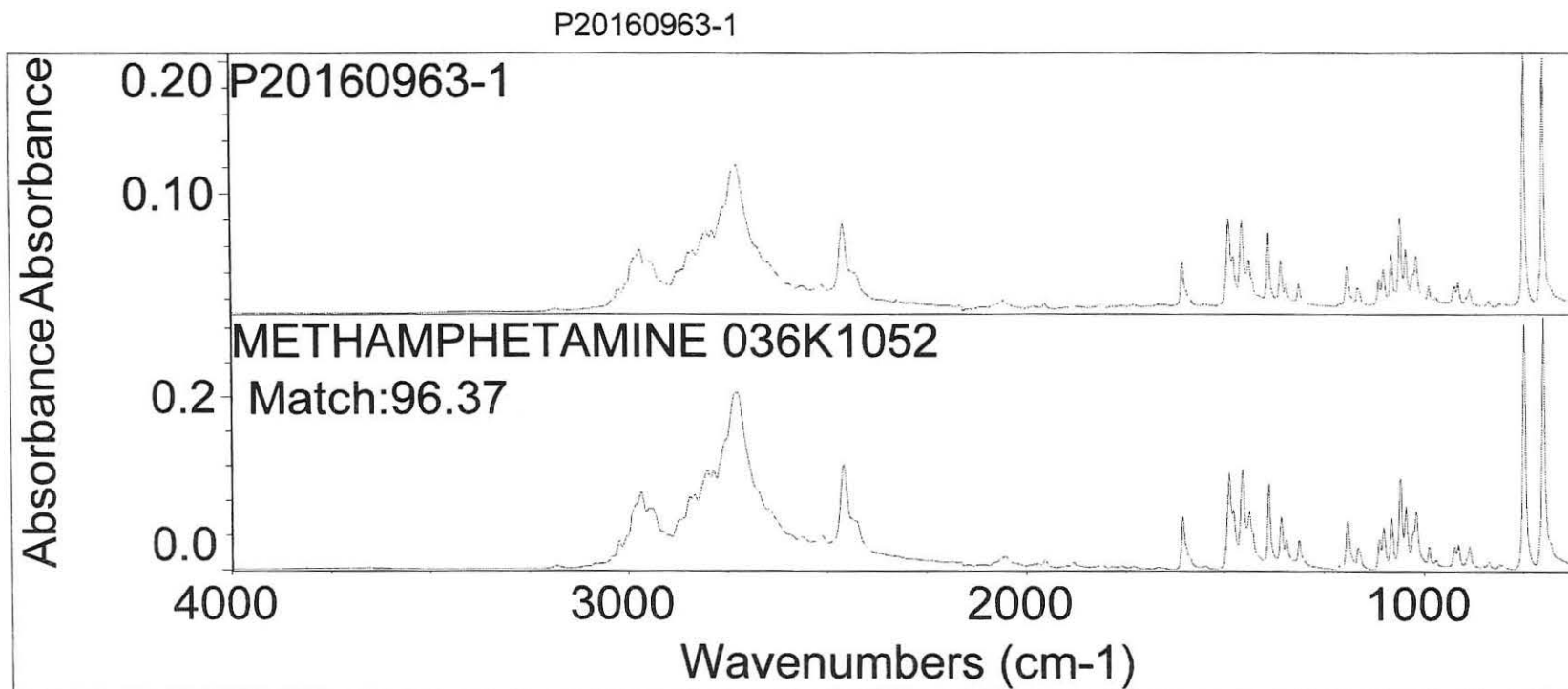
<u>Task/Test</u>	<u>Value</u>
Sealed	Yes
Initialed	Yes
External Packaging Type	evidence envelope

Controlled Substance Analysis

Item 1-pink glass pipe with white residue

<u>Task/Test</u>	<u>Value</u>
Item Designation	1
Agency Exhibit	P5146
Packaging Type	ziplock bag
Exhibit Description	smoking device with residue
Reserve	>1/2
Marquis	orange to brown
FTIR	Direct ATR
Sample Contains	Methamphetamine (CII)

CRC



Number of sample scans: 8
Number of background scans: 8
Resolution: 4.000
Sample gain: 1.0
Optical velocity: 0.4747
Aperture: 80.00

Spectrum: P20160963-1
Region: 3995.85-600.24
Search type: Correlation
Hit List:

Index	Match	Compound name
8	96.37	METHAMPHETAMINE 036K1052
63	78.28	METHAMPHETAMINE HCL IN KBR

Library
CdA ATR
Georgia State Crime Lab Sample Library

Collection time: Fri Jun 03 10:04:59 2016

Christina Rayner
FTIR 60568

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 11 Paper ID: AMP 5124 201600639

PERSONAL RETURN OF SERVICE

DEPUTY _____ CASE NO.

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 7TH DAY OF OCTOBER 2016.

I HEREBY CERTIFY THAT, ON THE 11TH DAY OF OCTOBER 2016, AT 2:29 O'CLOCK P.M., I, ROBERT PELTO, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** HARPER, RONALD VAN *****

PERSONALLY AT: 557 MAIN ST BERN ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 12TH DAY OF OCTOBER 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



ROBERT PELTO
SERVING OFFICER

BY



AMANDA PORATH
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 OCT -7 A 4: 25

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

.....
To: Ron Harper
Probation

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 OCT 12 AM 9:24
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Motion to Suppress Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the 20th day of October
2016, at 9:00 a.m. in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that
if you fail to appear at the place and time specified above that you may be held in contempt of
Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: October 7, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 12 AM 9:24 Paper ID: 201600640

PERSONAL RETURN OF SERVICE

STATE OF IDAHO

-- VS --

BRODY LEE JASKOWSKI

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 7TH DAY OF OCTOBER 2016.

I HEREBY CERTIFY THAT, ON THE 10TH DAY OF OCTOBER 2016, AT 7:40 O'CLOCK P.M., I, SPENCER CLEMENTS, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

***** WELLS, BLAKE A *****

PERSONALLY AT: 534 WASHINGTON ST MONTPELIER ID 83254

WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 12TH DAY OF OCTOBER 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



SPENCER CLEMENTS
SERVING OFFICER

BY



AMANDA PORATH
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 OCT -7 A 4:25

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

.....
To: Lieutenant Blake Wells
Montpelier City Police Department

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 OCT 12 AM 9:24
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Motion to Suppress Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the 20th day of October
2016, at 9:00 a.m. in the Bear Lake County Courtroom, Paris, Idaho. You are further notified that
if you fail to appear at the place and time specified above that you may be held in contempt of
Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: October 7, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

R=96%

Page:004

ID:Kumm, Reichert PLLC

From:

OCT-18-2016 09:34 AM

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 18 AM 10:17

CINDY GARNER, CLERK

DEPUTY _____ CASE NO

Steven A. Wuthrich
P.O. Box 190
Paris, Idaho 83254
Prosecuting Attorney for
Bear Lake County
(208)945-1438

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

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY JASKOWSKI,

Juvenile,

Case No. CR-2016-269

STIPUALTION TO STATES
MOTION TO CONTINUE

COMES NOW Kelly Kumm, counsel for the Defendant and hereby stipulate and agree to
the STATE'S MOTION FOR CONTINUANCE for the reason set forth herein.

Date: October 18, 2016
Kelly Kumm
KUMM & REICHERT, PLLC

STIPULATION TO STATES MOTION TO CONTINUE

State v. BRODY JASKOWSKI

Steven A. Wuthrich (ISB #3316)
Bear Lake County Prosecuting Attorney
P.O. Box 190
Paris, Idaho 83261
(208) 945-1438

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2016 OCT 18 AM 10:49

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,

Plaintiff,

CASE NO: CR- CR-2016-269

vs.

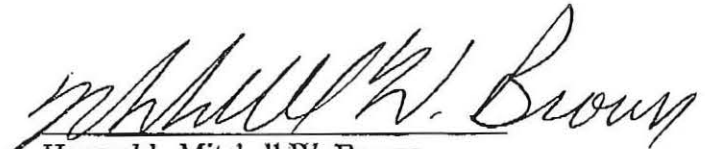
ORDER TO CONTINUE

BRODY JASKOWSKI,

Defendant.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the MOTION TO
SUPPRESS HEARING in the above entitled case be continued until Nov. 17, 2016,
at 1:30 A.M. P.M. in the Bear Lake County Court Room.

DATED this 18th day of October, 2016.


Honorable Mitchell W. Brown
Sixth District Judge

State v. Brody Jaskowski
Molton & Order to Continue

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of October, 2016, I mailed/served a true and correct copy of the foregoing upon each of the following attorney(s)/person(s)/individual(s) listed below by facsimile, U.S. mail with correct postage thereon or causing the same to be hand delivered.

ATTORNEY(S) /PERSON(S):

Steven A. Wuthrich
Bear Lake County Prosecutor

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, Idaho 83201
Fax: (208) 232-2880

METHOD OF SERVICE:

☒ Hand Delivered

Fax: (208) 232-2880

by


Deputy Clerk

BRENT R. BUNN
(208) 945-2121

BEAR LAKE SHERIFF'S OFFICE
P.O. BOX 365
PARIS, ID 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 OCT 31 PM 4:25
Paper ID: 201600673
CINDY GARNER, CLERK
DEPUTY _____ CASE NO _____

PERSONAL RETURN OF SERVICE

STATE OF IDAHO

-- VS --

PLAINTIFF(S)

COURT: BEAR LAKE

CASE NO: CR-2016-269

BRODY LEE JASKOWSKI

DEFENDANT(S)

PAPER(S) SERVED:
SUBPOENA

I, BRENT R. BUNN, SHERIFF OF BEAR LAKE, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 27TH DAY OF OCTOBER 2016.

I HEREBY CERTIFY THAT, ON THE 30TH DAY OF OCTOBER 2016, AT 4:06 O'CLOCK P.M., I, JOHN MARTINEZ, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER UPON

*****WELLS, BLAKE A*****

PERSONALLY AT: 534 WASHINGTON ST MONTPELIER ID 83254


WITHIN THE COUNTY OF BEAR LAKE, STATE OF IDAHO.

DATED THIS 31ST DAY OF OCTOBER 2016.

BRENT R. BUNN
SHERIFF

SHERIFF'S FEES: 0.00
TOTAL COLLECTED TO DATE: 0.00
AMOUNT UNCOLLECTED: 0.00

BY



JOHN MARTINEZ
SERVING OFFICER

BY



AMANDA PORATH
RETURNING OFFICER

STEVEN ALLEN WUTHRICH
1011 WASHINGTON STE 101
MONTPELIER, ID 83254

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

2016 OCT 27 P 1:17

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

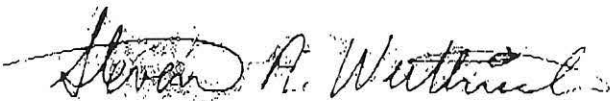
To: Lieutenant Blake Wells
Montpelier City Police Department

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 OCT 31 PM 4:25
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Motion to Suppress Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the 17th day of
November 2016, at 1:30 p.m. in the Bear Lake County Courtroom, Paris, Idaho. You are further
notified that if you fail to appear at the place and time specified above that you may be held in
contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: October 27, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

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

2016 OCT 27 P 1:17

STATE OF IDAHO,

CASE NO. CR-2016-269

Plaintiff,

SUBPOENA

vs,

BRODY JASKOWSKI,

Defendant.

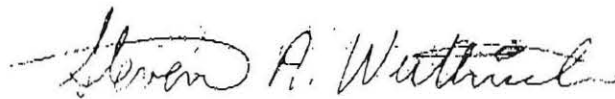
.....
To: Ron Harper
Probation

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2016 OCT 31 PM 4:25
CINDY GARNER, CLERK
DEPUTY _____ CASE NO.

YOU ARE HEREBY COMMANDED to appear before the District Court of the Sixth
Judicial District in and for the County of Bear Lake, as a witness in a Motion to Suppress Hearing
prosecuted by the STATE OF IDAHO against BRODY JASKOWSKI on the 17th day of
November 2016, at 1:30 p.m. in the Bear Lake County Courtroom, Paris, Idaho. You are further
notified that if you fail to appear at the place and time specified above that you may be held in
contempt of Court.

Issued under Rule 17 I.R.E. by the Prosecuting Attorney of Bear Lake County

Dated: October 27, 2016



Steven A. Wuthrich
Bear Lake County Prosecutor

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

11/26/2016

DATE

KW

DEPUTY

TIME
CLERK

CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

Register No. CR-2016-0000269-FE

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY L. JASKOWSKI,

DOB [REDACTED]

SS# [REDACTED]

Defendant.

MINUTE ENTRY & ORDER

On November 17, 2016, the above-named Defendant appeared in Court with his counsel, Kelly Kumm, for the Defendant's Motion to Suppress. Steven A. Wuthrich, Bear Lake County Prosecuting Attorney, appeared on behalf of the State of Idaho. The court reporter was Rodney M. Felshaw and the court clerk was Karen Volbrecht.

The Court heard argument from respective counsel regarding the Defendant's motion. Counsel for the Defendant requested the Preliminary hearing transcript be made part of the record with respect to the pending motion and published. The State requested State's Exhibit 1 from the Preliminary hearing held on May 18, 2016, the Defendant's Judgment form and Agreement of Supervision from Magistrate Court, also be made part of the record and considered by the Court in ruling on the pending motion.

The following witness was sworn and testified on direct and cross examination:

State's Witness

Register CR-2016- 0000269-FE

MINUTE ENTRY & ORDER

Page 1

Ronald V. Harper

The Court heard arguments from counsel and took this matter under ADVISEMENT. A decision will be issued in due course. The Preliminary hearing transcript and State's Exhibit 1 will be published and considered by the Court regarding this matter.

IT IS SO ORDERED.

Dated this 26th day of November, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of November, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Steven A. Wuthrich
Bear Lake County Prosecutor

Hand Deliver

Kelly Kumm
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Facsimile: 232-2880



Deputy Clerk

2016 DEC 15 PM 12:14

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE
MAGISTRATE DIVISION

CLARK EARNER, CLERK

DEPUTY _____ CASE NO.

THE STATE OF IDAHO,
Plaintiff,

CASE NO. CR-2016-269

-vs-

AMENDED
MINUTE ENTRY
&
ORDER

BRODY L. JASKOWSKI,
Defendant.

DATE: May 18, 2016

APPEARANCES: Steve Wuthrich– Bear Lake County Prosecutor
Kelly Kumm – Counsel with and for the Defendant

MATTER BEFORE THE COURT: Preliminary Hearing

PROCEEDINGS: This matter came on for hearing before the Court at this date and time for preliminary hearing. The defendant is charged with the following charges:

Count One- POSSESSION OF A CONTROLLED SUBSTANCE § 37-2732(c)(1);
FELONY

The State notified the Court that the Defendant had declined to be fingerprinted. Mr. Kumm explained the Defendant had been fingerprinted on numerous other cases and requested time to review the codes associated with fingerprinting. The Court GRANTED this request.

A preliminary hearing was held on Count One: POSSESSION OF A CONTROLLED SUBSTANCE § 37-2732(c)(1); FELONY. Counsel for the Defendant moved to recuse all potential witnesses and the motion was GRANTED.

The following witnesses were sworn and testified on direct and cross;

STATE'S WITNESSES

Blake Wells

Ron Harper

STATE'S EXHIBIT

1. Judgment of Conviction CR-2014-1191 DUI (1st offense) Admitted

The State gave closing argument.

IT IS HEREBY ORDERED that the Court finds the State met the burden of proof and the defendant is bound over to District Court on the charge of POSSESSION OF A CONTROLLED SUBSTANCE § 37-2732(c)(1); FELONY

The Defendant is currently released on his/her own recognizance and the following conditions are attached to said release, to wit:

- (1) Defendant shall keep in touch with his attorney and shall keep his attorney advised of his current telephone number and address;
- (2) Defendant is required to appear on time and prepared for all scheduled proceedings;
- (3) Defendant shall not violate any laws of the City, County, State or Federal government where the potential penalty could be in excess of \$150.00 during the period of said release;
- (4) Defendant shall not drive any motorized vehicle without a valid driver's license;
- (5) Defendant shall not possess or use any alcohol and/or drugs not prescribed by a medical doctor;
- (6) Defendant shall not frequent any establishment where the primary source of income is from the sale of alcohol;
- (7) The Defendant shall submit to random blood, breath and/or urine analysis upon the request of the Court or any law enforcement official;
- (8) The Defendant shall not associate with any individuals who are on probation/parole or involved in criminal activity.

DATED this 15th day of December, 2016.



R. TODD GARBETT
Magistrate Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 15th day of December, 2016, I mailed/served a true and correct copy of the foregoing document on the attorney(s)/person(s) listed below by mail, with the correct postage, thereon or causing the same to be hand delivered.

ATTORNEY(S)/PERSON(S):

John Olson
Bear Lake County Prosecutor

Hand Delivery

Kelly Kumm
Attorney for Defendant

Faxed

CINDY GARNER, CLERK



Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO
12/24/2016
DATE TIME
KW CLERK
DEPUTY CASE NO.

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

STATE OF IDAHO,)	Case No. CR-2016-269
)	
Plaintiff,)	
)	
vs.	)	MEMORANDUM DECISION AND
	)	ORDER ON DEFENDANT'S MOTION
BRODY JASKOWSKI,	)	TO SUPPRESS EVIDENCE
)	
Defendant.)	
)	

This matter is before the Court on Defendant's, Brody Jaskowski ("Jaskowski"), Motion to Suppress Evidence ("Motion to Suppress").¹ The Plaintiff, State of Idaho ("State") filed a Memorandum in Opposition to Motion to Suppress ("Opposition Memorandum"). There was a contested preliminary hearing in this proceeding. At the conclusion of this preliminary hearing, the magistrate court made a finding that there was probable cause to believe that a crime had been committed and probable cause to believe that the Defendant had committed said crime. Based upon this finding, Jaskowski was bound over to District Court to stand trial. See Amended Minute Entry and Order Holding Defendant to Answer and Commitment. A transcript of said preliminary hearing has been transcribed and made part of the record on Jaskowski's Motion to Suppress. See Minute Entry and Order filed on November 27, 2016. This will be

¹Jaskowski's Motion to Suppress was supported by a Memorandum in Support of Motion to Suppress Evidence ("Supporting Memorandum").

referred to in this Memorandum Decision and Order as “TR.” The Court conducted an evidentiary hearing on Jaskowski’s Motion to Suppress on November 17, 2016. The State called Bear Lake County Misdemeanor Probation Officer Ron Harper (“P.O. Harper”) as a witness. P.O. Harper was subject to direct, cross, and redirect examination during this evidentiary hearing. At the conclusion of the hearing, the Court took the matter under advisement. The Court now issues its Memorandum Decision and Order (“MD&O”).

PROCEDURAL HISTORY

This case arises from an incident that occurred on April 15, 2016. Jaskowski was stopped by law enforcement and subsequently charged with one (1) felony count of Possession of a Controlled Substance, Methamphetamine, and two (2) misdemeanor counts: (1) Driving Without Privileges and (2) Possession of Drug Paraphernalia. Jaskowski was bound over to District Court following a contested preliminary hearing. Jaskowski’s Motion to Suppress requests that the Court enter an “order suppressing all evidence seized following the unconstitutional stop of Jaskowski.” Motion to Suppress, p. 1. In Jaskowski’s Supporting Memorandum, he identifies three (3) issues associated with his Motion to Suppress as follows:

- (1) Was Officer Wells and/or Officer Harper authorized to stop Jaskowski’s vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski?
- (2) Does the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop?
- (3) Did the state of Idaho adequately meet its burden of proof at the preliminary hearing with the introduction of a field test conducted by the officer with no scientific foundation concerning the reliability of the test?²

²The Court will summarily **DENY** this portion of Jaskowski’s Motion to Suppress. The evidence admitted, including evidence admitted over Defendant’s objection, at the time of the preliminary hearing clearly established probable cause to believe that a crime had been committed and probable cause to believe that Jaskowski committed said crime. This Motion to Suppress revolves not around whether there was evidence submitted at preliminary hearing stage was sufficient to support a bind over to District, but whether the evidence utilized at the preliminary hearing to obtain the bind over was obtained in a constitutionally permissible manner.

DISCUSSION

The Court will attempt to address each of the three (3) issues raised by Jaskowski in his Motion to Suppress and Supporting Memorandum. A discussion of the relevant facts associated with the Motion to Suppress is in order. On April 15, 2016, Officer Blake Wells (“Officer Wells”) of the Montpelier Police Department initiated a traffic stop on Jaskowski and the vehicle he was operating. TR. p. 7, LL. 11-14, p. 9, LL. 1-2. Officer Wells’ testimony clearly establishes that he was on the lookout for Jaskowski, presumably because he understood there to be an outstanding warrant for Jaskowski’s arrest. *See* TR. p. 7, LL. 16-20.

Officer Wells, upon observing a vehicle matching the description of a vehicle Jaskowski was believed to be driving, contacted dispatch and was advised “that there was a warrant for his arrest.” *Id.* p. 7, LL. 20-22, p. 8, LL. 13-14. Officer Wells, also knowing that Jaskowski was on probation with P.O. Harper, was asked by P.O. Harper to stop Mr. Jaskowski.” *Id.* p. 8, LL. 19-22. Officer Wells then testified that as “the vehicle left where it was parked ... and drove past where [he] was parked” he initiated a stop. *Id.* p. 8, LL. 23-25, p. 9, LL. 1-2. However, as Officer Wells approached Jaskowski’s vehicle, he “was informed that the warrant had been recalled by the court just a few days prior.” *Id.* p. 9, LL. 9-11.

Despite the fact that Officer Wells was apprised of the fact that the warrant had been recalled, he continued with the stop. *Id.* p. 9, LL. 13-16. Officer Wells testified that the reason he continued with the stop at this point in time was because P.O. Harper had requested that he stop Jaskowski. *Id.* p. 25, LL. 24-25, p. 26, LL. 1-2. Officer Wells, upon contacting Jaskowski, advised him concerning the purpose of the stop and requested his identification and vehicle information. *Id.* p. 9, LL. 14-16. Officer Wells testified that upon running Jaskowski’s license,

it “was shown as denied.” *Id.* p. 9, LL. 17-20. At that time, Officer Wells commenced writing Jaskowski a citation. *Id.* p. 9, LL. 22-23.

While writing the citation, P.O. Harper arrived at the scene of the stop. *Id.* Officer Wells then describes returning to the vehicle being operated by Jaskowski and asking him to exit the vehicle, at which time Officer Wells served the citation upon Jaskowski.³ *Id.* p. 9, L. 10, p. 10, LL. 1-2. Officer Wells testified that then P.O. Harper began to speak with Jaskowski and then began to search the vehicle Jaskowski had been driving. *Id.* p. 10, LL. 2-5. Officer Wells testified that P.O. Harper then instructed him to place Jaskowski in custody. Officer Wells took Jaskowski into custody, placed him in his patrol vehicle and returned to assist P.O. Harper with the search of Jaskowski’s vehicle. *Id.* p. 10, LL 9-15. Officer Wells, while assisting in the search, testified that he found a “pink cloth pipe which is commonly used to smoke meth.” *Id.* p. 10, LL. 17-18. He also testified that he found a “tube-type pipe that was underneath the center console of the vehicle.” *Id.* p. 10, LL 18-19. Officer Wells testified that he used a “field test kit” to test the “pink pipe” and that the field test came back presumptively positive for methamphetamine. *Id.* p. 11, LL 8-9, p. 16, LL. 18-20.⁴

Officer Wells testified that after having placed Jaskowski under arrest and having completed the search of Jaskowski’s vehicle with P.O. Harper, he then had a conversation with

³The Court has learned, incident to its review of the preliminary hearing transcript, that Jaskowski, in addition to being charged with felony possession of a controlled substance, methamphetamine, was also served a citation for two (2) misdemeanor charges: (1) Failure to have a current and valid driver’s license, I.C. § 49-301(1); and (2) Possession of Drug Paraphernalia with Intent to use, I.C. § 37-2734A(1). However, these two (2) misdemeanors were filed under a separate case number, CR-2016-265. This was done in contravention of the Sixth Judicial District Case Flow Management Plan. *See* Sixth District Local Rule 13. This Case Flow Management Plan mandates that “Felony, misdemeanor, ... charges arising out of the same incident that are filed at the same time and prosecuted by the same entity are included in the same file and assigned to the same district judge who presides over the new felony case.” *See* Case Flow Management Plan, Section 2.2, subparagraph 2. Therefore, this Court will be filing an order consolidating these two (2) files consistent with the Sixth District Case Flow Management Plan. For the purposes of clarity, Jaskowski was initially served a citation at the scene of the traffic stop with only one charge, failure to have a current and valid driver’s license. However, before transporting Jaskowski to the Caribou County Jail, Officer Wells “asked for the citation back so [he] could add the charge of paraphernalia to put them on the same charging document.” TR. p. 55, LL. 8-11.

⁴This testimony was hotly contested with Jaskowski objecting to the testimony primarily on the grounds of lack of foundation. However, Judge Garbett ultimately overruled the objection and allowed this testimony into evidence. TR. p. 16, L. 17.

Jaskowski.⁵ During this conversation with Jaskowski, Officer Wells testified that Jaskowski advised him that he had “smoked meth out of that pipe” within “a couple of days” of the traffic stop. *Id.* p. 15, LL. 21-25, p. 16, LL. 1-5.

P.O. Harper was also called to testify at Jaskowski’s preliminary hearing. P.O. Harper testified that he was supervising Jaskowski on probation. *Id.* p. 44, LL. 9-10. P.O. Harper testified that on April 15, 2016 he had been contacted by Officer Wells. Officer Wells advised P.O. Harper that “he had just seen” Jaskowski and believed that there was an outstanding warrant for Jaskowski’s arrest. *Id.* p. 44, LL. 1-4. P.O. Harper advised Officer Wells that he understood the warrant had been recalled, but that “since [Jaskowski] doesn’t live in our county [and P.O. Harper] hadn’t seen him for quite a while, [P.O. Harper] asked [Officer Wells] to detain [Jaskowski] so [P.O. Harper] could come and visit him.” *Id.* p. 44, LL. 4-8.

P.O. Harper testified that he went to the scene of the traffic stop. *Id.* p. 45, LL. 17-21. P.O. Harper testified that upon arriving at the scene of the traffic stop he conducted a search of the vehicle Jaskowski had been operating. *Id.* p. 46, LL. 5-7.⁶ Upon finding “a glass tube with some dark brown residue in it”, P.O. Harper testified he instructed Officer Wells to place Jaskowski in “wrist restraints.” *Id.* p. 46, LL 13-14.

P.O. Harper testified that Officer Wells then joined him in searching the vehicle. P.O. Harper testified that Officer Wells located a “pipe that kind of looks like it was used for

⁵This custodial interrogation occurred at Montpelier City Hall/Police Department following Officer Wells advising Jaskowski of his Miranda Rights. TR. p. 40, LL. 20-25, p. 41, LL. 1-3, 10-16.

⁶It should be noted that Officer Wells testified at the preliminary hearing that prior to commencing the search of the vehicle Jaskowski was driving, there was a brief discussion between Jaskowski and P.O. Harper. See TR. p. 10, LL. 2-5. During P.O. Harper’s examination during the preliminary hearing, there is no mention of this discussion. However, P.O. Harper was also called to testify at the evidentiary hearing conducted incident to Jaskowski’s Motion to Suppress. During this testimony, P.O. Harper was asked about any dialogue he may have had with Jaskowski before commencing the search. In response to this query, P.O. Harper responded that he advised Jaskowski that he “would search the vehicle.” When asked by the State if this had been in the form of a declaration or a question, P.O. Harper responded that “I don’t remember the exact wording. I think it was probably I just told him I was going to search.”

methamphetamine.” *Id.* p. 46, LL. 21-24. P.O. Harper testified that Officer Wells also found a “small glass tube similar to the one that [P.O. Harper] previously found.” *Id.* p. 47, LL. 2-3.

P.O. Harper testified that upon discovering the pipes, the vehicle was towed and Jaskowski was taken to Montpelier City Hall/Police Station. *Id.* p. 47, LL. 9-11. At the Montpelier City Hall/Police Station, P.O. Harper testified that Jaskowski was read his rights and questioned by Officer Wells and P.O. Harper. During the course of this interrogation, P.O. Harper testified that Jaskowski admitted to using methamphetamine four (4) to six (6) days earlier. *Id.* p. 47, LL. 17-19.

P.O. Harper testified that the reason he was looking for Jaskowski was initially he understood Jaskowski had a “fail to pay” warrant. *Id.* p. 48, LL. 13-14 . P.O. Harper later learned that Jaskowski had paid all of his fines (presumably this is why the warrant was recalled) and that his probation would expire within a few weeks. *Id.* p. 48, LL. 16-17. P.O. Harper testified as follows concerning why he wanted to see Jaskowski:

A. I heard that he was possibly using drugs, which is one of the reasons I wanted to visit with him. Even if I hadn’t heard that, I would have requested that Mr. Wells pull him over because I hadn’t seen him for a while.

Id. p. 49, LL. 1-5. However, during the course of P.O. Harper’s testimony at the evidentiary hearing on Jaskowski’s Motion to Suppress, P.O. Harper also disclosed that in addition to just wanting to see Jaskowski, he wanted “see him and test him.”

P.O. Harper was also asked to identify a Judgment in CR-2014-1191 whereby Jaskowski was placed on probation. This Judgment was introduced and admitted into evidence as State’s Exhibit No. 1 (“Ex. “1””). The second and third pages of Ex. “1” are titled the Agreement of Supervision/Understanding of Suspended Rights (“Agreement of Supervision”). Paragraph 9 of

the Agreement of Supervision is titled WARRANTLESS SEARCHES. This provision provides as follows:

I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time of day or night. I understand that any Alcohol, evidence, and/or Contraband will be confiscated, and new charges can be filed in the event of criminal activity.

Paragraph 9 of the Agreement of Supervision is initialed "BJ" as are all of the other paragraphs in the Agreement of Supervision, and the document is signed by Brody Jaskowski, and witnessed by Ronald Harper.

The foregoing facts are undisputed in this matter and, therefore, the foregoing will constitute this Court's findings of fact with respect to Jaskowski's Motion to Suppress.

STANDARD OF REVIEW

Jaskowski's Motion to Suppress asserts that it is brought pursuant to "the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States of America and Article I, Sections 13 and 17 of the Constitution of the State of Idaho." Motion to Suppress, p. 1. However, the Supporting Memorandum and arguments contained therein and presented at the time of the suppression hearing before this Court do not address any Fifth or Sixth Amendment issues; neither does the Supporting Memorandum and argument contained therein and presented at the time of the suppression hearing before this Court address Article I, Section 13 of the Idaho Constitution. As such, this Court will limit its discussion contained in this MD&O to the Fourth Amendment issues and the corresponding Article I, Section 17 issues argued by Jaskowski in his Supporting Memorandum and argued by Jaskowski's counsel at the suppression hearing. The Court specifically concludes that Jaskowski's failure to address the other claimed bases for his

Motion to Suppress is indicative of the fact that they have been withdrawn and therefore, the Court will not consider the same.

In *State v. Bordeaux*, 148 Idaho 1, 6, 217 P.3d 1, 6 (Ct.App.2009) (*Bordeaux*), the Idaho Court of Appeals notes that “Article 1, §17 of the Idaho Constitution is generally construed consistently with the Fourth Amendment of the United States Constitution.” However, as noted by the Court of Appeals in *Bordeaux*, the Idaho Appellate Courts are “free to extend greater protections under our constitution than those granted by the United States Supreme Court by the federal constitution.”⁷ *Id.*

In reviewing a trial court’s decision on a motion to suppress, Idaho’s appellate courts utilize a “bifurcated standard of review.” *State v. Charlson*, 160 Idaho 610, ___, 377 P.3d 1073, 1079 (2016) (“*Charlson*”). The appellate courts accept “the trial court’s findings of fact unless they are clearly erroneous, but may freely review the trial court’s application of constitutional principles in light of those facts. *Id.* (citing *State v. Purdum*, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)).

DISCUSSION

1. Reasonableness of the Stop

Jaskowski asserts that his Fourth Amendment right to be free from unreasonable stops and seizures was violated by Officer Wells and P.O. Harper incident to the stop which occurred on April 15, 2016. See Supporting Memorandum, pp. 7 and 9. The Idaho Supreme Court addressed a similar argument in *State v. Purdum*, 147 Idaho 206, 207 P.3d 182, (2009) (“*Purdum*”). In *Purdum*, the defendant appealed the trial court’s denial of a motion to suppress

⁷Neither party has asserted, nor has the Court found any Idaho case law, that would suggest that the Idaho Constitution has been interpreted to provide greater protections than those granted under the United States Constitution. Therefore, the Court will address Jaskowski’s Motion to Suppress pursuant to the standards announced incident to the search and seizure case law analyzing the Fourth Amendment of the United States Constitution.

in a case factually similar to the case at bar. In *Purdum*, a police officer who knew that Purdum was on probation stopped the vehicle without articulating any suspicion that Purdum was in violation of his probation or the law. *Id.* at 207, 207 P.3d at 183. Purdum argued that the district court committed error in denying his motion to suppress. The asserted basis for this claimed error was that the stop violated Purdum's Fourth Amendment rights because there was no reasonable suspicion or probable cause to initially stop him." *Id.* at 207-08, 207 P.3d at 183-84. The Idaho Supreme Court, in affirming the trial court's ruling, held that "Purdum consented to random evidentiary tests through his probation conditions, which also implied consent to a limited seizure of his person necessary to effectuate such searches." *Id.* at 208, 207 P.3d at 184.

In support of its holding in *Purdum*, the Idaho Supreme Court wrote as follows:

The Fourth Amendment to the United States Constitution guarantees the right of every citizen to be free from unreasonable searches and seizures. *State v. Mubita*, 145 Idaho 925, 932, 188 P.3d 867, 874 (2008). "Establishing that a search is reasonable ordinarily requires that the government demonstrate probable cause to a neutral magistrate and obtain a particularized warrant authorizing the search." *United States v. Weikert*, 504 F.3d 1, 6 (1st Cir.2007). However, "[t]he Fourth Amendment's proper function is to constrain, **not against all intrusions, but against intrusions which are not justified in the circumstances, or which are made in an improper manner.**" *State v. Holton*, 132 Idaho 501, 503, 975 P.2d 789, 791 (quoting *Schmerber v. California*, 384 U.S. 757, 768, 86 S.Ct. 1826, 1834, 16 L.Ed.2d 908, 918 (1966)). Therefore, **limited exceptions to the warrant requirement exist for intrusions that are "justified in the circumstances," such as where the individual has consented.** *Zap v. United States*, 328 U.S. 624, 628, 66 S.Ct. 1277, 1279, 90 L.Ed. 1477, 1481 (1946); *see also Schneckloth v. Bustamonte*, 412 U.S. 218, 243, 93 S.Ct. 2041, 2056, 36 L.Ed.2d 854, 872 (1973) ("... the community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime....").

Id. at 208, 207 P.3d at 184. [Bold Emphasis Added]. The Supreme Court went on to hold that "while the United States Supreme Court has not yet addressed whether a probationer may waive his Fourth Amendment rights through acceptance of probationary conditions, [footnote omitted] this Court has determined that a probationer's consent to searches constitutes a waiver of Fourth

Amendment rights.” *Id.* The earlier case that the Idaho Supreme Court is referring to in this statement is *State v. Gawron*, 112 Idaho 841, 736 P.2d 1295 (1987) (“*Gawron*”).

The probation term in *Gawron* more closely approximates paragraph 9 of the Agreement of Supervision than the probation language in *Purdum*. As such, the Court will focus on the similarities between these two (2) probation terms in *Gawron* and the case at bar. In *Gawron*, the applicable probationary term read as follows:

That probationer does hereby **agree** and consent to the **search of his person, automobile**, real property, and any other property **at any time and at any place by any law enforcement officer, peace officer, or probation officer**, and does **waive his constitutional right to be free from such searches**.

112 Idaho at 842, 736 P.2d at 1296. [Bold Emphasis Supplied] This language, although not identical to the language of paragraph 9 of Jaskowski’s Agreement of Supervision, is nearly identical in content and meaning. Paragraph 9 of Jaskowski’s Agreement of Supervision reads as follows:

I shall submit and I **agree** to polygraph examinations, **warrantless searches of my person, personal property**, electronic devices, **automobiles**, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; **with or without Probable Cause; any time of day or night**. I understand that any Alcohol, evidence, and/or Contraband will be confiscated, and new charged can be filed in the event of criminal activity.

[Bold Emphasis Supplied]

This Court concludes, on the facts of this case and upon review of the applicable language of Jaskowski’s Agreement of Supervision, that by consenting to the terms of his probation and the Agreement of Supervision, Jaskowski, like the defendant in *Purdum*, impliedly consented to the “limited seizure of his person” for the expressed purpose of P.O. Harper seeing him and testing him.

Certainly, the initial stop was constitutionally appropriate. Equipped with an understanding that Jaskowski had an outstanding warrant for his arrest; Officer Wells, upon seeing Jaskowski operating a vehicle in Montpelier, Idaho, affected a stop. While approaching the vehicle that Jaskowski was operating, Officer Wells was notified that the outstanding warrant for Jaskowski's arrest had been recalled. However, Officer Wells continued with the stop based upon P.O. Harper's request that he detain Jaskowski in order to allow P.O. Harper to see and test Jaskowski. In order to effectuate a warrantless search of Jaskowski's person for the purpose of administering a drug test, P.O. Harper must also possess the authority to temporarily detain a probationer, in this case Jaskowski, in order to complete the warrantless search of Jaskowski's person. This necessity is illustrated by the Idaho Court of Appeals in language cited to and adopted by the Idaho Supreme Court in *Purdum*.

The Idaho Court of Appeals directly addressed *Purdum*'s claim that his consent to submit to random evidentiary testing did not mean that he consented to a seizure for such testing:

While the Idaho Supreme Court has said that conditions of probation, especially a waiver of a Fourth Amendment right, cannot be implied, *State v. Klingler*, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006), an officer must be able to temporarily detain a probationer in order to effectuate this search condition. Any other reading would render the provision a nullity. *See Brown v. State*, 127 P.3d 837, 844 (Alaska Ct.App.2006) (if a probationer's conditions of probation authorize suspicionless searches of the probationer's person, an officer who wishes to exercise this authority has the concurrent right to stop and temporarily detain the probationer in order to conduct the search); *People v. Viers*, 1 Cal.App.4th 990, 993-94, 2 Cal.Rptr.2d 667 (Cal.Ct.App.1991) ("[p]ermission to detain is implicit in most Fourth Amendment waivers absent a detention the police cannot search a person and [areas] typically listed in Fourth Amendment waiver provisions")....

State v. Purdum, 2008 WL 183377 at *4 (Idaho Ct.App.2008) (footnote omitted). Thus, the Idaho Court of Appeals answered the question presented by *Purdum*'s appeal and answered it correctly.

Purdum, 147 Idaho 206, 210, 207 P.3d 182, 186 (2009).

For the foregoing reasons, this Court concludes that there was no Fourth Amendment violation committed by either Officer Wells and/or P.O. Harper in detaining Jaskowski for P.O. Harper's stated purpose of seeing and drug testing Jaskowski. As a result, the Court will **DENY** Jaskowski's Motion to Suppress on the first two (2) issues asserted by Jaskowski: (1) whether Officer Wells and/or Officer Harper were authorized to stop Jaskowski's vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski; and (2) did the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop.⁸

2. Reasonableness of the Search

Jaskowski also asserts that his Fourth Amendment Right against unreasonable searches of his property were violated when P.O. Harper searched the vehicle he was driving on April 15, 2016.⁹ Jaskowski asserts that despite being on probation, P.O. Harper's warrantless search of his vehicle violated his Fourth Amendment right to be free from unreasonable searches and seizures and the terms and conditions of his Agreement of Supervision which contained a limited waiver of his Fourth Amendment right to be free from unreasonable searches and seizures.

In *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011) ("*Turek*"), the Idaho Court of Appeals addressed the search of a shed by law enforcement personnel. Incident to this search, contraband was located resulting in the defendant being charged with manufacturing marijuana. *Id.* at 747, 250 P.3d 798. The trial court suppressed the evidence of the marijuana

⁸This Court has not attempted to address whether the continuation of the stop was appropriate once Officer Wells learned that the warrant had been recalled. The reason the Court has not addressed this issue is because Officer Wells had an alternative basis for continuing with the stop and that was that P.O. Harper had requested that Officer Wells stop and detain Jaskowski for the purpose of allowing P.O. Harper to see and drug test Jaskowski. Therefore, the Court need not make a determination concerning whether it would have amounted to a Fourth Amendment violation for Officer Wells to continue with the stop after learning that the warrant had been recalled.

⁹Although, the reasonableness of the search was not specifically articulated as one of the three (3) issues raised by Jaskowski's Motion to Suppress (*See* Supporting Memorandum, p. 3, § II titled Issues), Jaskowski's arguments, both contained in his Supporting Memorandum and as argued during oral argument, are deemed by the Court to be sufficient for purposes of raising this issue as part of his Motion to Suppress.

growing operation pursuant to Turek's motion to suppress. *Id.* The primary issue addressed in the Idaho Court of Appeals decision in *Turek* focused on Turek's agreement of supervision relative to probation and to what extent he consented to warrantless searches. The Idaho Court of Appeals framed this issue in the following terms:

We next examine whether Turek's agreement to submit to warrantless searches "at the request of" a probation officer or law enforcement official as a condition of his probation constituted requisite consent to render the search constitutional. The state contends that Turek waived his Fourth Amendment right to be free from warrantless searches when he agreed to the probation condition such that he consented in advance to the search and there was no need to obtain his consent at the scene, despite the language stating that Turek must submit to a search "at the request of" probation or law enforcement officials.

Id. at 748, 150 P.3d at 799. The Court of Appeals determined that this was an issue of first impression in the state of Idaho. *Id.* at 749, 250 P.3d at 800. After considering authority from both the Idaho Supreme Court and other jurisdictions, the Idaho Court of Appeals held as follows:

[w]e conclude that a probation condition that requires a probationer to submit to a search "at the request of" an officer requires that the probationer be informed of an officers intent to conduct and impending search. [Footnote omitted] Like the *Joubert* Court, we recognize that the purpose of probation may be better advanced if we were to allow probation officers to conduct unrestricted, unannounced searches of a probationer's residence. However, we must keep in mind that probationers expectation of privacy is merely diminished, not obliterated. In addition, to adopt the state's interpretation of the term would be to essentially ignore the plain language of the probation condition – a proposition for which the state has cited no authority and which does not constitute an "objectively reasonable," nor logical, interpretation.

Id. at 752, 250 P.3d at 803.

The Court finds that the decision of the Idaho Court of Appeals in *Turek* is controlling upon this Court with respect to the search conducted by P.O. Harper and assisted in by Officer Wells, at P.O. Harper's request. The express and unambiguous language of Jaskowski's Agreement of Supervision, paragraph 9, uses the identical language as the agreement of

supervision in *Turek*, “at the request of my Probation Officer” (Agreement of Supervision, ¶ 9) compared to “at the request of the Probation Officer or Law Enforcement” (*Turek*, 150 Idaho at 746, 250 Idaho at 797).

In the present case, it is undisputed that P.O. Harper did not request permission or consent to search the vehicle Jaskowski was driving. Rather, he merely made the declaratory statement that “I was going to search”¹⁰ the vehicle Jaskowski was driving. Because Jaskowski’s Agreement of Supervision is couched in terms of “at the request of my Probation Officer” and in light of the Idaho Court of Appeals decision in *Turek*, this Court must find that the search of the vehicle being driven by Jaskowski on April 15, 2016 did not comply with the express terms of his Agreement of Supervision and, therefore, was unreasonable and illegal search of the vehicle he was driving in violation of his Fourth Amendment Right. As a result, the Court will **GRANT** Jaskowski’s motion to suppress on the basis that the search of the vehicle he was driving was in violation of his Fourth Amendment Right. The Court will suppress all evidence seized or related to this vehicle search, including Jaskowski’s subsequent admissions at the Montpelier City Hall/Police Station as being derivative of the impermissible search.

CONCLUSION

Based upon the foregoing, the Court hereby **GRANTS** Jaskowski’s Motion to Suppress on the basis that P.O. Harper’s warrantless search of the vehicle Jaskowski was driving on April 15, 2016, was in violation of the Agreement of Supervision and, therefore, violated Jaskowski’s Fourth Amendment protections against unreasonable searches and seizures. Therefore, all of the evidence seized or related to this vehicle search will be suppressed.

¹⁰Throughout this MD&O, the Court has cited to oral testimony from the evidentiary hearing conducted incident to Jaskowski’s Motion to Suppress, the Court has even included some statements in quotation marks. The Court recognizes that a formal and certified copy of the transcript from this evidentiary hearing has not been prepared. However, the citations to and quotes from this hearing are the result of this Court’s notes taken during the evidentiary hearing and a rough transcript of the preliminary hearing prepared by the Court’s Court Reporter at the Court’s request.

The Court hereby sets this matter for a Status and Scheduling Conference to be conducted on January 5, 2017 at 9:00 a.m., at which time the Court and parties shall discuss the status of this case.

Dated this 24th day of December, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 26th day of December, 2016, I mailed/served a true and correct copy of the foregoing document on the attorney(s)/person(s) listed below by mail, with the correct postage, thereon or causing the same to be hand delivered.

ATTORNEY(S)/PERSON(S):

John Olson
Bear Lake County Prosecutor

Kelly Kumm
KUMM & REICHERT, PLLC
Pocatello, ID 83201
305 East Center Street

METHOD OF DELIVERY:

HAND DELIVERED

Facsimile (208) 232-288

CINDY GARNER, CLERK



Deputy Clerk

Sixth Judicial District Court, State of Idaho
and For the County of Bear Lake
7 East Center
Paris, Idaho 83261

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

STATE OF IDAHO,
Plaintiff.

vs.

Brody L Jaskowski
109 North 3rd East
Franklin, ID 83237

Defendant.

DOB: [REDACTED]

2016 DEC 26 PM 12:29

CINDY GARNER, CLERK

Case No: CR-2016-0000269
DEPUTY _____ CASE NO

NOTICE OF HEARING

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

Status Thursday, January 5, 2017 09:00 AM
Judge: Mitchell W Brown
Courtroom: Bear Lake County Courtroom-Paris

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on this date Monday, December 26, 2016.

Defendant: Brody L Jaskowski

Mailed _____ Hand Delivered _____

Private Counsel:

232-2880

Faxed X Hand Delivered _____

Kelly Kenneth Kumm

see attached Memorandum for Court Call

1305 East Center
Pocatello ID 83201-5796

Prosecutor: John H. Olson

Mailed _____ Hand Delivered X

Dated: Monday, December 26, 2016

CINDY GARNER
Clerk Of The District Court

By:

[Signature]
Deputy Clerk
DOC22 7/96

MEMORANDUM

TO: All Counsel and/or Pro Se Parties

FROM: Judge Mitchell W. Brown
Sixth Judicial District Court of the State of Idaho
Bannock County, Bear Lake County, Caribou County, Franklin County

RE: Telephonic Appearances with CourtCall

DATE: September 2011

For appearances commencing in September 2011, I will join a growing number of Judges in Idaho and around the country using CourtCall to conduct telephonic appearances by counsel and/or pro se parties ("CourtCall Appearances"). In my courtroom, CourtCall Appearances may generally be made for all non-evidentiary and/or non-dispositive appearances including Pretrial Conferences, Status and Scheduling Conferences and Motions. CourtCall is providing equipment to enhance the process. It is my hope that by making the process more uniform, your practice will become more productive and enjoyable so that the cost of litigation will be further reduced.

Counsel and/or pro se parties may make a CourtCall Appearance by serving and filing with CourtCall (not the Court), NOT LESS THAN THREE (3) COURT DAYS PRIOR TO THE HEARING DATE, a Request for Telephonic Appearance Form and paying a fee of fifty-five dollars (\$55.00) for each CourtCall Appearance. There are no subscription fees.

A CourtCall Appearance is made as part of a Court's regular calendar and all counsel and/or pro se parties who have timely filed their request form and paid the fee may appear by dialing the Courtroom's dedicated **toll-free teleconference number, and access code (if any) which will be provided by CourtCall, LLC on the confirmation faxed to your office.** A pre-hearing check-in will occur five (5) minutes prior to the scheduled hearing time. A CourtCall Appearance is voluntary and may be made without consent of the other party, and the Court continues to reserve the right to reject any request.

You may obtain additional information by calling the CourtCall Program Administrator, **CourtCall at (310) 342-0888 or (888) 882-6878.**

For more information about CourtCall please call CourtCall, LLC, not the Court.

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

Register #CR-2016-0000269-FE

STATE OF IDAHO,

Plaintiff,

-vs-

BRODY L. JASKOWSKI,

Defendant.

MINUTE ENTRY & ORDER

On January 5, 2017, Kelly Kumm, counsel for the above-named Defendant, appeared by telephone with prior permission of the Court. John H. Olson, Bear Lake County Prosecuting Attorney, appeared on behalf of the State of Idaho. No court reporter was available due to inclement weather and the Court declared an emergency pursuant to I.C.A.R. 27(h). The proceedings were recorded electronically and the parties waived the presence of a court reporter. The court clerk was Karen Volbrecht.

This matter was scheduled for status hearing upon the Court's own motion. The Court reviewed the prior proceedings noting its Memorandum Decision and Order on Defendant's Motion to Suppress Evidence was issued on December 24, 2016, wherein the Defendant's Motion to Suppress Evidence was granted. The Court also noted that two (2) misdemeanor charges were filed by way of citation incident to the Defendant's arrest in this matter and should have been

included in this case for prosecution purposes pursuant to the Idaho Sixth District Case Management Plan. The Court heard comments from counsel regarding the issue.

The State indicated, following consultation with the Idaho Attorney General's Office, that it intended to file an appeal arising from the Court's Memorandum Decision and Order granting the Defendant's suppression request. Based upon the information before the Court, this matter will not be set for trial at this time. Rather, pursuant to Idaho Appellate Rule 11(c)(7), the Court will allow the State to perfect its appeal.

IT IS HEREBY ORDERED that the two (2) misdemeanor charges in Case No. CR-2016-265, Count 1: Failure to Purchase/Invalid Driver's License, I.C. §49-301(1) and Count 2: Possession of Drug Paraphernalia, I.C. §37-2734A(1), shall be consolidated with this matter for future proceedings, including trial.

The Court admonished the Defendant to comply with the terms and conditions of release and to appear at any further proceedings as required.

DATED this 8th day of January, 2017.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of January, 2017, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

John H. Olson
Bear Lake County Prosecutor

Hand Deliver

Kelly Kumm
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DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2017 JAN 11 PM 2:43

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

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

STATE OF IDAHO,	)	District Court No. CR-2016-269
)	
Plaintiff-Appellant,	)	Supreme Court No.
)	
v.	)	NOTICE OF APPEAL
)	
BRODY L. JASKOWSKI,)	
)	
Defendant-Respondent.)	
)	

TO: BRODY L. JASKOWSKI, THE ABOVE-NAMED RESPONDENT,
KELLY K. KUMM, KUMM & REICHERT, PLLC, 1305 E. CENTER STREET,
POCATELLO, IDAHO 83201-5796 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 MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

EVIDENCE, entered in the above-entitled action on the 24th day of December, 2016, the Honorable Mitchell W. Brown presiding. A copy of the judgment or order being appealed is attached to this notice.

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 Jaskowski's probation conditions did not waive his right against warrantless searches by his probation officer.

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 motion to suppress, held November 17, 2016 (Court reporter Rodney Felshaw, no estimate for number of pages available).

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R. The state requests that the previously prepared transcript of the preliminary hearing, presented to the district court, be included in the record as an exhibit.

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:

RODNEY FELSHAW
631 S. 1st E.
Preston, ID 83263


(b) That arrangements have been made with the Bear Lake 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 11th day of January, 2017.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 11th day of January, 2017, 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 MITCHELL W. BROWN
Bear Lake County District Court
7 E. Center
P. O. Box 190
Paris, ID 83261

JOHN H. OLSON
Bear Lake County Prosecuting Attorney
P. O. Box 190
Paris, ID 83261

KELLY K. KUMM
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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

DISTRICT CO NO. 933 P. 6
 SIXTH JUDICIAL COURT
 BEAR LAKE COUNTY IDAHO
12/24/2016
 DATE TIME
KU CLERK
 DEPUTY CASE NO.

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

STATE OF IDAHO,

Plaintiff,

vs.

BRODY JASKOWSKI,

Defendant.

Case No. CR-2016-269

**MEMORANDUM DECISION AND
 ORDER ON DEFENDANT'S MOTION
 TO SUPPRESS EVIDENCE**

This matter is before the Court on Defendant's, Brody Jaskowski ("Jaskowski"), Motion to Suppress Evidence ("Motion to Suppress").¹ The Plaintiff, State of Idaho ("State") filed a Memorandum in Opposition to Motion to Suppress ("Opposition Memorandum"). There was a contested preliminary hearing in this proceeding. At the conclusion of this preliminary hearing, the magistrate court made a finding that there was probable cause to believe that a crime had been committed and probable cause to believe that the Defendant had committed said crime. Based upon this finding, Jaskowski was bound over to District Court to stand trial. *See* Amended Minute Entry and Order Holding Defendant to Answer and Commitment. A transcript of said preliminary hearing has been transcribed and made part of the record on Jaskowski's Motion to Suppress. *See* Minute Entry and Order filed on November 27, 2016. This will be

¹Jaskowski's Motion to Suppress was supported by a Memorandum in Support of Motion to Suppress Evidence ("Supporting Memorandum").

referred to in this Memorandum Decision and Order as "TR." The Court conducted an evidentiary hearing on Jaskowski's Motion to Suppress on November 17, 2016. The State called Bear Lake County Misdemeanor Probation Officer Ron Harper ("P.O. Harper") as a witness. P.O. Harper was subject to direct, cross, and redirect examination during this evidentiary hearing. At the conclusion of the hearing, the Court took the matter under advisement. The Court now issues its Memorandum Decision and Order ("MD&O").

PROCEDURAL HISTORY

This case arises from an incident that occurred on April 15, 2016. Jaskowski was stopped by law enforcement and subsequently charged with one (1) felony count of Possession of a Controlled Substance, Methamphetamine, and two (2) misdemeanor counts: (1) Driving Without Privileges and (2) Possession of Drug Paraphernalia. Jaskowski was bound over to District Court following a contested preliminary hearing. Jaskowski's Motion to Suppress requests that the Court enter an "order suppressing all evidence seized following the unconstitutional stop of Jaskowski." Motion to Suppress, p. 1. In Jaskowski's Supporting Memorandum, he identifies three (3) issues associated with his Motion to Suppress as follows:

- (1) Was Officer Wells and/or Officer Harper authorized to stop Jaskowski's vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski?
- (2) Does the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop?
- (3) Did the state of Idaho adequately meet its burden of proof at the preliminary hearing with the introduction of a field test conducted by the officer with no scientific foundation concerning the reliability of the test?²

²The Court will summarily **DENY** this portion of Jaskowski's Motion to Suppress. The evidence admitted, including evidence admitted over Defendant's objection, at the time of the preliminary hearing clearly established probable cause to believe that a crime had been committed and probable cause to believe that Jaskowski committed said crime. This Motion to Suppress revolves not around whether there was evidence submitted at preliminary hearing stage was sufficient to support a bind over to District, but whether the evidence utilized at the preliminary hearing to obtain the bind over was obtained in a constitutionally permissible manner.

Supporting Memorandum, p. 3.

DISCUSSION

The Court will attempt to address each of the three (3) issues raised by Jaskowski in his Motion to Suppress and Supporting Memorandum. A discussion of the relevant facts associated with the Motion to Suppress is in order. On April 15, 2016, Officer Blake Wells ("Officer Wells") of the Montpelier Police Department initiated a traffic stop on Jaskowski and the vehicle he was operating. TR. p. 7, LL. 11-14, p. 9, LL. 1-2. Officer Wells' testimony clearly establishes that he was on the lookout for Jaskowski, presumably because he understood there to be an outstanding warrant for Jaskowski's arrest. See TR. p. 7, LL. 16-20.

Officer Wells, upon observing a vehicle matching the description of a vehicle Jaskowski was believed to be driving, contacted dispatch and was advised "that there was a warrant for his arrest." *Id.* p. 7, LL. 20-22, p. 8, LL. 13-14. Officer Wells, also knowing that Jaskowski was on probation with P.O. Harper, was asked by P.O. Harper to stop Mr. Jaskowski." *Id.* p. 8, LL. 19-22. Officer Wells then testified that as "the vehicle left where it was parked ... and drove past where [he] was parked" he initiated a stop. *Id.* p. 8, LL. 23-25, p. 9, LL. 1-2. However, as Officer Wells approached Jaskowski's vehicle, he "was informed that the warrant had been recalled by the court just a few days prior." *Id.* p. 9, LL. 9-11.

Despite the fact that Officer Wells was apprised of the fact that the warrant had been recalled, he continued with the stop. *Id.* p. 9, LL. 13-16. Officer Wells testified that the reason he continued with the stop at this point in time was because P.O. Harper had requested that he stop Jaskowski. *Id.* p. 25, LL. 24-25, p. 26, LL. 1-2. Officer Wells, upon contacting Jaskowski, advised him concerning the purpose of the stop and requested his identification and vehicle information. *Id.* p. 9, LL. 14-16. Officer Wells testified that upon running Jaskowski's license,

it "was shown as denied." *Id.* p. 9, LL. 17-20. At that time, Officer Wells commenced writing Jaskowski a citation. *Id.* p. 9, LL. 22-23.

While writing the citation, P.O. Harper arrived at the scene of the stop. *Id.* Officer Wells then describes returning to the vehicle being operated by Jaskowski and asking him to exit the vehicle, at which time Officer Wells served the citation upon Jaskowski.³ *Id.* p. 9, L. 10, p. 10, LL. 1-2. Officer Wells testified that then P.O. Harper began to speak with Jaskowski and then began to search the vehicle Jaskowski had been driving. *Id.* p. 10, LL. 2-5. Officer Wells testified that P.O. Harper then instructed him to place Jaskowski in custody. Officer Wells took Jaskowski into custody, placed him in his patrol vehicle and returned to assist P.O. Harper with the search of Jaskowski's vehicle. *Id.* p. 10, LL 9-15. Officer Wells, while assisting in the search, testified that he found a "pink cloth pipe which is commonly used to smoke meth." *Id.* p. 10, LL. 17-18. He also testified that he found a "tube-type pipe that was underneath the center console of the vehicle." *Id.* p. 10, LL 18-19. Officer Wells testified that he used a "field test kit" to test the "pink pipe" and that the field test came back presumptively positive for methamphetamine. *Id.* p. 11, LL 8-9, p. 16, LL. 18-20.⁴

Officer Wells testified that after having placed Jaskowski under arrest and having completed the search of Jaskowski's vehicle with P.O. Harper, he then had a conversation with

³The Court has learned, incident to its review of the preliminary hearing transcript, that Jaskowski, in addition to being charged with felony possession of a controlled substance, methamphetamine, was also served a citation for two (2) misdemeanor charges: (1) Failure to have a current and valid driver's license, I.C. § 49-301(1); and (2) Possession of Drug Paraphernalia with Intent to use, I.C. § 37-2734A(1). However, these two (2) misdemeanors were filed under a separate case number, CR-2016-265. This was done in contravention of the Sixth Judicial District Case Flow Management Plan. See Sixth District Local Rule 13. This Case Flow Management Plan mandates that "Felony, misdemeanor, ... charges arising out of the same incident that are filed at the same time and prosecuted by the same entity are included in the same file and assigned to the same district judge who presides over the new felony case." See Case Flow Management Plan, Section 2.2, subparagraph 2. Therefore, this Court will be filing an order consolidating these two (2) files consistent with the Sixth District Case Flow Management Plan. For the purposes of clarity, Jaskowski was initially served a citation at the scene of the traffic stop with only one charge, failure to have a current and valid driver's license. However, before transporting Jaskowski to the Caribou County Jail, Officer Wells "asked for the citation back so [he] could add the charge of paraphernalia to put them on the same charging document." TR. p. 55, LL. 8-11. "This testimony was hotly contested with Jaskowski objecting to the testimony primarily on the grounds of lack of foundation. However, Judge Garbett ultimately overruled the objection and allowed this testimony into evidence. TR. p. 16, L. 17.

Jaskowski.⁵ During this conversation with Jaskowski, Officer Wells testified that Jaskowski advised him that he had “smoked meth out of that pipe” within “a couple of days” of the traffic stop. *Id.* p. 15, LL. 21-25, p. 16, LL. 1-5.

P.O. Harper was also called to testify at Jaskowski’s preliminary hearing. P.O. Harper testified that he was supervising Jaskowski on probation. *Id.* p. 44, LL. 9-10. P.O. Harper testified that on April 15, 2016 he had been contacted by Officer Wells. Officer Wells advised P.O. Harper that “he had just seen” Jaskowski and believed that there was an outstanding warrant for Jaskowski’s arrest. *Id.* p. 44, LL. 1-4. P.O. Harper advised Officer Wells that he understood the warrant had been recalled, but that “since [Jaskowski] doesn’t live in our county [and P.O. Harper] hadn’t seen him for quite a while, [P.O. Harper] asked [Officer Wells] to detain [Jaskowski] so [P.O. Harper] could come and visit him.” *Id.* p. 44, LL. 4-8.

P.O. Harper testified that he went to the scene of the traffic stop. *Id.* p. 45, LL. 17-21. P.O. Harper testified that upon arriving at the scene of the traffic stop he conducted a search of the vehicle Jaskowski had been operating. *Id.* p. 46, LL. 5-7.⁶ Upon finding “a glass tube with some dark brown residue in it”, P.O. Harper testified he instructed Officer Wells to place Jaskowski in “wrist restraints.” *Id.* p. 46, LL. 13-14.

P.O. Harper testified that Officer Wells then joined him in searching the vehicle. P.O. Harper testified that Officer Wells located a “pipe that kind of looks like it was used for

⁵This custodial interrogation occurred at Montpelier City Hall/Police Department following Officer Wells advising Jaskowski of his Miranda Rights. TR. p. 40, LL. 20-25, p. 41, LL. 1-3, 10-16.

⁶It should be noted that Officer Wells testified at the preliminary hearing that prior to commencing the search of the vehicle Jaskowski was driving, there was a brief discussion between Jaskowski and P.O. Harper. See TR. p. 10, LL. 2-5. During P.O. Harper’s examination during the preliminary hearing, there is no mention of this discussion. However, P.O. Harper was also called to testify at the evidentiary hearing conducted incident to Jaskowski’s Motion to Suppress. During this testimony, P.O. Harper was asked about any dialogue he may have had with Jaskowski before commencing the search. In response to this query, P.O. Harper responded that he advised Jaskowski that he “would search the vehicle.” When asked by the State if this had been in the form of a declaration or a question, P.O. Harper responded that “I don’t remember the exact wording. I think it was probably I just told him I was going to search.”

methamphetamine.” *Id.* p. 46, LL. 21-24. P.O. Harper testified that Officer Wells also found a “small glass tube similar to the one that [P.O. Harper] previously found.” *Id.* p. 47, LL. 2-3.

P.O. Harper testified that upon discovering the pipes, the vehicle was towed and Jaskowski was taken to Montpelier City Hall/Police Station. *Id.* p. 47, LL. 9-11. At the Montpelier City Hall/Police Station, P.O. Harper testified that Jaskowski was read his rights and questioned by Officer Wells and P.O. Harper. During the course of this interrogation, P.O. Harper testified that Jaskowski admitted to using methamphetamine four (4) to six (6) days earlier. *Id.* p. 47, LL. 17-19.

P.O. Harper testified that the reason he was looking for Jaskowski was initially he understood Jaskowski had a “fail to pay” warrant. *Id.* p. 48, LL. 13-14. P.O. Harper later learned that Jaskowski had paid all of his fines (presumably this is why the warrant was recalled) and that his probation would expire within a few weeks. *Id.* p. 48, LL. 16-17. P.O. Harper testified as follows concerning why he wanted to see Jaskowski:

A. I heard that he was possibly using drugs, which is one of the reasons I wanted to visit with him. Even if I hadn’t heard that, I would have requested that Mr. Wells pull him over because I hadn’t seen him for a while.

Id. p. 49, LL. 1-5. However, during the course of P.O. Harper’s testimony at the evidentiary hearing on Jaskowski’s Motion to Suppress, P.O. Harper also disclosed that in addition to just wanting to see Jaskowski, he wanted “see him and test him.”

P.O. Harper was also asked to identify a Judgment in CR-2014-1191 whereby Jaskowski was placed on probation. This Judgment was introduced and admitted into evidence as State’s Exhibit No. 1 (“Ex. “1””). The second and third pages of Ex. “1” are titled the Agreement of Supervision/Understanding of Suspended Rights (“Agreement of Supervision”). Paragraph 9 of

the Agreement of Supervision is titled WARRANTLESS SEARCHES. This provision provides as follows:

I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time of day or night. I understand that any Alcohol, evidence, and/or Contraband will be confiscated, and new charges can be filed in the event of criminal activity.

Paragraph 9 of the Agreement of Supervision is initialed "BJ" as are all of the other paragraphs in the Agreement of Supervision, and the document is signed by Brody Jaskowski, and witnessed by Ronald Harper.

The foregoing facts are undisputed in this matter and, therefore, the foregoing will constitute this Court's findings of fact with respect to Jaskowski's Motion to Suppress.

STANDARD OF REVIEW

Jaskowski's Motion to Suppress asserts that it is brought pursuant to "the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States of America and Article I, Sections 13 and 17 of the Constitution of the State of Idaho." Motion to Suppress, p. 1. However, the Supporting Memorandum and arguments contained therein and presented at the time of the suppression hearing before this Court do not address any Fifth or Sixth Amendment issues; neither does the Supporting Memorandum and argument contained therein and presented at the time of the suppression hearing before this Court address Article I, Section 13 of the Idaho Constitution. As such, this Court will limit its discussion contained in this MD&O to the Fourth Amendment issues and the corresponding Article I, Section 17 issues argued by Jaskowski in his Supporting Memorandum and argued by Jaskowski's counsel at the suppression hearing. The Court specifically concludes that Jaskowski's failure to address the other claimed bases for his

Motion to Suppress is indicative of the fact that they have been withdrawn and therefore, the Court will not consider the same.

In *State v. Bordeaux*, 148 Idaho 1, 6, 217 P.3d 1, 6 (Ct.App.2009) (*Bordeaux*), the Idaho Court of Appeals notes that “Article 1, §17 of the Idaho Constitution is generally construed consistently with the Fourth Amendment of the United States Constitution.” However, as noted by the Court of Appeals in *Bordeaux*, the Idaho Appellate Courts are “free to extend greater protections under our constitution than those granted by the United States Supreme Court by the federal constitution.”⁷ *Id.*

In reviewing a trial court’s decision on a motion to suppress, Idaho’s appellate courts utilize a “bifurcated standard of review.” *State v. Charlson*, 160 Idaho 610, ___, 377 P.3d 1073, 1079 (2016) (“*Charlson*”). The appellate courts accept “the trial court’s findings of fact unless they are clearly erroneous, but may freely review the trial court’s application of constitutional principles in light of those facts. *Id.* (citing *State v. Purdum*, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009)).

DISCUSSION

1. Reasonableness of the Stop

Jaskowski asserts that his Fourth Amendment right to be free from unreasonable stops and seizures was violated by Officer Wells and P.O. Harper incident to the stop which occurred on April 15, 2016. See Supporting Memorandum, pp. 7 and 9. The Idaho Supreme Court addressed a similar argument in *State v. Purdum*, 147 Idaho 206, 207 P.3d 182, (2009) (“*Purdum*”). In *Purdum*, the defendant appealed the trial court’s denial of a motion to suppress

⁷Neither party has asserted, nor has the Court found any Idaho case law, that would suggest that the Idaho Constitution has been interpreted to provide greater protections than those granted under the United States Constitution. Therefore, the Court will address Jaskowski’s Motion to Suppress pursuant to the standards announced incident to the search and seizure case law analyzing the Fourth Amendment of the United States Constitution.

in a case factually similar to the case at bar. In *Purdum*, a police officer who knew that Purdum was on probation stopped the vehicle without articulating any suspicion that Purdum was in violation of his probation or the law. *Id.* at 207, 207 P.3d at 183. Purdum argued that the district court committed error in denying his motion to suppress. The asserted basis for this claimed error was that the stop violated Purdum's Fourth Amendment rights because there was no reasonable suspicion or probable cause to initially stop him." *Id.* at 207-08, 207 P.3d at 183-84. The Idaho Supreme Court, in affirming the trial court's ruling, held that "Purdum consented to random evidentiary tests through his probation conditions, which also implied consent to a limited seizure of his person necessary to effectuate such searches." *Id.* at 208, 207 P.3d at 184.

In support of its holding in *Purdum*, the Idaho Supreme Court wrote as follows:

The Fourth Amendment to the United States Constitution guarantees the right of every citizen to be free from unreasonable searches and seizures. *State v. Mubita*, 145 Idaho 925, 932, 188 P.3d 867, 874 (2008). "Establishing that a search is reasonable ordinarily requires that the government demonstrate probable cause to a neutral magistrate and obtain a particularized warrant authorizing the search." *United States v. Weikert*, 504 F.3d 1, 6 (1st Cir.2007). However, "[t]he Fourth Amendment's proper function is to constrain, **not against all intrusions, but against intrusions which are not justified in the circumstances, or which are made in an improper manner.**" *State v. Holton*, 132 Idaho 501, 503, 975 P.2d 789, 791 (quoting *Schmerber v. California*, 384 U.S. 757, 768, 86 S.Ct. 1826, 1834, 16 L.Ed.2d 908, 918 (1966)). Therefore, **limited exceptions to the warrant requirement exist for intrusions that are "justified in the circumstances,"** such as where the individual has consented. *Zap v. United States*, 328 U.S. 624, 628, 66 S.Ct. 1277, 1279, 90 L.Ed. 1477, 1481 (1946); see also *Schneekloth v. Bustamonte*, 412 U.S. 218, 243, 93 S.Ct. 2041, 2056, 36 L.Ed.2d 854, 872 (1973) ("... the community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime....").

Id. at 208, 207 P.3d at 184. [Bold Emphasis Added]. The Supreme Court went on to hold that "while the United States Supreme Court has not yet addressed whether a probationer may waive his Fourth Amendment rights through acceptance of probationary conditions, [footnote omitted] this Court has determined that a probationer's consent to searches constitutes a waiver of Fourth

Amendment rights.” *Id.* The earlier case that the Idaho Supreme Court is referring to in this statement is *State v. Gawron*, 112 Idaho 841, 736 P.2d 1295 (1987) (“*Gawron*”).

The probation term in *Gawron* more closely approximates paragraph 9 of the Agreement of Supervision than the probation language in *Purdum*. As such, the Court will focus on the similarities between these two (2) probation terms in *Gawron* and the case at bar. In *Gawron*, the applicable probationary term read as follows:

That probationer does hereby agree and consent to the search of his person, automobile, real property, and any other property at any time and at any place by any law enforcement officer, peace officer, or probation officer, and does waive his constitutional right to be free from such searches.

112 Idaho at 842, 736 P.2d at 1296. [Bold Emphasis Supplied] This language, although not identical to the language of paragraph 9 of Jaskowski’s Agreement of Supervision, is nearly identical in content and meaning. Paragraph 9 of Jaskowski’s Agreement of Supervision reads as follows:

I shall submit and I agree to polygraph examinations, warrantless searches of my person, personal property, electronic devices, automobiles, residence, and outbuildings at the request of my Probation Officer, by the Probation Officer, Peace Officer, and/or his designee; with or without Probable Cause; any time of day or night. I understand that any Alcohol, evidence, and/or Contraband will be confiscated, and new charged can be filed in the event of criminal activity.

[Bold Emphasis Supplied]

This Court concludes, on the facts of this case and upon review of the applicable language of Jaskowski’s Agreement of Supervision, that by consenting to the terms of his probation and the Agreement of Supervision, Jaskowski, like the defendant in *Purdum*, impliedly consented to the “limited seizure of his person” for the expressed purpose of P.O. Harper seeing him and testing him.

Certainly, the initial stop was constitutionally appropriate. Equipped with an understanding that Jaskowski had an outstanding warrant for his arrest; Officer Wells, upon seeing Jaskowski operating a vehicle in Montpelier, Idaho, affected a stop. While approaching the vehicle that Jaskowski was operating, Officer Wells was notified that the outstanding warrant for Jaskowski's arrest had been recalled. However, Officer Wells continued with the stop based upon P.O. Harper's request that he detain Jaskowski in order to allow P.O. Harper to see and test Jaskowski. In order to effectuate a warrantless search of Jaskowski's person for the purpose of administering a drug test, P.O. Harper must also possess the authority to temporarily detain a probationer, in this case Jaskowski, in order to complete the warrantless search of Jaskowski's person. This necessity is illustrated by the Idaho Court of Appeals in language cited to and adopted by the Idaho Supreme Court in *Purdum*.

The Idaho Court of Appeals directly addressed *Purdum*'s claim that his consent to submit to random evidentiary testing did not mean that he consented to a seizure for such testing:

While the Idaho Supreme Court has said that conditions of probation, especially a waiver of a Fourth Amendment right, cannot be implied, *State v. Klingler*, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006), an officer must be able to temporarily detain a probationer in order to effectuate this search condition. Any other reading would render the provision a nullity. *See Brown v. State*, 127 P.3d 837, 844 (Alaska Ct.App.2006) (if a probationer's conditions of probation authorize suspicionless searches of the probationer's person, an officer who wishes to exercise this authority has the concurrent right to stop and temporarily detain the probationer in order to conduct the search); *People v. Viers*, 1 Cal.App.4th 990, 993-94, 2 Cal.Rptr.2d 667 (Cal.Ct.App.1991) ("[p]ermission to detain is implicit in most Fourth Amendment waivers absent a detention the police cannot search a person and [areas] typically listed in Fourth Amendment waiver provisions")....

State v. Purdum, 2008 WL 183377 at *4 (Idaho Ct.App.2008) (footnote omitted). Thus, the Idaho Court of Appeals answered the question presented by *Purdum*'s appeal and answered it correctly.

Purdum, 147 Idaho 206, 210, 207 P.3d 182, 186 (2009).

For the foregoing reasons, this Court concludes that there was no Fourth Amendment violation committed by either Officer Wells and/or P.O. Harper in detaining Jaskowski for P.O. Harper's stated purpose of seeing and drug testing Jaskowski. As a result, the Court will **DENY** Jaskowski's Motion to Suppress on the first two (2) issues asserted by Jaskowski: (1) whether Officer Wells and/or Officer Harper were authorized to stop Jaskowski's vehicle based solely upon an alleged waiver of 4th Amendment Rights and a desire to speak with Jaskowski; and (2) did the existence of a warrant for arrest and its subsequent recall form the basis for a permissible traffic stop.⁸

2. Reasonableness of the Search

Jaskowski also asserts that his Fourth Amendment Right against unreasonable searches of his property were violated when P.O. Harper searched the vehicle he was driving on April 15, 2016.⁹ Jaskowski asserts that despite being on probation, P.O. Harper's warrantless search of his vehicle violated his Fourth Amendment right to be free from unreasonable searches and seizures and the terms and conditions of his Agreement of Supervision which contained a limited waiver of his Fourth Amendment right to be free from unreasonable searches and seizures.

In *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011) ("*Turek*"), the Idaho Court of Appeals addressed the search of a shed by law enforcement personnel. Incident to this search, contraband was located resulting in the defendant being charged with manufacturing marijuana. *Id.* at 747, 250 P.3d 798. The trial court suppressed the evidence of the marijuana

⁸This Court has not attempted to address whether the continuation of the stop was appropriate once Officer Wells learned that the warrant had been recalled. The reason the Court has not addressed this issue is because Officer Wells had an alternative basis for continuing with the stop and that was that P.O. Harper had requested that Officer Wells stop and detain Jaskowski for the purpose of allowing P.O. Harper to see and drug test Jaskowski. Therefore, the Court need not make a determination concerning whether it would have amounted to a Fourth Amendment violation for Officer Wells to continue with the stop after learning that the warrant had been recalled.

⁹Although, the reasonableness of the search was not specifically articulated as one of the three (3) issues raised by Jaskowski's Motion to Suppress (See Supporting Memorandum, p. 3, § II titled Issues), Jaskowski's arguments, both contained in his Supporting Memorandum and as argued during oral argument, are deemed by the Court to be sufficient for purposes of raising this issue as part of his Motion to Suppress.

growing operation pursuant to Turek's motion to suppress. *Id.* The primary issue addressed in the Idaho Court of Appeals decision in *Turek* focused on Turek's agreement of supervision relative to probation and to what extent he consented to warrantless searches. The Idaho Court of Appeals framed this issue in the following terms:

We next examine whether Turek's agreement to submit to warrantless searches "at the request of" a probation officer or law enforcement official as a condition of his probation constituted requisite consent to render the search constitutional. The state contends that Turek waived his Fourth Amendment right to be free from warrantless searches when he agreed to the probation condition such that he consented in advance to the search and there was no need to obtain his consent at the scene, despite the language stating that Turek must submit to a search "at the request of" probation or law enforcement officials.

Id. at 748, 150 P.3d at 799. The Court of Appeals determined that this was an issue of first impression in the state of Idaho. *Id.* at 749, 250 P.3d at 800. After considering authority from both the Idaho Supreme Court and other jurisdictions, the Idaho Court of Appeals held as follows:

[w]e conclude that a probation condition that requires a probationer to submit to a search "at the request of" an officer requires that the probationer be informed of an officers intent to conduct and impending search. [Footnote omitted] Like the *Joubert* Court, we recognize that the purpose of probation may be better advanced if we were to allow probation officers to conduct unrestricted, unannounced searches of a probationer's residence. However, we must keep in mind that probationers expectation of privacy is merely diminished, not obliterated. In addition, to adopt the state's interpretation of the term would be to essentially ignore the plain language of the probation condition – a proposition for which the state has cited no authority and which does not constitute an "objectively reasonable," nor logical, interpretation.

Id. at 752, 250 P.3d at 803.

The Court finds that the decision of the Idaho Court of Appeals in *Turek* is controlling upon this Court with respect to the search conducted by P.O. Harper and assisted in by Officer Wells, at P.O. Harper's request. The express and unambiguous language of Jaskowski's Agreement of Supervision, paragraph 9, uses the identical language as the agreement of

supervision in *Turek*, “at the request of my Probation Officer” (Agreement of Supervision, ¶ 9) compared to “at the request of the Probation Officer or Law Enforcement” (*Turek*, 150 Idaho at 746, 250 Idaho at 797).

In the present case, it is undisputed that P.O. Harper did not request permission or consent to search the vehicle Jaskowski was driving. Rather, he merely made the declaratory statement that “I was going to search”¹⁰ the vehicle Jaskowski was driving. Because Jaskowski’s Agreement of Supervision is couched in terms of “at the request of my Probation Officer” and in light of the Idaho Court of Appeals decision in *Turek*, this Court must find that the search of the vehicle being driven by Jaskowski on April 15, 2016 did not comply with the express terms of his Agreement of Supervision and, therefore, was unreasonable and illegal search of the vehicle he was driving in violation of his Fourth Amendment Right. As a result, the Court will **GRANT** Jaskowski’s motion to suppress on the basis that the search of the vehicle he was driving was in violation of his Fourth Amendment Right. The Court will suppress all evidence seized or related to this vehicle search, including Jaskowski’s subsequent admissions at the Montpelier City Hall/Police Station as being derivative of the impermissible search.


CONCLUSION

Based upon the foregoing, the Court hereby **GRANTS** Jaskowski’s Motion to Suppress on the basis that P.O. Harper’s warrantless search of the vehicle Jaskowski was driving on April 15, 2016, was in violation of the Agreement of Supervision and, therefore, violated Jaskowski’s Fourth Amendment protections against unreasonable searches and seizures. Therefore, all of the evidence seized or related to this vehicle search will be suppressed.

¹⁰Throughout this MD&O, the Court has cited to oral testimony from the evidentiary hearing conducted incident to Jaskowski’s Motion to Suppress, the Court has even included some statements in quotation marks. The Court recognizes that a formal and certified copy of the transcript from this evidentiary hearing has not been prepared. However, the citations to and quotes from this hearing are the result of this Court’s notes taken during the evidentiary hearing and a rough transcript of the preliminary hearing prepared by the Court’s Court Reporter at the Court’s request.

The Court hereby sets this matter for a Status and Scheduling Conference to be conducted on January 5, 2017 at 9:00 a.m., at which time the Court and parties shall discuss the status of this case.

Dated this 24th day of December, 2016.


MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 25th day of December, 2016, I mailed/served a true and correct copy of the foregoing document on the attorney(s)/person(s) listed below by mail, with the correct postage, thereon or causing the same to be hand delivered.

ATTORNEY(S)/PERSON(S):

John Olson
Bear Lake County Prosecutor

Kelly Kumm
KUMM & REICHERT, PLLC
Pocatello, ID 83201
305 East Center Street

METHOD OF DELIVERY:

HAND DELIVERED

Facsimile (208) 232-288

CINDY GARNER, CLERK


Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
COUNTY OF BEAR LAKE, STATE OF IDAHO

STATE OF IDAHO,

Plaintiff/Appellant,

vs.

NOTICE OF LODGING.

BRODY L. JASKOWSKI,

Defendant/Respondent.

Bear Lake County No. CR-2016-269
Supreme Court No. 44772

The following transcript(s) in the above-entitled matter were electronically lodged with the District Court Clerk at the Bear Lake County Courthouse in Paris, Idaho, on February 15, 2017.

November 17, 2016 - Motion to Suppress hearing. 41 pages.

Filed via:

- (XX) Electronic Filing with Court Clerk
- () U.S. Mail to Court Clerk
- (XX) Electronic Copy to ISC/ICA.
- () Hard copy filed with Court Clerk.

Rodney M. Felshaw, RPR, CSR

(Typed name of Reporter.)

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

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

BRODY L. JASKOWSKI,

Defendant-Respondent.

**Supreme Court No. 44772
Case No. CR-2016-269**

CERTIFICATE OF CLERK

I, CINDY GARNER, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake, do hereby certify that the foregoing Clerk's Record in the above entitled cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross-Appeal, and any additional documents requested to be included.

I further certify 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, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 28th day of February, 2017.

CINDY GARNER
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF CLERK

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

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

BRODY L. JASKOWSKI,

Defendant-Respondent.

Supreme Court No. 44772

Case No. CR-2016-269

CERTIFICATE OF EXHIBITS

I, CINDY GARNER, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake, 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:

EXHIBITS:

NO:	DESCRIPTION:	SENT/RETAINED
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1	Judgment of Conviction CR-2014-1191 (DUI -1 st Offense)	Sent
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court
this 28th day of February, 2017.

(SEAL)

CINDY GARNER
Clerk of the District Court

By Karen Volbrecht
Karen Volbrecht, Deputy Clerk

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

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

BRODY L. JASKOWSKI,

Defendant-Respondent.

Supreme Court No. 44772

Case No. CR-2016-269

CERTIFICATE OF SERVICE

I, KAREN VOLBRECHT, Deputy Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. Box 83720
Boise, ID 83720-0010
Attorney for Plaintiff-Appellant

KELLY KUMM
KUMM & REICHERT, PLLC
1305 East Center Street
Pocatello, ID 83201

Attorney for Defendant-Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court
this 16th day of March, 2017.

(SEAL)

CINDY GARNER,
Clerk of the District Court

By 
Karen Volbrecht, Deputy Clerk

CERTIFICATE OF SERVICE