

4-21-2017

State v. Harper Clerk's Record Dckt. 44819

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IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-)
 Respondent,)
)
 -vs-)
)
 DAVID JOHN HARPER,)
)
 Defendant-)
 Appellant.)

Supreme Court No. 44819-2017

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE THOMAS J. RYAN, Presiding

Eric D. Freckericksen, State Appellate Public Defender,
322 East Front Street, Suite 570, Boise, Idaho 83702

Attorney for Appellant

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

Attorney for Respondent

State of Idaho vs. David John Harper

Felony

Date		Judge
12/18/2015	New Case Filed-Felony	Thomas J Ryan
	Affidavit Of Probable Cause	Thomas A. Sullivan
	Criminal Complaint	Thomas A. Sullivan
	Hearing Scheduled (Arraignment (In Custody) 12/18/2015 01:32 PM)	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Arraignment / First Appearance	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Constitutional Rights Warning	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Order Appointing Public Defender	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Commitment On Bond - \$25,000.00	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Upon Posting Bond - Report to Pre-Trial Release	Thomas A. Sullivan
	Hearing result for Arraignment (In Custody) scheduled on 12/18/2015 01:32 PM: Notice Pretrial Release Services	Thomas A. Sullivan
	Hearing Scheduled (Preliminary Hearing 12/30/2015 08:30 AM) Mo Bond Redu	Brian D Lee
12/21/2015	Waiver Of Extradition	Thomas J Ryan
	Request For Discovery	Thomas J Ryan
	Notice Of Appearance / Gerald Bublitz	Thomas J Ryan
	Request For Discovery	Thomas J Ryan
	Specific Request For Discovery	Thomas J Ryan
	Bond Posted - Surety (Amount 25000.00)	Thomas J Ryan
	Stipulated Substitution Of Counsel / Gerald Bublitz	Thomas J Ryan
12/22/2015	Stipulation to Vacate and Reset Preliminary Hearing (w/order)	Thomas J Ryan
12/28/2015	Order to Vacate and Reset the Preliminary Hearing	Thomas J Ryan
	Hearing Scheduled (Preliminary Hearing 01/14/2016 10:00 AM) Mo Bond Redu	Gregory F. Frates
1/7/2016	Request For Discovery	Thomas J Ryan
	PA's Response And Objection To Request For Discovery	Thomas J Ryan
	Demand For Notice Of Defense Of Alibi	Thomas J Ryan
1/12/2016	Stipulation to Vacate and Reset Preliminary Hearing (w/order)	Thomas J Ryan
1/13/2016	Order to Vacate and Reset the Preliminary Hearing	F Randall Kline
	Hearing Scheduled (Preliminary Hearing 01/28/2016 10:00 AM)	Gregory F. Frates
	Hearing result for Preliminary Hearing scheduled on 01/14/2016 10:00 AM: Hearing Vacated Mo Bond Redu	Gregory F. Frates
1/19/2016	PA First Supplemental Response to Request for Discovery	Thomas J Ryan
1/28/2016	Hearing result for Preliminary Hearing scheduled on 01/28/2016 10:00 AM: Preliminary Hearing Held	James C. Peart

State of Idaho vs. David John Harper

Felony

Date		Judge
1/28/2016	Hearing result for Preliminary Hearing scheduled on 01/28/2016 10:00 AM: Bound Over (after Prelim)	James C. Peart
	Hearing result for Preliminary Hearing scheduled on 01/28/2016 10:00 AM: Order Binding Defendant Over to District Court	James C. Peart
	Hearing Scheduled (Arrn. - District Court 02/26/2016 09:00 AM)	George A. Southworth
	PA's Second Supplemental Response to Request for Discovery	Thomas J Ryan
1/29/2016	Information	Thomas J Ryan
2/26/2016	Hearing result for Arrn. - District Court scheduled on 02/26/2016 09:00 AM: Hearing Held RYAN PT: MAY 23@1:30 JT: JUNE 21-24@8:30 w/MORFITT	Davis F. VanderVelde
	Hearing result for Arrn. - District Court scheduled on 02/26/2016 09:00 AM: District Court Hearing Held Court Reporter: KathyKlemetson Number of Transcript Pages for this hearing estimated: less than 100 pages	Davis F. VanderVelde
	Hearing result for Arrn. - District Court scheduled on 02/26/2016 09:00 AM: Arraignment / First Appearance RYAN PT: MAY 23@1:30 JT: JUNE 21-24@8:30 w/MORFITT	Davis F. VanderVelde
	Hearing result for Arrn. - District Court scheduled on 02/26/2016 09:00 AM: Notice Of Hearing RYAN PT: MAY 23@1:30 JT: JUNE 21-24@8:30 w/MORFITT	Davis F. VanderVelde
	Hearing Scheduled (Pre Trial 05/23/2016 01:30 PM)	Thomas J Ryan
	Hearing Scheduled (Jury Trial 06/21/2016 08:30 AM) stnw	James C. Morfitt
	A Plea is Entered for Charge: - NG (I37-2732B(a)(1) Drug-Trafficking in Marijuana)	Thomas J Ryan
3/21/2016	Motion to Suppress	Thomas J Ryan
5/2/2016	Order Setting Hearing and Briefing Schedule	Thomas J Ryan
5/9/2016	Memorandum In Support of Motion to Suppress	Thomas J Ryan
5/17/2016	Brief In Support of Objection to Motion to Suppress Evidence	Thomas J Ryan
5/18/2016	Amended Notice of Hearing	Thomas J Ryan
5/23/2016	Hearing result for Pre Trial scheduled on 05/23/2016 11:00 AM: Continued	Thomas J Ryan
	Hearing result for Pre Trial scheduled on 05/23/2016 11:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Pre Trial 06/13/2016 03:30 PM) poss cop	Thomas J Ryan
5/24/2016	Motion for Production of Preliminary Hearing Transcript (w/order)	Thomas J Ryan
	Defendant's First Response For Request For Discovery	Thomas J Ryan
5/26/2016	Order for Production of the Preliminary Hearing Transcript	Thomas J Ryan

State of Idaho vs. David John Harper

Felony

Date		Judge
5/26/2016	Disclosure Of Expert Witness Pursuant To I.C.R. 16(b)(7) And IRE 702, 703, 705	Thomas J Ryan
5/31/2016	Estimated Cost of Transcript	Thomas J Ryan
	Stipulation to Vacate and Reset Jury Trial (w/order)	Thomas J Ryan
6/3/2016	Notice Of Defendant's Voluntary Waiver Of Statutory Right To Speedy Jury Trial	Thomas J Ryan
6/6/2016	Affidavit of David J. Harper	Thomas J Ryan
6/7/2016	Order To Vacate And Reset The Jury Trial	Thomas J Ryan
	Hearing result for Jury Trial scheduled on 06/21/2016 08:30 AM: Hearing Vacated stnw	James C. Morfitt
	Hearing Scheduled (Jury Trial 08/23/2016 08:30 AM)	G.D. Carey
6/10/2016	Bond Posted - Cash (Receipt 34871 Dated 6/10/2016 for 117.00)(transcript)	Thomas J Ryan
6/13/2016	Hearing result for Pre Trial scheduled on 06/13/2016 03:30 PM: Hearing Held - motion under advisement	Thomas J Ryan
	Hearing result for Pre Trial scheduled on 06/13/2016 03:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
6/21/2016	PA's Third Supplemental Response to Request for Discovery	Thomas J Ryan
6/23/2016	Memorandum, Decision, And Order Upon Defendant's Motion To Suppress/DENIED	Thomas J Ryan
7/6/2016	Transcript Filed (Preliminary Hearing 1-28-16)	Thomas J Ryan
	Bond Converted (Transaction number 2807 dated 7/6/2016 amount 100.75)(transcript)	Thomas J Ryan
	Bond Converted (Transaction number 2808 dated 7/6/2016 amount 16.25)(refund for Transcript)	Thomas J Ryan
7/21/2016	Disclosure of Expert Witness	Thomas J Ryan
8/24/2016	Defendant's Witness List	Thomas J Ryan
8/25/2016	Hearing result for Jury Trial scheduled on 08/25/2016 08:30 AM: Hearing Held	G.D. Carey
	Jury Trial Started: Day 1	G.D. Carey
	Hearing result for Jury Trial scheduled on 08/25/2016 08:30 AM: District Court Hearing Held Court Reporter: Leda Waddle Number of Transcript Pages for this hearing estimated: More than 100 pages	G.D. Carey
3/26/2016	Day 2 Jury Trial Hearing Held	G.D. Carey
	Preliminary and Final Jury Instructions Filed	G.D. Carey
	Verdict Filed	G.D. Carey
	Hearing result for Jury Trial scheduled on 08/25/2016 08:30 AM: Found Guilty After Trial	G.D. Carey

Felony

Date		Judge
8/26/2016	Hearing result for Jury Trial scheduled on 08/25/2016 08:30 AM: Pre-Sentence Investigation Evaluation Ordered	G.D. Carey
	PSI Face Sheet Transmitted	G.D. Carey
	Hearing result for Jury Trial scheduled on 08/25/2016 08:30 AM: District Court Hearing Held	G.D. Carey
	Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: More than 100 pages	
	Hearing Scheduled (Sentencing 10/17/2016 02:30 PM)	Thomas J Ryan
9/29/2016	Stipulation to Vacate and Reset Sentencing Hearing (w/order)	Thomas J Ryan
10/4/2016	Order to Vacate and Reset the Sentencing Hearing	Thomas J Ryan
	Hearing result for Sentencing scheduled on 10/17/2016 02:30 PM: Hearing Vacated	Thomas J Ryan
	Hearing Scheduled (Sentencing 11/28/2016 03:30 PM)	Thomas J Ryan
11/21/2016	Stipulation to Vacate and Reset Sentencing Hearing (w/order)	Thomas J Ryan
11/22/2016	Order to Vacate and Reset the Sentencing Hearing	Thomas J Ryan
	Hearing result for Sentencing scheduled on 11/28/2016 03:30 PM: Hearing Vacated	Thomas J Ryan
	Hearing Scheduled (Sentencing 12/12/2016 02:00 PM)	Thomas J Ryan
12/12/2016	Hearing result for Sentencing scheduled on 12/12/2016 02:00 PM: Continued	Thomas J Ryan
	Hearing result for Sentencing scheduled on 12/12/2016 02:00 PM: District Court Hearing Held	Thomas J Ryan
	Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	
	Hearing Scheduled (Sentencing 01/09/2017 02:00 PM)	Thomas J Ryan
1/9/2017	Stipulation to Vacate and Reset Sentencing Hearing (w/ order)	Thomas J Ryan
	Hearing result for Sentencing scheduled on 01/09/2017 02:00 PM: Hearing Vacated	Thomas J Ryan
	Hearing Scheduled (Sentencing 02/01/2017 01:30 PM)	Thomas J Ryan
	Order to Vacate and Reset the Sentencing Hearing	Thomas J Ryan
2/1/2017	Hearing result for Sentencing scheduled on 02/01/2017 01:30 PM: Hearing Held	Thomas J Ryan
	Hearing result for Sentencing scheduled on 02/01/2017 01:30 PM: Final Judgement, Order Or Decree Entered	Thomas J Ryan
	Hearing result for Sentencing scheduled on 02/01/2017 01:30 PM: Sentenced To Fine And Incarceration	Thomas J Ryan
	Hearing result for Sentencing scheduled on 02/01/2017 01:30 PM: Notice of Post Judgment Rights	Thomas J Ryan
	Hearing result for Sentencing scheduled on 02/01/2017 01:30 PM: Commitment - Held To Answer	Thomas J Ryan
	Sentenced To Incarceration (I37-2732B(a)(1) Drug-Trafficking in Marijuana) Confinement terms: Penitentiary determinate: 3 years.	Thomas J Ryan

State of Idaho vs. David John Harper

Felony

Date		Judge
2/1/2017	Case Status Changed: closed pending clerk action	Thomas J Ryan
	Sentenced To Pay Fine 10000.00 charge: I37-2732B(a)(1) Drug-Trafficking in Marijuana	Thomas J Ryan
	District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
2/2/2017	Lab Restitution Order and Judgment	Thomas J Ryan
	Restitution Ordered 100.00 victim # 1	Thomas J Ryan
2/3/2017	Surety Bond Exonerated (Amount 25,000.00)	Thomas J Ryan
2/6/2017	Notice of Appeal	Thomas J Ryan
	Appealed To The Supreme Court	Thomas J Ryan
2/7/2017	Judgment and commitment	Thomas J Ryan
2/14/2017	Motion to Appoint State Appellant Public Defender (with order)	Thomas J Ryan
2/17/2017	Order Appointing State Appellate Public Defender In Direct Appeal	Thomas J Ryan
3/16/2017	Amended Notice of Appeal	Thomas J Ryan

15-12750

7/3 AM **FILED** P.M.

Departmental Report # B15004081

DEC 18 2015

IN THE DISTRICT COURT OF THE 3RD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
CANYON COUNTY CLERK
CANNON, DEPUTY

THE STATE OF IDAHO,
Plaintiff,

COURT CASE NUMBER CR15-24285
PROBABLE CAUSE AFFIDAVIT IN SUPPORT
OF ARREST

David John Harper
Defendant.

DOB: [REDACTED]
DL#: [REDACTED]
State: Oregon

State of Idaho, | SS
County of Canyon

I, Corporal Chris Cottrell, the undersigned, being first duly sworn on oath, deposes and says that:

- 1. I am a peace officer employed by the IDAHO STATE POLICE.
- 2. The defendant was arrested on at 0910 AM PM for the crime of Drug Trafficking (Marijuana) 17.38 lbs.
- 3. Location of Occurrence: EB on Interstate 84 near milepost 30 in Canyon County, Idaho.

4. Identified the defendant as: David John Harper by: (check box)

Military ID State ID Card Student ID Card Drivers License Credit Cards

Paperwork found Verbal ID by defendant

Witness: identified defendant.

Other:

5. Actual physical control established by:

Observation by affiant Observation by Officer

Admission of Defendant to: , Statement of Witness:

Other:

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST:

On December 17, 2015, at approximately 0910 hours, I Corporal Chris Cottrell of the Idaho State Police, stopped a black 2000 Audi A6, displaying Oregon license plate [REDACTED] eastbound on Interstate 84, near milepost 30, in Canyon County, Idaho. The stop was made for following another vehicle too closely (approximately 1.5 car lengths at 65 mph= 95 fps). I made a passenger side approach to the vehicle and smelled the immediate and strong odor of marijuana coming from inside the vehicle. The driver was identified by an Oregon driver's license as David John Harper. I saw two large gift wrapped boxes on the back seat. Harper said he thought he was following the other vehicle from 2 seconds behind (approximately 190.5 feet behind). I deployed my drug detection canine partner Dax, to sniff around the vehicle and Dax alerted to the odor of drugs both on the exterior of the vehicle and on the gift wrapped boxes inside the vehicle. A search of the vehicle revealed that the gift wrapped boxes were loaded with freezer style packages of marijuana. Harper was arrested and booked into the Canyon County Jail, where he was booked in and charged with Drug Trafficking (marijuana). I returned to the Idaho State Police District Office, where I field / NIK tested the suspected marijuana and received a presumptive positive result. I weighed the 31 individually wrapped packages from the boxes at approximately 17.38 lbs.

I, Cpl. Chris Cottrell, the undersigned declare and state:

"I declare under penalty of perjury pursuant to the law of the State of Idaho that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief."

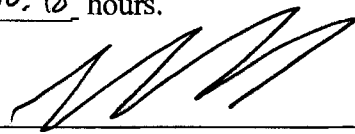
Dated: 12/17/2015

Signed: Chris J. Cottrell

ORDER

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime or crimes has been committed, and that the Defendant committed said crime or crimes.

Dated this 17 day of Dec 2015, at 10:48^{AM} hours.



MAGISTRATE

<u>CHARGE</u>	<u>IDAHO CODE</u>	<u>VIOLATION</u>
1. <u>Drug Trafficking (Marijuana)</u>		<u>37-2732B</u>
2. _____		_____
3. _____		_____
4. _____		_____

FILED
7/13 A.M. P.M.

SZ

DEC 18 2015

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID JOHN HARPER
D.O.B. [REDACTED]

Defendant.

CASE NO. CR 2015- 24285C

CRIMINAL COMPLAINT

TRAFFICKING IN MARIJUANA
Felony, I.C. §37-2732B(a)(1)

STATE OF IDAHO)
 ss
County of Canyon)


PERSONALLY APPEARED Before me this 18 day of December, 2015,

K Bratke, of the Canyon County Prosecuting Attorney's Office, who

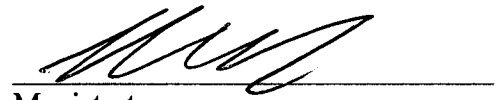
being duly sworn, complains and says:

That the Defendant, David John Harper, on or about the 17th day of December, 2015, in the County of Canyon, State of Idaho, did knowingly possess and/or bring into this state five (5) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

All of which is contrary to **Idaho Code**, Section 37-2732B(a)(1) and against the power, peace and dignity of the State of Idaho.


Complainant

SUBSCRIBED AND SWORN To before me this 18th day of December, 2015.


Magistrate

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON

ARRAIGNMENT **IN-CUSTODY** **SENTENCING / CHANGE OF PLEA**

STATE OF IDAHO,	)	Case No. CR-2015-24285-C
	Plaintiff)	
-vs-	)	Date: December 18, 2015
David John Harper)	
	Defendant.)	Judge: Thomas A. Sullivan
<input checked="" type="checkbox"/> True Name)	
Corrected Name:	)	Recording: Mag7 (251-258)

APPEARANCES:

<input checked="" type="checkbox"/> Defendant	<input checked="" type="checkbox"/> Prosecutor John Spalding
<input checked="" type="checkbox"/> Defendant's Attorney Ali Crafts	<input type="checkbox"/> Interpreter

ADVISEMENT OF RIGHTS: Defendant

<input checked="" type="checkbox"/> was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.	
<input checked="" type="checkbox"/> requested court appointed counsel.	<input type="checkbox"/> waived right to counsel.
<input checked="" type="checkbox"/> Indigency hearing held.	
<input checked="" type="checkbox"/> Court appointed public defender.	<input type="checkbox"/> Court denied court-appointed counsel.

PRELIMINARY HEARING: Statutory time waived: Yes No Preliminary Hearing Waived
 Preliminary Hearing set December 30, 2015, at 8:30 a.m. before Judge B. Lee

BAIL: State recommends bail be set in the amount of \$100,000.00

<input type="checkbox"/> Released on written citation promise to appear	<input type="checkbox"/> Released on bond previously posted.
<input type="checkbox"/> Released on own recognizance (O.R.)	<input checked="" type="checkbox"/> Remanded to the custody of the sheriff.
<input type="checkbox"/> Released to pre-trial release officer.	<input checked="" type="checkbox"/> Bail set at \$25,000.00
<input type="checkbox"/> No Contact Order <input type="checkbox"/> entered <input type="checkbox"/> continued	<input type="checkbox"/> Cases consolidated
<input type="checkbox"/> Address Verified	<input checked="" type="checkbox"/> Defendant to Report to Pretrial Release Services upon posting bond.
<input type="checkbox"/> Corrected Address: _____	

OTHER: Ms. Crafts advised the Court that the defense would argue bond at Preliminary Hearing.

CLBART, Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 12/18/15 AT 2:58P .M.
CLERK OF THE DISTRICT COURT
BY [Signature], Deputy

THE STATE OF IDAHO/or

David John Harper

Case No. CR-2015-24285-C

**ORDER APPOINTING PUBLIC
DEFENDER**

The Court being fully advised as to the application of the above-named applicant and it appearing to be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

THE MATTER IS SET FOR Preliminary Hearing
12/30/15 at 8:30 am before Judge B. Lee

THE MATTER SHALL BE SET FOR _____
before Judge _____

Dated: 12/18/2015

Signed: [Signature]
Judge

In Custody -- Bond \$ 25,000.00
 Released: O.R.
 on bond previously posted
 to PreTrial Release

Juvenile: In Custody
 Released to _____

No Contact Order entered.

Cases consolidated.

Discovery provided by State.

Interpreter required.

Additional charge of FTA.

Judge Ryan

Original--Court File

Yellow--Public Defender

Pink--Prosecuting Attorney

**ORDER APPOINTING PUBLIC
DEFENDER**

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 10/18/15 AT 2:50 P.M.
CLERK OF THE DISTRICT COURT
BY ASB, DEPUTY

STATE OF IDAHO,)
Plaintiff,)
-vs-)

David John Harper)
Defendant,)

Case No. CR-2015-24285 e

ORDER FOR

- Conditional Release/Pretrial Services
- Release on Own Recognizance
- Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

- Defendant is Ordered released
 - On own recognizance Placed on probation Case Dismissed
 - Bond having been set in the sum of \$ 25,000 Total Bond
 - Bond having been increased reduced to the sum of \$ _____ Total Bond
 - Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:
 - Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:
 - Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____
 - Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.
 - Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.
 - Not operate or be in the driver's position of any motor vehicle.
 - Abide by any No Contact Order and its conditions.
 - Submit to GPS Alcohol monitoring as directed by Pretrial Services.
- Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.**

OTHER: _____

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 10/18/15 Signed: [Signature] Judge

White - Court Yellow - Jail/Pretrial Services Pink - Defendant 10/11

FILED
4:20 A.M. P.M.

CANYON COUNTY
WAIVER OF EXTRADITION

DEC 21 2015

CANYON COUNTY CLERK
SALSUP. DEPUTY

CASE # CR1524285C

I, David John Harper

Do hereby freely and voluntarily state that I am (are) the identical person against whom Criminal proceedings charging me with the commission of a felony have been instituted in the City of Caldwell, County of Canyon, State of Idaho and hereby freely, voluntarily and without promise of reward or leniency, agree, consent and elect to return to said City of Caldwell, State of Idaho, without requisition papers, warrant or rendition or other legal forms of process having for their object my return to the aforesaid County and State.

This agreement and Waiver is made by me without reference to my (our) guilt or innocence and shall not be considered in any matter prejudicing my case and is not in any sense an admission of guilt.

And I further wholly exonerate and hold blameless in this matter the Sheriff of Canyon County, State of Idaho, and all other persons action under him, and agree to accompany to the State of Idaho, and peace officer who may be sent to take me to the said State of trial.

This waiver and statement (made in triplicate) done at the City of Caldwell, County of Canyon, State of Idaho this 19 Day of December 2015.

X Krista Callaway
SIGNED

Krista Callaway 5946
WITNESS

R R Donnelly 5319
WITNESS

Harper, David John
NAME PRINTED

[REDACTED]

SOCIAL SECURITY# / DOB

15-009364 / 413529
ARREST NUMBER / NAME NUMBER

WHITE-COURT YELLOW-DEFENDANT PINK-FILE

F I L E D
A.M. 4:56 P.M.

DEC 21 2015

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

**GERALD BUBLITZ - ISB# 7562
JESSICA BUBLITZ - ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104**

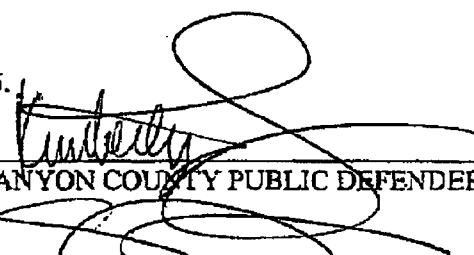
Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,	)	STIPULATED SUBSTITUTION OF
	)	COUNSEL
vs.)	
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

COMES NOW, the above Defendant, DAVID J. HARPER, by and through his attorney of record, Canyon County Public Defender and gives notice to this Court the withdrawal of the Canyon County Public Defender and the Substitution of Gerald R. Bublitz of the firm Bublitz Law, P.C., as retained counsel for Defendant.

STIPULATED this 21st day of December, 2015.



 CANYON COUNTY PUBLIC DEFENDER

 GERALD R. BUBLITZ

CERTIFICATE OF SERVICE


I hereby certify that on this ___ day of December, 2015, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



 Amy McKenzie
 Legal Assistant

FILED
A.M. 12:33 P.M.

DEC 22 2015

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

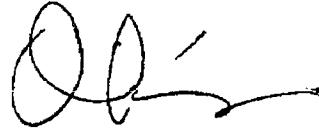
STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	STIPULATION TO VACATE AND
vs.	)	RESET PRELIMINARY HEARING
)	
DAVID HARPER,)	
)	
Defendant.)	
)	

COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Preliminary Hearing currently set for the 30th day of December, 2015. The hearing shall be reset to the 14th day of January, 2016, at 10:00 before the Honorable Judge Frates. The Defendant hereby waives his statutory right to a speedy Preliminary Hearing pursuant to ICR 5.1(a).

The reason for said stipulation is:

1. Defense counsel has just appeared on this case and discovery is not complete.
2. Defense counsel is in Ada County at this time.

STIPULATED this 20th day of December, 2015.



PROSECUTING ATTORNEY
Attorney for Plaintiff

STIPULATED this 21st day of December, 2015.



GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE


I hereby certify that on this 22nd day of December, 2015, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission


Amy McKenzie
Legal Assistant

GERALD BUBLITZ - ISB# 7562
JESSICA BUBLITZ - ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

FILED
A.M. P.M.

DEC 28 2015

CANYON COUNTY CLERK
A YOUNG, DEPUTY

Attorneys for Defendant

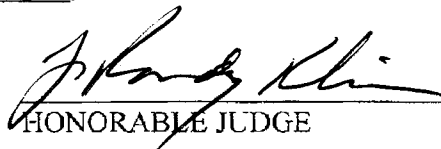
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	PRELIMINARY HEARING
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Preliminary Hearing scheduled for the 30th day of December, 2015, at 8:30 a.m. is hereby vacated and reset. The Preliminary Hearing will be reset to the 14th day of January, 2016 at 10:00 before the Honorable Judge Frates.

SO ORDERED this 24 day of December, 2015.


HONORABLE JUDGE

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a ~~true~~ and ~~correct~~ copy of the foregoing instrument was served on the following this the 28 day of Dec, 2015, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

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- U.S. Mail
- Overnight Courier
- Facsimile Transmission

*NO
Copies
provided*

Ayana

Clerk of the Court

FILED
11:51 A.M. P.M.

GERALD BUBLITZ - ISB# 7562
JESSICA BUBLITZ - ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

JAN 12 2016
CANYON COUNTY CLERK
A YOUNG, DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
Plaintiff,)	
vs.	)	STIPULATION TO VACATE AND
	)	RESET PRELIMINARY HEARING
DAVID HARPER,)	
Defendant.)	

COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Preliminary Hearing currently set for the 14th day of January, 2016 at 10:00am. The hearing shall be reset to the 28th day of January, 2016 at 10:00 before the Honorable Judge Frates. The Defendant hereby waives his statutory right to a speedy Preliminary Hearing pursuant to ICR 5.1(a).

The reason for said stipulation is:

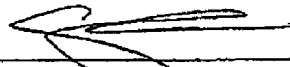
1. Defense counsel has not yet received labs in this matter.

STIPULATED this 12 day of January, 2016.

Matthew Sewer

PROSECUTING ATTORNEY
Attorney for Plaintiff

STIPULATED this 11th day of January, 2016.



GERALD R. BLUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
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Caldwell, Idaho 83605
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1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Amy McKenzie
Amy McKenzie
Legal Assistant

FILED
1/14 A.M. P.M.

JAN 13 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

**GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104**

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	PRELIMINARY HEARING
)	
DAVID J. HARPER,)	
)	
Defendant.)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Preliminary Hearing scheduled for the 14th day of January, 2016 is hereby vacated and reset. The Preliminary Hearing will be reset to the 28th day of January, 2016 at 10:00 before the Honorable Judge Frates.

SO ORDERED this 12 day of January, 2016


HONORABLE JUDGE

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 13 day of January, ~~2015~~, by the following method: 2016

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

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Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

- Hand Delivery
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- Overnight Courier
- Facsimile Transmission



Clerk of the Court

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
PRELIMINARY HEARING

STATE OF IDAHO

Plaintiff

-vs-

David John Harper

Defendant.

True Name
Corrected Name:

Case No. CR15-24285-C

Date: 1/28/16

Judge: Peart

Recording: MAG 6 (1001-1033)

APPEARANCES:

Defendant
 Prosecutor Josh Vanswearingen

Defendant's Attorney Gerald Bublitz
 Interpreter

PROCEEDINGS:

Preliminary hearing held.

STATE'S WITNESSES SWORN:

1. Christopher Cottrell 2. _____

3. _____ 4. _____ 5. _____

DEFENDANT'S WITNESSES SWORN:

1. _____ 2. _____

3. _____ 4. _____ 5. _____

Defendant had no testimony or evidence to present.

EXHIBITS: As set forth on attached list.

COURT'S RULING:

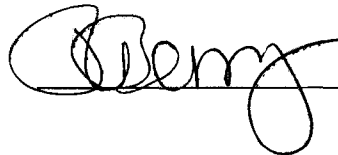
Probable cause found for offense set forth in Complaint.
 Defendant held to answer to the District Court. District Court Arraignment set for February 26, 2016 at 9 a.m. before Judge Southworth.

BAIL: The Defendant was

Released on written citation promise to appear
 Released on own recognizance (O.R.)
 Released to pre-trial release officer.

Released on bond previously posted.
 Remanded to the custody of the sheriff.
 Bail set at \$
 Defendant to Report to Pretrial Release Services upon posting bond.

OTHER: _____

 _____, Deputy Clerk

MAGISTRATE LOG/ MINUTE

CASE NO. CR15-24285-C

INDEX	Name of Speaker: Phase of Case: Cross-Examination, Etc.
1001-1028	State's 1 st Witness: Christopher Cottrell - DX, CX, RDX

**STATE'S
EXHIBIT LIST**

STATE OF IDAHO
CANYON COUNTY

CASE NO. CR15-24285-C

Case Title

State of Idaho

vs.

David John Harper

Date: 1/28/16

PH

CT

JT

OSC

Plaintiff's Attorney Josh Vanswearingen

Defendant's Attorney Gerald Bublitz

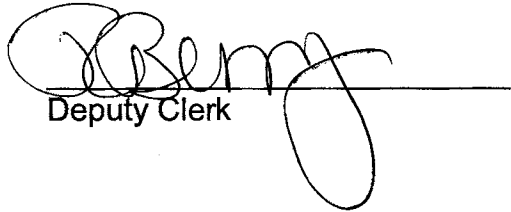
EXHIBIT INFORMATION

No.	Description	Offered	Admitted	Denied	Withdrawn	Orig. Sub.
A	Lab Report	x	x			

The Court ordered all exhibits returned to the custody of the State, and the Clerk delivered the exhibits to: _____

On _____.

Exhibits received by: _____ Date: _____.


Deputy Clerk

Third Judicial District Court, State of Idaho
In and For the County of Canyon
1115 Albany Street
Caldwell, Idaho 83605

Filed: 1/28/16 at 1033 A. M
Clerk of the District Court
By [Signature], Deputy

STATE OF IDAHO
Plaintiff,

vs.

David John Harper
Defendant,

Case No: CR15-24285-C

ORDER BINDING DEFENDANT OVER TO DISTRICT COURT

Preliminary hearing having been waived held in this case on the 28 day of January, 20 16 and the Court being fully satisfied that a public offense has been committed and that there is probable or sufficient cause to believe the Defendant guilty thereof,

IT IS HEREBY ORDERED that the Defendant herein be held to answer in the District Court of the Third Judicial District of The State of Idaho, in and for the County of Canyon, to the charge of Trafficking In marijuana 37-2732B(a)(1)

a felony, committed in Canyon County, Idaho on or about the 17 day of December, 20 15.

IT IS FURTHER ORDERED that the Defendant herein shall be arraigned before the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, on the 26 day of February, 20 16 at 9:00 a.m.

- Defendant is continued released on the bond posted.
- Defendant's personal recognizance release is continued ordered.
- Defendant's release to Pre-Trial Release Officer is continued ordered.
- YOU, THE SHERIFF OF CANYON COUNTY, IDAHO, are commanded to receive into your custody and detain the Defendant until legally discharged. Defendant is to be admitted to bail in the sum of \$ _____.

Dated: 28 Jan 16

Signed [Signature]
Magistrate

FILED
10:27 A.M. P.M.

JAN 29 2016

CANYON COUNTY CLERK
SALSUP. DEPUTY

dm

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID JOHN HARPER
D.O.B. 11/19/1958

Defendant.

CASE NO. CR2015-24285

INFORMATION

TRAFFICKING IN MARIJUANA
Felony, I.C. §37-2732B(a)(1)

BRYAN F. TAYLOR, Prosecuting Attorney in and for the County of Canyon,
State of Idaho, who in the name and by authority of said state prosecutes in its behalf, in proper
person comes into the above entitled Court and informs said Court that the above name
Defendant stands accused by this Information of crime of

TRAFFICKING IN MARIJUANA
Felony
Idaho Code Section 37-2732B(a)(1)

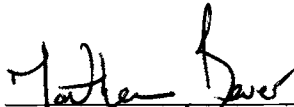
committed as follows:

INFORMATION

That the Defendant, David John Harper, on or about the 17th day of December, 2015, in the County of Canyon, State of Idaho, did knowingly possess and/or bring into this state five (5) pounds or more of Marijuana, a Schedule I non-narcotic controlled substance.

All of which is contrary to **Idaho Code**, Section 37-2732B(a)(1) and against the power, peace and dignity of the State of Idaho.

DATED this 24th day of January, 2016.



MATTHEW R. BEVER for
BRYAN F. TAYLOR
Prosecuting Attorney for Canyon County, Idaho

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **DAVIS F. VANDERVELDE** DATE: February 26, 2016

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR2015-24285*C
)	
vs.	)	TIME: 9:00 A.M.
)	
DAVID JOHN HARPER,	)	REPORTED BY:
	)	Kathy Klemeston
Defendant.)	
_____	)	DCRT5 (923-927)

This having been the time heretofore set for **arraignment** in the above entitled matter, the State was represented by Mr. Gearld Wolff, Deputy Prosecuting Attorney for Canyon County; and the defendant appeared in court with counsel, Ms. Jessica Bublitz.

The Court called the case and determined the defendant's true name was charged.

The Court advised the defendant of the charge in the above referenced case and possible penalties for the same.

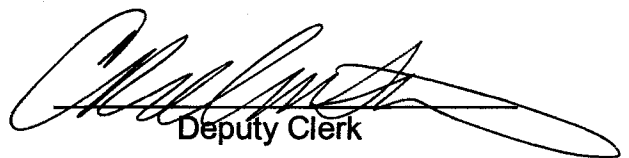
The Court determined the defendant had received and reviewed a copy of the Information and waived formal reading of the same. In answer to Court's inquiry, the defendant indicated he understood the nature of the charges and the penalties.

The Court advised the defendant he had the right against self-incrimination. The defendant could not be compelled or required to make statements against himself, however, if the defendant made any such statements they could be used against him at a later time.

In answer to Court's inquiry, the defendant entered a plea of **not guilty** and **demanding speedy trial**.

The Court set this matter for **pretrial conference on May 23, 2016 at 9:00 a.m.** before Judge Kerrick and **jury trial for four (4) days to commence on June 21, 2016 at 8:30 a.m. before Senior Judge Morfitt.**

The defendant was continued released on the bond previously posted.


Deputy Clerk

FILED
A.M. P.M.

**GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16th ST
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104**

**MAR 21 2016
CANYON COUNTY CLERK
A YOUNG, DEPUTY**

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	MOTION TO SUPPRESS
vs.)	
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

COMES NOW the Defendant, DAVID J. HARPER, by and through his attorney of record, Gerald R. Bublitz, of the firm Bublitz Law, P.C., and moves this Court for an Order to Suppress statements and evidence in the above entitled case. This Motion is based on the following:

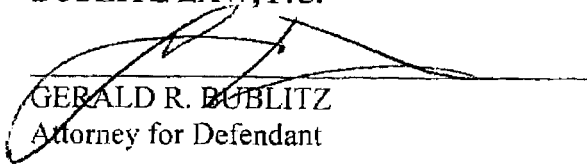
1. Lack of reasonable suspicion for the stop.
2. Defendant was pulled over for I.C. §49-638 Following too Closely; Defense Counsel believes this statute is void for vagueness and unconstitutional.

For this reason, the Defendant asks for all statements and evidence obtained in this case as a result of this illegal stop to be suppressed.

Defense Counsel's Memorandum and Affidavit in Support of Motion will follow shortly.

DATED this 21st day of March, 2016.

BUBLITZ LAW, P.C.


GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

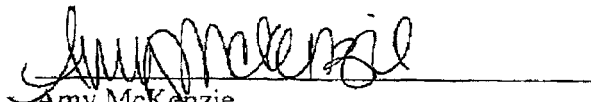
I hereby certify that on this 21st day of March, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

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Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission


Amy McKenzie
Legal Assistant

MAY 02 2016

CANYON COUNTY CLERK
SALSIP DEPUTY

THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID J. HARPER,)
)
 Defendant.)

CASE NO. CR 2015-24285*C

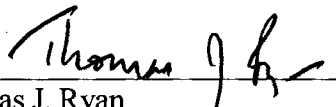
ORDER SETTING HEARING
AND BRIEFING SCHEDULE

IT IS HEREBY ORDERED that Defendant David J. Harper's Motion to Suppress, filed March 21, 2016, shall be heard before the Honorable Judge Thomas J. Ryan at 1:30 p.m. on May 23, 2016, the time also set for pre-trial conference.

IT IS FURTHER ORDERED:

- 1) Defendant's brief in support of the Motion to Suppress shall be submitted no later than 5:00 p.m., May 11, 2016; and
- 2) State's responsive brief, if any, shall be submitted no later than 5:00 p.m., May 18, 2016.

DATED this 2nd day of May 2016.


Thomas J. Ryan
District Judge


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was mailed, hand delivered, or sent via facsimile transmission to the following persons:

BRYAN F. TAYLOR
GEARLD WOLFF
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, Idaho 83605

GERALD BUBLITZ
JESSICA BUBLITZ
Bublitz Law, P.C.
604 North 16th Street
Boise, Idaho 83702

DATED this 2 day of May 2016.



Deputy Clerk of the Court

FILED
A.M. 057 P.M.

MAY 09 2016

CANYON COUNTY CLERK
S ALSUP, DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16th ST
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	MOTION TO SUPPRESS
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

COMES NOW the Defendant, DAVID JOHN HARPER, by and through his attorney of record, Jessica B. Bublitz of the firm Bublitz Law, P.C., and hereby moves this Court pursuant to the Fourteenth Amendment of the United States Constitution, and Article I, Section 17 of the Idaho Constitution for an Order suppressing all statements and evidence obtained as a result of an illegal search and seizure.

STATEMENT OF FACTS

The facts as articulated in this Memorandum are those pertinent to the Motion to Suppress only. According to a report written by Officer Cottrell of the Idaho State Police, on December 17, 2015, at approximately 0910 hours, he stopped a black 2000 Audi A6 eastbound I-

84 for following a vehicle too closely. The officer states in his report that he initially observed the vehicle following a white Ford pickup too closely, but just before activating his overhead lights, the vehicle hit its brakes and backed away from the Ford to allow a semi-truck in front of it. He writes that he then followed the vehicle for about one mile and observed it follow the semi-truck too closely. He estimated its following distance at about approximately 1.5 car lengths at 65 mph (95 feet per second) for the majority of the time he was behind it.

ARGUMENT

- I. I.C. Section 49-638 is void for vagueness as applied to this case because the statutory terms have not been clearly defined so that average individuals would understand what conduct is prohibited by the statute; in addition, the lack of sufficient clarity in the wording of the aforementioned statute invites arbitrary and discriminatory enforcement.

The void-for-vagueness doctrine is premised upon the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This doctrine requires that a statute defining criminal conduct be worded with sufficient clarity and definiteness that ordinary people can understand what conduct is prohibited and that the statute be worded in a manner that does not allow arbitrary and discriminatory enforcement. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 490 (1982). It is a basic principle of due process that a statute is void for vagueness if its prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972). Vague laws offend several important values. First, "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id.* at 108. Vague laws may trap the innocent by not providing fair warning. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) Second, laws must provide explicit standards for those who apply them in order to prevent arbitrary and

discriminatory enforcement. *Grayned*, 408 U.S. at 108. A vague law impermissibly delegates basic policy matters to police officers, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. *Id.* at 109. Furthermore, due process requires that all “be informed as to what the State commands or forbids” and that “men of common intelligence” not be forced to guess at the meaning of the criminal law. *State v. Cobb*, 132 Idaho 195, 197 (1998). Thus, “a statute may be void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes, or if it fails to establish minimal guidelines to govern law enforcement or others who must enforce the statute.” *State v. Korsen*, 138 Idaho 706, 712 (2003).

In this case, officers alleged that the defendant violated I. C. Section 49-638, which states in pertinent part, “49-638. FOLLOWING TOO CLOSELY. (1) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway.” Therefore, the statute itself contemplates that the defendant, at any given time, is supposed to be able to assess the traffic conditions and condition of the highway and make his own determination as to what might be an illegal following distance.

In this case, the officer stated that the above named Defendant was driving contrary to I. C. Section 49-638 by following a vehicle “too closely” and then apparently backing off so that another vehicle, a rather large one in the form of a semi-truck, could pass between them. The defendant likely thought that if he could allow a third vehicle to go in between them that he was not too close. In addition, the officer cites the specific following distance as 1.5 vehicles at 65 m.p.h. This is typical distance for many areas of highway in many parts of the nation, especially when there are several vehicles on the road. The statute in this instance does not give specific

enough guidance to inform a person as to when his conduct would be in violation of the law. He is left to do the guesswork as to what would be illegal at any given point in time given the circumstances of traffic. The officer does not give any report as to the actual road conditions or traffic conditions at the time the stop was made.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. *State v. McCarthy*, 133 Idaho 119, 124 (Ct. App. 1999). A traffic stop, which constitutes a seizure under the Fourth Amendment, must be supported by reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws or that either the vehicle or occupant is subject to detention in connection with a violation of other laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981). It is the position of the defendant that Nampa City Code 1057 does not provide adequate notice as to the conduct which is proscribed.

In *Burton v. State Department of Transportation*, 149 Idaho 746, 240 P. 3d 933 (2010), the Court held that the statute was void for vagueness as applied to the facts in that case. In that case, Burton challenged I.C. §49-808(1) for failing to give adequate notice that a signal is required when before one drives into a single lane that stems from the merger of two lanes. *See Id.* The Court held that, because it was simply not apparent from the language of the statute whether a signal is required when two lanes blend into one, and persons of ordinary intelligence could only guess at the statute's directive in that circumstance, that this statute subsection (1) was unconstitutionally vague in that circumstance. *Id.*

In this case as well, the statute referenced does not give persons of ordinary intelligence adequate notice as when they are following another vehicle too closely. The standard is completely arbitrary and persons of ordinary intelligence from different traffic conditions and driving standards would likely come to very different conclusions as to what satisfied the statute.

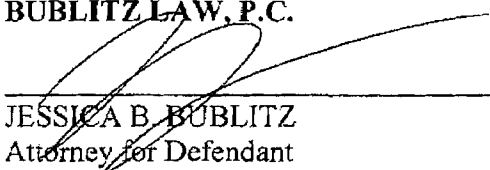
Therefore, it is unconstitutionally void for vagueness as written and as applied in this case.

CONCLUSION

The attorneys for the above named Defendant respectfully request that any evidence obtained as a result of the detention which occurred on the 11th day of February, 2016, and the events thereafter, including any statements by the Defendant which were made, be suppressed in the above entitled action as they were obtained as the result of an illegal search and seizure or the fruits thereof.

DATED this 9th day of May, 2016.

BUBLITZ LAW, P.C.



JESSICA B. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

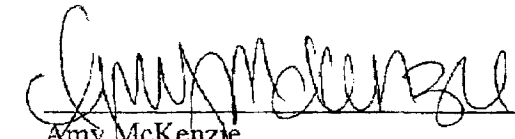
I hereby certify that on this 9th day of May, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

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Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Amy McKenzie
Legal Assistant

cb

FILED
10/21 A.M. P.M.

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

MAY 17 2016

CANYON COUNTY CLERK
S ALSUP, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR2015-24285
)	
Plaintiff,)	
	)	BRIEF IN SUPPORT OF
vs.	)	OBJECTION TO MOTION TO
	)	SUPPRESS EVIDENCE
DAVID JOHN HARPER,)	
)	
Defendant.)	
_____)	

COMES NOW, DOUG ROBERTSON, Deputy Prosecuting Attorney of the Canyon County Prosecuting Attorney's Office, and hereby provides supplemental evidence to support Plaintiff's Objection to the defendant's Motion to Suppress. The State accepts Defendant's recitation of the facts.

PROCEDURAL HISTORY

Defendant was arrested for Marijuana Trafficking on December 17, 2015. Bublitz Law filed a notice of appearance on December 21st, 2015. A preliminary hearing was held in this case on January 28th, 2016. At that hearing, Mr. Bublitz argued that the evidence obtained in this case was clearly suppressible based on a faulty traffic stop. The Court found there was sufficient probable cause and the Defendant was bound over to District Court. The Defendant was

BRIEF IN SUPPORT OF
OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

ORIGINAL

arraigned on February 26, 2016, where he entered a not guilty plea. A Motion to Suppress was filed in this case on March 21st, 2016.

ARGUMENT

1. The Statute for Following Too Closely is Constitutionally Valid Because it Gives Sufficient Notice of the Conduct Prohibited.

Idaho Code § 49-638 prohibits following too closely. Subsection (1), which is at issue here, reads in its entirety:

“The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway.”

Defense counsel argues that the statute is void for vagueness because it does not provide adequate notice of the prohibited conduct. This is incorrect.

First, statutes are presumed to be valid. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709 (1990). The challenging party must overcome “a strong presumption of validity.” *Id.* In addition, a statute should not be held void for vagueness if “any practical interpretation can be given it.” *State v. Leferink*, 133 Idaho 780, 783 (1999). A party attempting to challenge a statute on vagueness grounds must demonstrate that it does not provide “fair warning” of the conduct that is prohibited. *See State v. Lenz*, 632 Idaho, 634 (Ct. App. 1982).

Put another way, any statute that is worded so that a person of ordinary intelligence can understand what the State either commands or prohibits is not unconstitutionally vague. *See State v. Ruggiero*, 156 Idaho 662, 670 (Ct. App. 2014). A statute can be challenged as vague on its face or vague as applied. *Id.* Defense counsel does not specify which analysis leads to vagueness, rather concluding that the statute is “void as written and as applied.” *Memorandum in Support of*

Motion to Suppress, p. 5. However, the bulk of the argument seems to be addressing how the statute was applied to Defendant in this case. The State will proceed under that assumption.

A statute is vague as applied to a particular defendant's conduct under two particular circumstances. First, a statute can be unconstitutionally vague when it does not provide fair notice that the defendant's specific conduct was prohibited. *Id.* The second manner is if the statute allows the police unbridled discretion in determining whether to arrest. *Id.*

A statute does not provide fair warning where a defendant's conduct is not addressed in the statute. For example, in *Burton v. State*, a defendant was pulled over for failing to signal upon the merger of two lanes. 149 Idaho 746 (Ct. App. 2010). The Court held that the statute, which required a signal when a vehicle moved right or left upon a highway, did not address the particular actions of the defendant in that case. *Id.* at 749. In that case, the evidence before the court showed that two lanes merged to form one lane. There was no signage indicating which lane ended and which one continued. Thus, the requirement to signal upon changing lanes did not apply because in this particular circumstance, the statute did not specify whether a signal was necessary when two lanes blended into one. *Id.* On the other hand, a statute was not vague where the defendant's failure to signal properly fell squarely within the statute. In *State v. Kelley*, the defendant was pulled over for not signaling for five continuous seconds. 361 P.3d 1280 (Ct. App. 2015). Kelley argued that the statute was unconstitutionally vague as applied because another statute seemed to indicate that a signal was required for only one-hundred feet prior to the turn. *Id.* The Court held that the competing statute did not apply to the type of highway Kelley was driving on, so the statute requiring a five-second signal properly governed his conduct. *Id.* Additionally, the Court noted that the hundred-foot provision from the other statute clearly did not apply to a road where the speed limit was sixty-five miles per hour. *Id.* at 1286. The facts

showed that at the speed limit, a turn signal for one hundred feet would last less than one second. The court held that “no person of ordinary intelligence would reasonably believe that [the law] requires a driver on I-84 to signal for less than one second before changing lanes.” *Id.* Thus, where a defendant’s conduct is directly addressed in the statute, it cannot be vague as applied.

In this case, Defendant was following a vehicle at about 1.5 car lengths at a speed of 65 miles per hour, or roughly 95 feet per second. The most popular car in America is the Toyota Camry. A 2016 Toyota Camry is 190.9 inches long, or just shy of 16 feet. To give Defendant the benefit of the doubt, let’s call a car length twenty feet. Thus, 1.5 car lengths would be 30 feet. According to this rough estimation, Defendant was tailing a car at a distance of thirty feet, going ninety-five feet per second. This means about a third of a second was all that separated Defendant’s car from the vehicle directly in front of his. The statute requires that no one should follow at a distance “more closely than is reasonable and prudent.” Like in Kelley, no one of ordinary intelligence would call following a car with a third of a second’s buffer as reasonable or prudent. In fact, the 2015 Idaho Driver’s Education Manual recommends a minimum three-second following distance.¹

The other way in which a statute can be unconstitutionally vague is if it permits arbitrary enforcement. *State v. Bitt*, 118 Idaho 584, 585 (1990). Not only does a statute have to provide sufficient clarity to those it governs, but it must also provide clarity to those who enforce it. In *Bitt*, a statute allowed for discriminatory enforcement because it put total discretion into the police officer’s hands as to whether the statute had been violated. The statute at issue was designed to prevent loitering. It provided that a person could not be convicted of loitering so long as they provided a reasonable explanation for their presence to “dispel any alarm.” *Id.* at 588. The

¹ https://itd.idaho.gov/dmv/driverservices/documents/driver_manual.pdf, p. 4-6
BRIEF IN SUPPORT OF
OBJECTION TO MOTION TO
SUPPRESS EVIDENCE

Court held that the statute allowed for arbitrary or discriminatory enforcement because it vested complete discretion in the officer to determine whether the person had “provided a credible and reliable explanation.” *Id.* at 590. However, in *State v. Cobb*, a statute did provide sufficient limitations on enforcement because it contained examples of the prohibited conduct. 132 Idaho 195, 199 (1998). In that case, even though the statute provided for other, non-specified conduct, the presence of the examples of prohibited conduct gave sufficient notice to those governed as well as to those tasked with enforcing the law. *Id.* Thus, a law does not need to explicitly state every kind of conduct that is prohibited. All it must do is provide “fair warning” and sufficiently limit the arresting officer’s discretion.

The statute in this case sufficiently limits the arresting officer’s discretion. The statute provides that the driver must not follow more closely than is reasonable and prudent given the conditions then existing. Defense counsel argues that what is reasonable is a matter of subjective interpretation, and opens the door for arbitrary enforcement. However, simply because a person is directed to act reasonably does not make a statute unconstitutionally vague. Again, ^{no} ~~of~~ one of ordinary intelligence would believe that following a vehicle at sixty-five miles per hour with a third of a second buffer is reasonable. At the suppression hearing, the State anticipates that Trooper Cottrell will be able to testify regarding a reasonable following distance. The State anticipates that he has received training regarding safe following distances, stopping distances, and human reaction times. Because driving is such a fluid experience, with widely varied weather and road conditions, it would be impossible for the legislature to spell out with particularity a proper following distance in every scenario. Thus, the legislature chose to require drivers to follow at a reasonable and prudent distance. The Defendant was not doing this, following at a distance that no one could honestly call reasonable or prudent.

For these reasons, this court should hold that I.C. 49-638 provides fair warning to motorists and adequately limits the discretion of police officers.

CONCLUSION

The State respectfully requests that this Court deny the Defendant's motion to suppress and find that the traffic stop was valid.

DATED this 16th day of May, 2016.

BRYAN F. TAYLOR
Prosecuting Attorney
Canyon County, Idaho



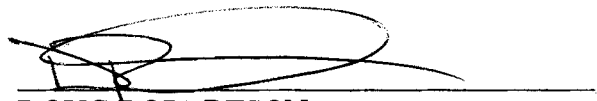
DOUG ROBERTSON
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 16th day of May, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Gerald Bublitz
604 N 16th St
Boise, ID 83702
FAX: (208) 343-6104

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



DOUG ROBERTSON
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: THOMAS J. RYAN DATE: MAY 23, 2016

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR2015-24285-C
)	
vs.	)	TIME: 11:00 A.M.
)	
DAVID JOHN HARPER,	)	DCRT4 (1119-1120)
)	
Defendant.	)	REPORTED BY: Kim Saunders

This having been the time heretofore set for **pre-trial and motion hearing** in the above entitled matter, the State was represented by Mr. Doug Robertson, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Ms. Jessica Bublitz.


The Court called the case and noted it had a conference in chambers with counsel. The State had made an offer to the defendant and Ms. Bublitz had requested a continuance to allow her and Mr. Bublitz to discuss that option with the defendant.

The Court continued this matter until the 13th day of June, 2016 at 3:30 p.m. before this Court and the jury trial remained as previously set.

In the event this case did not settle, the Court indicated it would have enough time to hear and rule on the motion to suppress prior to trial.

In answer to the Court's inquiry, neither counsel had anything further for the Court to address.

The defendant was continued released to pre-trial release on the bond previously posted.



Deputy Clerk

FILED
A.M. 300 P.M.

MAY 24 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

GERALD BUBLITZ - ISB# 7562
JESSICA BUBLITZ - ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	MOTION FOR PRODUCTION OF
vs.	)	PRELIMINARY HEARING TRANSCRIPT
)	
DAVID HARPER,)	
)	
Defendant.)	

COMES NOW, Defendant, DAVID HARPER, by and through his attorney of record, Gerald R. Bublitz of Bublitz Law, PC, and moves this Court for its Order for the production and preparation of a transcript of Defendant's preliminary hearing in the above-matter, pursuant to Rule 6.3(c), Idaho Criminal Rules.

THIS REQUEST is made and based upon the following grounds and reasons:

1. Defense counsel must have access to the preliminary hearing transcript to effectively represent Defendant in this matter.

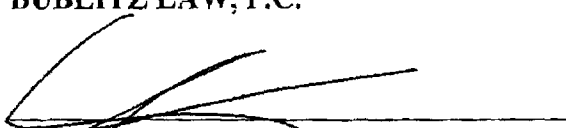
Said transcript should be prepared and sent to counsel within thirty (30) days from the date of the Court's Order herein. Said transcript should be provided at Defendant's expense.

This request is made and based upon the grounds that such preliminary hearing transcript

is necessary to prepare for Jury Trial.

DATED this 24th day of May, 2016.

BUBLITZ LAW, P.C.


GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

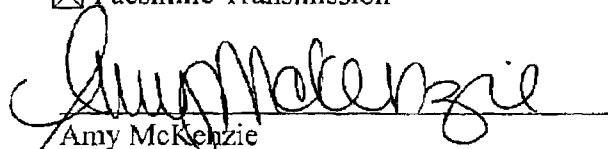
I hereby certify that on this 24th day of May, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

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- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission


Amy McKenzie
Legal Assistant

FILED p.4
A.M. 2:04 P.M.

MAY 26 2016

**CANYON COUNTY CLERK
S ALSUP, DEPUTY**

**GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104**

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER FOR PRODUCTION OF THE
vs.	)	PRELIMINARY HEARING TRANSCRIPT
)	
DAVID HARPER,)	
)	
Defendant.)	

Based upon Motion of counsel and good cause appearing therefore;

IT IS HEREBY ORDERED, AND THIS DOES ORDER that a transcript of the Preliminary Hearing held on January 28, 2016, before the Honorable Judge Frates, be produced and prepared in the above-matter. Said Transcript shall be completed and provided to Defense counsel within thirty (30) days from the date of this Order at Defendant's expense.

SO ORDERED this 26th day of May, 2016.


HONORABLE JUDGE

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 20 day of May, 2016, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Bublitz Law, PC
604 North 16th Street
Boise, Idaho 83702
Fax: (208) 343-6104

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



CLERK

cc: Kathy Waldemer
transcript & Appeals Clerk

MAY 26 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

cb

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID JOHN HARPER,

Defendant.

CASE NO. CR2015-24285

**DISCLOSURE OF EXPERT WITNESS
PURSUANT TO I.C.R. 16(b)(7) AND IRE
702, 703, 705**

COMES NOW, The Plaintiff, the State of Idaho, and submits the following Disclosure of
Expert Witness pursuant to I.C.R 16 and IRE 702, 703 and 705.

That the Plaintiff, the State of Idaho, has complied with ICR 16(b)(7) and IRE 702, 703
and 705 by submitting the following information, evidence and materials.

1) Kerry Hogan

(a) The State discloses Kerry Hogan, Idaho State Police Forensic Scientist, as an
expert witness on controlled substances.

(b) See the Curriculum Vitae attached for Kerry Hogan qualifications.

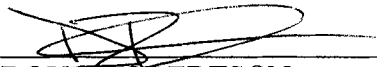
2) Witness Opinions:

DISCLOSURE OF EXPERT WITNESS
PURSUANT TO I.C.R. 16(b)(7) AND IRE
702, 703, 705

ORIGINAL

(a) A summary of findings and opinions was disclosed in the Idaho State Police
Forensic Controlled Substance analysis report on or about January 19, 2016.

DATED this 26th day of May, 2016.



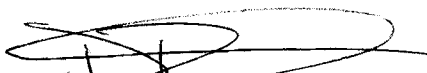
DOUG ROBERTSON
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 26th day of May, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Gerald R. Bublitz
604 N. 16th Street,
Boise, ID 83702-4023
FAX: (208) 343-6104

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



DOUG ROBERTSON
Deputy Prosecuting Attorney



Idaho State Police

Service Since 1939



Colonel Ralph W. Powell
Director

C.L. "Butch" Otter
Governor

KERRY K. HOGAN

Forensic Scientist II
Idaho State Police Forensic Services
700 S. Stratford Dr. Ste. 125
Meridian, ID 83642
(208)884-7170 (Phone)
(208)884-7197 (Fax)

EDUCATION:

May 2008 University of Montana-Missoula, MT
Bachelor of Science Microbiology
Minor in Chemistry

EXPERIENCE:

2011-present Idaho State Police Forensic Services
Forensic Scientist II Controlled Substances
2008- 2011 Idaho State Police Forensic Services
Forensic Scientist II Biology
2007-2008 Montana State Crime Laboratory
CODIS Technician/volunteer
May 2007-
August 2007 Idaho State Police Forensic Services Intern

CERTIFICATION:

2014-present Fellow in Drug Analysis-American Board of Criminalistics (ABC)

PROFESSIONAL ORGANIZATIONS:

2010-present Northwest Association of Forensic Scientists

TESTIMONY:

State of Idaho, Magistrate Court, Ada County
State of Idaho, District Court Grand Jury, Ada County
State of Idaho, Juvenile Court, Ada County
State of Idaho, Magistrate Court, Canyon County
State of Idaho, District Court Grand Jury, Canyon County
State of Idaho, Magistrate Court, Twin Falls County
State of Idaho, Magistrate Court, Jerome County
State of Idaho, Magistrate Court, Kootenai County

CONTINUING EDUCATION:

2014 NWAFS/CAC Technical Session

700 South Stratford Drive • Meridian, Idaho 83642-6251

EQUAL OPPORTUNITY EMPLOYER

Revised 10/27/14

Kerry Hogan

- 2013 DEA Forensic Chemist Seminar
- 2012 Clandestine Laboratory Safety Certification Program
- 2011 American Academy of Forensic Sciences Technical Session
West Virginia University Forensic Science Initiative:
 - Introduction to Drug Chemistry
 - Forensic Mass Spectrometry
- 2010 Northwest Association of Forensic Scientists:
 - Courtroom Testimony
 - Sexual Assault Inquiry
 - DNA Mixture Interpretation
 - Y-STR Analysis
- 2009 California Criminalistics Institute:
 - Genetic Typing Methods and Biological Fluids Identification
 - DNA Extraction and Quantitation
 - Clothing Examination and Microscopy
 - Interpretation of Sexual Assault Evidence
 - Short Tandem Repeat Analysis and Typing
 - Y-STR Analysis and Typing
 - DNA Quantification
 - Courtroom Presentation of DNA Evidence
 - Population Genetics and Statistics in Forensic DNA Analysis
 - Technical Writing for the CriminalistWest Virginia University Forensic Science Initiative:
 - Bloodstain pattern Analysis
 - Ethics in Forensic Science
 - Hair Examination for DNA AnalysisNorthwest Association of Forensic Scientists:
 - DNA AnalysisFBI
 - Crime Scene Photography

FILED
A.M. 2:13 P.M.

MAY 31 2016

CANYON COUNTY CLERK
E BULLON, DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
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BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	STIPULATION TO VACATE AND
vs.	)	RESET JURY TRIAL
)	
DAVID HARPER,)	
)	
Defendant.)	
)	

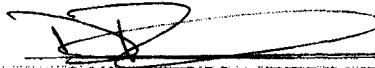
COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald R. Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Jury Trial currently set for the 21st-24th day of June, 2016 at 8:30am. The hearing shall be reset to the 23rd-26th day of August, 2016 at 8:30am before the Honorable Judge Carey. The Defendant hereby waives his statutory right to a speedy Trial.

The reason for said stipulation is:

1. Defense counsel is in another jury trial at this time.

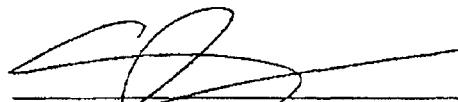
ORIGINAL

STIPULATED this ___ day of May, 2016.



PROSECUTING ATTORNEY
Attorney for Plaintiff

STIPULATED this 31st day of May, 2016.



GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of May, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

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Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Amy McKenzie
Legal Assistant

FILED
A.M. 5:00 P.M.

JUN 03 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

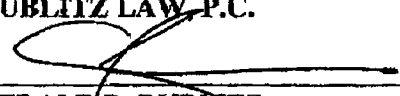
GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104
Attorneys for Defendant

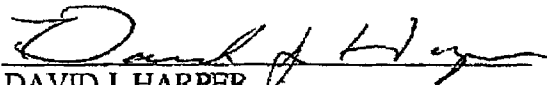
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,	)	NOTICE OF DEFENDANT'S VOLUNTARY
	)	WAIVER OF STATUTORY RIGHT TO
vs.	)	SPEEDY JURY TRIAL
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

COMES NOW, Defendant, DAVID J. HARPER, by and through his attorney of record, Gerald R. Bublitz of the firm Bublitz Law, P.C., and hereby advises this Honorable Court that he waives his statutory right to a speedy Jury Trial.

DATED this 3 day of June, 2016.

BUBLITZ LAW, P.C.

GERALD R. BUBLITZ
Attorney for Defendant


DAVID J. HARPER

CERTIFICATE OF SERVICE


I hereby certify that on this 2nd day of June, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
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Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



 Amy McKenzie
 Legal Assistant

JUN 06 2016

CANYON COUNTY CLERK
M. NYE, DEPUTY

GERALD BUBLITZ - ISB# 7562
JESSICA BUBLITZ - ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
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Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO: CR-2015-24285-C
)	
Plaintiff,)	
)	
vs.	)	AFFIDAVIT OF DAVID J. HARPER
)	
DAVID J. HARPER,)	
)	
Defendant,)	
)	
)	

STATE OF IDAHO)
County of Ada)

I, David J. Harper, do swear the following to be true and accurate to the best of my knowledge:

1. On December 17, 2015 I was driving a black 2000 Audi A6 on eastbound I - 84 when I was pulled over by ISP.
2. After providing my identifying information, the officer had me step out of the vehicle.
3. The officer did not have a warrant.
4. He arrested me without a warrant and placed me in handcuffs.

SUBSCRIBED AND SWORN TO before me this 3 day of June, 2016.

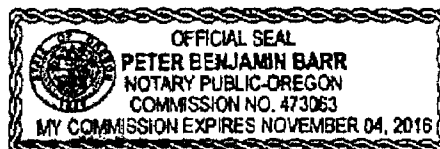


 DAVID J. HARPER

SUBSCRIBED AND SWORN TO before me this 3 day of June 2016, before me, Notary Republic in and for said state, personally appearing DAVID J. HARPER, known or identified to me by the person who executed the foregoing instrument and acknowledged to me that ~~he~~ she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Peter Benjamin Barr
Notary Public
Residing in Eugene OR
Commission Expires: Nov. 4, 2016



FILED *ELD*
A.M. P.M.

JUN 07 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
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Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

* * * * *

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	JURY TRIAL
)	
DAVID J. HARPER,)	
)	
Defendant.)	
_____)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Jury Trial scheduled for the 21st-24th day of June, 2016 at 8:30am is hereby vacated and reset. The Jury Trial will be reset to the 23rd-26th day of August, 2016 at 8:30am before the Honorable Judge Carey.

SO ORDERED this 7th day of June, 2016.

Thomas J. B.

HONORABLE JUDGE

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

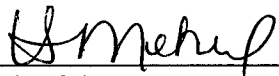
I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 7 day of JUNE, 2016, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Clerk of the Court

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **JUNE 9, 2016**

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR2015-24285-C
)	
vs.	)	TIME: 3:30 P.M.
)	
DAVID JOHN HARPER,	)	DCRT3 (331-408)
)	
Defendant.	)	REPORTED BY: Kim Saunders

This having been the time heretofore set for **pre-trial** in the above entitled matter, the State was represented by Mr. Doug Robertson, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Ms. Jessica Bublitz.

The Court called the case and noted this matter had been set for hearing on the defense's motion to suppress. The Court reviewed the basis for the motion for the record.

In answer to the Court's inquiry, Ms. Bublitz indicated the defense was arguing the statute was too vague and there was lack of reasonable suspicion for the stop.

The Court believed factual evidence was required and therefore the burden of proof shifted to the State.

Mr. Robertson agreed.

The State's first witness, **Christopher Cottrell**, was called, sworn by the clerk, directed examined, and cross-examined. Ms. Bublitz offered **defense's exhibit A**. There being no objection, the Court admitted **defense's exhibit A** was admitted.

The witness was continued cross-examined and re-direct examined.

The witness was excused.

Neither counsel had any further evidence to present.


Ms. Bublitz presented argument in support of the motion.

Mr. Robertson objected and presented argument.

Ms. Bublitz presented further argument.

The Court took this matter under advisement and indicated a written decision would be issued within the next ten (10) days.

The defendant was continued released to pre-trial release on the bond previously posted.



Deputy Clerk

JUN 23 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,)	
	)	CASE NO. CR-2015-24285
Plaintiff,)	
vs.)	
	)	MEMORANDUM, DECISION, AND
DAVID JOHN HARPER,	)	ORDER UPON DEFENDANT'S
	)	MOTION TO SUPPRESS
Defendant.)	
_____)	

This matter came on for hearing June 9, 2016, upon the defendant's Motion to Suppress. Defendant David J. Harper (hereinafter "Harper") was represented by Jessica B. Bublitz of Bublitz Law, P.C. The State was represented by Douglas W. Robertson, Deputy Prosecutor. The matter has been fully briefed and argued and the Court finds as follows.

BACKGROUND

According to his Probable Cause Affidavit and testimony during the hearing on Harper's Motion to Suppress, Corporal Chris Cottrell of the Idaho State Police stopped Harper in his black 2000 Audi A6, displaying Oregon license plate [REDACTED] eastbound on I-84 near milepost 30, in Canyon County, Idaho, on December 17, 2015, at about 9:10 a.m. *Probable Cause Affidavit*, filed December 18, 2015. After observing Harper from the median, Officer Cottrell stopped Harper for following another vehicle too closely, about 1.5 car lengths at a speed of approximately 65 miles per hour, in violation of I.C. § 49-638(1). *Id.*

He asserts that upon approaching the passenger side of the Audi he smelled the “immediate and strong” odor of marijuana. *Id.* He noticed two large gift-wrapped boxes in the back seat of the car and decided to deploy his drug detection canine, Dax. *Id.* Dax the dog “alerted to the odor of drugs both on the exterior of the vehicle and on the gift wrapped boxes inside the vehicle.” *Id.* Officer Cottrell then searched Harper’s vehicle and the boxes. *Id.* The boxes “were loaded with freezer style packages of marijuana.” *Id.*

Subsequently, Officer Cottrell arrested and booked Harper into the Canyon County Jail. *Id.* Officer Cottrell returned to the Idaho State Police District Office and “field/NIK tested the suspected marijuana and received a presumptive positive result...[he] weighed the 31 individually wrapped packages from the boxes at approximately 17.38 lbs.” *Id.*

Harper moves for an order suppressing statements he made to and evidence seized by Officer Cottrell pursuant to the stop because: (1) Officer Cottrell did not have reasonable suspicion to stop him, and (2) I.C. § 49-638, which controls how close one vehicle may follow another, is void for vagueness as applied to this case. Harper only argues the statute is void for vagueness within his memorandum, but argued Officer Cottrell did not have reasonable suspicion to stop him during the hearing on this matter.

STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the reviewing court accepts the district court’s findings of fact that are supported by substantial evidence, but will freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996). At a suppression hearing, the trial court is vested with the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences. *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct.App.1999).

ANALYSIS

I. Void for Vagueness.

The void for vagueness doctrine is an aspect of due process requiring that a statute defining criminal conduct or imposing civil sanctions be determinable. *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998); *Burton v. State, Dept. of Transp.*, 149 Idaho 746, 748, 240 P.3d 933, 935 (Ct.App.2010); U.S. Const., Am. 14 and Idaho Const., Art. 1, § 13. The party attacking a statute bears the burden of proof and must overcome a strong presumption of validity.

State v. Kelley, 159 Idaho 417, 361 P.3d 1280, 1284 (Ct.App.2015) (internal citations omitted). The court must give a plain and unambiguous statute its plain, obvious, and rational meaning. *Id.* Only where the language is ambiguous should the court resort to legislative history or rules of statutory interpretation. *Id.*

Here, Harper does not assert I.C. § 49-638(1) regulates constitutionally protected conduct, but rather that it is void for vagueness as applied to his conduct. *See State v. Bitt*, 118 Idaho 584, 587-88, 798 P.2d 43, 46-47 (1990) (“First, the court must ask whether the ordinance regulates constitutionally protected conduct...”); *see also State v. Freitas*, 157 Idaho 257, 262, 335 P.3d 597, 602 (Ct.App.2014), *review denied* (Sept. 10, 2014) (The court may find a statute is unconstitutionally vague as applied to the defendant’s conduct or facially void.). To succeed on his claim, Harper must prove one of two things: (1) I.C. § 49-638(1) failed to provide him with fair notice his conduct was prohibited; or (2) I.C. § 49-638(1) “failed to provide sufficient guidelines such that police had unbridled discretion in determining” whether to arrest him. *Kelley, supra*, at 417, 1285 (citing *State v. Pentico*, 151 Idaho 906, 915, 265 P.3d 519, 528 (Ct.App.2011)); *see also State v. Bitt*, 118 Idaho 584, 587-88, 798 P.2d 43, 46-47 (1990).

The State argues the statute is not vague as applied to Harper under either prong and that “[b]ecause driving is such a fluid experience, with widely varied weather and road conditions, it would be impossible for the legislature to spell out with particularity a proper following distance in every scenario. Thus, the legislature chose to require drivers to follow at a “reasonable and prudent” distance. *Brief in Support of Objection to Motion to Suppress Evidence*, at Pg., 5.

1) *Whether the statute gives notice to those who are subject to it.*

To avoid violating I.C. § 49-638(1), a driver should avoid following another vehicle “more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway.”¹ Harper makes the following arguments in support of his assertion that subsection (1) of the statute failed to provide him with sufficient notice in how to avoid violating it: (1) The statute contemplates that Harper, at any given time, is supposed to be able to assess the traffic conditions and condition of the highway and make his

¹ “Although there is language in I.C. § 49-110(5) defining ‘infraction’ as a ‘civil public offense¹,’ traffic infractions are criminal in nature and are treated as criminal for both constitutional and statutory purposes.” *State v. Bettwieser*, 143 Idaho 582, 586-87, 149 P.3d 857, 861-62 (Ct.App.2006) (since *Bettwieser*, the fine associated with an infraction has increased from \$100 to \$300).

own determination as to what might be an illegal following distance. *Memorandum in Support of Motion to Suppress*, at Pg., 3; (2) the statute leaves Harper to do the guesswork as to what would be illegal at any point in time given the circumstances of traffic. *Id.*, at Pgs., 3-4; and (3) the standard set forth in the statute is completely arbitrary and persons of ordinary intelligence from different traffic conditions and driving standards would likely come to very different conclusions as to what satisfied the statute. *Id.*, at Pg., 4.

Harper cites *Burton v. State, Dept. of Transp.*, 149 Idaho 746, 240 P.3d 933 (Ct.App.2010), wherein the Idaho Court of Appeals held I.C. § 49-808(1)² was unconstitutionally vague as it applied to the defendant in that case. In so holding, the *Burton* court determined the statute did not “clearly indicate that a signal is required when two lanes merge with neither lane clearly ending and neither clearly continuing.” *Id.*, at 749, 936. The *Burton* court concluded persons of ordinary intelligence could only guess at the statute’s directive in that circumstance and therefore the defendant successfully showed that “no legal cause existed to effectuate the traffic stop that led to her breath tests.” *Id.*, at 749-50, 936-37.

In distinguishing its facts from those presented in the *Burton* case, the court in *State v. Colvin* 157 Idaho 881, 341 P.3d 598 (Ct.App.2014) *review denied* (Feb. 3, 2015) determined I.C. § 49-808(1) was not unconstitutionally vague as applied to the defendant Colvin:

In *Burton*, neither the sign nor the road configuration made clear which lane terminated....In this case, the sign indicated which lane ended... Thus, the sign provided Colvin fair notice that his lane ended and that under the statute he was required to signal.

Id. Prior to those decisions, the Court in *State v. Pigge* held a statute governing motor vehicles was *facially* void because it did not give a driver notice with regard to what conduct was criminal:

The definition as contained in the legislative act here being considered, defines negligent driving to mean “the operation of a vehicle upon the public highways of this state in such a manner as to endanger or be likely to endanger any persons or property.” The statute does not specify or define any act or acts, either general or specific, covered by its terms and does not even require that the vehicle be driven or operated in a negligent, careless or unlawful manner.

² “No person shall turn a vehicle onto a highway or move a vehicle right or left upon a highway or merge onto or exit from a highway unless and until the movement can be made with reasonable safety nor without giving an appropriate signal.”

By the terms of the statute, the operation of a motor vehicle on a public highway could endanger or be likely to endanger a person or property without any act of commission or omission on the part of the driver recognized as criminal. The offense attempted to be defined covers many situations in which one driving a vehicle could endanger or be likely to endanger persons or property without any negligence, carelessness or unlawfulness on the driver's part that would, under the statute, be criminal.

79 Idaho 529, 532, 322 P.2d 703, 704-05 (1957); see *Tuma v. Bd. of Nursing*, 100 Idaho 74, 79, 593 P.2d 711, 716 (1979) ("The void-for-vagueness doctrine, although not there so named in that terminology, was clearly the heart of the Court's decision in *Pigge*.").

It is apparent the *Pigge* Court was concerned with the statute's lack of distinction between wrongful and innocent conduct, i.e. a lack of either criminal intent or negligence. The *Pigge* Court is distinguishable, however, because I.C. § 49-638(1) is a public welfare offense.³ Idaho courts generally hold the violation of motor vehicle safety statutes to be negligence *per se*.⁴ Thus, it is acceptable the statute proscribes conduct sans a defendant's criminal intent or negligence.

In *State v. Bitt*, *supra*, the Court found a Pocatello ordinance constitutionally valid, in that it provided sufficient notice to the defendant: "To avoid violating the ordinance, one should refrain from loitering or prowling 'in a place at a time or in a manner not usual for law-abiding individuals.' Such loitering or prowling must 'warrant alarm for the safety of persons or property.' *We are certain that a reasonably intelligent individual could, if pressed, be able to form some idea of what sort of conduct the ordinance proscribes, and that may be sufficient.*" 118 Idaho 584, 589, 798 P.2d 43, 48 (1990) (emphasis added).

The State argues:

³ "[U]nder certain circumstances, public welfare offenses, such as traffic violations, need not contain a general criminal intent or criminal negligence requirement in order to comply with the due process clause. Instead, the crimes can be premised upon ordinary negligence, or in some instances, even strict liability." *Haxforth v. State*, 117 Idaho 189, 190, 786 P.3d 580, 581 (Ct.App.1990); see *Haxforth*, 191, 582 ("Traffic laws are enacted for the benefit of the traveling public and it is reasonable to expect compliance with these laws.").

⁴ *Griffith v. Schmidt*, 110 Idaho 235, 715 P.2d 905 (1985) (law fixing speed limit); *Bradbury v. Voge*, 93 Idaho 360, 461 P.2d 255 (1969) (law requiring operation of vehicle on left side of the highway while traversing an intersection); *Bale v. Perryman*, 85 Idaho 435, 380 P.2d 501 (1963) (statute prescribing limitations on driving to the left of center of roadway); *Brixey v. Craig*, 49 Idaho 319, 288 P. 152 (1930) (act regulating speed when approaching within fifty feet and in traversing an intersection of highways when driver's view is obstructed); *Johnson v. Emerson*, 103 Idaho 350, 647 P.2d 806 (Ct.App.1982) (speed limit statute).

The statute requires that no one should follow at a distance “more closely than is reasonable and prudent.”...[N]o one of ordinary intelligence would call following a car with a third of a second’s buffer as reasonable or prudent. In fact, the 2015 Idaho Driver’s Educational Manual recommends a minimum three-second following distance.

Brief in Support of Objection to Motion to Suppress Evidence, at Pg., 4.

As previously stated, to avoid violating I.C. § 49-638(1), one should refrain from following another vehicle “more closely than is reasonable and prudent, having due regard for the speed of the vehicle, the traffic upon and the condition of the highway.” In this Court’s opinion, a reasonably intelligent person could form an idea about what subsection (1) of the statute proscribes: do not “tailgate” another vehicle under any circumstance; if the weather makes it difficult for a driver to see, that driver should follow another vehicle at a greater distance than it would if it were a dry, cloudy day; be aware of traffic flow; etc.

More specifically, Harper has failed to show that he himself was void of adequate notice. The law allows a statute to hold a driver criminally liable of a public welfare offense where the driver acted with ordinary negligence. As a consequence, Harper is lawfully required to drive as a reasonably prudent person and decipher whether he is following another vehicle too closely. Accordingly, Harper failed to show I.C. § 49-638(1) fails under the first prong of the analysis.

2) *Whether the statute contains guidelines and imposes sufficient discretion on those who must enforce the ordinance.*

Harper also contends I.C. § 49-638(1) is void for vagueness, in that it grants law enforcement officers too much unbridled discretion in deciding who is following the vehicle in front of them too closely:

[T]he officer cites the specific following distance as 1.5 vehicles at 65 m.p.h. This is typical distance for many areas of highway in many parts of the nation, especially when there are several vehicles on the road....The officer does not give any report as the actual road conditions or traffic conditions at the time the stop was made.”

Id., at Pgs., 3-4. In the alternative, the State argues:

The statute in this case sufficiently limits the arresting officer’s discretion. The statute provides that the driver must not follow more closely than is reasonable and prudent given the conditions then existing....[S]imply because a person is directed to act reasonably does not make a statute unconstitutionally vague....At the suppression hearing, the State anticipates that Trooper Cottrell will be able to testify regarding a reasonable following distance. The State anticipates that he has received training regarding safe following distances, stopping distances, and human reaction times.

Brief in Support of Objection to Motion to Suppress Evidence, at Pg., 5.

In *State v. Bitt*, *supra*, the Court asserted the ordinance was constitutionally infirm as to the second prong of the analysis where it provided: “a person cannot be arrested or convicted unless he fails to identify himself and offer an explanation of his presence and conduct which dispels the police officer's alarm.” *Id.*, 118 Idaho at 590, 798 P.2d at 49. The Court held the ordinance vested “complete discretion in the hands of the police officer to determine whether the person has provided a credible and reliable explanation...[and] therefore create[d] the potential for arbitrary and discriminatory arrests ... condemned by our State Constitution.” *Id.*

Unlike the ordinance in *Bitt*, the statute at issue here does not vest complete discretion in law enforcement officers. As asserted by the State, the Idaho Driver's Education Manual recommends a minimum of three second following distance, a standard Officer Cottrell testified to being familiar with. Moreover, Officer Cottrell testified that his training and experience shows the average person has a reaction time of about 1 to 1.5 seconds, during which time the average driver will travel from between 95 and 140 feet if going 65 mph. These statistics may lawfully and effectively guide an officer in determining whether one vehicle is following another too closely. Harper argues following another vehicle at a distance of 1.5 vehicles while going 65 mph is a “typical distance for many areas of highway in many parts of the nation.” However, Harper fails to support that claim with any facts or authority. Consequently, I.C. § 49-638(1) is not void for vagueness and it does not grant law enforcement officers unbridled discretion.

II. Reasonable Suspicion Justifying Stop

An officer may stop a vehicle to investigate possible criminal behavior if a reasonable and articulable suspicion exists the vehicle is being driven contrary to traffic laws. *Aguirre*, 141 Idaho at 562, 112 P.3d at 850. The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *Bordeaux*, 148 Idaho at 6, 217 P.3d at 6. This standard requires less than probable cause but more than mere speculation, instinct, or hunch on the part of the officer. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct.App.1999). A law enforcement officer may draw reasonable inferences from facts in his possession, as well as his experience and training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (1988). Because probable cause and reasonable suspicion are objective tests, the court may freely apply relevant law to the objective facts presented when determining

whether a traffic stop constituted a lawful seizure. *State v. Young*, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct.App.2006) (internal citations omitted).

Here, Officer Cottrell testified Harper was driving 65 mph (95 feet per second) and keeping a mere distance of about 1.5 car lengths (30-35 feet) between himself and the vehicle he was following. As previously noted, he also testified his training and experience has taught him the average person has a reaction time of about 1 to 1.5 seconds, during which time the average driver will travel from between 95 and 140 feet. During the stop, Harper told Officer Cottrell he believed he was following the vehicle from 2 seconds behind, “approximately 190.5 feet.” *Probable Cause Affidavit, supra*, at Pg., 2.

Video of the encounter shows approximately 30 seconds prior to when Officer Cottrell activated his overhead lights. It does not display when Harper was allegedly following the vehicle in front of him too closely. *See Defendant’s Exhibit A*. Rather, the video shows Harper’s vehicle following a semi-truck, which merged in between Harper’s vehicle and the vehicle he was previously following. *Id.* Harper argues he was following the vehicle in front of him at an appropriate distance, which is evidenced by the fact that the semi-truck was able to merge between him and the vehicle. *Memorandum in Support of Motion to Suppress*, at Pg., 3.

While not binding, this Court was able to locate two cases where the court held an officer was reasonable in stopping a vehicle for following too closely in violation of I.C. § 49-638. First, in *United States v. Rosales*, the U.S. District Court for the District of Idaho determined that “[e]ven with clear and dry road conditions, and even with light traffic flow, an objectively reasonable police officer would determine that a vehicle traveling at speeds of 70-72 miles per hour, following another vehicle at a distance of two car lengths for approximately 1-2 minutes, is in violation of I.C. § 49-638.” 2006 WL 120053, at *3 (D. Idaho Jan. 12, 2006). Second, in *State v. Lloyd*, the Idaho District Court for the First Judicial District found the arresting officer was reasonable in stopping the defendant for being in violation of I.C. § 49-638 where the defendant was traveling on a highway at a speed of 50 miles per hour and following the trailer in front of him by about one car length. 2010 WL 3723207. The *Lloyd* court agreed with the officer that the defendant should have kept a distance of about three car lengths. *Id.*

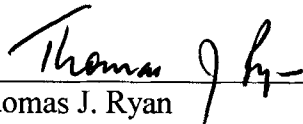
Here, too, the Court finds Officer Cottrell was reasonable in stopping Harper for following too closely.

Therefore,

ORDER

IT IS HEREBY ORDERED that Harper's Motion to Suppress is DENIED.

Dated this 23rd day of June, 2016.



Thomas J. Ryan
District Judge

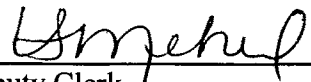
CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery on this 23 day of June, 2016:

Douglas W. Robertson
Canyon County Deputy Prosecutor
Canyon County Courthouse
1115 Albany Street
Caldwell, ID 83605

Jessica Bublitz
Bublitz Law, P.C.
604 N. 16th Street
Boise, ID 83702

6/23/16
Date



Deputy Clerk

JUL 21 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

DAVID J. HARER,

Defendant.

) **CASE NO. CR-2015-24285-C**

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COMES NOW, Defendant, DAVID J. HARPER, by and through his attorney of record,
Gerald R. Bublitz of the firm Bublitz Law, P.C. and offers the following pursuant to I.C.R. 16(c):
The Defendant intends to call an expert witness at trial in the above-entitled action:

1. Joe Adriany: Private Investigator, Columbo Investigations PO Box 72 Meridian, ID
83680 (208) 866-8689.

a. Resume/CV is attached.

b. Summary of Qualifications and Opinions:

i. Mr. Adriany has thirteen years experience as an officer of the San Diego
Police Department.

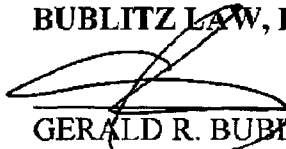
ii. During his time as a police officer, Mr. Adriany participated in numerous

narcotics investigations, including undercover investigations.

- iii. These investigations involved setting up and conducting surveillance of drug deals.
- iv. During his time as a police officer Mr. Adriany also conducted numerous traffic stops including cases where drugs were drugs had been hidden in the vehicle without the driver's knowledge
- v. Mr. Adriany also received specialized training in narcotics investigations including drug recognition.
- vi. Based on his experience and training as a police officer, Mr. Adriany will testify that it is common for drug traffickers to use unsuspecting "mules" to transport narcotics unknowingly.

DATED this 21st day of July, 2016.

BUBLITZ LAW, P.C



GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

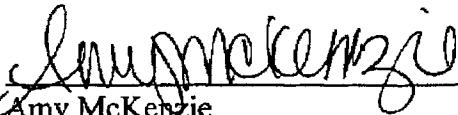
I hereby certify that on this 19th day of July, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
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- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Amy McKenzie
Legal Assistant

JOE ADRIANY

POB 72, MERIDIAN, ID 83680

H: (208) 994-6138 | C: (208) 866-8689 | columbo@houston.com

PROFESSIONAL SUMMARY

Private Investigator offering 13-year tenure with the San Diego Police Department and 17-years experience as a private investigator in Idaho and Oregon. Extensive experience across multiple branches of private investigation. Currently maintain credentials with the Department of Homeland Security to conduct background investigations for law enforcement agencies under their purview.

SKILLS

Top Secret Security Clearance with Department of Homeland Security for Contract Background Investigations. Ongoing Training & Refresher Courses to maintain clearance and credentials for ICE & CBP

Retired San Diego Police Department Officer earning a 1992 Advanced Certificate from the State of California Department of Justice Commission on Peace Officers Standards & Training (POST). Experience in Patrol, Patrol Supervision, Traffic Division, Crimes Against Persons & Property Investigations, Undercover Investigations, Narcotic Investigations, Background Investigations and Recruiting.

Advance Officer Training Courses and Continuing Education Courses throughout Career at the San Diego Police Department to include Money Laundering and Narcotics Investigations

State of Oregon Department of Public Safety Standards & Training Certification as a Private Investigator from 2010 to 2015

Conducted investigations for City of Boise, Boise Airport Police, Garden City Police, City of McCall, Canyon County Public Defenders Office and the Idaho Transportation Department

WORK HISTORY

COLUMBO INVESTIGATIONS

Perform civil, criminal and background investigations for private clients, attorneys and government agencies. Conduct surveillance and due diligence. Interview witnesses, collect evidence, prepare detailed reports and testify in proceedings as required. Criminal cases include infractions, misdemeanors and felonies, including murder.

COMPUTER SCIENCES CORPORATION (CSRA)

Contract employment background investigator for US Immigration & Customs Enforcement (ICE) and US

Customs & Border Protection (CBP through the Department of Homeland Security. Conduct interviews, search records and complete thorough investigative reports in line with strict government guidelines. Currently hold a Top Secret Security Clearance with the Department of Homeland Security and possess Credentials for ICE and CBP.

EDUCATION

BACHELOR OF ARTS Anthropology
San Diego State University

AUG 24 2016

CANYON COUNTY CLERK
B HATFIELD, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, ID 83702
Telephone: (208) 344-5500
Fax: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

DAVID J. HARPER,

Defendant.


) CASE NO. CR-2015-24285-C
)
)
) DEFENDANT'S WITNESS LIST
)
)
)
)
)
)

COMES NOW, the Defendant, DAVID J. HARPER, by and through his attorney of record Gerald R. Bublitz of the firm Bublitz Law, PC, and hereby submits the following witnesses that Defendant may call upon to testify in the above-entitled matter.

- 1. Joe Adriany: Private Investigator, Columbo Investigations PO Box 72 Meridian, ID 83680 (208) 866-8689.
- 2. Jonathan Harper – (541) 554-9852 6715 W. Morris Hill Lane #101 Boise, ID 83704
- 3. David J. Harper

DATED this 24th day of August, 2016

BUBLITZ LAW, P.C.


GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

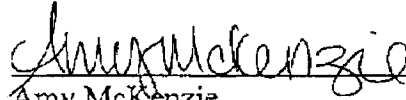
I hereby certify that on this 24th day of August, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Amy McKenzie
Legal Assistant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **G.D. CAREY** DATE: AUGUST 25, 2016

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2015-0024285-C
)	
vs.	)	TIME: 9:00 A.M.
)	
	)	REPORTED BY: Leda Waddle
DAVID JOHN HARPER,)	
	)	DCRT 2 (839-514)
)	
Defendant.)	
<hr/>		

This having been the time heretofore set for **trial to a jury (day 1)** in the above entitled matter, the State was represented by Ms. Madison Hamby and Mr. Patrick Denton Deputy Prosecuting Attorneys for Canyon County, Idaho. The defendant was present in court with counsel, Mr. Gerald Bublitz.

The Court convened at 8:39 a.m., with each of counsel being present, and outside the presence of the prospective jury panel.

In answer to the Court's inquiry, each counsel advised that this matter would proceed to trial.

The Court noted that it had been previously advised of preliminary matters that needed to be addressed prior to the arrival of the jury. The Court instructed each of counsel to proceed with argument

Ms. Hamby informed the Court that the State had been advised that the defendant would present evidence that he had no knowledge of what was found in his car. Further, Ms. Hamby advised the Court that if the defendant intended to introduce evidence of that kind then the State would request it be allowed to introduce his prior criminal record.

The Court requested clarification in regard to the criminal record of the defendant.

Ms. Hamby provided clarification.

Mr. Bublitz presented argument in opposition to the argument and cited case law in support.

Ms. Hamby presented further argument in support of the State's request.

The Court expressed legal opinions, cited case law and granted and denied the State's request. Additionally, the Court provided explanation and clarification in regard to its ruling.

Mr. Denton advised the Court that prior to the hearing this date each of counsel agreed to stipulate to several facts. Mr. Denton advised the Court that each of counsel would stipulate to the State showing the marijuana during opening statement.

Additionally, Mr. Denton informed the Court that each of counsel stipulated that the substance tested was marijuana and it weighed 15.57 pounds. Mr. Denton requested the Court advise the jury of the same.

Mr. Bublitz advised the Court that the defendant would stipulate to the weight of

the substance and that the substance was marijuana. Mr. Publitz informed the Court that with said stipulation/agreement then there would be no need for expert testimony.

Ms. Hamby requested that one of the State's witnesses be allowed to remain in the courtroom during trial.

Mr. Publitz presented argument in opposition to the State's request.

The Court cited Idaho Criminal Rules as well as reviewed witness exclusion rules and procedures.

The Court advised each of counsel and the defendant that it would first address witness exclusion procedure. The Court ordered each of counsel to admonish their witnesses, agents and law enforcement officials to not discuss their testimony or anything that may occur in the courtroom with anyone; (including the jury panel); nor should they discuss anything in the presence of the jury panel or any other witnesses until the case had been concluded.

The Court recessed at 9:05 a.m.

The Court reconvened at 9:17 a.m., with each of counsel and the defendant being present. The prospective jury panel was present in the charge of the Bailiff, Mr. Bryan Yiengst.

The Court advised the jury of the charge that was involved in this case and the process involved in jury selection.

The prospective jury panel was sworn voir dire by the clerk at 9:19 a.m.

The Court read the charging Information to the Jury.

The Court explained legal procedure to the prospective jurors in regard to voir dire.

Under direction of the Court, the clerk called roll of the prospective jury panel; with all being present.

The clerk drew twenty-seven (27) juror numbers, one at a time, and the following Prospective jurors were seated:

#326 #160 #274 #383 #298 #123 #283 #386 #300 #395 #276
#333 #315 #293 #220 #336 #312 #320 #295 #80 #273 #375
#387 #317 #286 #340 #353

Upon direction of the Court, each of counsel read the names of potential witnesses.

The Court noted the job descriptions and tasks of itself, each of counsel as well as the Jurors themselves.

The Court conducted general voir dire examination of the prospective jury panel as a whole.

Ms. Hamby examined the prospective jurors' voir dire.

The Court admonished the Jury as to their conduct and recessed at 10:23 a.m.

The Court proceeded in the absence of the jury. The Court reviewed its understanding of the evidence in which each of counsel stipulated to.

Based upon the Court's inquiry, each of counsel agreed to the same.

The Court recessed at 10:27 a.m.

The Court reconvened at 10:37 a.m., with the defendant, each of counsel and the

Jury panel present.

Mr. Bublitz examined the prospective jurors' vior dire.

Upon the Court's inquiry, each of counsel indicated they passed the panel for cause.

The Court instructed each of counsel to complete their peremptory challenges.

The Court went off record at 10:50 a.m.

The Court resumed recording at 10:59 a.m.

The Court instructed those prospective jurors chosen to try this matter to take the appropriate seat in the jury box, and excused the remaining jurors instructing them to report to the Jury Commissioner before leaving.

The following jurors were called and seated.

#326	#298	#300	#395	#315
#293	#220	#273	#375	#387
#286	#340	#353		

In answer to the Court's inquiry, each of counsel accepted the jury panel as seated.

The jurors were sworn by the clerk to well and truly try the matters at issue at 11:03 a.m.

The Court admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.

The Court recessed at 11:06 a.m., with admonishment to the jury.

The Court proceeded in the absence of the jury.

The Court inquired of the State in regard to the exhibit number of the marijuana as well as the weight.

Ms. Hamby informed the Court that it was State's exhibit #2 and weighed 15.57 pounds.

The Court recessed at 11:10 a.m.

The Court reconvened at 11:24 a.m., with each of counsel and the defendant. The jury panel was present and properly seated.

The Court read Preliminary Jury Instructions to the jury panel.

The Court read the Information to the jury; and noted the defendant's plea of not guilty to the charges.

Mr. Denton presented the State's opening statement.

Mr. Bublitz presented the defendant's opening statement.

The Court recessed the jury for lunch at 11:49 a.m., and admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.

The Court directed counsel and the defendant to be present at 1:00 p.m. to address legal issues before the jury returns from lunch.

The Court recessed at 11:49 a.m.

The Court proceed in the absence of the jury

Ms. Hamby advised the Court that the State had concerns with the statements made during the defendant's opening statement. Ms. Hamby reviewed its understanding of the ruling made on the motion to suppress.

Mr. Bublitz presented argument in opposition and reviewed his understanding of the ruling made on the motion to suppress.

The Court cited case law and expressed legal opinions. The Court requested additional clarification based upon the argument presented.

Ms. Hamby provided clarification in this argument.

Mr. Bublitz presented additional argument in support of the previous statements in questions.

The Court made an oral ruling on the record.

The Court recessed at 12:00 p.m.

The Court reconvened at 1:01 p.m., with each of counsel and the defendant being present, and outside the presence of the prospective jury panel.

Ms. Hamby requested that the State be allowed to present the un-redacted video due to statements made in the opening statement.

Mr. Bublitz had no objection.

The Court noted that the audio would be played in its entirety to the jury.

In answer to the Court's inquiry, counsel indicated there were no additional issues to be addressed.

The Court recessed at 1:05 p.m.

The Court reconvened at 1:08 p.m., with the defendant and each of counsel. The jury was returned to the courtroom by the Bailiff and properly seated at 1:07 p.m.

Christopher Cottrell was called as the State's first witness, sworn by the clerk, direct examined, cross examined and re-direct examined. The witness was excused but asked to remain available.

State's exhibit #4 previously marked, was identified by the witness as a photo for a black car was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #5 previously marked, was identified by the witness as a photo of gift wrapped packages was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #6 previously marked, was identified by the witness as a photo of gift wrapped packages was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #7 previously marked, was identified by the witness as a photo of gift wrapped packages was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #8 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #9 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #10 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #11 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #12 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #13 previously marked, was identified by the witness as a photo was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #2 previously marked, was identified by the witness as a 15.57 pound bag of marijuana was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #18 previously marked, was identified by the witness as a box was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #19 previously marked, was identified by the witness packaging material that individually contained the marijuana was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #3 previously marked, was identified by the witness as a lab report was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #17 previously marked, was identified by the witness as a photo of a G.P.S was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #20 previously marked, was identified by the witness as a photo of a receipt was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #1 previously marked, was identified by the witness as a video was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

Based upon the Court's inquiry, each of counsel stipulated that the Court Reporter need not take down the audio.

The Court recessed at 1:45 p.m., with admonishment to the jury.

The Court reconvened at 2:16 p.m., with each of counsel and the defendant. The jury panel was present and properly seated.

The Court recessed at 2:19 p.m., with admonishment to the jury.

The Court reconvened at 2:47 p.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Defendant's exhibit A was marked by the clerk and identified by the witness as a box of Ziploc space bags.

Defendant's exhibit #B previously marked, was identified by the witness as brown envelope, was offered and the defendant objected.

Mr. Denton objected to the admission of State's exhibit #2 on the basis that there was no foundation to admit the item.

The Court recessed at 3:51 p.m., and proceeded outside the presence of the jury panel.

The Court noted the objection and instructed each of counsel to proceed with argument.

Mr. Bublitz presented argument in support of the admission of defense exhibit #B.

Mr. Denton presented argument in opposition to the admission of defense exhibit #B.

The Court sustained the objection and **Defense exhibit B was denied.**

Ms. Hamby advised the Court the State rested.

The Court reconvened at 3:58 p.m. with each of counsel and the defendant. The jury panel was present and properly seated.

Christopher Cottrell was called as the Defendant's first witness, sworn by the clerk, direct examined, cross examined and re-direct examined. The witness was excused but

asked to remain available as a rebuttal witness.

Jonathon Harper was called as the Defendant's second witness, sworn by the clerk, direct examined, cross examined and re-direct examined. Rebuttal witness

The Court recessed at 4:28 p.m., with admonishment to the jury.

The Court inquired of the witness. Based upon the answers of the witness the Court advised it was ready to proceed with the jury.

The Court recessed at 4:29 p.m.

The Court reconvened at 4:34 p.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Joe Adriany was called as the Defendant's third witness, sworn by the clerk, direct examined, cross examined and re-direct examined.

The Court excused the jury for the evening at 5:12 p.m. with instructions to reconvene at 9:00 a.m., the following morning.

The Court admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.


The Court advised the defendant of his Fifth Amendment right not to testify in this case. The Court advised the defendant of his constitutional right against self-incrimination and his right to remain silent. Further, the right to testify was his choice and that if he did testify he could be cross-examined by the State within the scope of

anything he testified to on direct examination. The Court further advised the defendant if chose not to testify the jury panel would be instructed that could not be held against him in their deliberations. The defendant indicated he understood his rights as explained by the Court.

In answer to the Court's inquiry, the defendant advised the Court he had no questions regarding his Fifth Amendment rights.

The defendant shall be released on the bond previously posted on the continued provision that he report to Pretrial Services.

The Court adjourned for the day at 5:13 p.m.


Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **G.D. CAREY** DATE: AUGUST 26, 2016

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2015-0024285-C
)	
vs.	)	TIME: 9:00 A.M.
)	
	)	REPORTED BY: Kathy Klemetson
DAVID JOHN HARPER,)	
	)	DCRT 2 (858-123)
)	
Defendant.)	
<hr/>		

This having been the time heretofore set for **trial to a jury (day 2)** in the above entitled matter, the State was represented by Ms. Madison Hamby and Mr. Patrick Denton Deputy Prosecuting Attorneys for Canyon County, Idaho. The defendant was present in court with counsel, Mr. Gerald Bublitz.

The Court convened at 8:58 a.m., with each of counsel being present, and outside the presence of the prospective jury panel.

Based upon the Court's inquiry, each of counsel indicated they were ready to proceed.

The jury was returned to the courtroom by the Bailiff and properly seated at 9:01 a.m.

Christopher Cottrell was recalled to the stand and reminded by the Court that

he was still under oath.

Defendant's exhibit C was marked by the clerk and identified by the witness as a police report. Mr. Bublitz moved for admission of Defendant's Exhibit C, there being no objection, it was admitted into evidence.

Johnny Harper was recalled to the stand and reminded by the Court that he was still under oath.

Mr. Bublitz requested a recess.

The Court recessed at 9:06 a.m.

The Court reconvened at 9:14 a.m.

Ms. Hamby advised the Court that the State had one rebuttal witness.

Mr. Bublitz advised the Court that the defendant would rest upon the return of the jury.

The Court reconvened at 9:24 a.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Mr. Bublitz advised the Court that the defendant rested.

Christopher Cottrell was called as the State's rebuttal witness and reminded he was still under oath. The witness was, direct examined, cross examined and redirect examined.

State's exhibit #16 previously marked, was identified by the witness as a photo of the defendant's trunk with a duffle bag in it. Further, State's exhibit #16 was not offered nor admitted into evidence.

The Court noted the State and Defendant rested and the evidence was complete. Further, the Court noted that each of counsel needed additional time to review final jury instructions.

The Court recessed at 9:47 a.m., with admonishment to the jury.

The Court noted that jury instruction were completed and inquired as to whether each of counsel had additional concerns in regard to that matter.

Ms. Hamby advised the Court that the State accepted the final jury instructions as previously provided.

Mr. Bublitz requested additional time to review the proposed jury instructions.

The Court recessed at 9:48 a.m.

The Court reconvened at 10:07 a.m., with each of counsel and the defendant being present, and outside the presence of the prospective jury panel.

The Court inquired of each of counsel in regard to concerns with final jury instructions.

Each of counsel advised the Court they accepted the final jury instructions as previously presented.

The bailiff returned the jury to the courtroom at 10:09 a.m.

The Court read Final Jury Instructions to the jury.

Ms. Hamby presented closing argument on behalf of the State.

Mr. Bublitz presented closing argument on behalf of the defendant.

Ms. Hamby presented final closing argument on behalf of the State.

The clerk administered the Oath to the Bailiff and the jury retired to deliberate its' verdict at 10:35 a.m.

Upon direction of the Court, the clerk randomly drew juror #298 to be the alternate juror in this matter. Upon stipulation of the parties, the Court advised the alternate juror he would be excused at this time subject to recall. The Court further advised juror #298 the Bailiff would contact him once the case was concluded, but in the interim to follow the Court's earlier admonishment not to discuss the case or form any opinions.

The Court recessed at 10:38 a.m. to await the verdict of the jury.

The Court reconvened at 1:17 p.m. with each of counsel and the defendant being present. The jury panel was present and properly seated in the charge of the Bailiff.

In answer to the Court's inquiry, the presiding juror indicated a verdict had been reached. The following verdict was delivered to the Court by the Bailiff and under direction of the Court, was read by the Court:

TITLE OF COURT AND CAUSE	VERDICT FORM
Case No. CR-2015-0024285-C	

We, the Jury, in the above-entitled case unanimously find that the defendant is (select only one of the following):

Guilty of Trafficking in Marijuana by Possession of or Bringing into	
This State at Least Five Pounds of Marijuana	_____ X _____
Not Guilty	_____

Dated this 26th day of August, 2016.

Presiding Juror
Juror # 300

In answer to the Court's inquiry, each of the jurors indicated this was their unanimous verdict.

Upon the instruction of the Court, the clerk polled the jury and inquired as to whether this was their true and correct verdict and the jurors unanimously answered "Yes".

The Court ordered the Verdict be filed with the Court.


The Court thanked the jury for their service and excused them at 1:21 p.m.

Based upon the Verdict finding the defendant guilty of the offense of Trafficking in Marijuana, the Court ordered the preparation of a Presentence Investigation Report as well as a Drug Evaluation and set this matter for sentencing the 17th day of October, 2016 at 2:30 p.m. before Judge Thomas J. Ryan.

In answer to the Court's inquiry, Mr. Bublitz stated the defendant would waive his Fifth and Sixth Amendment rights in regard to the Presentence Investigation and any evaluations required.

The defendant shall be released on the bond previously posted on the continued provision that he report to Pretrial Services.

The Court adjourned at 1:23 p.m.


Deputy Clerk

Case Title

DAVID JOHN HAZ PAR

Date: 8/25/2016

PH ()
CT ()
JT (X)
OSC ()

Plaintiff's Attorney

MADISON HANDY
PATRICK DENTON

Defendant's Attorney

GERALD BUBLITZ

EXHIBIT INFORMATION
DEFENSE

No.	Description	Offered	Admitted	Denied	With-drawn	Orig. Sub.
A	Ziploc Bags - Spau bags (never offered or admitted)					
B	Copy of receipts on one page			X		
C	Pole officer Report	X	X			

The Court ordered all exhibits returned to the custody of the State, and the clerk delivered the exhibits to: _____ on _____ Exhibits received by: _____ Date: _____

Deputy Clerk

AUG 24 2016

CANYON COUNTY CLERK
K HAWKES, DEPUTY

mh

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID JOHN HARPER,

Defendant.

CASE NO. CR2015-24285

WITNESS LIST – EXHIBIT LIST

COMES NOW, DOUG ROBERTSON, Deputy Prosecuting Attorney, Canyon County,
State of Idaho and submits the following list of witnesses and exhibits the State intends to use at
jury trial.

WITNESS LIST

Officer Christopher Cottrell

Officer Kerry K. Hogan

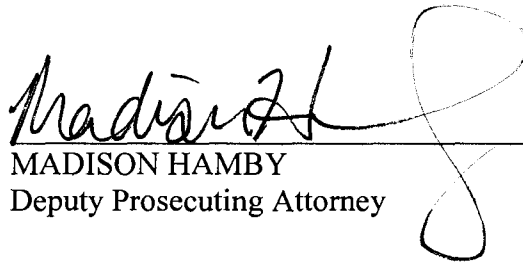
EXHIBIT LIST

No.	Description	Offered	Admitted	Denied	With- drawn	Orig. Sub
1.	Video	X	X			
* 2.	Marijuana	X	X			
3.	Lab Report	X	X			
4.	Photo	X	X			

5	Photo	X	X			
6	Photo	X	X			
7	Photo	X	X			
8	Photo	X	X			
9	Photo	X	X			
10	Photo	X	X			
11	Photo	X	X			
12	Photo	X	X			
13	Photo	X	X			
14	Photo					
15	Photo					
16	Photo (Viewed but never offered nor admitted)					
17	Photo	X	X			
18	Boxes and Gift Wrapping	X	X			
19	Marijuana Packaging	X	X			
20	Walmart Receipt	X	X			
21	Google Results					

*
*

DATED this 25th day of August, 2016.


 MADISON HAMBY
 Deputy Prosecuting Attorney

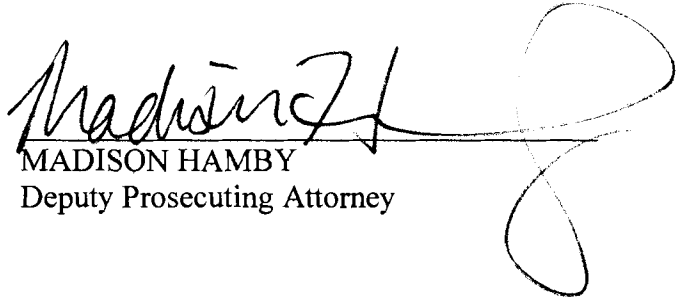
* St #2, #18, & #19
 returned to Chris J. Cottrell / Chris J. Cottrell
 on 8-26-16 8-26-16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 25th day of August, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Gerald R. Bublitz
604 N. 16th Street,
Boise, ID 83702-4023
FAX: (208) 343-6104

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



MADISON HAMBY
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
AUG 26 2016
CANYON COUNTY CLERK
K HAWKES, DEPUTY

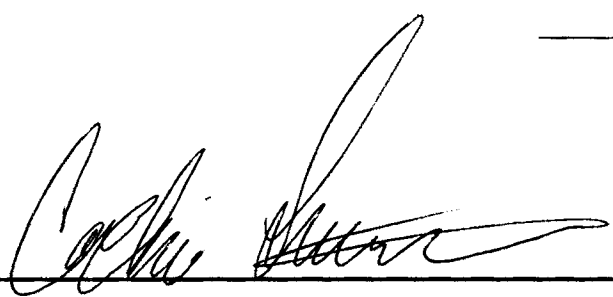
)	
)	
THE STATE OF IDAHO,)	
)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR 2015-0024285C
)	
DAVID JOHN HARPER,	)	Verdict (One Page)
D.O.B. 11/19/1958)	
)	
Defendant.)	
)	
)	
)	

We, the jury in the above-entitled case unanimously find that the defendant is (select only one of the following):

Guilty of Trafficking in Marijuana by Possession of or
Bringing into This State at Least Five Pounds of Marijuana

Not Guilty

Dated August 26, 2016



JURY MODERATOR # 300

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to: _____
Assigned: _____

BY K. Hawkes, DEPUTY

**Third Judicial District Court, State of Idaho
In and For the County of Canyon
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS**

STATE OF IDAHO
Plaintiff,
vs.

David John Harper
85797 Lorane Hwy
Eugene, OR 97405

Case No: CR-2015-0024285-C

**ORDER FOR PRE – SENTENCE INVESTIGATION
REPORT**

CHARGE(s):

137-2732B(a)(1) Drug-Trafficking in Marijuana

ROA : PSIO1- Order for Presentence Investigation Report

On this Friday, August 26, 2016, a **Pre-sentence Investigation Report** was ordered by the Honorable G.D. Carey to be completed for Court appearance on:

Sentencing Monday, October 17, 2016 at 02:30 PM at the above stated courthouse before the Honorable Thomas J. Ryan

- Behavioral Health Assessments waived by the Court
- Waiver under IC 19-2524 2 (e) allowing assessment and treatment services by the same person or facility

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

Other Drug Evaluation

PLEA AGREEMENT: State recommendation

WHJ/JOC Probation PD Reimb Fine ACJ Restitution Other: _____

DEFENSE COUNSEL: Gerald Bublitz

PROSECUTOR: Canyon County Prosecutor Douglas Robertson

THE DEFENDANT IS IN CUSTODY: NO YES If yes where: _____

DO YOU NEED AN INTERPRETER? NO YES if yes, what is the language? _____

Date: the 26th day of August, 2016

Signature: _____


District Judge

Kara Hawkes

From: Microsoft Outlook
To: 19-2524@dhw.idaho.gov; Mr. Bacon
Sent: Friday, August 26, 2016 02:32 PM
Subject: Relayed: PSI for Harper, David CR-2016-24285-C

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

19-2524@dhw.idaho.gov (19-2524@dhw.idaho.gov) <mailto:19-2524@dhw.idaho.gov>

Mr. Bacon (rabacon@idoc.idaho.gov) <mailto:rabacon@idoc.idaho.gov>

Subject: PSI for Harper, David CR-2016-24285-C

FILED
A.M. 4:00 P.M.

SEP 29 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	STIPULATION TO VACATE AND
vs.	)	RESET SENTENCING HEARING
)	
DAVID HARPER,)	
)	
Defendant.)	
)	


COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald R. Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Sentencing Hearing currently set for the 17th day of October, 2016 at 2:30pm. The hearing shall be reset to the 28th day of November, 2016 at 2:30pm before the Honorable Judge Ryan.

The reason for said stipulation is:

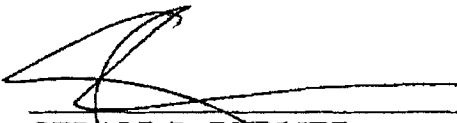
1. Defense counsel is in Ada County at the time currently scheduled.
2. The Defendant is trying to close his business.

ORIGINAL

STIPULATED this 21 day of September, 2016.


PROSECUTING ATTORNEY
Attorney for Plaintiff

STIPULATED this 28th day of September, 2016.


GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of September, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Legal Assistant

FILED
11:22 A.M. P.M.

OCT 04 2016

CANYON COUNTY CLERK
S ALSUP, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	SENTENCING HEARING
)	
DAVID J. HARPER,)	
)	
Defendant.)	
)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Sentencing Hearing scheduled for the 17th day of October, 2016 is hereby vacated and reset. The Sentencing Hearing will be reset to the 28th day of November, 2016 at 3:30 before the Honorable Judge Ryan.

SO ORDERED this 3rd day of October, 2016.



HONORABLE JUDGE RYAN

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

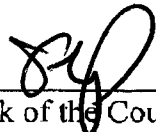
I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 4 day of Oct, 2016, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Clerk of the Court

GERALD R. BUBLITZ – ISB# 7562
 JESSICA B. BUBLITZ – ISB# 6649
 JOSHUA D. WETZEL – ISB# 9688
 BUBLITZ LAW, P.C.
 604 NORTH 16TH STREET
 BOISE, IDAHO 83702
 Telephone: (208) 344-5500
 Facsimile: (208) 343-6104

FILED
 A.M. 2:44 P.M.
 NOV 21 2016
 CANYON COUNTY CLERK
 E BULLON, DEPUTY

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	STIPULATION TO VACATE AND
vs.	)	RESET SENTENCING HEARING
)	
DAVID HARPER,)	
)	
Defendant.)	
)	

COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald R. Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Sentencing Hearing currently set for the 28th day of November, 2016 at 3:30pm. The hearing shall be reset to the 12th day of December, 2016 at 2:00pm before the Honorable Judge Ryan.

The reason for said stipulation is:

1. The Defendant is trying to close his business.

ORIGINAL

STIPULATED this ___ day of November, 2016.



PROSECUTING ATTORNEY
Attorney for Plaintiff

STIPULATED this 21st day of November, 2016.

Gerald R. Bublitz

GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of November, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Legal Assistant

GERALD R. BUBLITZ – ISB# 7562
 JESSICA B. BUBLITZ – ISB# 6649
 JOSHUA D. WETZEL – ISB# 9688
 BUBLITZ LAW, P.C.
 604 NORTH 16TH STREET
 BOISE, IDAHO 83702
 Telephone: (208) 344-5500
 Facsimile: (208) 343-6104

FILED
 A.M. 7:40 P.M.

NOV 22 2016

CANYON COUNTY CLERK
 SALSUP, DEPUTY

Attorneys for Defendant

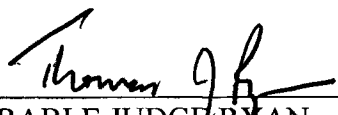
**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	SENTENCING HEARING
)	
DAVID J. HARPER,)	
)	
Defendant.)	
_____)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Sentencing Hearing scheduled for the 28th day of November, 2016 is hereby vacated and reset. The Sentencing Hearing will be reset to the 12th day of December, 2016 at 2:00 before the Honorable Judge Ryan.

SO ORDERED this 22nd day of November, 2016.



 HONORABLE JUDGE RYAN

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

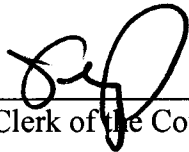
I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 22 day of Nov, 2016, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Clerk of the Court

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
CONTINUED HEARING

STATE OF IDAHO

Plaintiff

-vs-

DAVID JOHN HARPER,

Defendant.

Case No. CR2015-24285-C

Date: December 12, 2016 / 2:00 p.m.

Judge: Thomas J. Ryan

Reported By: Kim Saunders

Recording: DCRT4 (203-208)

Hearing: Sentencing

True Name
Corrected Name:

APPEARANCES:

Defendant

Prosecutor - Madison Hamby

Defendant's Attorney - Gerald Bublitz

Interpreter -

Other -

PROCEEDINGS: This matter shall be

continued to the 9th day of January, 2017 at 2:00 p.m. before Judge Ryan.

per stipulation of counsel at the request of State Defendant/Counsel

to allow defendant to spend Christmas with a son who has leave from the military for the holidays.

BAIL: The Defendant was continued

Released on written citation promise to appear

Released on own recognizance (O.R.)

Released to pre-trial release officer.

Released on bond previously posted.

Remanded to the custody of the sheriff.

Bail set at \$

Defendant to Report to Pretrial Release Services upon posting bond.

OTHER: _____

D. J. Deputy Clerk

GERALD R. BUBLITZ – ISB# 7562
 JESSICA B. BUBLITZ – ISB# 6649
 JOSHUA D. WETZEL – ISB# 9688
 BUBLITZ LAW, P.C.
 604 NORTH 16TH STREET
 BOISE, IDAHO 83702
 Telephone: (208) 344-5500
 Facsimile: (208) 343-6104

FILED
 A.M. P.M.

JAN 09 2017

CANYON COUNTY CLERK
 M. CERROS, DEPUTY

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	STIPULATION TO VACATE AND
vs.	)	RESET SENTENCING HEARING
)	
DAVID HARPER,)	
)	
Defendant.)	
)	

COMES NOW, the above-named Plaintiff by and through the Prosecuting Attorney, and the above-named Defendant by and through his attorney Gerald R. Bublitz of the firm BUBLITZ LAW, P.C., and hereby stipulate to vacate and reset the Sentencing Hearing currently set for the 9th day of January, 2017 at 2:00pm. The hearing shall be reset to the 1st day of February, 2017, at 1:30pm before the Honorable Judge Ryan.

The reason for said stipulation is:

1. The Defendant is snowed in. Parts of the interstate between Oregon and Idaho have been closed due to weather.

ORIGINAL

STIPULATED this 9TH day of January, 2017

[Signature]

for PROSECUTING ATTORNEY
D.R. Attorney for Plaintiff

STIPULATED this 9th day of January, 2017

Gerald R. Bublitz

GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2017, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

[Signature]

Legal Assistant

FILED
A.M. *10:21* P.M.

JAN 09 2017

CANYON COUNTY CLERK
E BULLON, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	CASE NO. CR-2015-24285-C
)	
Plaintiff,)	
	)	ORDER TO VACATE AND RESET THE
vs.	)	SENTENCING HEARING
)	
DAVID J. HARPER,)	
)	
Defendant.)	
_____)	

Upon stipulation of counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the Sentencing Hearing scheduled for the 9th day of January, 2017 is hereby vacated and reset. The Sentencing Hearing will be reset to the 1st day of February, 2017 at 1:30pm before the Honorable Judge Ryan.

SO ORDERED this 9th day of Jan, 2017.

Thomas J Ryan

HONORABLE JUDGE RYAN

ORIGINAL

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing instrument was served on the following this the 9 day of January, 2017, by the following method:

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Gerald R. Bublitz
Bublitz Law, PC
604 North 16th St.
Boise, ID 83702
Fax: (208) 343-6104

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



Clerk of the Court

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **THOMAS J. RYAN** DATE: **FEBRUARY 1, 2017**

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR2015-24285-C
)	
vs.	)	TIME: 1:30 P.M.
)	
DAVID JOHN HARPER,	)	DCRT4 (131-149)
)	
Defendant.	)	REPORTED BY: Kim Saunders

This having been the time heretofore set for **sentencing** in the above-entitled matters, the State was represented by Mr. Doug Robertson, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Mr. Gerald Bublitz.

The Court called the case and determined there was no legal reason not to proceed with sentencing. It was further determined all parties had received / reviewed the Presentence Investigation Report. No factual corrections were made to the report.

In answer to the Court's inquiry, Mr. Robertson made statements about the defendant and the case and recommended a sentence of three (3) years fixed followed by two (2) years indeterminate, imposed.

Mr. Bublitz made statements about the defendant and the case and recommended a sentence of three (3) years fixed with no indeterminate portion and a recommendation for the work center.

The defendant made statements to the Court on his own behalf.

The Court made statements to the defendant and found him to be guilty of the offense of Trafficking in Marijuana, a felony, and sentenced him as set forth in the Judgment and Commitment.

Mr. Robertson presented an order of restitution for lab expenses to the Court.

In answer to the Court's inquiry, neither counsel had anything further for the Court to address.

The defendant had no questions of the Court.

The Court provided the defendant with a copy of the notice of his rights upon sentencing, which he reviewed, signed, and returned to the Court.

The defendant was remanded into the custody of the Canyon County Sheriff pending transfer to the Idaho Department of Correction.



Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 2.1.17 AT 146 P.M.
CLERK OF THE DISTRICT COURT
BY D. J., Deputy

THE STATE OF IDAHO, or

Plaintiff,

-vs-

David John Harper
Defendant.

Case No. CR15-24285C

COMMITMENT

Charge: trafficking in
marijuana

IT IS HEREBY ORDERED that the above-named Defendant, having been found guilty as charged, be committed to the custody of the Sheriff of Canyon County, Idaho and that this Order of Commitment shall serve as authority for continued custody.

IT IS FURTHER ORDERED that the above-named Defendant shall serve:

- _____ day(s). _____ month(s). _____ year(s).
- as previously Ordered on the Judgment dated _____.
- credit for _____ day(s) served.
- determinate 3 yrs indeterminate 0 yrs retained jurisdiction.
- work search/work-out privileges granted from _____ to _____.

- upon written verification. as authorized by the Sheriff of Canyon County.

Sheriff's Work Detail: _____ days in lieu of _____ days jail to be completed by _____.

If the Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff Inmate Labor Detail, then the Sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

Other: _____

IT IS FURTHER ORDERED that the above-named Defendant shall report to the Canyon County Sheriff on or before _____.

Dated: 2/1/17

Signed: Thomas J. H.
Judge

- Jail Defendant

COMMITMENT

3/02

FILED
10:50 A.M. P.M.

FEB 02 2017

CANYON COUNTY CLERK
M. CERROS, DEPUTY

dm

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID JOHN HARPER,

Defendant.

CASE NO. CR2015-24285

**LAB RESTITUTION ORDER AND
JUDGMENT**

Based upon the judgment and sentence in this case, and the expenses of the victim on this matter, and pursuant to **Idaho Code**, Section 37-2732.

IT IS HEREBY ORDERED THAT THE DEFENDANT, DAVID JOHN HARPER, pay **ONE HUNDRED DOLLARS (\$100)** in restitution and that such restitution be paid to the Court to be distributed by the Court to the following victim(s):

Idaho State Police
Forensic Services
700 S. Stratford Dr., Suite #125
Meridian, ID 83642-6202

<u>Date</u>	<u>Lab Expense</u>
1.12.2016	\$100

LAB RESTITUTION ORDER AND JUDGMENT

There are no known Co-Defendants.

It is **FURTHER ORDERED** that pursuant to I.C. Section 19-5305, forty-two (42) days after entry of this order, or at the conclusion of a hearing to reconsider this order, whichever occurs later, this order may be recorded as judgment and the victim(s) may execute as provided by law for civil judgments.

DATED this 1st day of February, 2017.

Thomas J. Ky
Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order for Restitution was forwarded to the following persons this 2 day of Feb, 2017.

Private Counsel:
Gerald R. Bublitz
604 N. 16th Street
Boise, ID 83702-4023

Mailed X

Prosecutor:

Court Basket X

Felony Parole & Probation:


Court Basket X

Idaho State Police
700 S. Stratford Drive, Ste 125
Meridian, ID 83642

Mailed X

FEB 02 2017

Dated: _____
CHRIS YAMAMOTO
Clerk of the District Court

By: 
Deputy Clerk



IDAHO STATE POLICE FORENSIC SERVICES

700 South Stratford Drive, Ste 125

Meridian, ID 83642-6202

Phone: (208) 884-7170

Fax: (208) 884-7197

FORENSIC CONTROLLED SUBSTANCE ANALYSIS REPORT

Case Agency(s): ISP-PATROL D3	Agency Case No(s): B15004081	Laboratory Case No.: M2015-4724
Date(s) of Offense: 12/17/2015	Investigating Officer(s): Christopher Cottrell	Report No.: 1
Date Evidence Accepted: 12/22/2015	Analyst: Kerry Hogan	
Case Name(s): Suspect - DAVID HARPER		

Lab Item #	Agency Exhibit	Description	Conclusions and Interpretations	Additional Information
1	150003219-1	7060.7g plant material	Marijuana or the resins thereof (CI)	

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.

Kerry Hogan / Forensic Scientist

Issue Date: **01/12/2016**

Idaho State Police Drug Restitution

As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant, **DAVID HARPER** in the amount of **\$100** in association with Laboratory Case No. **M2015-4724**. 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.

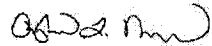
Test	Cost
Controlled Substance Analysis (1 sample(s) @ \$100 ea.)	\$100

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,



Rylene Nowlin
Meridian Laboratory Manager
Forensic Services

Kathy

FEB 06 2017

CANYON COUNTY CLERK
A ROEHRIG, DEPUTY CLERK

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	) CASE NO. CR-2015-24285-C
)
Plaintiff,)
)
vs.	) NOTICE OF APPEAL
)
DAVID J. HARPER,)
)
Defendant.)
)

TO: THE ABOVE NAMED RESPONDENT, BRYAN TAYLOR, CANYON COUNTY PROSECUTOR AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the final Decision and Order entered in the above-entitled action on the 23rd day of June, 2016, the Honorable T. Ryan, District Judge presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).
3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:
 - (a) Denial of the Defendant's Motion to Suppress
4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

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

- (a) Motion Hearing on the 23rd day of May, 2016
- (b) Motion Hearing on the 13th day of June, 2016

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

- (a) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the Motion to Suppress filed or lodged, by the state, appellant or the court;
- (b) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the Court Reporter,;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That Canyon County will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 6th day of February, 2017:

BUBLITZ LAW, P.C.


GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2017, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, Id 83720-0010
Fax: (208) 854-8074

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Court Reporter/Appeals
Via:Email
kwaldemer@canyonco.org

- Hand Delivery
- U.S. Mail
- Overnight Courier
- EMail



Amy McKenzie
Legal Assistant

FEB 07 2017

CANYON COUNTY CLERK
D TORGERSEN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID JOHN HARPER)
 SS# [REDACTED])
 D.O. [REDACTED])
)
 Defendant.)
 _____)

JUDGMENT AND COMMITMENT
CASE NO. CR2015-24285-C

On this 1st day of February, 2017, personally appeared Doug Robertson, Deputy Prosecuting Attorney for the County of Canyon, State of Idaho, and the defendant, David John Harper, and the defendant's attorney, Gerald Publitz.

IT IS ADJUDGED that defendant has been convicted upon the defendant's plea of guilty to the offense of **Trafficking in Marijuana**, a felony, as charged in the Information, a violation of Idaho Code Section 37-2732B(a)(1), being committed on or about the 17th day of December, 2015; and the Court having asked the defendant whether there was any legal cause to show why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS HEREBY FURTHER ADJUDGED that the defendant be sentenced to the custody of the Idaho State Board of Correction for a minimum period of confinement of three (3) years and a subsequent indeterminate period of confinement not to exceed zero (0) years for a total unified sentence of three (3) years.

IT IS FURTHER ORDERED that the defendant be given credit for three (3) days of incarceration prior to the entry of judgment for this offense, pursuant to Idaho Code Section 18-309.

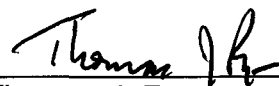
IT IS FURTHER ORDERED that the defendant shall pay a fine in the amount of \$10,000.00 and restitution pursuant to the restitution order.

IT IS FURTHER ORDERED that the defendant shall submit a DNA sample and right thumbprint impression to the Idaho State Police through its designated agent, the Idaho Department of Correction, pursuant to I.C. §19-5506. Such sample must be provided within 10 calendar days of this order; failure to provide said sample within the 10 day period is a felony offense.

IT IS ADJUDGED that the defendant be committed to the custody of the Sheriff of Canyon County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary or other facility within the State designated by the State Board of Correction.

IT IS ORDERED that the clerk deliver a copy of this Judgment and Commitment to the Director of the Idaho State Board of Correction or other qualified officer and that the copy serve as the commitment of the defendant.

DATED this 3rd day of February, 2017.



Thomas J. Ryan
District Judge

FEB 14 2017

CANYON COUNTY CLERK
M. NYE, DEPUTY

GERALD R. BUBLITZ – ISB# 7562
JESSICA B. BUBLITZ – ISB# 6649
JOSHUA D. WETZEL – ISB# 9688
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

DAVID J. HARPER,

Defendant-Respondent.

) **CASE NO. CR-2015-24285-C**
)
)
) **MOTION TO APPOINT STATE**
) **APPELLANT PUBLIC DEFENDER**
)
)
)
)

COMES NOW, GERALD R. BUBLITZ, of the firm Bublitz Law P.C., attorney for the above-named Defendant, and moves the Court for an Order Appointing the State Appellant Public Defenders Office.

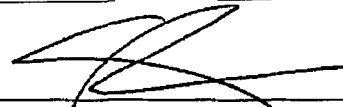
THIS MOTION is based upon the grounds and for the reasons as follows:

1. The Appeal process is not a retained service provided by our office and Defendant is not financially able to hire an attorney to represent him in the Appeal. Defendant is currently in custody at the Idaho State Correctional Institution. Counsel for the Defendant respectfully request that a State Appellant Public Defender be appointed for the above

named Defendant.

DATED this 14th day of February, 2017.

BUBLITZ LAW, P.C.



GERALD R. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2017, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, Id 83720-0010
Fax: (208) 854-8074

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Clerk
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-6616

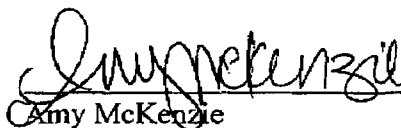
- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Prosecutor
1115 Albany
Caldwell, Idaho 83605
Fax: (208) 454-7474

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Canyon County Court Reporter/Appeals
Via:Email
kwaldemer@canyonco.org

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission


Amy McKenzie

FILED
9:44 A.M. FEB 17 2017 P.M.

FEB 17 2017

CANYON COUNTY CLERK
S ALSUP, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,
Plaintiff,
-vs-
DAVID JOHN HARPER,
Defendant.

CASE NO. CR 2015-24285*C

ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER
IN DIRECT APPEAL

TO: IDAHO STATE APPELLATE PUBLIC DEFENDER

The above named Defendant was convicted of **Trafficking in Marijuana** on the 1ST day of February, 2017, and sentenced to the custody of the Idaho State Board of Correction for a minimum period of confinement of three (3) years, and a subsequent indeterminate period of confinement of zero (0) years; for a total unified term of three (3) years.

Counsel for the Defendant filed a Notice of Appeal on February 6, 2017, and Motion for Appointment of Counsel on February 14, 2017.

The Defendant, having requested the assistance of counsel in pursuing a direct appeal from the Judgment and Commitment and Order of Retained Jurisdiction, and the Court being

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER IN DIRECT APPEAL

satisfied that the said Defendant is an indigent person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code § 19-870 and that the appeal is from a judgment or order enumerated in Idaho Code § 19-870 (1); and

GOOD CAUSE APPEARING,

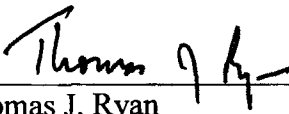
IT IS HEREBY ORDERED and this does ORDER that the State Appellate Public Defender is appointed to represent the above named Defendant on the appeal on the judgment and conviction entered in this case.

IT IS FURTHER ORDERED, and this does ORDER, that trial defense counsel shall remain as counsel as record for all post-trial motions in this case including motions pursuant to I.C.R. 35.

The State Appellate Public Defender is provided the following information concerning this case.

1. The Defendant's trial defense counsel is: Gerald Bublitz.
2. The Idaho Department of Correction lists the Defendant's current address as: I.S.C.I., Unit 15, IDOC No. 121161, P.O. Box 14, Boise, Idaho, 83707.

DATED: 2/15/17



Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was forwarded by me to the following persons this 17 day of February, 2017.

Bryan F. Taylor
Canyon County Prosecuting Attorney
Canyon County Courthouse
Caldwell, Idaho 83605


Gerald R. Bublitz
BUBLITZ LAW, PC
604 N 16th St
Boise, ID 83702

State Appellate Public Defender
PO Box 2816
Boise, Idaho 83701

Kathy Waldemer
Appellate Clerk
Courthouse
Caldwell, ID 83605

David John Harper
IDOC No. 121161
I.S.C.I., Unit 15
P.O. Box 14
Boise, ID 83707

Chris Yamamoto, Clerk

By  _____
Deputy Clerk

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985

FILED
A.M. *23* P.M.
MAR 16 2017
CANYON COUNTY CLERK
E BULLON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CANYON COUNTY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	CASE NO. CR 2015-24285
)	
v.	)	S.C. DOCKET NO. 44819
)	
DAVID JOHN HARPER,	)	AMENDED
	)	NOTICE OF APPEAL
Defendant-Appellant.)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO AND THE PARTY'S ATTORNEYS, BRYAN TAYLOR, CANYON COUNTY PROSECUTOR 1115 ALBANY STREET, CALDWELL, ID 83605, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above named respondent to the Idaho Supreme Court from the ~~final decision and order~~ Judgment and Commitment entered in the above entitled action on the ~~23rd~~ 7th day of ~~June~~ February, ~~2016~~ 2017, the Honorable Thomas J. Ryan, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rules (I.A.R.) 11(c)(1-9).

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

- (a) Denial of the Defendant's Motion to Suppress.
- (b) Was there sufficient evidence to convict Appellant?

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

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

- (a) Motion to Suppress Hearing held June 13, 2016 (Court Reporter: Kim Saunders, estimation of less than 100 pages is listed on the Register of Actions);
- (b) Motion Hearing on the 23rd day of May, 2016;
- (c) Jury Trial held on August 25-16, 2016, to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter(s): Leda Waddle

and Kathy Klemetson, estimation of more than 200 pages is listed on the Register of Actions); and

(d) Sentencing Hearing held on February 1, 2017, (Court Reporter: Kim Saunders, estimation of less than 100 pages is listed on the Register of Actions).

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

- (a) Affidavit of Probable Cause filed December 18, 2015;
- (b) Waiver of Extradition filed December 21, 2015;
- (c) Motion to Suppress filed March 21, 2016;
- (d) Memorandum in Support of Motion to Suppress filed May 9, 2016;
- (e) Brief in Support of Objection to Motion to Suppress Evidence filed May 17, 2017;
- (f) Disclosure of Expert Witness Pursuant to I.C.R. 16(b)(7) and IRE 702, 703, and 705 filed May 26, 2016;
- (g) Notice of Defendant's Voluntary Waiver of Statutory Right to Speedy Jury Trial filed June 3, 2016;
- (h) Affidavit of David J. Harper filed June 6, 2016;
- (i) Memorandum, Decision and Order Upon Defendant's Motion to Suppress/DENIED filed June 23, 2016;

- (j) Transcript Filed (Preliminary Hearing 1-28-16) filed July 6, 2016;
 - (k) Disclosure of Expert Witness filed July 21, 2016;
 - (l) Defendant's Witness List filed August 24, 2016; and
 - (m) Any exhibits, including but not limited to the PSI, letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing. Except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but maybe sought later by motion to the Idaho Supreme Court.
7. I certify:
- (a) That a copy of this Notice of Appeal has been served on the court reporter(s), Kim Saunders, Kathy Klemetson and Leda Waddle;
 - (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e) 27(f));
 - (c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§31-3220, 31-3220A, I.A.R. 23(a)(8));
 - (d) That arrangements have been made with Canyon County who will be responsible for paying for the reporter's transcript, as the client is indigent, (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e h)); and

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

DATED this 16th day of March, 2017.



ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 16th day of March, 2017, caused a true and correct of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

GERALD BUBLITZ
BUBLITZ LAW PC
604 NORTH 16TH STREET
BOISE ID 83702

KATHY KLEMETSON
COURT REPORTER
1115 ALBANY ST
CALDWELL ID 83605

KIM SAUNDERS
COURT REPORTER
1115 ALBANY ST
CALDWELL ID 83605

LEDA WADDLE
COURT REPORTER
1115 ALBANY ST
CALDWELL ID 83605

BRYAN TAYLOR
CANYON COUNTY PROSECUTOR
1115 ALBANY STREET
CALDWELL ID 83605

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL - CRIMINAL DIVISION
Hand deliver to Attorney General's mailbox at Supreme Court



MARY ANN LARA
Administrative Assistant

ERL/mal

AMENDED NOTICE OF APPEAL – PAGE 6

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
)	
Plaintiff-)	
Respondent,	)	Case No. CR-15-24285*C
)	
-vs-)	
	)	CERTIFICATE OF EXHIBITS
DAVID JOHN HARPER,)	
)	
Defendant-)	
Appellant.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify the following exhibits were used at the Preliminary Hearing:

State's Exhibits:

1	Lab Report	Admitted	Sent
----------	-------------------	-----------------	-------------

The following exhibits were used at the Motion to Suppress Hearing:

Defendant's Exhibits:

A	Video of Stop	Admitted	Sent
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The following exhibits were used at the Jury Trial:

State's Exhibit:

1	Video	Admitted	Sent
2	Marijuana	Admitted	Retained
3	Lab Report	Admitted	Sent
4 - 13	Photographs	Admitted	Sent

CERTIFICATE OF EXHIBITS

18	Boxes & Gift Wrap	Admitted	Retained
19	Marijuana Packaging	Admitted	Retained
20	Walmart Receipt	Admitted	Retained

The following are being sent as confidential exhibits:

Presentence Investigation Report

Addendum to Presentence Investigation Report

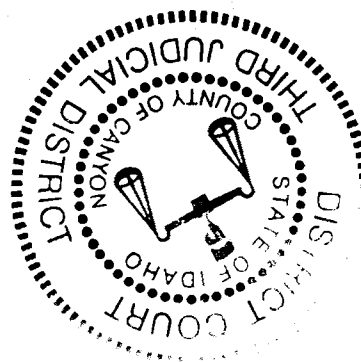
The following is being sent as an exhibit as requested in the Notice of Appeal:

Transcript Preliminary Hearing, held 1-28-16

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 27th day of April, 2017.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *K. Walker* Deputy



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)	
	)	Case No. CR-15-24285*C
Plaintiff-)	
Respondent,)	
)	
-vs-	)	CERTIFICATE OF CLERK
)	
DAVID JOHN HARPER,)	
)	
Defendant-)	
Appellant.)	

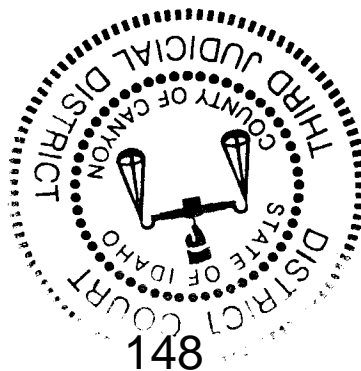
I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled case was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including all documents lodged or filed as requested in the Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 27th day of April, 2017.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *K Waldman* Deputy

CERTIFICATE OF CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,)
)
 Plaintiff-) Supreme Court No. 44819-2017
 Respondent,)
) CERTIFICATE OF SERVICE
 -vs-)
)
 DAVID JOHN HARPER,)
)
 Defendant-)
 Appellant.)

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcripts to the attorney of record to each party as follows:

Eric Fredericksen, State Appellate Public Defender's Office,
322 East Front Street, Suite 570, Boise, Idaho 83702

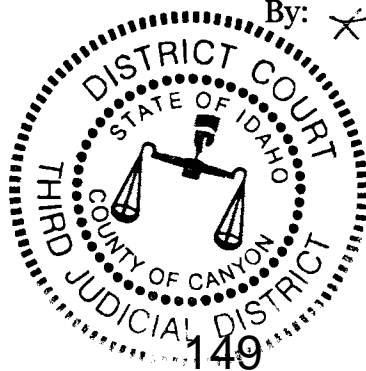
Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 27th day of April, 2017.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho
in and for the County of Canyon.

By: *K. Waldemer* Deputy

CERTIFICATE OF SERVICE



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

DOCKET NO. 44819

(
(STATE OF IDAHO,
(
(vs.
(
(DAVID J. HARPER.,
(

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on March 17, 2017, I lodged 0 & 3 transcripts of 39 pages in length, consisting of a Continuance/Motion to Suppress hearing on 5-23-16 and 6-13-16, in the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Kimberly R. Hofkins, RPR, CSR #703

3-17-17

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

DOCKET NO. 44819

(
(STATE OF IDAHO,
(
(vs.
(
(DAVID J. HARPER.,
(

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on April 17, 2017, I lodged 0 & 3 transcripts of 15 pages in length, consisting of a Sentencing hearing on 2-1-17 in the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Kimberly R. Hofkins, RPR, CSR #703

4-17-17

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

DOCKET NO. 44819-2017

(
(STATE OF IDAHO
(
(vs.
(
(DAVID JOHN HARPER
(_____

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on April 20, 2017, I lodged 0 & 3 transcripts of 57 pages in length, consisting of jury trial on August 26, 2016, for the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Katherine J. Klemetson, RPR, CSR #436

(Date)

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IN THE SUPREME COURT OF THE STATE OF IDAHO

-----	X	Docket No. 44819-2017
STATE OF IDAHO,)	
)	
PLAINTIFF/RESPONDENT,	)	<u>JURY TRIAL, Day 1</u>
vs.	)	<u>8-25-2016</u>
)	
DAVID JOHN HARPER,)	
)	
DEFENDANT/APPELLANT.)	
-----	X	

**Received from Leda M. Waddle,
Official Court Reporter, of the above-entitled
action and lodged with me April 20, 2017.**

CHRIS YAMAMOTO
Clerk of the District Court

CHRIS YAMAMOTO