

3-17-2017

State v. Vargas Clerk's Record Dckt. 44843

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TANYA ANDREA VARGAS,

Defendant-Appellant.

Supreme Court Case No. 44843

CLERK'S RECORD ON APPEAL

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

HONORABLE GERALD F. SCHROEDER

RANDALL S. BARNUM

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985

State of Idaho
vs.
Tanya Andrea Vargas

§
§
§
§
§

Location: Ada County District Court
Judicial Officer: Schroeder, Gerald F.
Filed on: 06/05/2015
Case Number History:
Police Reference Number: 509-968

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Criminal
Jurisdiction: Boise City Police Department					
1. Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle	149-1404 {M}	MIS	05/08/2015		
TCN: 1110221327					

Warrants

Arrest Warrant - Vargas, Tanya Andrea (Judicial Officer: Clerk, Magistrate Court)
10/05/2015 Returned Served
06/05/2015 Outstanding Bench Warrant/Det Order
Fine: \$300
Bond: \$0

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	CR-MD-2015-7985
Court	Ada County District Court
Date Assigned	04/15/2016
Judicial Officer	Schroeder, Gerald F.

PARTY INFORMATION

Lead Attorneys

State **State of Idaho**

Boise City Prosecutor- Generic
Retained

Defendant **Vargas, Tanya Andrea**

Barnum, Randall Scott
Retained
208-336-3600(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

06/05/2015	Initiating Document - Criminal Party: Defendant Vargas, Tanya Andrea <i>New Case Filed - Misdemeanor</i>
06/05/2015	Prosecutor Assigned Party: Defendant Vargas, Tanya Andrea <i>Prosecutor assigned Boise City Prosecutor- Generic</i>
06/05/2015	Criminal Complaint Party: Defendant Vargas, Tanya Andrea <i>Criminal Complaint</i>
06/05/2015	Warrant/Det Order Issued - Arrest Party: Defendant Vargas, Tanya Andrea <i>Warrant Issued - Arrest Bond amount: 5000.00 Defendant: Vargas, Tanya Andrea</i>
06/05/2015	Case Sealed Party: Defendant Vargas, Tanya Andrea

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985

	<i>Case Sealed</i>
06/05/2015	Status Changed Party: Defendant Vargas, Tanya Andrea <i>STATUS CHANGED: Inactive</i>
10/05/2015	Warrant/Det Order Returned - Served Party: Defendant Vargas, Tanya Andrea <i>Warrant Returned Defendant: Vargas, Tanya Andrea</i>
10/05/2015	Case Un-sealed Party: Defendant Vargas, Tanya Andrea <i>Case Un-sealed</i>
10/05/2015	Status Changed Party: Defendant Vargas, Tanya Andrea <i>STATUS CHANGED: Pending</i>
10/05/2015	Book into Jail on Party: Defendant Vargas, Tanya Andrea <i>Booked into Jail on:</i>
10/05/2015	Hearing Scheduled Party: Defendant Vargas, Tanya Andrea <i>Hearing Scheduled (Video Arraignment 10/05/2015 01:30 PM)</i>
10/05/2015	Arraignment Party: Defendant Vargas, Tanya Andrea <i>Hearing result for Video Arraignment scheduled on 10/05/2015 01:30 PM: Arraignment / First Appearance</i>
10/05/2015	Order Appointing Public Defender Party: Defendant Vargas, Tanya Andrea <i>Order Appointing Public Defender Ada County Public Defender</i>
10/05/2015	Change Assigned Judge: Administrative Party: Defendant Vargas, Tanya Andrea <i>Judge Change: Administrative</i>
10/05/2015	Hearing Scheduled Party: Defendant Vargas, Tanya Andrea <i>Hearing Scheduled (BC Pretrial Conference 11/20/2015 08:45 AM)</i>
10/05/2015	Hearing Scheduled Party: Defendant Vargas, Tanya Andrea <i>Hearing Scheduled (Jury Trial 12/22/2015 08:15 AM)</i>
10/05/2015	Bond Set Party: Defendant Vargas, Tanya Andrea <i>BOND SET: at 5000.00 - (149-1404 {M} Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle)</i>
10/05/2015	Notice of Hearing Party: Defendant Vargas, Tanya Andrea <i>Notice Of Hearing</i>
10/05/2015	Video Arraignment (1:30 PM) (Judicial Officer: Steckel, Daniel L.)
10/06/2015	Request for Discovery Party: Defendant Vargas, Tanya Andrea <i>Defendant's Request for Discovery</i>

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985

10/13/2015	Response to Request for Discovery Party: Defendant Vargas, Tanya Andrea <i>State/City Response to Discovery</i>
10/13/2015	Request for Discovery Party: Defendant Vargas, Tanya Andrea <i>State/City Request for Discovery</i>
10/19/2015	Substitution of Counsel Party: Defendant Vargas, Tanya Andrea <i>Substitution Of Conflict Counsel</i>
10/19/2015	Request for Discovery Party: Defendant Vargas, Tanya Andrea <i>Defendant's Request for Discovery</i>
11/20/2015	Hearing Held Party: Defendant Vargas, Tanya Andrea <i>Hearing result for BC Pretrial Conference scheduled on 11/20/2015 08:45 AM: Hearing Held</i>
11/20/2015	Trial Status Memo Party: Defendant Vargas, Tanya Andrea <i>Trial Status Memo</i>
11/20/2015	BC Pretrial Conference (8:45 AM) (Judicial Officer: Oths, Michael J.)
12/11/2015	Response to Request for Discovery Party: Defendant Vargas, Tanya Andrea <i>State/City Response to Discovery / Supplemental</i>
12/22/2015	Continued Party: Defendant Vargas, Tanya Andrea <i>Continued (Jury Trial 01/12/2016 08:15 AM)</i>
12/22/2015	Miscellaneous Party: Defendant Vargas, Tanya Andrea <i>Magistrate Minutes & Notice of Hearing</i>
01/12/2016	Continued Party: Defendant Vargas, Tanya Andrea <i>Continued (Jury Trial 02/24/2016 08:15 AM)</i>
01/12/2016	Miscellaneous Party: Defendant Vargas, Tanya Andrea <i>Magistrate Minutes & Notice of Hearing</i>
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03/10/2016	Notice Party: Defendant Vargas, Tanya Andrea

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985











Notice of Intent to Offer IRE 404(b)/IRE 406 Evidence

03/11/2016	Motion Party: Defendant Vargas, Tanya Andrea <i>Motion In Limine</i>
03/11/2016	Notice of Hearing Party: Defendant Vargas, Tanya Andrea <i>Notice Of Hearing</i>
03/11/2016	Notice Party: Defendant Vargas, Tanya Andrea <i>Notice Of Filing</i>
03/15/2016	Jury Trial Started Party: Defendant Vargas, Tanya Andrea <i>Hearing result for Jury Trial scheduled on 03/15/2016 08:15 AM: Jury Trial Started</i>
03/15/2016	Jury Instructions Filed Party: Defendant Vargas, Tanya Andrea <i>Jury Instructions Filed</i>
03/15/2016	Verdict form Party: Defendant Vargas, Tanya Andrea <i>Verdict Form</i>
03/15/2016	A Plea is entered for Charge:* Party: Defendant Vargas, Tanya Andrea <i>A Plea is entered for charge: - GT (I49-1404 {M} Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle)</i>
03/15/2016	Finding of Guilty Party: Defendant Vargas, Tanya Andrea <i>Finding of Guilty (I49-1404 {M} Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle)</i>
03/15/2016	Sentenced to Jail or Detention Party: Defendant Vargas, Tanya Andrea <i>Sentenced to Jail or Detention (I49-1404 {M} Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle) Confinement terms: Jail: 166 days. Credited time: 166 days.</i>
03/15/2016	Status Changed Party: Defendant Vargas, Tanya Andrea <i>STATUS CHANGED: closed pending clerk action</i>
03/15/2016	Jury Trial (8:15 AM) (Judicial Officer: Oths, Michael J.)
03/15/2016	Disposition 1. Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle Guilty TCN: 1110221327 :
03/15/2016	Plea 1. Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle Guilty TCN: 1110221327 :
03/15/2016	Sentence (Judicial Officer: Oths, Michael J.) 1. Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985

	Misdemeanor Sentence Confinement Type: Facility: Ada County Jail Term: 166 Days Effective Date: 03/15/2016 Credit Term: 166 Days
03/17/2016	Status Changed Party: Defendant Vargas, Tanya Andrea <i>STATUS CHANGED: closed</i>
04/15/2016	Notice of Appeal Party: Defendant Vargas, Tanya Andrea <i>NOTICE OF APPEAL</i>
04/15/2016	Appeal Filed in District Court Party: Defendant Vargas, Tanya Andrea <i>Appeal Filed In District Court</i>
04/15/2016	Case Appealed Party: Defendant Vargas, Tanya Andrea <i>Case Appealed:</i>
04/15/2016	Status Changed Party: Defendant Vargas, Tanya Andrea <i>STATUS CHANGED: Reopened</i>
04/15/2016	Change Assigned Judge: Administrative Party: Defendant Vargas, Tanya Andrea <i>Judge Change: Administrative</i>
04/19/2016	Notice Party: Defendant Vargas, Tanya Andrea <i>Notice of Preparation of Appeal Transcript</i>
04/20/2016	Order Party: Defendant Vargas, Tanya Andrea <i>Order Governing Procedure on Appeal</i>
05/10/2016	Notice Party: Defendant Vargas, Tanya Andrea <i>Notice Of Lodging Transcript On Appeal</i>
06/03/2016	Notice Party: Defendant Vargas, Tanya Andrea <i>Notice Of Filing Transcript on Appeal</i>
06/30/2016	Motion to Enlarge Party: Defendant Vargas, Tanya Andrea <i>Motion to Enlarge Time</i>
06/30/2016	Miscellaneous Party: Defendant Vargas, Tanya Andrea <i>Request for Additional Transcripts to be Included in Reporter's Transcript</i>
07/06/2016	Notice Party: Defendant Vargas, Tanya Andrea <i>Notice of Preparation of Appeal Transcript</i>
07/07/2016	Order

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CR-MD-2015-7985

	Party: Defendant Vargas, Tanya Andrea <i>Order Enlarging Time</i>
07/08/2016	Non-Opposition Party: Defendant Vargas, Tanya Andrea <i>Notice of No Objection</i>
07/08/2016	Non-Opposition Party: Defendant Vargas, Tanya Andrea <i>Notice of No Objection</i>
07/12/2016	Miscellaneous Party: Defendant Vargas, Tanya Andrea <i>Appeal Transcript Lodged</i>
09/09/2016	 Notice <i>of Transcripts on Appealed</i>
09/12/2016	 Brief Filed <i>Appellant's Brief</i>
10/04/2016	 Brief Filed <i>Respondent's Brief</i>
10/18/2016	 Brief Filed <i>Appellant's Reply Brief</i>
10/21/2016	 Notice of Hearing <i>Oral Argument</i>
11/17/2016	 Oral Argument (1:30 PM) (Judicial Officer: Schroeder, Gerald F.)
11/17/2016	 Court Minutes
01/12/2017	 Decision or Opinion <i>on Appeal</i>
02/15/2017	 Notice of Appeal
02/15/2017	Appeal Filed in Supreme Court
03/17/2017	 Notice <i>of Transcript Lodged x 2 - Supreme Court No. 44757</i>

JUN 05 2015

CHRISTOPHER D. RICH, Clerk
By COURTNEY PACKER
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

Jennifer Pitino
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 6595

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

THE STATE OF IDAHO,

Plaintiff,

v.

TANYA ANDREA VARGAS,

Defendant.

Case No. MD15-7986

COMPLAINT

PERSONALLY APPEARED Before me this 4 day of June,
2015, Sarah Hallock Jayne, Deputy City Attorney, in the city of Boise, county of
Ada, state of Idaho, who, being first duly sworn, complains and says that Tanya Andrea Vargas,
on or about the 8th day of May, 2015 in the city of Boise, county of Ada, and state of Idaho, did
commit the crime(s) of: Count I: ELUDING, a misdemeanor, which is in violation of Idaho
Code § 49-1404; as follows, to-wit:

COMPLAINT - 1

ad Bmp
DR # 2015-509968

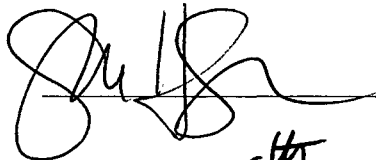
000008

COUNT I

That the Defendant, Tanya Andrea Vargas, on or about the 8th day of May, 2015, in the city of Boise, county of Ada, state of Idaho, did operate a motor vehicle, to-wit: 2002 Mazda Protege, at or about Curtis and Cassia, and willfully fled or attempted to elude, a pursuing police vehicle after being given a visual or audible signal to stop, which is in violation of Idaho Code § 49-1404(1).

All of which is contrary to the form, force, and effect of the statute, and against the peace and dignity of the state of Idaho.

Said Complainant therefore prays that a Summons/Warrant issue for the appearance of the Defendant and that the Defendant may be dealt with according to law.



SUBSCRIBED AND SWORN to before me this 21st day of March, 2016.



Magistrate for the District Court,
Magistrate Division

dunc proteune

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

STATE OF IDAHO

CASE NO. _____

VS

CLERK km kw

PROSECUTOR SHJ

DATE 6/4/15

TIME 9:10

COMPLAINING WITNESS _____

CASE ID _____

BEG. 91025

COURTROOM 203

END 91226

INTOX _____

JUDGE

STATUS

- ☐ BEREZ
- ☐ BIETER
- ☐ CAWTHON
- ☐ COMSTOCK
- ☐ ELLIS
- ☐ FORTIER
- ☒ GARDUNIA
- ☐ HARRIGFELD
- ☐ HAWLEY
- ☐ HICKS
- ☐ KIBODEAUX
- ☐ _____
- ☐ _____

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

- ☒ STATE SWORN
- ☐ PC FOUND Eluding
- ☒ COMPLAINT SIGNED
- ☐ AMENDED COMPLAINT SIGNED
- ☐ AFFIDAVIT SIGNED
- ☐ JUDICIAL NOTICE TAKEN
- ☐ NO PC FOUND _____
- ☐ EXONERATE BOND _____
- ☐ SUMMONS TO BE ISSUED
- ☒ WARRANT ISSUED
- ☒ BOND SET \$ 5,000
- ☐ NO CONTACT

DR# _____

- ☐ DISMISS CASE
- ☐ IN CUSTODY

COMMENTS

- ☐ AGENTS WARRANT _____
- ☐ RULE 5(B) _____
- ☐ FUGITIVE _____
- ☐ MOTION & ORDER TO CONSOLIDATE _____
- _____
- _____
- _____

1063005

NO. 10.08
FILED

OCT 05 2015

CHRISTOPHER D. RICH, Clerk
By MANDI WIENSZ
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

Jennifer Pitino
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 6595

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

THE STATE OF IDAHO,

Plaintiff,

v.

TANYA ANDREA VARGAS,

Defendant.

Case No. MDV5-1985 0101

WARRANT OF ARREST

Address:

DOB: [REDACTED]

SSN: [REDACTED]

DL#: [REDACTED]

FBI/LE#:

FEMALE/MALE: F

HEIGHT: 5' 2"

WEIGHT: 130

EYE COLOR: Brown

HAIR

COLOR:

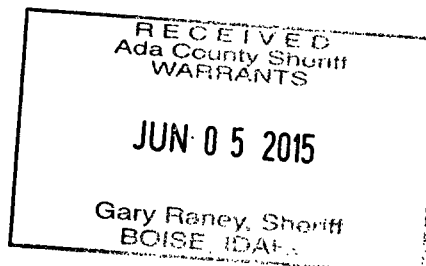
Brown

TO: Any Sheriff, Constable, Marshal, or Policeman in the state of Idaho:

A Complaint upon oath, having been this day laid before me by Sarah Halladay
stating that the crime of: Count I: ELUDING, a misdemeanor, which is in violation of Idaho
Code § 49-1404, has been committed in Ada County, Idaho and accusing Tanya Andrea Vargas
thereof; and probable cause having been found;

WARRANT OF ARREST - 1

**ARRESTED
ADA COUNTY SHERIFF**



DR # 2015-509968
ad

0000161

YOU ARE THEREFORE COMMANDED to immediately arrest Tanya Andrea Vargas, and to bring her before me at the Ada County Courthouse, or in case of my absence or inability to act, before the nearest or most accessible magistrate in Ada County.

Defendant may be released pending said appearance upon posting bond as set forth below.

DATED this 4th day of June 2015, in Boise Idaho.

[Signature]
Magistrate Judge

BOND SET AT:

\$ 5000 Cash/Surety

\$ _____ Cash/

\$ _____ Surety

\$ _____ No Bond Until Arraignment

_____ ROR to parent/ROR

MAY BE SERVED DURING THE DAY OR NIGHT IN ANY PUBLIC PLACE.

_____ AND during the night (between 8 p.m. and 8 a.m.) in the named person's residence.

RETURN OF SERVICE

I HEREBY CERTIFY that I served the foregoing Warrant by arresting the above-named Defendant and bringing Tanya Andrea Vargas into Court this 2nd day of October 2015.

Daniel Hawn #857
Signature

Boise PD Detective
Title

ADA COUNTY MAGISTRATE MINUTES

Tanya Andrea Vargas

CR-MD-2015-0007985

DOB:

Scheduled Event: Video Arraignment Monday, October 05, 2015 01:30 PM

Judge: Daniel L Steckel

Clerk:

Interpreter:

Prosecuting Agency: AC BC EA GC MC

Pros:

PD / Attorney:

• 149-1404 M Officer-Flee or Attempt to Elude a Police Officer in a Motor Vehicle M

Case Called Defendant: Present Not Present In Custody

Advised of Rights Waived Rights PD Appointed Waived Attorney

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

Bond \$5000 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

PT / JT Master

Finish () Release Defendant

000013

CR-MD-2015-0007985

AM. 10:50 P.M.
Monday, October 05, 2015
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: _____
DEPUTY CLERK

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

200 W. Front Street, Boise Idaho 83702

STATE OF IDAHO,
Plaintiff.

vs.

Tanya Andrea Vargas
7511 W Emerald St
Boise, ID 83704
Defendant.

Case No: CR-MD-2015-0007985

NOTICE OF HEARING

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

BC Pretrial Conference....Friday, November 20, 2015....08:45 AM
Judge: Michael Oths

Jury Trial....Tuesday, December 22, 2015....08:15 AM
Judge: Michael Oths

THE DEFENDANT SHALL BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL. FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S ARREST.

I HEREBY CERTIFY that the foregoing is a true and correct copy of this Notice of Hearing entered by the court and on file in this office. I further certify that copies of this notice were served as follows:

Defendant: Mailed _____ Hand Delivered ✓ Signature Guil 5507
Clerk _____ Date _____ Phone () _____

Ada County Public Defender
200 W Front St Rm 1107
Boise ID 83702

Private Counsel: Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

Prosecutor: Interdepartmental Mail ✓ ☐ Ada ☒ Boise ☐ Eagle ☐ G.C. ☐ Meridian
Clerk SANDRA BURCH Date 10-6

Public Defender: Interdepartmental Mail ✓
Clerk SANDRA BURCH Date 10-6

Other: _____

Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

Dated: 10/5/2015

CHRISTOPHER D. RICH
Clerk of the Court

By: _____
Deputy Clerk

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

NOTICE OF HEARING

000014

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

NO. _____ FILED _____
A.M. _____ P.M. 3:30

OCT 06 2015

CHRISTOPHER D. RICH, Clerk
By SARA MARKLE
DEPUTY

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

STATE OF IDAHO,

Plaintiff

vs.

TANYA ANDREA VARGAS,

Defendant.

Case No. CR-MD-2015-0007985

REQUEST FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to BOISE CITY PROSECUTING ATTORNEY:

PLEASE TAKE NOTICE, that the undersigned, pursuant to ICR 16, requests discovery and photocopies of the following information, evidence, and materials:

- 1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).
- 2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.
- 3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.
- 4) Any prior criminal record of the defendant and co-defendant, if any.
- 5) All **unredacted** documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

- 6) All reports of physical or mental examinations and of scientific tests or experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.
- 7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.
- 8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.
- 9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."
- 10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.
- 11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.
- 12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED, Tuesday, October 06, 2015.



THOMAS MCALLERY
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Tuesday, October 06, 2015, I mailed a true and correct copy of the within instrument to:

BOISE CITY PROSECUTING ATTORNEY
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



OCT 13 2015

CHRISTOPHER D. RICH, Clerk
By CHRIS FRIES
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

Theodore B. Blank
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 8865

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.)	
)	
TANYA ANDREA VARGAS,	)	RESPONSE TO REQUEST
	)	FOR DISCOVERY
)	
Defendant.)	
)	

COMES NOW, the state of Idaho, by and through Theodore B. Blank, Deputy City Attorney, and submits the following Response to Request for Discovery in compliance with Idaho Criminal Rule 16. Wherein, the State has furnished the following information, evidence, and materials:

1. Copies of:

Boise Police Department General Report DR# 2015-509968
Boise Police Department Narrative Report DR# 2015-509968 from Officer Wing
Complaint
Boise Police Department General Photo Log(s)
Boise Police Department Report Photo(s)
Ada County Law Enforcement Arrest Record

2. Defendant advised of existence and allowed access to when available (for audio or video tapes, see paragraph #3):

Not Applicable to this Charge

3. Audio and/or Video recordings:

If the citation, police report, discovery response or any other materials provided in discovery reflect the existence of audio or video recording(s), you may access such recording(s) by:

- a) **Using the “Audio Request” link on your JusticeWeb Active Cases webpage for this case. *This is the easiest and preferred method.**
- b) **Using the “Officer Video Request” link on your JusticeWeb Active Cases webpage.** If video exists, you will either be provided with a link to access the video(s) online via an email from evidence.com, or you will receive a DVD copy of the video(s) in the mail. The response you receive from the Boise City Attorney’s Office will depend on the program/equipment that police used to record the video(s) in the first place.
- c) Sending an email request to BCAO@cityofboise.org including the case number and the name of the defendant.
- d) Contact the legal secretary for the undersigned to make arrangements to do one of the following:
 1. Have the digital audio and/or video tape sent electronically to our secure JusticeWeb program for you to download to your local machine. You will be notified via email when it is ready to download.
 2. Listen and/or view the audiotape, videotape, and/or CD at the Boise City Attorney’s Office.
 3. Make or obtain a copy of the audio file, video file or compact disc at our office using our high-speed dubbing machine, or downloading the file to a CD or USB drive.

4. Results of examination and tests:

N/A

5. The State intends to call as witnesses:

Officer Natalie Wing Ada #838, Boise Police Department, 333 N. Mark Stall Place, Boise, Idaho, 83704, (208) 570-6000

And any other individuals identified in the discovery materials.

6. Criminal histories:

The Idaho criminal history for Defendant and/or witnesses, if such history exists, can be found using the on-line *Idaho Supreme Court Data Repository* at: <https://www.idcourts.us/repository/start.do>

7. Other Information:

There may be other relevant information or documents on this case contained in the Court file.

8. Officer Certification and Training Records:

- a) Defense counsel may submit a specific written request to the POST Academy care of Trish Christy, 700 S. Stratford Drive, Meridian, Idaho 83642 for information regarding a specific officer's training history, including which year (color) of N.H.T.S.A. training manual was used and if/when the officer may have taken a refresher training. If counsel has questions regarding the request, they may contact Ms. Christy at 208-884-7253.

9. Ongoing duty to supplement discovery:

The State recognizes its on-going duty to supplement this Response to Discovery should additional evidence relevant to this case arise.

DATED this 9 day of October, 2015.



Theodore B. Blank
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Monday, October 12, 2015, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Thomas M. Callery
Ada County Public Defender
200 W. Front Street, Room 1107
Boise ID 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☐ **HAND DELIVER**
☒ **ELECTRONIC To:** tcallery@adaweb.net

Malay Shoke

OCT 13 2015

CHRISTOPHER D. RICH, Clerk
By CHRIS FRIES
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

Theodore B. Blank
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 8865

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.)	
	)	REQUEST FOR DISCOVERY
TANYA ANDREA VARGAS,)	
)	
Defendant.)	
)	

TO: Thomas M. Callery:

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

1. **DOCUMENTS AND TANGIBLE OBJECTS** -- Books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

2. **REPORTS OF EXAMINATION AND TESTS** -- Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of Defendant, which Defendant intends to

introduce in evidence at the trial, or which were prepared by a witness whom Defendant intends to call at the trial when the results or reports relate to testimony of the witness.

3. **DEFENSE WITNESSES** -- Names and addresses of any witnesses which the defendant intends to call at trial and a current curriculum vitae for any witness which the defense intends to utilize as an expert at trial.

4. **EXPERT WITNESSES** – Name(s), address(es), and phone number(s) of any expert witness Defendant intends to call at trial. With respect to each expert witness, please provide a written summary describing the testimony the witness intends to introduce, including the witness's opinions, the facts and data for those opinions, and the witness's qualifications.

The undersigned further requests permission to inspect and copy said information, evidence and materials within fourteen (14) days of service of this request, at a time and place mutually agreeable to the parties hereto.

FURTHER, please take notice that the undersigned prosecutor, pursuant to Idaho Code Section 19-519, demands the defendant to serve, within ten (10) days, upon the prosecutor, a written notice of defendant's intention to offer alibi. Such notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

YOU ARE FURTHER notified of the requirement to disclose any additional witnesses promptly to the prosecutor named below as they become known to you.

DATED this 9 day of October, 2015.



Theodore B. Blank
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Monday, October 12, 2015, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Thomas M. Callery
Ada County Public Defender
200 W. Front Street, Room 1107
Boise ID 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☐ **HAND DELIVER**
☒ **ELECTRONIC To:** tcallery@adaweb.net

Malay Smoke

246
072
8/15

NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 19 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

RANDALL SCOTT BARNUM, ISB #6034
BARNUM HOWELL, PLLC
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
P.O. Box 2616
Boise, ID 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077

Attorney for Defendant

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
vs.)	
	)	SUBSTITUTION OF CONFLICT
TANYA ANDREA VARGAS,	)	COUNSEL
)	
Defendant.)	
_____)	

TO: COURT AND COUNSEL:

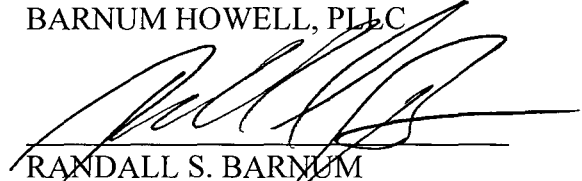
NOTICE is hereby given that Randall S. Barnum is hereby substituted for the Ada County Public Defender as conflict counsel of record for Defendant, TANYA ANDREA VARGAS, in the above-entitled case. Randall S. Barnum hereby enters his appearance as conflict counsel of record. All future pleadings, correspondence and other documents relating to this matter, should be forwarded to Randall S. Barnum at the above-referenced address.

SUBSTITUTION OF CONFLICT COUNSEL—P.1

000024

DATED THIS 19 day of October, 2015.

BARNUM HOWELL, PLLC

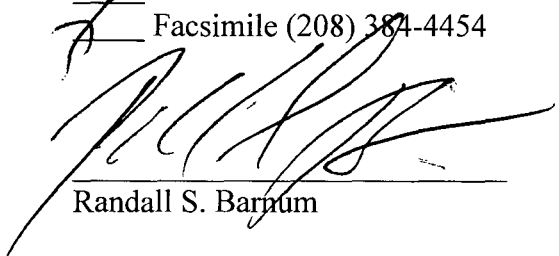

RANDALL S. BARNUM
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of October, 2015, I caused to be served a true copy of the foregoing SUBSTITUTION OF CONFLICT COUNSEL by the method indicated below, and addressed to each of the following:

Boise City Prosecuting Attorney
PO Box 500
Boise, ID 83701-0500

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☒ Facsimile (208) 384-4454


Randall S. Barnum

OCT 19 2015

CHRISTOPHER D. RICH, Clerk
By KATHINA CHRISTENSEN
DEPUTY

RANDALL SCOTT BARNUM, ISB #6034
BARNUM HOWELL, PLLC
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
P.O. Box 2616
Boise, ID 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077

Attorney for Defendant

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
vs.	)	REQUEST FOR DISCOVERY
)	
TANYA ANDREA VARGAS,)	
)	
Defendant.)	
_____)	

TO: THE PROSECUTING ATTORNEY OF BOISE CITY:

PLEASE TAKE NOTICE That the undersigned, pursuant to ICR 16, requests discovery and photocopies of the following information, evidence, and materials:

1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).

REQUEST FOR DISCOVERY---P. 1

2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.

3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

4) Any prior criminal record of the defendant and co-defendant, if any.

5) All un redacted documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

6) All reports of physical or mental examinations and or scientific tests of experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.

7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.

REQUEST FOR DISCOVERY---P. 2

8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.

9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."

10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.

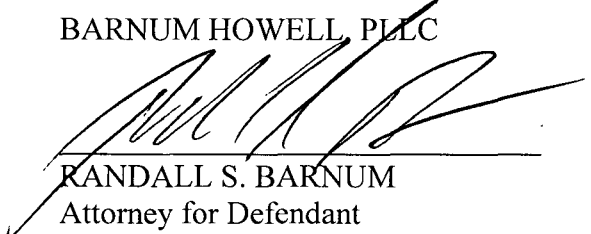
11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.

12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED THIS 17 day of October, 2015.

BARNUM HOWELL PLLC



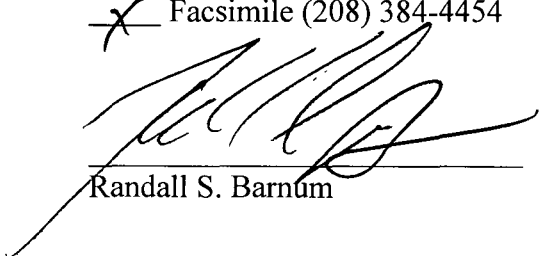
RANDALL S. BARNUM
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of October, 2015, I caused to be served a true copy of the foregoing REQUEST FOR DISCOVERY by the method indicated below, and addressed to each of the following:

Boise City Prosecuting Attorney
PO Box 500
Boise, ID 83701-0500

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☒ Facsimile (208) 384-4454



Randall S. Barnum

FILED 11/20/15 AT 10:13 M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
BY [Signature]
Deputy

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

STATE OF IDAHO

Plaintiff,

vs.

Tanya Vargas
Defendant.

Case No. CRMD 15-7985

TRIAL STATUS MEMORANDUM

12-22-15 @ 8:15

Appearances: Prosecutor K. Berger
Defense Counsel R. Bertram

- ☐ This case is ready for trial.
- ☐ Discovery has been completed.
- ☒ Cut off date for discovery is One week before trial
- ☐ State is to prepare a formal complaint for trial. (by _____)
- ☐ Parties are to prepare proposed jury instruction on the elements of count(s) _____.
- ☐ The State does not intend to amend the charge.
- ☐ The State may amend the charge to _____.
- ☒ The parties anticipate the case can be tried in one day.
- ☐ Courtroom media equipment will be needed. (The attorneys are responsible for the presentation of evidence.)
- ☐ Motions subject to Idaho Criminal Rule 12(b) have been heard.
- ☐ Other _____

[Signature]
Prosecuting Attorney

Date

11/20/15

[Signature]
Defense Counsel

[Signature]
Magistrate

DEC 11 2015

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

Robert C. Lockward
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 6840

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.)	
	)	SUPPLEMENTAL RESPONSE TO
TANYA ANDREA VARGAS,	)	REQUEST FOR DISCOVERY
)	
Defendant.)	
_____)	

COMES NOW, the state of Idaho, by and through Robert C. Lockward, Deputy City Attorney, and submits the following Supplemental Response to Request for Discovery:

There is no Audio Tape and/or Digital Audio Recording(s) for this incident

DATED this _____ day of December, 2015.



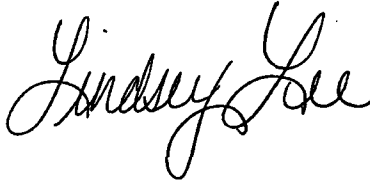
Robert C. Lockward
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Thursday, December 10, 2015, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Randall S. Barnum
Attorney at Law
PO Box 2616
380 S. 4th Street, Ste 101
Boise Idaho 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☐ **HAND DELIVER**
☒ **ELECTRONIC To:** Stacie@barnumlaw.com
Randall@barnumlaw.com



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA DEC 22 2015

NO. 922
A.M. P.M.

STATE OF IDAHO,

Plaintiff,

vs.

Tanya Vargas

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING

PRE-TRIAL MEMORANDUM

Case Number: CL-MD-2015-7985

Event Date: 12/22/15 JT

Judge: Oth Clerk: KG

Case Called: ☒ In Chambers

☐ Interpreter:

☐ AC ☒ BC ☐ EA ☐ GC ☐ MC Lodino PD / Private R. Barnum

Defendant: ☒ Present ☐ Not Present ☒ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$

☐ Advised Rights ☐ Not Guilty ☐ Guilty / Admit ☐ Written Guilty Plea ☐ No Contact ☐ Pre-Trial Release Order

Parties stipulate to continue

Waiver ST

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☐ Sentencing on at am/pm w/ Judge

☐ Court Trial Conference on at am/pm w/ Judge

☐ Court Trial on at am/pm w/ Judge

☐ Pre-Trial Conference on at am/pm w/ Judge

☒ Jury Trial on 1/12/16 at 8:15 am/pm w/ Judge Oth

☐ on at am/pm w/ Judge

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208) 287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

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

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

Defendant: Hand Delivered ☒ Via Counsel ☐

Defense Atty: Hand Delivered ☒ Intdept Mail ☐

Prosecutor: Hand Delivered ☒ Intdept Mail ☐

CHRISTOPHER D. RICH, Clerk of the District Court

By:

Deputy Clerk

Magistrate Judge (for Pre-Trial Memorandum)

DATED 12/22/15

000033

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

NO. 9158

AM. 11:58

FILED
P.M.

JAN 12 2016

STATE OF IDAHO,

Plaintiff,

vs.

Vargas, Tanya

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING

☒ **PRE-TRIAL MEMORANDUM**

By CHRISTOPHER D. RICH, Clerk
By KRISTI GARDNER
DEPUTY

Case Number:

Case 2015-7985

Event Date:

1/12/16 JT

Judge:

JLS

Clerk:

KG

Case Called:

☒ In Chambers

☐ Interpreter:

☐ AC ☒ BC ☐ EA ☐ GC ☐ MC

KBORG

☒ Private

Soem / conflict

Defendant: ☒ Present ☐ Not Present ☐ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$

☐ Advised Rights ☐ Not Guilty ☐ Guilty / Admit ☐ Written Guilty Plea ☐ No Contact ☐ Pre-Trial Release Order

Cese Langelier ST Dep.

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☐ Sentencing on at am/pm w/ Judge

☐ Court Trial Conference on at am/pm w/ Judge

☐ Court Trial on at am/pm w/ Judge

☐ Pre-Trial Conference on at am/pm w/ Judge

☒ Jury Trial on 2/24/16 at 815 am/pm w/ Judge

☐ on at am/pm w/ Judge

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208) 287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

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

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

Defendant: Hand Delivered ☐ Via Counsel ☒

Signature

Defense Atty: Hand Delivered ☒ Intdept Mail ☐

Prosecutor: Hand Delivered ☒ Intdept Mail ☐

CHRISTOPHER D. RICH, Clerk of the District Court

By Deputy Clerk

Magistrate Judge (for Pre-Trial Memorandum)

DATED 1/12/16

000034

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT **FEB 22 2016**
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By KRISTI GARDNER

STATE OF IDAHO,

Plaintiff,

vs.

Tanya Vargas

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING
PRE-TRIAL MEMORANDUM

Case Number: *KMD 15-7985*

Event Date: *2/22/16 JT*

Judge: *QHS* Clerk: *KEG*

Case Called: _____ ☒ In Chambers

☐ Interpreter: _____

☐ AC ☒ BC ☐ EA ☐ GC ☐ MC *John Smith* PD / Private *R. Brown*

Defendant: ☐ Present ☒ Not Present ☒ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$ _____

☐ Advised Rights ☐ Not Guilty ☐ Guilty / Admit ☐ Written Guilty Plea ☐ No Contact ☐ Pre-Trial Release Order

Parties agree to continue JT. A° unavailable.

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☐ Sentencing on _____ at _____ am/pm w/ Judge _____

☐ Court Trial Conference on _____ at _____ am/pm w/ Judge _____

☐ Court Trial on _____ at _____ am/pm w/ Judge _____

☐ Pre-Trial Conference on _____ at _____ am/pm w/ Judge _____

☒ Jury Trial on *3/15/16* at *8:15* am/pm w/ Judge *QHS*

☐ _____ on _____ at _____ am/pm w/ Judge _____

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208) 287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

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

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

Defendant: Hand Delivered ☐ Via Counsel ☒

Defense Atty: Hand Delivered ☒ Intdept Mail ☐

Prosecutor: Hand Delivered ☒ Intdept Mail ☐

Signature _____

CHRISTOPHER D. RICH, Clerk of the District Court

By: _____

Deputy Clerk

Magistrate Judge (for Pre-Trial Memorandum)

DATED *2/22/16*

214

ROBERT B. LUCE
BOISE CITY ATTORNEY

John J. Smith
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 9674

NO. _____ FILED
A.M. _____ P.M. _____

FEB 25 2016

CHRISTOPHER D. RICH, Clerk
By GRICELDA TORRES
DEPUTY

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

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.)	
	)	SUPPLEMENTAL RESPONSE TO
TANYA ANDREA VARGAS,	)	REQUEST FOR DISCOVERY
)	
Defendant.)	
_____)	

COMES NOW, the state of Idaho, by and through John J. Smith, Deputy City Attorney,
and submits the following Supplemental Response to Request for Discovery:

The State has complied with such request by furnishing the following additional
information, evidence, and/or materials:

1. Disclosure:

Copy of Tanya Vargas' Driver's License Picture obtained by Officer Wing

DATED this 24 day of February, 2016.



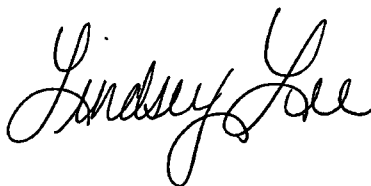
John J. Smith
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Thursday, February 25, 2016, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Randall S. Barnum
Attorney at Law
PO Box 2616
380 S. 4th Street, Ste 101
Boise Idaho 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☐ **HAND DELIVER**
☒ **ELECTRONIC To:** Stacie@barnumlaw.com
Randall@barnumlaw.com



CIT
JT
3/15
8:15

NO. _____ FILED _____
A.M. _____ P.M. 122

MAR 10 2016

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

John J. Smith
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 9654

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

THE STATE OF IDAHO)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.	)	NOTICE OF INTENT TO
	)	OFFER IRE 404(b)/IRE 406 EVIDENCE
TANYA ANDREA VARGAS)	
)	
Defendant.)	
)	

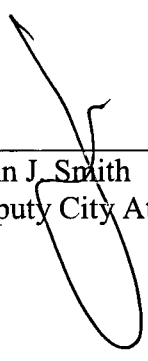
COMES NOW, the City of Boise, by and through attorney of record, John J. Smith, and gives the court and defense counsel notice of intent to offer as evidence other acts of the defendant at trial pursuant to Idaho Rules of Evidence 404(b) and Idaho Rules of Evidence 406. The acts intended to be offered are the following: At the time and on the date of the offense in this case—May 8, 2015—Defendant was on parole in Bannock County Case CR-2008-14539. In particular, Defendant absconded from Probation and Parole on March 23, 2015. As of the date of offense, Defendant was still absconding from Probation and Parole.

Such evidence is admissible pursuant to IRE 404(b) and IRE 406 to show the Defendant's motive, intent, knowledge, identity, and/or absence of mistake or accident.
NOTICE OF INTENT TO OFFER IRE 404(b)/IRE 406 EVIDENCE - 1

8

jjs
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DATED this 10 day of March, 2015.



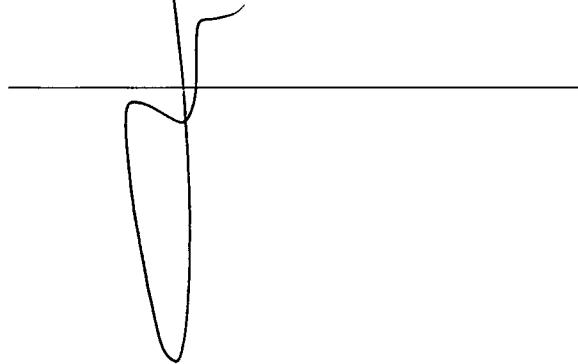
John J. Smith
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10 day of March, 2015, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Randall S. Barnum
Attorney at Law
P.O. Box 2616
Boise, ID 83702

☐ US MAIL
☒ ~~INTERDEPARTMENTAL MAIL~~ Email
☐ FACSIMILE
☐ HAND DELIVER

A handwritten signature in black ink, consisting of a vertical line with a loop at the bottom and a small flourish at the top, crossing a horizontal line.

716
ST
3/15
815

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077

Attorneys for Defendant

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-7985
)	
vs.	)	MOTION IN LIMINE
)	
TANYA ANDREA VARGAS,)	
)	
<u>Defendant,</u>)	

COMES NOW the Defendant, Tanya Vargas, by and through her attorney of record, Randall S. Barnum, of the firm Barnum Howell, PLLC, conflict counsel for the Ada County Public Defender, and hereby moves this honorable court, for the reasons stated herein, for its Order in Limine excluding Officer Natalie Wing's out of court, and expected in-court, identification of Ms. Vargas.

I. INTRODUCTION

Officer Wing identified Ms. Vargas based on a single photo lineup. The basis of Officer Wing's identification of Ms. Vargas was Officer Wing's incredibly minimal nighttime

MOTION IN LIMINE--P. 1

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MAR 11 2016
CHRISTOPHER D. RICH, Clerk
By GRICELDA TORRES
DEPUTY

observations of a driver of a vehicle that failed to stop when directed by Officer Wing. Officer Wing's out of court identification of Ms. Vargas is appropriately excluded because it was highly suggestive and utterly lacks reliability under the totality of the circumstances. Officer Wing's expected in-court identification of Ms. Vargas is irreparably tainted by the out of court identification and therefore appropriately excluded as well.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

At 10:48 p.m. on May 8, 2015 Officer Natalie Wing was driving southbound on Curtis Road near its intersection with Franklin Road when she noticed a vehicle in front of her with a non-functioning tail light.¹ Officer Wing attempted to initiate a traffic stop of the vehicle near the intersection of Curtis Road and Cassia Street. The vehicle did not stop. Officer Wing alleges that she observed the driver in the driver's side view mirror of the vehicle as the driver glanced in the side view mirror. Officer Wing did not pursue the vehicle.

Officer Wing researched the license plate of the vehicle and called its owner in Utah. The owner stated that the car was loaned to Ms. Vargas. Officer Wing obtained a photo of Ms. Vargas from an identification card and positively identified Ms. Vargas in a single photo lineup as the driver of the vehicle which she observed glancing in the driver's side view mirror in the darkness.

III. GOVERNING LAW

"Trial courts have broad discretion in determining the admissibility of evidence in cases before them and ruling on motions in limine." *Appel v. LePage*, 135 Idaho 133, 135 (2000).

¹ It is expected that Officer Wing will testify in accordance with her report regarding this incident.

Under Idaho law, “[e]vidence which is not relevant is not admissible.” I.R.E. 402. “‘Relevant Evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” I.R.E. 401.

IV. DISCUSSION

Both Officer Wing’s out of court identification, and expected in-court identification, of Ms. Vargas should be excluded as such identifications violate Ms. Vargas’s due process rights.

There are two identifications at issue: (1) Officer Wing’s out of court identification of Ms. Vargas based on the identification photo; and (2) Officer Wing’s expected in-court identification of Ms. Vargas.

A. *Out of Court Identification.*

Regarding the out of court identification, such identification “must be suppressed when, under the totality of the circumstances, ‘the identification procedure was so impermissibly suggestive’ that it gave ‘rise to a very substantial likelihood of misidentification.’” *State v. Best*, 117 Idaho 652, 654, 791 P.2d 33, 35 (Ct. App. 1990) (quoting *State v. Kysar*, 116 Idaho 992, 994–94, 783 P.2d 859, 861–62 (1989); *State v. Edwards*, 109 Idaho 501, 708 P.2d 906 (Ct. App. 1985). *See also Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375 (1972).

Officer Wing looked at a lineup of a single photograph to identify Ms. Vargas. “In particular, single subject showups are inherently suspect and generally not condoned” *State v. Hoisington*, 104 Idaho 153, 162, 657 P.2d 17, 26 (1983).

Though the identification is inherently suspect, it is not *per se* inadmissible. To determine

the admissibility of the out of court identification testimony, reliability is the foundation upon which the testimony is weighed. *Manson v. Brathwaite*, 432 U.S. 98, 97 S. Ct. 2243, (1977). Five factors must be considered to determine the reliability of the identification: (1) the opportunity for the witness to view the criminal at the time of the crime; (2) the degree of the witness' attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated at the identification; and (5) the time span between the crime and the identification. *Kysar, supra*; *Manson, supra*; *State v. Hoisington*, 104 Idaho 153, 657 P.2d 17 (1983).

In this case the *Manson* factors heavily favor exclusion of Officer Wing's out of court identification of Ms. Vargas. First, Officer Wing had minimal time to view the criminal at the time of the crime. Officer Wing observed the reflection of the criminal by virtue of a few glances in a side view mirror a few square inches in size, while driving presumably at least a car length behind, in the pitch darkness at 10:48 p.m. Second, Officer Wing was focused on safely operating her vehicle and effecting a traffic stop. Officer Wing was not solely and entirely focused on identifying the criminal. Third, Officer Wing's description of the criminal before identifying Ms. Vargas was minimal. Officer Wing identified the criminal as a "Hispanic female." Officer Wing identified no further characteristics such as approximate age, build, tattoos, hair or eye color, or distinguishing physical characteristics. Approximately 99,296 persons in the state of Idaho fit the description of "Hispanic female".² Fourth, Officer Wing undoubtedly demonstrated certainty in her identification of Ms. Vargas, but that is easy to do

² Idaho Quickfacts – United States Census Bureau – Available:
<http://www.census.gov/quickfacts/table/PST045215/16>

when the lineup consists of a single photograph of a person who matches the incredibly vague description of “Hispanic female”. It would have been a simple task for Officer Wing, after obtaining Ms. Vargas’s name, to ask a colleague to pull Ms. Vargas’s photograph and then arrange a lineup of Hispanic females in order to make a non-suggestive identification. Officer Wing declined to do so, rendering her certainty in identifying Ms. Vargas in a lineup of one both expected and irrelevant. Lastly, it is unclear from Officer Wing’s report how much time elapsed between her witness of the criminal and her identification of Ms. Vargas in a highly suggestive lineup of one.

Manson is the seminal case with regards to this issue, and the factual difference between the upheld identification in that case and Officer Wing’s identification is stark. In *Manson*, Glover, an undercover police officer, identified the defendant in a lineup of one, just as Officer Wing did in this case. 432 U.S. at 98. In *Manson*, however, Glover stood face to face within two feet of the defendant in an apartment doorway for two to three minutes. *Id.* at 114. In this case Officer Wing viewed the criminal’s reflection in passing glances in side view mirror while driving at least a car length behind. In *Manson*, “[T]he sun had not yet set, so it was not dark or even dusk or twilight.” *Id.* This is perhaps the most significant fact in this case: Officer Wing’s identification took place at 10:48 p.m. and there is this no dispute that Officer Wing’s purported identification of the criminal took place in pitch darkness. In *Manson*, Glover’s description of the criminal included “his height, his build, the color and style of his hair, and the high cheekbone facial feature. It also included clothing” *Id.* By contrast in this case Officer Wing’s description of the criminal was incredibly minimal: Hispanic female. Unlike Glover, Officer

Wing was able to observe no further details such as height, build, clothing, or visible physical characteristics.

Admittedly, there are cases in which identifications have been upheld when the witness viewed the defendant for a minimal period of time. *See, e.g., United States v. Wong*, 40 F. 3d 1347, 1360 (2d. Cir. 1994) (two or three seconds); *United States v. Mohammed*, 27 F.3d 815, 821 (2d Cir. 1994), *cert. denied*, 513 U.S. 975 (1994) (thirty seconds); *United States v. Williams*, 999 F. Supp. 412, 415 (W.D.N.Y. 1998) (twenty to thirty seconds). Significantly, however, in each of these cases, the brief identification was made face to face, with good lighting, unlike Officer Wing's nighttime identification in the side view mirror. *See, e.g., Wong*, 40 F. 3d at 1360 ("staring him in the face" in a lighted restaurant); *Mohammed*, 27 F.3d at 821 (2d Cir. 1994), (held face to face at gunpoint by defendant); *Williams*, 999 F.Supp. at 415 (face to face interactions during daylight); *Coleman v. Alabama*, 399 U.S. 1, 4–6, 90 S. Ct. 1999, 2000–02, (1970) (plurality opinion) (fleeting but "real good look" at assailant sufficient for identification).

The totality of the circumstances and the *Manson* factors, as applied to this case, counsel exclusion of Officer Wing's nighttime, side view mirror, single photograph lineup identification of Ms. Vargas.

B. Expected In-Court Identification.

It is expected that Officer Wing will make an in-court identification of Ms. Vargas. Such identification is properly excluded.

In *State v. Crawford*, 99 Idaho 87, 577 P.2d 1135 (1978), the Idaho Supreme Court recognized that the "the due process test for suppression of an in-court identification that is

allegedly tainted by an impermissibly suggestive out-of-court identification is whether the out-of-court identification was so suggestive that there is a very substantial likelihood of misidentification.” *Id.* at 103, 577 P.2d at 1151 (*citing Manson v. Braithwaite*, 432 U.S. 98 (1977) and *Neil v. Biggers*, 490 U.S. 188 (1972)); *see also State v. Hoisington*, 104 Idaho 153, 657 P. 2d 17 (1983).

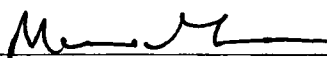
In this case there exists a substantial likelihood for Ms. Vargas to be misidentified by Officer Wing as a result of the tainted out of court identification. As discussed in Section IV.A, *supra*, Officer Wing identified Ms. Vargas in an inherently suspect single photo lineup. The identification was based on fleeting glances in a side view mirror, in pitch darkness, from a following car. The out of court identification was so suggestive as to be useless, and it irreconcilably taints any in-court identification of Ms. Vargas by Officer Wing. At this juncture it is not reasonable to expect Officer Wing to completely block from memory her prior identification of Ms. Vargas in the single photo lineup and identify her anew, based solely on the events of May 8, 2015.

V. CONCLUSION

For the reasons stated herein, the Ms. Vargas’s Motion in Limine is appropriately granted.

DATED This 11 day of March, 2016.

BARNUM HOWELL, PLLC


FOR RANDALL S. BARNUM
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11 day of March, 2016, I served a true and correct copy of the foregoing MOTION IN LIMINE to:

Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

_____ Hand Delivery
_____ U.S. Mail
_____ Federal Express
_____ Certified Mail
☒ _____ Facsimile



FOR Randall S. Barnum

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
Attorneys for Defendant

NO. 1149
A.M. FILED P.M.
MAR 11 2016
CHRISTOPHER D. RICH, Clerk
By GRICELDA TORRES
DEPUTY

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

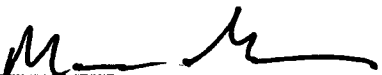
STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2015-7985
)	
vs.	)	NOTICE OF HEARING
)	
TANYA ANDREA VARGAS,)	
)	
Defendant,)	

TO: ADA COUNTY PROSECUTOR

Notice is hereby given that on Tuesday, the 15th day of March, 2016, at the courtroom of the above-entitled Court, 200 W. Front Street, in Boise, Idaho, at the hour of 8:15 o'clock a.m., or as soon thereafter as counsel can be heard, the Defendant's Motion in Limine will be heard before the Honorable Michael Oths.

DATED This 11 day of March, 2016.

BARNUM HOWELL, PLLC

FR 
RANDALL S. BARNUM
Attorney for Defendant

NOTICE OF HEARING--P. 1


000049

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11 day of March, 2016, I served a true and correct copy of the foregoing NOTICE OF HEARING to:

Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

☐ Hand Delivery
☐ U.S. Mail
☐ Federal Express
☐ Certified Mail
☒ Facsimile

FOR 
Randall S. Barnum

FILED
P.M.
MAR 11 2016
CHRISTOPHER D. RICH, Clerk
By GRICELDA TORRES
DEPUTY

**RANDALL SCOTT BARNUM
BARNUM HOWELL & GUNN, PLLC**

Attorney at Law
380 S. 4th Street, Suite 101
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
ISB# 6034

Attorney for Defendant

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


STATE OF IDAHO,)	
)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0013258
)	
vs.	)	NOTICE OF
	)	FILING
TRACE D. NIELSON,)	
)	
<u>Defendant.</u>)	

COMES NOW Defendant, TRACE D. NIELSON, by and through his attorney of record,
Randall S. Barnum, of the firm Barnum Howell & Gunn, PLLC, and hereby gives notice of filing
the following:

1. Defendant's Completion Certificate of the Victims' Impact Panel completed through
Tom Wilson Counseling Center. See Certificate attached hereto.

DATED This 10 day of March, 2016.

BARNUM HOWELL, PLLC



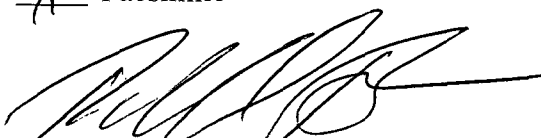
RANDALL S. BARNUM
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 10 day of March, 2016, I served a true and correct copy of the foregoing document to:

Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

____ U.S. Mail, Postage Prepaid
____ Hand Delivered
____ E-mail
☒ Facsimile



Randall S. Barnum

Tom Wilson Counseling Center

514 S. Orchard, Suite 101
Boise, ID 83705

This certificate is hereby granted to:

Trace Nielson

to certify that he has completed to satisfaction



NOT VALID WITHOUT SEAL

Victims' Impact Panel

At Tom Wilson Counseling Center

Granted: March 10, 2016

Tom Wilson

Tom Wilson, MA, LCPC Director

Certified Prevention Specialist

Time	Speaker	Note
<u>11:34:59 AM</u>		Tanya Vargas/ MD- 15-7985
<u>11:35:14 AM</u>		Jury Trial Held
<u>11:36:08 AM</u>		Jury Enters
<u>11:38:30 AM</u>		Roll Call
<u>11:41:10 AM</u>	Judge Oths	Jury Instructions
<u>11:47:56 AM</u>		All Jurors Sworn
<u>11:48:57 AM</u>	Judge Oths	Voir Dire
<u>11:59:43 AM</u>	John Smith	Voir Dire
<u>12:16:34 PM</u>	Matthew Gunn	Voir Dire
<u>12:37:25 PM</u>		Peremptory Challenges
<u>12:49:55 PM</u>		Final Jury Selected and Sworn
<u>12:49:58 PM</u>	Judge Oths	Jury Instructions
<u>01:00:55 PM</u>		Jury Exits
<u>02:21:09 PM</u>		
<u>02:21:12 PM</u>		Jury Enters
<u>02:21:35 PM</u>	John Smith	Opening Statement
<u>02:23:14 PM</u>	Matthew Gunn	Opening Statement
<u>02:25:02 PM</u>	John Smith	Calls SW#1
<u>02:25:13 PM</u>	Officer Natalie Wing	Sworn
<u>02:26:05 PM</u>	John Smith	Direct Examination
<u>02:26:16 PM</u>	Officer Natalie Wing	Explains Training and Experience
<u>02:36:56 PM</u>	Officer Natalie Wing	Id's the Defendant
<u>02:38:08 PM</u>	John Smith	Offers SE#1
<u>02:39:35 PM</u>	Judge Oths	SE#1 Admitted
<u>02:39:39 PM</u>	John Smith	No Further Questions
<u>02:39:42 PM</u>	Matthew Gunn	Cross Examination
<u>02:42:52 PM</u>	Officer Natalie Wing	Looks at Report to Refresh Memory
<u>02:43:30 PM</u>	Matthew Gunn	Offers DE#1
<u>02:44:41 PM</u>	John Smith	Objection
<u>02:44:49 PM</u>	Judge Oths	Sustained
<u>02:52:54 PM</u>	John Smith	Redirect Examination
<u>02:55:06 PM</u>	Officer Natalie Wing	Nothing Further Witness Steps Down
<u>02:55:14 PM</u>	John Smith	State Rests
<u>02:55:53 PM</u>		Jury Exits

<u>03:28:27 PM</u>	.	Jury Enters
<u>03:29:01 PM</u>	Matthew Gunn	Defense Rests
<u>03:29:04 PM</u>	Judge Oths	Jury Instructions
<u>03:36:53 PM</u>	John Smith	Closing Argument
<u>03:37:33 PM</u>	Matthew Gunn	Closing Argument
<u>03:42:05 PM</u>	John Smith	Final Closing Argument
<u>03:45:07 PM</u>	.	Marshal Sworn
<u>03:45:45 PM</u>		Jury Exits for Deliberation
<u>04:37:56 PM</u>		Jury Enters with Verdict
<u>04:38:36 PM</u>		Jury Finds the Defendant Guilty
<u>04:41:05 PM</u>		Defendant Sentenced

NO. _____
A.M. _____ P.M. *HHD*

MAR 15 2016

CHRISTOPHER D. RICH, Clerk
By KRISTI GARDNER
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO

MAGISTRATE DIVISION

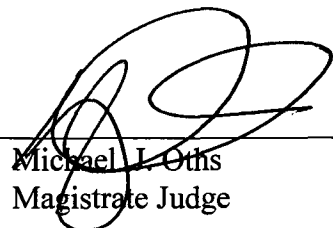
STATE OF IDAHO,
Plaintiff,

Case No. MD-15-7985
JURY INSTRUCTIONS

vs.

Tanya Vargas
Defendant.

Submitted to the jury this 15th of March, 2016.



Michael L. Oths
Magistrate Judge

INSTRUCTION NUMBER _____

In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.

The Clerk will now call the roll of the jury.

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select 6 jurors from among you.

I am Judge Michael Oths, the judge in charge of the courtroom and this trial. The deputy clerk of court Kristi Gardner mark the trial exhibits and administers oaths to you jurors and to the witnesses. The Marshal of the court today is Tom Davis.

Each of you is qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country. No one should avoid fulfilling this obligation except under the most pressing circumstances. Service on a jury is a civic and patriotic obligation which all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please identify yourself for the jury panel.

The state of Idaho is the plaintiff in this action. The lawyer representing the state is John Smith of the Boise City Prosecuting Attorney's Office.

The defendant in this action is Tanya Vargas. The defendant is represented by Matthew Gunn. I will now read you the pertinent portion of the complaint which sets forth the claim against the defendant. The complaint is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of his guilt and you must not be influenced by the fact that a charge has been filed.

With regard to Tanya Vargas, the complaint charges that she, on or about the 8th day of May 2015, did commit the crime of Eluding. In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain six persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself by both your name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however,

that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefore. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

The clerk will now swear the entire jury panel for the voir dire examination.

INSTRUCTION NUMBER 2

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form an opinion as to the merits of the case until after the case has been submitted to you for your determination.

INSTRUCTION NUMBER

3

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NUMBER 4

This criminal case has been brought by the state of Idaho. I will sometimes refer to the state as the prosecution. The state is represented at this trial by the prosecuting attorney, John Smith. The defendant, Tanya Vargas is represented by Matthew Gunn.

The defendant is charged by the state of Idaho with a violation of law. The charge against the defendant is contained in the Complaint. I will read the Complaint and state the defendant's plea.

The Complaint is simply a description of the charge; it is not evidence.

INSTRUCTION NUMBER 5

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does he ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NUMBER 6

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your job is to think about the testimony of each witness you heard and decide how much you believe of what he or she had to say.

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

INSTRUCTION NUMBER

7

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NUMBER

8

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

INSTRUCTION NUMBER 9

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NUMBER 16

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NUMBER 11

It is important that as juror and officers of this court you obey the following instruction at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

Do not Discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of you family. "No discussion" also means no emailing, text messaging, tweeting, blogging, posting to electronic bulletin boards, and any other form of communication, electronic or otherwise.

Do not discuss this case with other jurors until you begin your deliberations at the end of the trial. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you of because I don't think you are paying attention, but because experience has shown this is on of the hardest instruction for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common: what they just watched together, information on-line and to "Google" something as a matter of routine. Also, in a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision. You must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court. If you communicate with anyone about the case or do outside research during the trial it could cause us to have to start the trial over with new jurors and you could be held in contempt of court.

While you are actually deliberation in the jury room, the bailiff will confiscate all cell phones and other means of electronic communications. Should you need to communicate with me or anyone else during the deliberations, please notify the bailiff.

INSTRUCTION NO. 12

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 13

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

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

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

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

INSTRUCTION NO. 14

In order for the defendant to be guilty of "Eluding," the state must prove each of the following:

- (1) On or about May 8, 2015
- (2) in the state of Idaho;
- (3) the defendant, Tonya Vargas,
- (4) operated a motor vehicle, to wit: a 2002 Mazda Protégé,
- (5) at or about Curtis and Cassia,
- (6) and willfully fled or attempted to elude and/or elude,
- (7) a pursuing police vehicle,
- (8) after being given a visual and/or audible signal to stop.

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

INSTRUCTION NO. 15

In considering the charge of "Eluding or Fleeing Police:"

The signal given by a peace officer may be by emergency lights or siren. It is sufficient proof that a reasonable person knew or should have known that the visual or audible signal given by a peace officer was intended to bring the pursued vehicle to a stop.

INSTRUCTION NO. 16

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 17

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way. Some of the exhibit(s) have been sealed in bags or containers that allow you to view them. Do not open or remove the contents of these exhibits. If you have any questions about the handling or use of the exhibits, submit those questions in writing to me through the bailiff.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 18

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 19

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

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

INSTRUCTION NO. 20

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, ADA, COUNTY

☒ **JUDGMENT OF CONVICTION**

☐ **WITHHELD JUDGMENT**

☐ **PROBATION ORDER**

Expires _____

STATE OF IDAHO vs.

Tanya Vargas

DOB

SSN

FILED 3/15/16 AT 440
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY _____ Deputy

CASE NO.

MO-15-7985

Digital

43830

Prosecuting Agency: ☐ AC ☒ BC ☐ EC ☐ GC ☐ MC

State's Attorney: Smith

DEFENDANT having been charged with the following offenses:

Count 1. Eluding 49-1404

Count 2. _____

Count 3. _____

Count 4. _____

DEFENDANT WAS: ☒ Present ☒ In Custody ☐ Not Present ☐ Interpreter Present ☒ Advised of all rights and penalties per ICR 5,11, IMCR 5(f)

☒ Represented by: M. Gunn **COURT ENTERS JUDGMENT AFTER:** ☐ Vol Guilty Plea ☐ Trial - Found Guilty

Defendant Waived Right: ☒ To All Defenses ☒ Against Self-Incrimination ☒ To Jury Trial ☐ To Confront and Cross Examine Accuser(s) ☐ To Counsel

☐ **ORDERED: DEFENDANT'S DRIVING PRIVILEGES SUSPENDED** _____ days beginning _____; or

☐ **CONSECUTIVE TO ANY CURRENT SUSPENSION** ☐ Absolute Suspension _____ days ☐ Interlock from _____ to _____

☐ **ORDERED: DEFENDANT TO PAY TO THE CLERK:** ☐ Apply cash bond \$ _____

Count 1: Fine/Penalty \$ 0 W/ \$ _____ Suspended + CT Costs \$ 0 = \$ _____

Count 2: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 3: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 4: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

☐ Reimburse Public Defender \$ _____ ☐ Workers' Comp (\$60/hr) \$ _____ **TOTAL** = \$ _____

Restitution \$ _____ Defendant shall make _____ **EQUAL MONTHLY PAYMENTS BEGINNING ONE MONTH FROM TODAY**

☐ **ORDERED: DEFENDANT TO BE INCARCERATED IN:** ☐ County Jail ☐ Juvenile Detention Center

Count 1: 166 days w/ _____ Suspended - Credit 166 Total = 0 TOTAL DAYS TO SERVE = 0

Count 2: _____ days w/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent to Case number(s): _____

Count 3: _____ days w/ _____ Suspended - Credit _____ Total = _____

Count 4: _____ days w/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent ☐ Consecutive

_____ days must be fully completed, with **NO OPTIONS** available. _____ days must be fully completed, with **INTERIM JAIL** available.

☐ Pay or Stay \$ _____ ☐ In-Custody _____ SAP _____ ABC ☐ Interlock Funds (after use of any cafeteria funds)

☐ If approved by the Ada County Sheriff's Office, defendant is allowed to serve in _____ County at defendant's expense.

☐ **THE FOLLOWING** options offered by the County Sheriff are available to the defendant only **IF** defendant meets requirements of the program.

☐ All Options _____ days; ☐ If defendant is in custody, release and re-book for any options.

☐ Any combo of the following Options: Wk Rls _____ days; SLD _____ days; SCS _____ hours; Hs. Arr. (2/1) _____ days (1/1) _____ days

☐ **PROBATION CONDITIONS:** Supervised Probation Expires: _____ Unsupervised Probation Expires: _____

☒ No new crimes ☐ Classes/treatment per P.O. ☐ Discretionary jail to P.O. _____ ☐ Alcohol Monitor Device Authorized

Programs Ordered: (Defined on Responsibilities Form) ☐ No Alcohol Poss/Consume ☐ Refuse no evidentiary test for drugs/alcohol (BAC)

☐ Alcohol/Drug Ed hrs _____ ☐ Anger Management hrs _____ ☐ Tobacco Ed hrs _____ ☐ Driving School hrs _____

☐ Victim's Panel ☐ Theft classes hrs _____ ☐ Domestic Violence Treatment Weeks _____ ☐ Cog Self Change _____

☐ OTHER _____

☒ Defendant accepted terms and conditions of probation and received a copy of this form and supplemental **Notice of Responsibilities after Sentencing.**

☐ **PLEA AND SENTENCE VIA DEFENSE COUNSEL AUTHORIZED** ☐ **IN CHAMBERS PER WRITTEN GUILTY PLEA**

216 3/15/16

DEFENDANT _____ JUDGE _____

☒ Release Defendant this case only

Number _____ Date of Order _____

000082 [REV 11-1-2011]

216
130

NO. _____ FILED _____
A.M. _____ P.M. _____

APR 15 2016

CHRISTOPHER D. RICH, Clerk
By SARA WRIGHT
DEPUTY

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
Attorneys for Defendant

RECEIVED IN TRANSCRIPTS
APR 14 2016

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

STATE OF IDAHO,)	
	)	Case No. CR-MD-2015-0007985
Plaintiff/Respondent,)	
	)	NOTICE OF APPEAL
vs.)	
)	
TANYA ANDREA VARGAS,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ADA COUNTY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, TANYA ANDREA VARGAS, appeals against the above named Respondent to the District Court of the Fourth Judicial District, from the final judgment entered in the above entitled action on or about the 15th day of March, 2016, the Honorable Michael Oths, presiding.

2. That the party has a right to appeal to the District Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Criminal Rule 54.1.

MO

3. A preliminary statement of the issues on appeal which the Appellant 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.

(a) Whether the magistrate court erred in denying Ms. Vargas's Motion in Limine seeking exclusion of Officer Natalie Wing's out of court and in court identification of Ms. Vargas.

4. There is not a portion of the record that is sealed.

5 (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the **entire reporter's standard transcript** as defined in Rule 25(a), I.A.R. The appellant also requests the preparation of the additional portions of the reporter's transcript in [X] hard copy [] electronic format [] both (check one):

(1) Hearing on Defendant's Motion in Limine and the Jury trial held on the 15th day of March, 2016.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

(a) Any or other items offered at the jury trial on March 15, 2016.

7. I certify:

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

Rae Ann Nixon
Court Reporter
Ada County District Court
200 W. Front Street
Boise, ID 83702

(b) (1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) ☒ That the Appellant is exempt from paying the estimated transcript fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(c) (1) ☐ That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) ☒ That the Appellant is exempt from paying the estimated fee for the preparation of the record because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(d) (1) ☐ That the appellate filing fee has been paid.


(2) ☒ That Appellant is exempt from paying the appellate filing fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 14 day of April, 2016.

BARNUM HOWELL, PLLC

For



RANDALL S. BARNUM
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

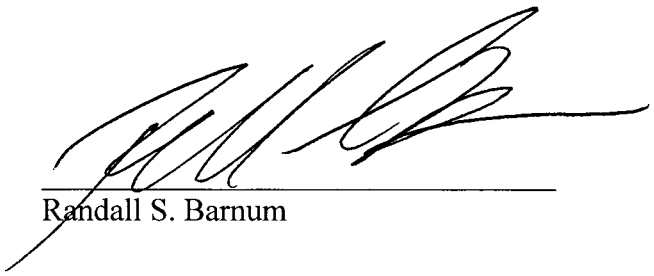
I HEREBY CERTIFY that on this 14th day of April, 2016, I caused to be served a true copy of the foregoing NOTICE OF APPEAL by the method indicated below, and addressed to each of the following:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☒ Facsimile

Rae Ann Nixon, Court Reporter
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile



Randall S. Barnum

APR 19 2016

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Case No. CRMD-2015-0007985
)	
TANYA A. VARGAS,	)	NOTICE OF PREPARATION
	)	OF APPEAL TRANSCRIPT
Defendant/Appellant,)	
_____)	

A Notice of Appeal was filed in the above-entitled matter on April 15, 2016 and a copy of said Notice was received by the Transcription Department on **April 19, 2016**. I certify the estimated cost of preparation of the appeal transcript to be:

Type of Hearing: Appeal

Date of Hearing: March 15, 2016 Judge: Michael Oths

43 Pages x \$3.25 = \$139.75

Pursuant to Idaho Rules of Civil Procedure, Rule 83(k)(1), the appellant must, unless otherwise ordered by a District Judge, pay the estimated fee for the preparation of the transcript within fourteen (14) days after the filing of the Notice of Appeal, and the appellant shall pay the balance of the fee, if any, for the transcript upon completion.

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

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty-five (35) days from the date of this notice. The transcriber may make

application to the District Judge for an extension of time in which to prepare the transcript.

Dated this 19th day of April, 2016.



RAE ANN NIXON

Ada County Transcript Coordinator

CERTIFICATE OF MAILING

I certify that on this 19th day of April, 2016, a true and correct copy of the Notice of Preparation of Appeal Transcript was forwarded to Appellant or Appellant's attorney of record, by first class mail, at:

Ada County Public Defender
200 West Front Street Ste 1107
Boise, ID 83702
RANDALL S. BARNUM & MATTHEW GUNN



RAE ANN NIXON

Ada County Transcript Coordinator

APR 20 2016

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

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

STATE OF IDAHO,

Plaintiff/Respondent,
vs.

TANYA A. VARGAS,

Defendant/Appellant.

Case No. CR-MD-15-7985

ORDER GOVERNING PROCEDURE
ON APPEAL

Notice of Appeal having been filed herein, and it appearing that a transcript of all the testimony of the original trial or hearing has been ordered and the estimated cost of said transcript having already been paid **OR** Ada County having agreed to pay the costs of said transcript upon completion;

It is ORDERED:

- 1) That Appellant's brief shall be filed and served within 35 days of the filing of the transcript.
- 2) That Respondent's brief shall be filed and served within 28 days after service of appellant's brief.
- 3) That Appellant's reply brief, if any, shall be filed and served within 21 days after service of respondent's brief.

4) That either party may notice the matter for oral argument in writing after all briefs are filed, and that if within fourteen (14) days after the final brief is filed, neither party does so notice for oral argument, the Court may deem oral argument waived and decide the case on the briefs and the record.

Dated this 20th day of April, 2016.

A handwritten signature in black ink, appearing to read "G. Schroeder", written over a horizontal line.

GERALD F. SCHROEDER
Senior District Judge

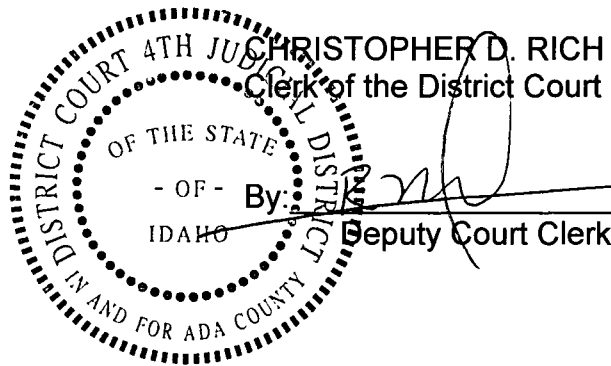
CERTIFICATE OF MAILING

I hereby certify that on this 20th day of April, 2016, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PUBLIC DEFENDER
VIA: INTERDEPARTMENTAL MAIL

BOISE CITY PROSECUTOR
VIA: INTERDEPARTMENTAL MAIL

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL



MAY 10 2016

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CRMD-2015-0007985
)	
vs.	)	NOTICE OF LODGING
	)	APPEAL TRANSCRIPT
TANYA A. VARGAS,)	
)	
Defendant/Appellant.)	
_____)	

To: John Smith, Attorney for Respondent.


To: Randall S. Barnum & Matthew Gunn, Appearing Appellant

PLEASE TAKE NOTICE THAT a transcript of the proceeding in this action was lodged with the Court on **May 10, 2016**.

YOU ARE NOTIFIED that you may pick up a copy of said transcript at the District Clerk's Office, Ada County Courthouse, 200 West Front Street, Boise, ID 83702.

Unless objections to the content of the transcript are received within twenty-one (21) days from the date of mailing of this notice, such transcript shall be deemed settled.

Date this 10th day of May, 2016.



RAE ANN NIXON
Deputy Clerk of the District Court

I hereby certify that on this 10th day of May, 2016, a true and correct copy of the Notice of Lodging was sent via US Mail to:

BOISE CITY ATTORNEY'S OFFICE
POST OFFICE BOX 500
BOISE ID 83701-055
JOHN SMITH

ADA COUNTY PUBLIC DEFENDER
200 WEST FRONT STREET STE 1107
BOISE ID 83702
RANDALL S. BARNUM & MATTHEW GUNN - CC



RAE ANN NIXON
Deputy Clerk of the District Court

JUN 03 2016

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

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

STATE OF IDAHO,

Plaintiff/Respondent

TANYA A. VARGAS,

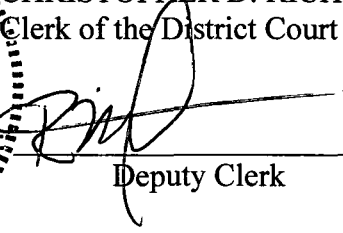
Defendant/Appellant

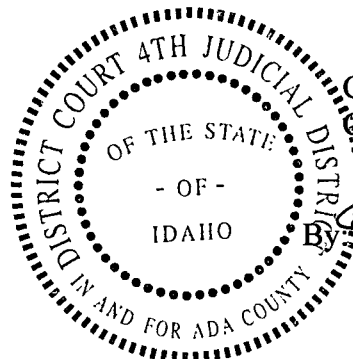
Case No. CR-MD-15-7985

**NOTICE OF FILING
TRANSCRIPT ON APPEAL**

Pursuant to I.R.C.P. 83(p), the transcript of the proceedings dated March 15, 2016, is now filed.

Dated this 3rd day of June, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court
By 
Deputy Clerk



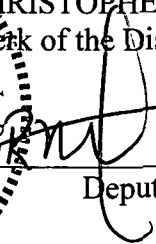
CERTIFICATE OF MAILING

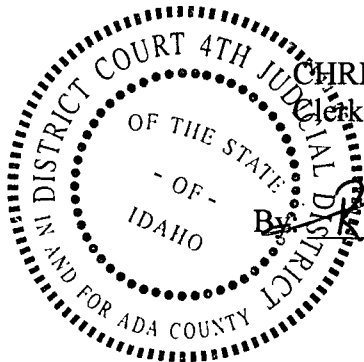
I hereby certify that on this 3rd day of June, 2016, I mailed (served) a true and correct copy of the
within instrument to:

ADA COUNTY PUBLIC DEFENDER
VIA: INTERDEPARTMENTAL MAIL

BOISE CITY PROSECUTOR
VIA: INTERDEPARTMENTAL MAIL

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court
By 
Deputy Clerk

The seal is circular with a dotted border. The text inside the seal reads: "DISTRICT COURT 4TH JUDICIAL DISTRICT" around the top, "OF THE STATE OF IDAHO" in the center, and "IN AND FOR ADA COUNTY" around the bottom.

130

JUL 10 2016

CHRISTOPHER D. RICH, Clerk
By WENDY MALONE
DL

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
Attorneys for Defendant

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

STATE OF IDAHO,)	
	)	Case No. CR-MD-2015-0007985
Plaintiff/Respondent,)	
	)	MOTION TO ENLARGE TIME
vs.)	
)	
TANYA ANDREA VARGAS,)	
)	
Defendant/Appellant.)	
)	

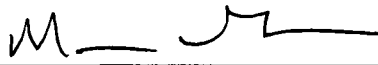
COMES NOW the Defendant/Appellant in the above-entitled, by and through her attorney of record, Randall S. Barnum, of the firm Barnum Howell & Gunn PLLC, conflict counsel for the Ada County Public Defender, and hereby moves this Court for its Order, pursuant to Idaho Criminal Rule 54.14, enlarging the time within which the Defendant/Appellant may file the Appellant's brief until 35 days of the filing of the transcript from the hearing on Defendant's Motion in Limine held on March 15, 2016.

um

This Motion is based upon the pleadings and record on file herein and the Defendant/Appellant's Request for Additional Transcripts to be included in Reporter's Transcript, filed contemporaneously herewith.

DATED THIS 29 day of June, 2016.

BARNUM HOWELL & GUNN PLLC


FOR RANDALL S. BARNUM
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of June, 2016, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to each of the following:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☒ Facsimile

Rae Ann Nixon, Court Reporter
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile


For Randall S. Barnum

JUN 30 2016

CHRISTOPHER D. RICH, Clerk
By WENDY MALONE
DEPUTY

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
Attorneys for Defendant

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

STATE OF IDAHO,)	
	)	Case No. CR-MD-2015-0007985
Plaintiff/Respondent,)	
	)	REQUEST FOR ADDITIONAL
vs.	)	TRANSCRIPTS TO BE INCLUDED IN
	)	REPORTER'S TRANSCRIPT
TANYA ANDREA VARGAS,)	
)	
Defendant/Appellant.)	
)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ADA COUNTY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN that the Defendant/Appellant in the above-entitled matter hereby requests the inclusion of the following transcript as previously requested in Defendant/Appellant's Notice of Appeal, of which was not included in the lodging of the transcript on or about May 10, 2016:

1. Hearing on Defendant's Motion in Limine held on the 15th day of March, 2016.

That the Appellant is exempt from paying the estimated transcript fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.


REQUEST FOR ADDITIONAL TRANSCRIPTS TO BE INCLUDED IN REPORTER'S
TRANSCRIPT—P.1

000098

I certify that a copy of this request was served upon the Clerk of the District Court and upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED THIS 29 day of June, 2016.

BARNUM HOWELL & GUNN PLLC


FOR RANDALL S. BARNUM
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 29 day of ~~April~~ ^{June}, 2016, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to each of the following:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☒ Facsimile

Rae Ann Nixon, Court Reporter
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile


FOR Randall S. Barnum

JUL 06 2016

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	
)	
vs.	)	Case No. CRMD-2015-0007985
)	
TANYA A. VARGAS,	)	AMENDED NOTICE OF PREPARATION
	)	OF APPEAL TRANSCRIPT
Defendant/Appellant,)	
_____)	

A Notice of Appeal was filed in the above-entitled matter on July 5, 2016 and a copy of said Notice was received by the Transcription Department on **July 6, 2016**. I certify the estimated cost of preparation of the appeal transcript to be:

Type of Hearing: Appeal

Date of Hearing: Motion in Limine - March 15, 2016 Judge: Michael Oths

32 Pages x \$3.25 = \$104.00

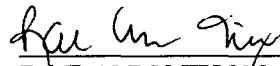
Pursuant to Idaho Rules of Civil Procedure, Rule 83(k)(1), the appellant must, unless otherwise ordered by a District Judge, pay the estimated fee for the preparation of the transcript within fourteen (14) days after the filing of the Notice of Appeal, and the appellant shall pay the balance of the fee, if any, for the transcript upon completion.

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

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty-five (35) days from the date of this notice. The transcriber may make

application to the District Judge for an extension of time in which to prepare the transcript.

Dated this 6th day of July, 2016.



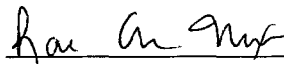
RAE ANN NIXON

Ada County Transcript Coordinator

CERTIFICATE OF MAILING

I certify that on this 6th day of July, 2016, a true and correct copy of the Notice of Preparation of Appeal Transcript was forwarded to Appellant or Appellant's attorney of record, by first class mail, at:

Ada County Public Defender
200 West Front Street Ste 1107
Boise, ID 83702
RANDALL S. BARNUM & MATTHEW GUNN



RAE ANN NIXON

Ada County Transcript Coordinator

JUL 07 2016

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

Randall S. Barnum, ISB No. 6034
Matthew G. Gunn, ISB No. 8763
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
PO Box 2616
Boise, Idaho 83701-2616
Telephone: (208) 336-3600
Facsimile: (208) 342-3077
Attorneys for Defendant

RECEIVED
JUL 05 2016
Ada County Clerk

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

STATE OF IDAHO,)	
	)	Case No. CR-MD-2015-0007985
Plaintiff/Respondent,)	
	)	ORDER ENLARGING TIME
vs.)	
)	
TANYA ANDREA VARGAS,)	
)	
Defendant/Appellant.)	
_____)	

COMES NOW the Defendant/Appellant having moved the Court for an Order enlarging the time within which she might file the Appellant's Brief, and supported by the Request for Additional Transcripts to be Included in Reporter's Transcript, and good cause appearing therefrom;

IT IS HEREBY ORDERED:

1. That the time within which the Defendant/Appellant may file the Appellant's Brief is hereby enlarged.

ORDER ENLARGING TIME—P.1

2. That the transcript of the hearing on the Motion in Limine as requested in Defendant/Appellant's Request for Additional Transcripts to be Included in Reporter's Transcript shall be filed by August 12, 2016.

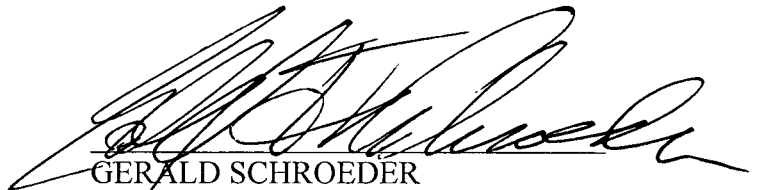
3. That Appellant's Brief shall be filed and served within 35 days of the filing of the transcript.

4. That Respondent's Brief shall be filed and served within 28 days after service of Appellant's Brief.

5. That Appellant's Reply Brief, if any, shall be filed and served within 21 days after service of Respondent's Brief.

IT IS SO ORDERED.

DATED THIS 6 day of July, 2016.


GERALD SCHROEDER
Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2016, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to each of the following:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered *Intro. to*
☐ E-mail
☐ Facsimile

Rae Ann Nixon, Court Reporter
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered *Intro. to office*
☐ E-mail
☐ Facsimile

Randall S. Barnum
Barnum Howell & Gunn PLLC
PO Box 2616
Boise, ID 83701-2616

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile



NO. _____
A.M. _____ P.M. 2

JUL 08 2016

CHRISTOPHER D. RICH, Clerk
By SARA MARKLE
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

John J. Smith
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 9674

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

THE STATE OF IDAHO)	
)	
Plaintiff,	)	Case No. CR-MD-2015-0007985
)	
v.)	
	)	NOTICE OF NO OBJECTION
TANYA ANDREA VARGAS)	
)	
Defendant.)	
)	

COMES NOW the State of Idaho, by and through John J. Smith, Assistant Boise City Attorney, and hereby notifies this Court and counsel that the State has no objection to Defendant's Motion to Enlarge Time.

DATED this 6 day of July, 2016.



John J. Smith
Deputy City Attorney

mo

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Wednesday, July 06, 2016, I served a true and correct copy of the foregoing document upon the following person(s) by the method indicated below:

Randall S. Barnum
Attorney at Law
PO Box 2616
380 S. 4th Street, Ste 101
Boise Idaho 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☒ **ELECTRONIC To:** stacie@bhglaw.net
randall@bhglaw.net



NO. _____ FILED _____
A.M. _____ P.M. _____

JUL 08 2016

CHRISTOPHER D. RICH, Clerk
By SARA MARKLE
DEPUTY

130
ROBERT B. LUCE
BOISE CITY ATTORNEY

John J. Smith
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
P.O. Box 500
Boise, Idaho 83701-0500
Telephone: (208) 384-3870
Idaho State Bar No. 9674

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

THE STATE OF IDAHO)

Plaintiff,)

v.)

TANYA ANDREA VARGAS)


Defendant.)

Case No. CR-MD-2015-0007985

NOTICE OF NO OBJECTION

COMES NOW the State of Idaho, by and through John J. Smith, Assistant Boise City Attorney, and hereby notifies this Court and counsel that the State has no objection to Defendant's Request for Additional Transcripts to be Included in Reporter's Transcript.

DATED this 6 day of July, 2016.



John J. Smith
Deputy City Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Wednesday, July 06, 2016, I served a true and correct copy of the foregoing document upon the following person(s) by the method indicated below:

Randall S. Barnum
Attorney at Law
PO Box 2616
380 S. 4th Street, Ste 101
Boise Idaho 83702

☐ **US MAIL**
☐ **INTERDEPARTMENT MAIL**
☐ **FACSIMILE**
☒ **ELECTRONIC To:** stacie@bhglaw.net
randall@bhglaw.net



JUL 12 2016

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CRMD-2015-0007985
)	
vs.	)	NOTICE OF LODGING
	)	APPEAL TRANSCRIPT
TANYA A. VARGAS,)	
)	
Defendant/Appellant.)	
_____)	

To: JOHN J. SMITH, Attorney for Respondent.


To: MATTHEW GUNN, Appearing Appellant

PLEASE TAKE NOTICE THAT a transcript of the proceeding in this action was lodged with the Court on **July 12, 2016**.

YOU ARE NOTIFIED that you may pick up a copy of said transcript at the District Clerk's Office, Ada County Courthouse, 200 West Front Street, Boise, ID 83702.

Unless objections to the content of the transcript are received within twenty-one (21) days from the date of mailing of this notice, such transcript shall be deemed settled.

Date this 12TH day of July, 2016.

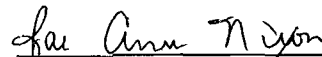


RAE ANN NIXON
Deputy Clerk of the District Court

I hereby certify that on this 12th day of July, 2016, a true and correct copy of the Notice of Lodging was sent via US Mail to:

BOISE CITY ATTORNEY'S OFFICE
POST OFFICE BOX 500
BOISE ID 83701-055
JOHN J. SMITH

ADA COUNTY PUBLIC DEFENDER
200 WEST FRONT STREET STE 1107
BOISE ID 83702
RANDALL S. BARNUM



RAE ANN NIXON
Deputy Clerk of the District Court

SEP 09 2016

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

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

STATE OF IDAHO ,

Plaintiff/Respondent

TANYA A. VARGAS,

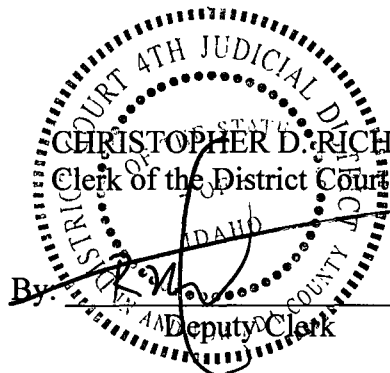
Defendant/Appellant

Case No. CRFE15-7985

**NOTICE OF FILING
TRANSCRIPT ON APPEAL**

Pursuant to I.R.C.P. 83(p), the transcript of the proceedings dated March 15, 2016, is now filed.

Dated this 9th day of September, 2016.



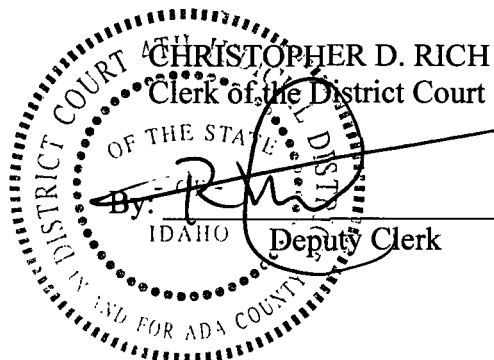
CERTIFICATE OF MAILING

I hereby certify that on this 12th day of September, 2016, I mailed (served) a true and correct copy of the within instrument to:

John J. Smith
BOISE CITY ATTORNEY'S OFFICE
150 N Capitol Blvd
PO Box 500
Boise, ID 83701-0500

RANDALL S. BARNUM
BARNUM HOWELL & GUNN PLLC
380 S 4TH ST, STE 104
PO BOX 2616
BOISE, ID 83701-2616

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL



RANDALL SCOTT BARNUM, ISB #6034
MATTHEW G. GUNN, ISB #8763
BARNUM HOWELL, PLLC
Conflict Counsel for Ada County Public Defender
380 S. 4th Street, Suite 104
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Facsimile: (208) 342-3077

Attorney for Defendant/Appellant

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

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
v.)
)
TANYA A. VARGAS,)
)
Defendant/Appellant.)
)
_____)

Case No. CR-MD-2015-0007985

APPELLANT'S BRIEF

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CASES AND AUTHORITIES

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Federal Cases

<i>Manson v. Brathwaite</i> , 432 U.S. 98, 97 S. Ct. 2243 (1977)	4,5,6,7,9
<i>Neil v. Biggers</i> , 409 U.S. 188, 93 S. Ct. 375 (1972)	4,9
<i>United States v. Morgan</i> , 690 F. Supp. 2d 274 (S.D.N.Y. 2010)	5,6,7

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STATEMENT OF THE CASE

A. *Nature of the Case*

This is an appeal from the judgment of conviction of the Appellant, Tanya Vargas, on one misdemeanor count of eluding a police officer. The trial court erred in denying Ms. Vargas's motion in limine seeking suppression of the police officer's identification of her, both in and out of court. Accordingly, the judgment of conviction is appropriately vacated and the case remanded.

B. *Course of Proceedings*

On June 5, 2015 Ms. Vargas was charged with one count of eluding a police officer in violation of Idaho Code § 49-1404. Ms. Vargas pled not guilty and the matter proceeded to a jury trial on March 15, 2016. Ms. Vargas' pre-trial motion in limine was denied by the trial court. After a one day trial, the jury found Ms. Vargas guilty. Ms. Vargas was sentenced to 166 days of jail and was credited for 166 days served. Ms. Vargas timely appealed her judgment of conviction on April 15, 2016.

C. *Factual and Procedural History*

Just before 11:00 p.m. on May 8, 2015 Boise Police Department Officer Natalie Wing was patrolling in a marked car in the vicinity of Curtis and Franklin in Boise, Ada County, Idaho. (Trial Tr., p. 7, L. 12-24.) Officer Wing observed a vehicle driving in front of her that had a non-functioning taillight. (Trial Tr., p. 8, L. 9-18.) Officer Wing followed the vehicle for approximately two minutes at a speed of thirty miles per hour. (Trial Tr., p. 21, L. 19-25.)

Officer Wing attempted to stop the vehicle near the intersection of Curtis and Cassia. (Trial Tr., p. 9, L. 3-6.) Officer Wing turned on her overhead lights, at which time the vehicle slowed but did not stop. (Trial Tr., p. 10, L. 14-p. 11, L. 10.) Pursuant to Boise Police

Department policy, Officer Wing did not pursue the vehicle. (Trial Tr., p. 17, L. 1-15.) Officer Wing obtained the vehicle's license plate number. (Trial Tr., p. 10, L. 7-13.)

While attempting to initiate the traffic stop, Officer Wing observed the driver glancing in the driver's sideview mirror "four to five times." (Trial Tr., p. 12, L. 22-p. 13, L. 13.) Officer Wing never observed the driver from the front or the side, only from behind. (Trial Tr., p. 25, L. 14-18.) Officer Wing observed the driver for a total of four to eight seconds. (Trial Tr., p. 26, L. 14-21.) Based on these glances, Officer Wing described the driver as a Hispanic female in her thirties. (Trial Tr., p. 14, L. 2-5.) Officer Wing was unable to establish any other identifying characteristics of the driver, including build, height, tattoos or physical impairments. (Trial Tr., p. 27, L. 17-p.28, L. 17.)

Officer Wing investigated the registered owner of the vehicle and obtained Ms. Vargas's name. (Trial Tr., p. 17, L. 12-24.) Officer Wing then obtained a state identification card of Mr. Vargas bearing her picture. (Trial Tr., p. 19, L. 9-13.) Officer Wing looked at no other photos or lineup and determined, based on the identification card photograph alone, that Ms. Vargas was driving the vehicle that failed to stop. (Trial Tr., p. 20, L. 16-20; Trial Tr., p. 29, L. 21-24.)

Prior to trial, Ms. Vargas moved to suppress both Officer Wing's out of court, and expected in-court, identification of her. (Limine Tr., p. 12, L. 22-p. 22, L. 25.) The trial court denied the motion in limine. (*Id.*)

At trial, Officer Wing identified Ms. Vargas as the driver of the vehicle. (Trial Tr., p. 17, L. 25-p. 18, L. 10.) Officer Wing also testified regarding her out of court identification of Ms. Vargas as the driver of the vehicle. (Trial Tr., p. 19, L. 2-p. 20, L. 4.) Ms. Vargas was found guilty. (Trial Tr., p. 43, L. 15-19.)

ISSUES ON APPEAL

1. Did the trial court err in denying Ms. Vargas's motion in limine seeking suppression of Officer Wing's identification of her, both in and out of court?

ARGUMENT

A. *Standard of Appellate Review*

"All appeals from the magistrate's division shall be heard by the district court as an appellate proceeding unless the district court orders a trial *de novo*." I. C. R. 54.2.

Under Idaho law, an appellate court freely reviews questions of relevancy under I. R. E. 401 "because relevancy is a question of law." *State v. Waddle*, 125 Idaho 526, 873 P2d 171 (1994).

B. *The Trial Court Erred in Denying Ms. Vargas's Motion in Limine Seeking Suppression of Officer Wing's Identification of her, Both in and out of Court.*

The trial court erred in denying Ms. Vargas's motion in limine seeking suppression of Officer Wing's (1) out of court; and (2) in-court identification.

1. Out of Court Identification.

The trial court denied Ms. Vargas's motion in limine seeking suppression of Officer Wing's out of court identification. The trial court premised its ruling on two bases: (1) characterization of Officer Wing's out of court identification as the culmination of an investigation, and not a single photo lineup (Limine Tr., p. 13, L. 5-8; p. 17, L. 24-p. 18, L. 3); and (2) reasoning that that the identification was sufficiently reliable as to be admissible (Limine Tr., p. 18, L. 4-p. 20, L. 23).

Out of court identifications “must be suppressed when, under the totality of the circumstances, “the identification procedure was so impermissibly suggestive’ that they give ‘rise to a very substantial likelihood of misidentification.’” *State v. Best*, 117 Idaho 652, 654, 791 P.2d 33, 35 (Ct. App. 1990) (quoting *State v. Kysar*, 116 Idaho 992, 994–94, 783 P.2d 859, 861–62 (1989); *State v. Edwards*, 109 Idaho 501, 708 P.2d 906 (Ct. App. 1985). *See also Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375 (1972). “In particular, single subject showups are inherently suspect and generally not condoned.” *State v. Hoisington*, 104 Idaho 153, 162, 657 P.2d 17, 26 (1983).

Though an identification may be inherently suspicious, such inherent suspicion does not render it *per se* inadmissible. To determine the admissibility of the out of court identification testimony, reliability is the foundation upon which the testimony is weighed. *Manson v. Brathwaite*, 432 U.S. 98, 97 S. Ct. 2243, (1977). Five factors must be considered to determine the reliability of the identification: (1) the opportunity for the witness to view the criminal at the time of the crime; (2) the degree of the witness’ attention; (3) the accuracy of the witness’ prior description of the criminal; (4) the level of certainty demonstrated at the identification; and (5) the time span between the crime and the identification. *Kysar, supra*; *Manson, supra*; *State v. Hoisington*, 104 Idaho 153, 657 P.2d 17 (1983).

The trial court in this case seemed to reason that if Officer Wing’s identification of Ms. Vargas in a single photo lineup was investigatory in nature, then it was not an out of court identification, impermissibly suggestive or otherwise, as contemplated by *Manson*, thus rendering the reliability factors set forth in that case inapplicable. There is no precedent, however, supporting the inapplicability of the law governing out of court identifications simply

because the identification was made by law enforcement in the context of an on-going investigation. In *United States v. Morgan*, an undercover narcotics officer purchased crack cocaine from one the defendants, John Franklin. 690 F. Supp. 2d 274, 280 (S.D.N.Y. 2010). The undercover officer identified Mr. Franklin through the use of a six-photo array containing Mr. Franklin's photograph, as well as five "filler" photographs of "persons that look similar to the target photograph, based on the geographic area selected." *Id.* The undercover officer's identification was made during the investigation, prior to any arrests being made. The court upheld the officer's identification because "mere use of a photo array is not inherently suggestive and use of the instant array cannot prevent admission of either the pre-trial identification or an in-court identification by the [undercover officer]." *Id.* at 290.

In *Manson*, similarly, an undercover narcotics officer purchased heroin from the defendant, whom he did not know, but was able to describe to another officer at the police station. 432 U.S. at 100. Recognizing the description of the heroin seller, the other officer showed the undercover officer a single, non-lineup photograph of the defendant, and the undercover officer identified the photograph as the defendant who sold him heroin. *Id.* at 101. Again, the identification occurred while the investigation was pending, prior to any arrests being made. *Id.* The Supreme Court noted that "[n]o explanation was offered by the prosecutor for the failure to utilize a photographic array or to conduct a lineup." *Id.* at 102. The *Manson* Court then created the seminal rule, applicable in this case, which "permits the admission of the confrontation evidence if, despite the suggestive aspect, the out-of-court identification possesses certain features of reliability." *Id.* at 110. The Court then enumerated the five specific factors, discussed *supra*, upon which a court may rely in determining whether an impermissibly-suggestive out of court identification is nonetheless sufficiently reliable as to be admissible:

These include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.

Id. at 114.

In stark contrast to the undercover officers in *Morgan* and *Manson*, in this case Officer Wing looked at a lineup of a single photograph to identify Ms. Vargas. Such identification was impermissibly suggestive and inherently suspect. *Hoisington*, 104 Idaho at 162, 657 P.2d at 26. Once established as suspect, an out of court identification is admissible if it is sufficiently reliable based on the *Manson* factors. The trial court considered the *Manson* factors, and concluded that suppression of Officer Wing's out of court identification was inappropriate. The trial court relied most heavily on the second *Manson* factor, degree of witness attention:

The degree of witness attention I think would probably be intense. . . . this is a police officer who's actively trying to figure out who it is who's driving, and so, I think their attention is laser focused on who that was driving.

(Limine Tr., p. 18, L. 12-18.)

The trial court, erred, however, because the *Manson* factors, particularly the first one, weighed heavily and decisively against the reliability, and therefore admissibility, of Officer Wing's out of court identification of Ms. Vargas. First, Officer Wing had minimal time to view the criminal at the time of the crime. Officer Wing observed the reflection of the criminal by virtue of a few glances in a side view mirror a few square inches in size, while driving presumably at least a car length behind, in the pitch darkness at 10:48 p.m. Despite the trial court concluding that Officer Wing was "laser focused" on identifying the vehicle's driver, Officer Wing was able to describe the driver in no more detail than "Hispanic female" in her thirties.

The State cited no authority, and counsel could locate none, in which an identification satisfying the *Manson* standard occurred absent face to face identification of the defendant by the witness. In both *Morgan* and *Manson, supra*, the predicate identification was face to face and stationary, as opposed to occurring in moving vehicles through mirrors at night in this case. In *Manson*, the undercover officer stood face to face within two feet of the defendant in an apartment doorway for two to three minutes, and the undercover officer's description included such detail as "his height, his build, the color and style of his hair, and the high cheekbone facial feature. It also included clothing" 432 U.S. at 114. In *Morgan*, the undercover officer also described the suspect in detail: "male black, medium build, approximately 23–27 years old, 5'7"–5'309", 175–185 pounds, wearing black frame glasses, a black and white striped shirt, and blue jeans." 690 F. Supp. 2d at 284. Officer Wing's description of the driver of the vehicle as nothing more than a thirties Hispanic female is, by comparison to the descriptions in *Manson* and *Morgan*, so scant as to be non-existent and strongly indicative of the fact that Officer Wing could not have been paying close attention to the identity of the driver of the vehicle.

Second, Officer Wing was focused on safely operating her vehicle and effecting a traffic stop. Notwithstanding her training and desire to identify the driver of the vehicle, Officer Wing could not have been solely and entirely focused on identifying the driver of the vehicle.

Third, as discussed *supra*, Officer Wing's description of the driver of the vehicle, prior to identifying Ms. Vargas, was scant. Officer Wing identified the criminal as a "Hispanic female." Officer Wing identified no further characteristics such as approximate age, build, tattoos, hair or

eye color, or distinguishing physical characteristics. Approximately 99,296 persons in the state of Idaho fit the description of “Hispanic female”.¹

Fourth, Officer Wing undoubtedly demonstrated certainty in her identification of Ms. Vargas, but that is easy to do when the lineup consists of a single photograph of a person who matches the incredibly vague description of “Hispanic female”. It would have been a simple task for Officer Wing, after obtaining Ms. Vargas’s name, to ask a colleague to pull Ms. Vargas’s photograph and then arrange a lineup of Hispanic females in order to make a non-suggestive identification. Officer Wing declined to do so, rendering her certainty in identifying Ms. Vargas in a lineup of one both expected and irrelevant.

Fifth, it is unclear from Officer Wing’s report how much time elapsed between her witnessing of the driver of the vehicle and her identification of Ms. Vargas in a highly suggestive lineup of one.

Consideration of the *Manson* factors, as applied to this case, require exclusion of Officer Wing’s highly unreliable nighttime, side view mirror, single photograph lineup identification of Ms. Vargas.

2. In-Court Identification.

Officer Wing also made an in-court identification of Ms. Vargas, and such identification is properly excluded as well.

¹ Idaho Quickfacts – United States Census Bureau – Available:
<http://www.census.gov/quickfacts/table/PST045215/16>

In *State v. Crawford*, 99 Idaho 87, 577 P.2d 1135 (1978), the Idaho Supreme Court recognized that the “the due process test for suppression of an in-court identification that is allegedly tainted by an impermissibly suggestive out-of-court identification is whether the out-of-court identification was so suggestive that there is a very substantial likelihood of misidentification.” *Id.* at 103, 577 P.2d at 1151 (*citing Manson v. Braithwaite*, 432 U.S. 98 (1977) and *Neil v. Biggers*, 490 U.S. 188 (1972)); *see also State v. Hoisington*, 104 Idaho 153, 657 P. 2d 17 (1983).

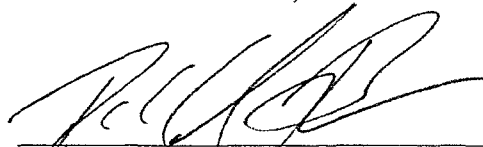
In this case there exists a substantial likelihood for Ms. Vargas to be misidentified by Officer Wing as a result of the tainted out of court identification. As discussed *supra*, Officer Wing identified Ms. Vargas in an inherently suspect single photo lineup. The identification was based on fleeting glances in a side view mirror, in pitch darkness, from a following car. The out of court identification was so suggestive as to be useless, and it irreconcilably taints any in-court identification of Ms. Vargas by Officer Wing. At trial it would be unreasonable to expect Officer Wing to completely block from memory her prior identification of Ms. Vargas in the single photo lineup and identify her anew, based solely on the events of May 8, 2015.

CONCLUSION

For the reasons set forth herein, Ms. Vargas respectfully asks this Court to vacate the imposition of sentence and remand this matter for further proceedings.

Dated this 9 day of September, 2016.

BARNUM HOWELL, PLLC.

A handwritten signature in black ink, appearing to read 'R. S. Barnum', written over a horizontal line.

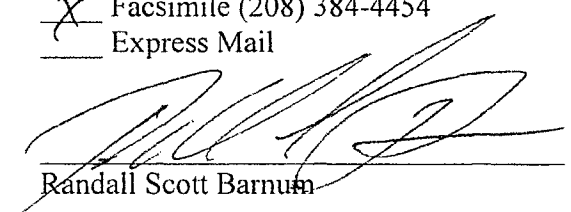
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR-MD-2015-0007985
Plaintiff/Respondent,)	
)	
vs.)	
	)	RESPONDENT'S BRIEF
TANYA ANDREA VARGAS,)	
)	
Defendant/Appellant.)	

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

HONORABLE MICHAEL OTHS, MAGISTRATE, PRESIDING

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COMES NOW, the Respondent by and through John J. Smith, Deputy City Attorney, and hereby files its Respondent's Brief in the above-captioned matter.

STATEMENT OF THE CASE

At approximately 11:00 p.m. on May 8, 2015, Boise Police Department Officer Natalie Wing was on patrol in the area of Curtis and Franklin, Boise, Idaho. (Trial Tr., p. 7, Ls. 16-20.) Officer Wing observed the vehicle in front of her traveling with a non-functioning taillight. (Trial Tr., p. 8, Ls. 14-17.)

Officer Wing followed the vehicle long enough to get the vehicle's information and project where she wanted to make a traffic stop. (Trial Tr., p. 8, Ls. 19-24.) At the well-lit intersection of Curtis and Cassia, Officer Wing attempted to make the traffic stop. (Trial Tr., p. 9, Ls. 5-25.)

Officer Wing turned on her overhead lights, signaling the vehicle to stop. (Trial Tr., p. 10, L. 14.) Officer Wing closed the distance between her and the vehicle, during which time she observed the vehicle's driver making multiple glances in the driver's side mirror. (Trial Tr., pp. 12-13.) As the driver looked in the mirror, Officer Wing was able to get a good look at the driver, including a full face shot and side profile. (Trial Tr., p. 13, Ls. 11-21.) Officer Wing observed a Hispanic female in her mid to upper thirties. (Trial Tr., p. 14, Ls. 3-5.)

The driver, however, did not stop but rapidly sped away. (Trial Tr., p. 17, Ls. 5-15.) Due to Boise Police Department public safety policy, Officer Wing chose not to pursue the vehicle. (Trial Tr., p. 17, Ls. 5-15.) In addition to safety concerns, Officer Wing made the decision not to pursue the vehicle because she already had a description of the driver along with the vehicle's description and registration information. (Trial Tr., p. 17, Ls. 16-20.)

With that information Officer Wing subsequently conducted an investigation to determine who had been driving the vehicle. (Trial Tr., pp. 18-19.) Officer Wing determined the vehicle was registered to an individual in Ogden, Utah. (Trial Tr., p. 18, Ls. 18-19.) After working with local law enforcement in Ogden, Officer Wing obtained the name and date of birth of Tanya Vargas, along with the registered owner's statement that he had given the car to Tanya Vargas. (Mot. Tr., p. 11, Ls. 9-20; p. 17, Ls. 7-22.)

With the knowledge that the registered owner had given the car to Tanya Vargas, and with Tanya Vargas' identifying information, Officer Wing then pulled up Tanya Vargas' State-issued ID picture. (Trial Tr., p. 19, Ls. 9-13.) When Officer Vargas saw Tanya Vargas' picture, Officer Wing immediately recognized Tanya Vargas as the vehicle driver from that evening. (Trial Tr., pp. 19-20.) During the trial, Officer Wing identified Tanya Vargas in the courtroom as the individual driving the vehicle that evening. (Trial Tr., p. 18, Ls. 5-11.)

Prior to trial, Vargas moved to exclude both Officer Wing's out-of-court and in-court identifications of Vargas. (Mot. Tr., p. 12.) Vargas argued that Officer Wing's use of Vargas' State-issued ID constituted a photo line-up and was therefore "highly suggestive." (Mot. Tr., p. 13, Ls. 20-21; p. 14, Ls. 10-11.)

The State argued that Officer Wing's identification came through Officer Wing's investigation and was not the kind of photo line-up Vargas argued was "highly suggestive." (Mot. Tr., p. 16, Ls. 1-14.) The trial court agreed. (Mot. Tr., p. 18, Ls. 1-11.) The trial court recognized that Officer Wing's identification of Vargas came through Officer Wing's investigation. (Mot. Tr., p. 21, Ls. 1-16.) In addition, the trial court determined that the issue was really one of the reliability of Officer Wing's ability to identify Vargas from the evening in

question. (Mot. Tr. pp. 18-20.) Accordingly, the trial court determined that the issue of Officer Wing's ability to identify Vargas through those circumstances was properly reserved for the jury. (Mot. Tr., p. 21, Ls. 1-16.)

ARGUMENT

A. STANDARD OF APPELLATE REVIEW.

"All appeals from the magistrate's division shall be heard by the district court as an appellate proceeding unless the district court orders a trial de novo." I.C.R. 54.2. The Court reviews the lower court's decision on a motion in limine for an abuse of discretion." *State v. Richardson*, 156 Idaho 524, 507 (2014). "A trial court does not abuse its discretion if it (1) recognizes the issue as one of discretion, (2) acts within the boundaries of its discretion and applies the applicable legal standards, and (3) reaches the decision through an exercise of reason." *State v. Guess*, 154 Idaho 521, 528 (2013) (internal quotation marks omitted).

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED VARGAS' MOTION IN LIMINE SEEKING SUPPRESSION OF OFFICER WING'S OUT-OF-COURT IDENTIFICATION.

The Due Process Clause to the United States Constitution imposes reliability-based constraints on the admissibility of eyewitness identification evidence. *See Simmons v. United States*, 390 U.S. 377, 384 (1968); *Foster v. California*, 394 U.S. 440, 443 (1969); *Neil v. Biggers*, 409 U.S. 188 (1972). Notwithstanding reliability-based concerns, "the potential unreliability of a type of evidence does not alone render its introduction at the defendant's trial fundamentally unfair." *State v. Abdullah*, 158 Idaho 386, 441 (2015).

"To determine whether evidence of an out-of-court identification violates due process, th[e] [c]ourt applies a two-step test." *State v. Almaraz*, 154 Idaho 584, 593 (2013). "First, the

defendant must establish that the identification procedure was overly suggestive. Second, if the defendant meets that burden, courts consider whether the identification was nonetheless reliable under the totality of the circumstances.” *Id.* (internal citations omitted).

Courts, however, will consider the second prong “only after the defendant establishes improper police conduct.” *Perry v. New Hampshire*, 132 S.Ct. 716, 725 (2012). Thus, “the Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstance arranged by law enforcement.” *Perry*, at 730. In the absence of unduly suggestive procedures by law enforcement, the potential unreliability of eyewitness identification testimony ordinarily goes to the weight of the evidence, not its admissibility, and is a question for the jury. *See id.* at 730.

In this case, the trial court did not abuse its discretion when it determined that Officer Wing’s investigative identification was not improper police conduct or unnecessarily suggestive circumstances. Accordingly, the trial court properly left the issue of Officer Wing’s ability to identify Vargas under the circumstances to the jury’s consideration.

1. Officer Wing’s Identification of Vargas through the Officer’s Own Investigation was not Improper Police Conduct.

The United States Supreme Court has held that neither suggestiveness nor the possibility of unreliable identification evidence it produces is a basis for suppression unless the police engaged in inappropriate conduct to create the suggestiveness. *Perry*, 132 S.Ct. at 730.

The identification must have involved “improper state conduct”—one in which the circumstances did not justify law enforcement’s suggestive behavior. *Id.* at 728. These are situations where the police *arrange* the suggestive circumstances. *Id.* at 720.

In *Perry*, the defendant allegedly broke into a vehicle in the parking lot of an apartment complex. *Id.* at 721. An eye-witness watched this happen from the kitchen window of her fourth floor apartment and alerted the authorities. *Id.* While one police officer went inside to speak to the witness, another officer remained with the defendant in the parking lot. *Id.* When the officer upstairs asked the witness for a specific description of the man, the witness pointed out her window and identified the thief as the man standing in the parking lot next to the other police officer. *Id.* The court ultimately held that because the suggestive nature of the witness' identification was not actually manufactured by the police, the police conduct was not improper, and a determination for reliability was not required. *Id.* at 722. The court reached its holding, recognizing that even if the identification was suggestive, the police did not create or arrange the suggestiveness for the purpose of making the identification. *See id.* Therefore, the identification was not the result of improper police conduct. *Id.*

Relying on *Manson v. Brathwaite*, 432 U.S. 98, 97 S. Ct. 2243, 53 L.Ed.2d 140 (1977), *Perry* reiterated the policy behind the rule excluding evidence from suggestive identification procedures is "to deter police from rigging identification procedures...." *Perry* at 721. "When no improper law enforcement activity is involved...it suffices to test reliability through the rights and opportunities generally designed for that purpose" such as "vigorous cross-examination, protective rules of evidence, and jury instructions on both the fallibility of eyewitness identification and the requirement that guilt be proceed beyond a reasonable doubt." *Id.*

Thus, "[t]he Constitution...protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the

defendant means to persuade the jury that the evidence should be discounted as unworthy of credit.” *Id.* at 723.

In this case, Officer Wing’s investigation and ultimate identification of Vargas was not the result of improper law enforcement activity. Indeed, Officer Wing pursued a normal and routine criminal investigation which led her to Vargas’ identity. Specifically, after Officer Wing obtained Vargas’ personal identifying information and the vehicle’s registered owner had given the car to Vargas, Officer Wing used that information to access Vargas’ State-issued ID in order to confirm whether Vargas was the same individual Officer Wing observed driving the vehicle. That is, a third party did not conduct the investigation and then offer Officer Wing a single photo for identification or otherwise suggest Vargas was the driver. Officer Wing’s own investigation led her to Vargas’ identity and picture, and Officer Wing used this information to confirm through her own personal observations that Vargas was the driver.

At the hearing on Vargas’ Motion in Limine, Vargas argued that the trial court should exclude Officer Wing’s identification of Vargas from her State-issued ID because Officer Wing’s confirmation after viewing the photo constituted a single photo lineup and was therefore “highly suggestive.” (Mot. Tr., p. 13, Ls. 5-21.)

As *Perry* indicates, however, the correct standard for the court’s initial determination is not whether the use of a single photo to confirm identity is “highly suggestive” but whether law enforcement used improper conduct as a method to confirm Vargas’ identity.

In this case, the trial court correctly distinguished the difference. The court did not agree with Vargas’ argument that Officer Wing’s use of Vargas’ photo to confirm her identity was the

same type of conduct as the photo lineups from the cases Vargas referenced. (Mot. Tr., pp. 17-18.)

Accordingly, the trial court recognized the critical distinction which turns on improper police conduct and circumstances arranged by the police. *See Perry*, at 721 (recognizing that the policy behind the rule excluding evidence from suggestive identification procedures is “to deter police from rigging identification procedures”). Those concerns are not present here.

The trial court then correctly determined that the issue of Officer Wing’s ability to correctly identify Vargas under the circumstances was appropriate grist for Vargas to attack at trial and for the jury to consider. (Mot. Tr., 18, Ls. 7-11.)

In making that determination in this case, the trial court adhered to the same premise that underlies the Court’s decisions in *Biggers*, *Brathwaite*, and *Perry* controlling this issue. That is, the court’s historical due deference to the jury in matters of weighing the reliability of evidence rather than the judge. *See Perry*, at 723, 728-29; *Brathwaite*, 432 U.S. at 116 (“We are content to rely upon the good sense and judgment of American juries, for evidence with some element of untrustworthiness is customary grist for the jury mill. Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has questionable feature.”).

For these reasons, the trial court did not abuse its discretion when it denied Vargas’ Motion in Limine.

2. The Trial Court did not Abuse its Discretion when it Denied Vargas’ Motion in Limine Seeking to Exclude Officer Wing’s In-Court Identification of Vargas.

For an out-of-court identification to taint an in-court identification, the out-of-court identification must have been “so suggestive that there is a very substantial likelihood of

misidentification.” *State v. Trevino*, 132 Idaho 888, 892 (1999). “Due process requires the exclusion of identification evidence if police suggestiveness created a substantial risk of mistaken identification, except where the reliability of the identification is sufficient to outweigh the corrupting effect of the suggestive identification.” *Id.*

For the same reasons above, Officer Wing’s identification of Vargas through Officer Wing’s own investigation does not constitute improper police conduct. Accordingly, Officer Wing’s identification was not unnecessarily suggestive. For these reasons, the trial court properly left the issue to the jury’s consideration.

The Court of Appeals of Idaho recently addressed an almost identical set of facts. In *State v. Williams*, the court affirmed the conviction of a defendant where the law enforcement officer used the defendant’s driver’s license photo to confirm identity after the law enforcement officer only observed the defendant’s reflection in a driver’s side mirror. *State v. Williams*, No. 42102, 2015 WL 631570, at *1 (Idaho Ct. App. February 12, 2015).

In that case, the defendant argued that the officer’s out-of-court identification of defendant was unreliable, and therefore it was a violation of his right to due process to allow the officer to identify him as the driver in court and to testify to the officer’s out-of-court identification. *Id.* at 2. The court noted,

Specifically, [defendant] argue[d] that the ‘pre-trial identification process’ was overly suggestive because by viewing only the photograph of the registered owner of the vehicle, Officer Bateman was merely confirming his ‘pre-existing belief that the driver was in fact the registered owner.’ He analogizes such a ‘bias-confirming procedure’ as ‘essentially the kind of single suspect show-up’ that is ‘inherently suspect and not generally condoned.’

Id. at 2.

The court did not reach the merits of Williams' argument, however, because he raised the issue for the first time on intermediate appeal. *Id.* Nonetheless, the court noted,

Even if we were to reach the merits of Williams' argument, he cites no authority for his contention that the law pertaining to the reliability of out-of-court identifications applies to Officer Bateman's identification of Williams under the circumstances here. As the State points out, the cases on which Williams relies concern subsequent identifications by a third party.

Id. at 5, n.1.

In this case, the court's reasoning in *Williams* is equally applicable. Officer Wing's identification of Vargas through Officer Wing's own investigation also is not a subsequent identification by a third party. That is, Officer Wing's identification of Vargas does not present the same type of conduct and circumstances as the cases upon which Vargas relies.

As *Perry* recognizes, the absence of a "third party," as *Williams* references, is the distinction. That is, improper police conduct occurs when law enforcement arranges the circumstances of identification for the purpose of presenting a suspect to a witness for the purpose of identifying that suspect. In all such cases, the witness making the identification is not the same individual who conducted the investigation which led to the suspect.

As noted above, a law enforcement officer's identification of a suspect through the officer's own investigation does not constitute improper police conduct. The issue of reliability is not a determination for the trial court unless the defendant establishes improper police conduct. *See Perry*, at 725 ("The due process check for reliability, *Brathwaite* made plain, comes into play only after the defendant establishes improper police conduct.").

This is not to say that a law enforcement officer's investigation and subsequent identification is per se reliable, however, since the law enforcement's own identification does not

constitute improper police conduct, the issue of reliability is properly reserved to the jury. *See Perry*, at 721. Therefore, the trial court did not abuse its discretion when it denied Vargas' Motion in Limine.

CONCLUSION

Based upon the above arguments, the Respondent requests this Court affirm the Magistrate's decision denying Vargas' Motion in Limine to exclude Officer Wing's out-of-court and in-court identification of Vargas.

DATED this 4 day of October 2016.

BOISE CITY ATTORNEY'S OFFICE



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I hereby certify that I have on this 4 day of October 2016, served the foregoing document on all parties of record as follows:

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

STATE OF IDAHO,)
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_____)

Case No. CR-MD-2015-0007985

APPELLANT'S REPLY BRIEF

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INTRODUCTION

The State puts forth a single argument in opposition to Ms. Vargas's appeal, namely that it was appropriate for Officer Wing to utilize a single photo lineup to identify Ms. Vargas in non-exigent, non-emergency investigatory circumstances. The State's argument is unavailing because the State cites no authority deeming a single photo lineup appropriate simply because the identifying witness is a law enforcement officer conducting an investigation. To the contrary, extensive authority holds an investigating officer in non-exigent, non-emergency circumstances to the same Constitutional standards as lay witnesses when making identifications.

ARGUMENT

A. *Officer Wing's Out of Court Identification of Ms. Vargas was Impermissibly Suggestive.*

The State's opposition to Ms. Vargas's appeal hinges entirely upon on the propriety of Officer Wing's utilization of a single photo lineup to identify the driver of the vehicle which failed eluded Officer Wing. The single photo lineup, however, was impermissibly suggestive and thus improper. The trial court abused its discretion in denying Ms. Vargas's motion in limine seeking exclusion of Officer Wing's out of court identification of Ms. Vargas.

As the State correctly notes, the applicable standards utilized to determine the admissibility of out of court identifications are well-established under Idaho law. To determine whether evidence of an out of court identification violates due process, Idaho courts apply a two-step test. *See State v. Hoisington*, 104 Idaho 153, 162, 657 P.2d 17, 26 (1983). First, the defendant must establish that the identification procedure was overly suggestive. *United States v. Wade*, 388 U.S. 218, 240 n. 31 (1967); *Hoisington*, 104 Idaho at 162, 657 P.2d at 26. Second, if the defendant meets that burden, courts consider whether the out of court identification was

nonetheless reliable under the totality of the circumstances. *Id.* This second step entails considering the witness's opportunity to view the perpetrator, his degree of attention, the accuracy of his description, his level of certainty, and the time between the crime and pretrial confrontation, and then weighing those factors against the "corrupting effect of the suggestive identification." *Manson v. Brathwaite*, 432 U.S. 98, 108 (1977); *Hoisington*, 104 Idaho at 162, 657 P.2d at 26. "Thus, greater indicia of reliability may be necessary the more egregious the suggestive procedures." *State v. Almaraz*, 154 Idaho 584, 301 P.3d 242 (2011).

The State's argument turns entirely on the first step of the *Hoisington* test set forth above, specifically whether unduly suggestive identification procedures were utilized by Officer Wing in making her out of court identification of Ms. Vargas. The State accurately notes that, under *Perry v. New Hampshire*, 132 S. Ct. 716, 725 (2012), "the correct standard for the court's initial determination is not whether the use of a single photo to confirm identity is 'highly suggestive' but whether law enforcement used improper conduct as a method to confirm Vargas' identity." (*Respondent's Br.*, 6.) In *Perry*, for example, a lay witness being interviewed by law enforcement identified a suspect standing in the parking lot outside her apartment. 132 S. Ct. at 721. The Supreme Court reasonably ruled that no improper conduct could be attributed to law enforcement where law enforcement did not arrange or otherwise organize a showup or lineup at which the witness made an identification. *Id.* at 730.

The State, however, proceeds to strain *Perry* beyond its breaking point. The State argues that "Officer Wing's investigation and ultimate identification of Vargas was not the result of improper law enforcement activity." (*Respondent's Br.*, 6.) The State emphasizes the fact that "a third party did not conduct the investigation and then offer Officer Wing a single photo for

identification or otherwise suggest Vargas was the driver. Officer Wing's own investigation led her to Vargas' identity and picture, and Officer Wing used this information to confirm through her own personal observations that Vargas was the driver." (*Id.*) The State concludes that "the correct standard for the court's initial determination is not whether use of a single photo to confirm identity is 'highly suggestive' but whether law enforcement used improper conduct as a method to confirm Vargas' identity." (*Id.*)

Stated differently, the State is arguing a single-photo lineup or showup is not inherently suspicious and that further, undefined "improper conduct" must be shown in order to satisfy the first step of the *Hoisington* test. The State cites zero authority supporting this premise, and the State ignores the numerous cases ruling that single photo lineups and showups, organized by law enforcement, are inherently and by definition suspicious, without an added finding of additional or further improper conduct. The State fails to recognize that a single photo lineup or showup is, in and of itself, improper conduct sufficient to satisfy the first step of the *Hoisington* test and require substantive consideration of the second step, the reliability of the identification.

... Indeed, in *Hoisington*, the Idaho Supreme Court made it clear that single photo lineups are suspect by their very nature: "In particular, single subject showups are inherently suspect and generally not condoned." 104 Idaho at 162, 657 P.2d 17 at 26 (emphasis added). *See also* *Manson*, 432 U.S. at 116 ("... identifications arising from single-photograph displays may be viewed in general with suspicion. . ."); *Simmons v. United States*, 390 U.S. 377, 383 (1968) (risk of misidentification increased "if the police display to the witness only the picture of a single individual . . ."); *Neil v. Biggers*, 409 U.S. 188, 198–200 (1972) (single suspect brought before victim was unnecessarily suggestive); *Stovall v. Denno*, 388 U.S. 293, 302 (1967) (single suspect

“show-up” at victim’s hospital bedside was suggestive but necessary given concern that victim might die); *United States v. Jamerson*, 35 F.3d 572, *1 (9th Cir. 1994) (unpublished opinion) (“Single-photo, pre-trial identifications where the witness knows that the subject of the photo is a suspect are usually considered suggestive unless justified by some exigency.”); *Brayboy v. Scully*, 695 F.2d 62, 65 (2d Cir. 1982) (“... the decisions finding impermissible suggestiveness involved identifications in which a suspect simply stood alone or in which a single photograph was shown to a witness . . .”).

Having established that, in accordance with *Hoisington* and the plethora of concurring persuasive authority, law enforcement may create an inherently suspicious one-person lineup or showup during the course of an investigation, the question then turns to whether an identification made by law enforcement from its own single photo lineup during an investigation is, as the State suggests, inoculated and inherently permissible. Again, the State wholly ignores the cases cited by Ms. Vargas in which law enforcement, during the course of an investigation, utilized single photo lineups to make identifications and such identifications were deemed inherently suspicious.

Tellingly, the State makes no attempt to distinguish the facts of *Manson*. In that case, an undercover narcotics officer purchased heroin from the defendant, whom he did not know, but was able to describe to another officer at the police station. *Manson*, 432 U.S. at 100. The other officer showed the undercover officer a single, non-lineup photograph of the defendant, and the undercover officer identified the photograph as the defendant who sold him heroin. *Id.* at 101. The identification occurred while the investigation was pending, prior to any arrests being made. *Id.* The state actor in *Manson* conceded that the single photo lineup was impermissibly

suggestive: “Petitioner at the outset acknowledges that ‘the procedure in the instant case was suggestive (because only one photograph was used) and unnecessary’ (because there was no emergency or exigent circumstance).” *Id.* at 109. *Manson* is directly on point and there is no basis upon which to distinguish its facts from the facts of this case.

The *Manson* Court raised an important issue relevant to this case: “[n]o explanation was offered by the prosecutor for the failure to utilize a photographic array or to conduct a lineup.” *Id.* at 102. The identical question could be asked of Officer Wing. Instead of simply looking at Ms. Vargas’s identification card by itself, it would have been a quite simple task for Officer Wing to ask a colleague to arrange a six-photo array, inclusive of Ms. Vargas’s photo, and then make an identification lacking Constitutional infirmities.

Similarly, in *United States v. Lumpkin*, two undercover narcotics officers purchased crack cocaine on two occasions, through intermediaries, from an unknown male suspect. 192 F.3d 280, 283-84 (2d Cir. 1990). After the second transaction a detective showed the two undercover narcotics officers a single photo, that of defendant Mario Williams. *Id.* at 284. “Both officers identified Williams, the individual pictured in the photograph, as the male involved in the two drug transactions that day.” *Id.* The trial court ruled that the single photo identification of Williams was impermissibly suggestive and excluded the officers’ out of court, pre-trial identification of Williams, which ruling was affirmed by the Second Circuit. *Id.* at 288.

Significantly, the State makes no argument regarding the second step of the *Hoisington* test set forth above. Rather, the State only contends that Ms. Vargas failed to establish the first step, that the identification procedures used in this case were not overly suggestive. By providing no analysis regarding the second step, reliability of Officer Wing’s out of court identification, the

State necessarily concedes that if the identification procedures were improper and overly suggestive, then Officer Wing's out of court identification was unreliable and appropriately excluded.

B. *Officer Wing's In-Court Identification of Ms. Vargas was Tainted by a Substantial Likelihood of Misidentification.*

The State argues that because Officer Wing's out of court identification of Ms. Vargas was valid, it could not have impermissibly tainted Officer Wing's in-court identification. The State's argument fails, however, for the reasons outlined in the preceding section; because the out of court identification was both impermissibly suggestive and unreliable, it fatally tainted Officer Wing's in-court identification of Ms. Vargas. *See State v. Trevino*, 132 Idaho 888, 892 (1992) (an out of court identification impermissibly taints an in-court identification when it is "so suggestive that there is a very substantial likelihood of misidentification.").

The State relies on *State v. Williams*, 2015 WL 631570 (Ct. App. Feb. 12, 2015) (unpublished opinion). In that case a police officer, while driving, ran the license plate of a vehicle and learned the registered owner thereof had suspended driving privileges. *Id.* at *1. The officer, still whilst driving, pulled up a picture of the registered owner on his computer and compared it to the driver as the officer pulled alongside the vehicle. *Id.* The vehicle eluded police, but the registered owner was arrested the next day when the officer visited the man and confirmed that the man had been driving the night before. *Id.*

The driver of the vehicle raised the issue of the admissibility of the out of court identification for the first time on appeal. *Id.* at *3. Accordingly, the Court of Appeals made no decision regarding the issue. *Id.* In a footnote, however, the Court of Appeals discussed the fact that "the cases on which Williams relies concern subsequent identifications by a third party.

Williams cites to no authority that this case law is equally applicable to an officer's comparisons of a suspect to a photograph during the commission of a crime." *Id.* at n.1 (emphasis added).

Williams is readily distinguishable and inapplicable to the facts at hand for multiple reasons. First, the defendant in *Williams* did not raise the issue of the admissibility of the out of court identification before the trial court, as Ms. Vargas did in this case. Such failure means that the Court of Appeals did not substantively consider the issue, and even had it done so, it would have done so with a differing standard of review. *See State v. Johnson*, 145 Idaho 970, 979, 188 P.3d 912, 921 (2008) ("However, this Court will consider issues raised for the first time on appeal if there is fundamental error.")

Second, the defendant in *Williams* only cited cases considering subsequent identifications by a third party. 2015 WL 631570, n.1. By contrast, Ms. Vargas cites *Manson* and *Lumpkin*, *supra*, two cases in which the challenged identification was made by the same officer who witnessed the defendant, just as Officer Wing did in this case with regards to Ms. Vargas.

Third, the *Williams* court took into account the exigent circumstances under which the officer looked at the suspect's photograph "during the commission of a crime." 2015 WL 631570, n.1. Numerous cases contemplate exceptions for single photo lineups when exigent circumstances are present. *See, e.g., United States v. Nava-Ruiz*, 515 F. Supp. 2d 198, 203 (D. Mass. 2007) ("The first question is whether the single photo identification procedure used in this case was 'impermissibly' suggestive given the lack of exigent or emergency circumstances." (emphasis added)); *Jamerson*, 35 F.3d 572, *1 ("Single-photo, pre-trial identifications where the witness knows that the subject of the photo is a suspect are usually considered suggestive unless justified by some exigency." (emphasis added)); *Stovall*, 388 U.S. at 302 (single suspect "show-

up” at victim’s hospital bedside was suggestive but necessary given concern that victim might die). In this case it is undisputed that Officer Wing observed the single photograph of Ms. Vargas in non-exigent, non-emergency circumstances when it would have been the matter of mere minutes for Officer Wing to ask a colleague to arrange a photo array in which to identify Ms. Vargas in a Constitutionally-sound manner.

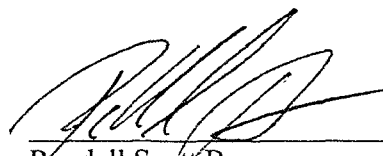
Williams is thus inapposite and of no moment with regards to this case and the State’s argument that Officer Wing’s out of court identification of Ms. Vargas did not substantially taint Officer Wing’s subsequent in-court identification of Ms. Vargas is unavailing. Accordingly, the trial court abused its discretion in failing to exclude Officer Wing’s in-court identification of Ms. Vargas.

CONCLUSION

For the reasons set forth herein, none of the State’s arguments in opposition to Ms. Vargas’s appeal are availing. Ms. Vargas respectfully asks this Court to vacate the imposition of sentence and remand this matter for further proceedings.

Dated this 18 day of October, 2016.

BARNUM HOWELL & GUNN, PLLC.



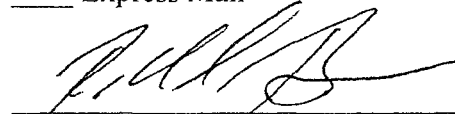
Randall Scott Barnum
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of September, 2016, I served a true and correct copy of the foregoing *Appellant's Reply Brief* in the manner indicated below:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500

☐ U.S. Mail
☐ Hand Delivered
☒ Facsimile (208) 384-4454
☐ Express Mail



Randall Scott Barnum

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

State of Idaho

vs.

Tanya Andrea Vargas

Case No. CR-MD-2015-7985

Notice of Oral Argument

Event Code: NOTH

NOTICE IS GIVEN That the above-entitled case is set for:

Hearing Type
Oral Argument

Date
11/17/2016

Time
1:30 PM

Judge
Gerald F. Schroeder

CHRISTOPHER D. RICH
Clerk of the Court

Dated: October 21, 2016

By: *Tyler Atkinson*
Deputy Clerk

CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the attached to:

Boise City Prosecutor-
Generic

bcao@cityofboise.org

☒ By email

Randall Scott Barnum

Randall Scott Barnum
Barnum Howell, PLLC
PO Box 2616
Boise, ID 83701-2616

☒ US Mail

Dated: October 21, 2016

By: *Tyler Atkinson*
Deputy Clerk



Description	Schroeder/TylerAtkinson/NicoleJulson/17nov2016		
Date	11/17/2016	Location	1A-CRT401
Time	Speaker	Note	
08:31:39 AM		CRMD2015-7985 - State v. Vargas - Oral Argument	
08:31:39 AM	Counsel	Attorney for State/Respondent is John Smith. Personal attorney for defendant/appellant is Randall Barnum	
01:34:32 PM	Judge	Calls case, counsel for all parties present.	
01:35:05 PM	R. Barnum	Opening argument regarding photo lineup.	
01:42:29 PM	J. Smith	Responsive oral argument.	
01:52:40 PM	Judge	Wish to respond?	
01:52:50 PM	R. Barnum	Responsive oral argument.	
02:02:27 PM	Judge	Will issue written opinion.	
02:02:40 PM		End.	

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TANYA A. VARGAS,

Defendant-Appellant.

Case No. CR-MD-2015-0007985

OPINION ON APPEAL

ATTORNEY FOR THE APPELLANT: RANDALL SCOTT BARNUM

ATTORNEY FOR THE RESPONDENT: JOHN J. SMITH

I. NATURE OF THE CASE

Tanya A. Vargas appeals her conviction for Eluding a Police Officer following a jury trial.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2015, Ms. Vargas was charged with one count of eluding a police officer in violation of Idaho Code § 49-1404. She pled not guilty and filed a pre-trial motion in limine seeking to exclude a police officer's identification of her. The motion was denied. After a one day trial the jury found her guilty. She was sentenced to 166 days of jail and was credited for 166 days served. Ms. Vargas timely appealed the judgment of conviction.

III. ISSUE ON APPEAL

Ms. Vargas contends the trial court erred in denying her motion in limine seeking suppression of Officer Wing's (1) out-of-court; and (2) in-court identification of her.

IV. STANDARD OF REVIEW

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The interpretation of law or statute is a question of law over which the Court has free review. *State v. Miller*, 134 Idaho 458, 462, 4 P.3d 570, 574 (Ct. App. 2000).

"We review decisions on a motion in limine for an abuse of discretion. *State v. Richardson*, 156 Idaho 524, 527, 328 P.3d 504, 507 (2014). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it, and reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)." *State v. Nelson*, 43586, 2016 WL 4706849, at *1 (Id. Ct. App.).¹

V. ANALYSIS

In her motion in limine Ms. Vargas argued that the officer identified her based on a single photo lineup following an "incredibly minimal nighttime observation of a driver of

¹"In reviewing the district court's ruling on a motion to suppress, this Court applies a bifurcated standard of review. This Court will accept the trial court's findings of fact that are supported by substantial evidence and freely review any constitutional principles implicated by the facts." *State v. Almarez*, 154 Idaho 584, 593, 301 P.3d 242, 251 (2013).

a vehicle that failed to stop when directed by Officer Wing." According to the appellant the identification should have been excluded because it was highly suggestive and utterly lacked reliability under the totality of the circumstances. Further, she maintains the in-court identification was irreparably tainted by the out-of-court identification and should have been excluded as well.

"To determine whether evidence of an out-of-court identification violates due process, this Court applies a two-step test. First, the defendant must establish that the identification procedure was overly suggestive. Second, if the defendant meets that burden, courts must consider whether the identification was nonetheless reliable under the totality of the circumstances. This second step entails considering the witness's opportunity to view the perpetrator, his degree of attention, the accuracy of his description, his level of certainty, and the time between the crime and pretrial confrontation, and then weighing those factors against 'the corrupting effect of the suggestive identification.' Thus, greater indicia of reliability may be necessary the more egregious the suggestive procedures." *Alvarez*, 154 Idaho at 593, 301 P.3d at 251.

However, "the Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement." *Perry v. New Hampshire*, ___ U.S. ___, 132 S.Ct. 716, 730, 181 L.Ed.2d 694 (2012). The due process check for reliability, [*Manson v. Braithwaite* [432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)]] made plain, comes into play only after the defendant establishes improper police conduct." *Perry*, 132 S.Ct. at 726.

"The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness." 132 S.Ct. at 728. The Constitution, our decisions indicate, protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit." *Perry*, 132 S.Ct. at 723.

This case is similar to the facts and reasoning of the Minnesota Court of Appeals in *State v. Hooks*, 752 N.W.2d 79 (Minn. Ct. App. 2008) (citations omitted); in which an undercover police officer (Urbanski) was working undercover, attempting to arrange a controlled purchase of drugs. A woman entered his car and told him to drive to a bar. There, the woman spoke to a man sitting in a parked car. The man then made a u-turn, stopping his car right beside Urbanski's. The man told Urbanski he had crack cocaine for sale, which Urbanski purchased. While the encounter was of short duration, Urbanski could see the man's face clearly enough to later identify him. Urbanski then reported the description of the man's car and license plate number to other officers in the narcotic unit as the man drove away, and officers stopped the car. An officer radioed to Urbanski that the driver's name was Keith Hooks, based on his driver's license. Urbanski decided to verify that the man the officers stopped was the man who sold him the cocaine. He returned to the police station and looked up Hooks's driver's license photograph on the Department of Motor Vehicles electronic database, Urbanski viewed the photograph within 20 minutes after the drug purchase. Viewing the photograph

satisfied Urbanski that the man who sold him the crack cocaine was Hooks. 752 N.W.2d at 82.

In the typical circumstance in which police provide the lineup options to an eyewitness, we apply a two-part test to determine whether the pretrial identification procedure created a substantial likelihood of irreparable misidentification. The test is whether the identification procedure was unnecessarily suggestive, and, if so, whether the identification is nonetheless reliable when considered as part of the totality of the circumstances. But this case does not present the typical circumstance. The reason a due process issue arises when a pretrial identification procedure is unnecessarily suggestive in the typical circumstance is that the defendant was unfairly singled out by police for the witness to identify. The traditional test is designed to measure whether police influence rather than the witness's own reasoning and recollection led to the witness's identification of the defendant. The constitutional concern about police-induced identification is not present where, as here, the facts include no conceivable identification-inducing interaction between police and the identifying witness.

Hooks's constitutional challenge overlooks why single-person lineups trigger a constitutional concern, so we briefly outline the reasoning behind the concern. It is commonly understood that the police solve crimes, so a witness naturally assumes that the police have unique expertise and information to determine the offender's identity. This confidence in police skill and insight demonstrates itself routinely This same prejudicial influence occurs more acutely when an eyewitness learns that police suspect a particular individual. The eyewitness's subsequent identification of the same individual is questionable because of the significant possibility that the identification rests indirectly on the officer's perceived suspicion rather than on the witness's own direct recollection. And, because the reliability of identification evidence is crucial, an eyewitness's tainted identification conflicts with the fundamental fairness required to satisfy due process

. . . .

Recognizing the reasoning that drives the constitutional concern in these cases, we hold that an investigating police officer who obtains and observes for himself a driver's license photograph to identify for himself the person he observed committing the investigated crime does not implicate that person's due process rights. Unlike the eyewitness to whom a single police-supplied photograph might suggest the photographed person's guilt, Officer Urbanski could not have been unduly

influenced by his own identification procedure. Acting as the investigating officer, Urbanski decided for himself which photograph to view to confirm his reasoning that the licensed driver of the car that officers stopped leaving the scene was the offending drug dealer. The lineup options therefore narrowed to a single photograph based on Urbanski's own reasoning, not based on the influence of an authority whose narrowing would tend to suggest a particular suspect to a witness.

We conclude that this process does not raise any fairness concerns that require the application of our two-part test. The district court therefore did not need to assess the identification for suggestibility under the traditional test, and it did not err by denying Hooks's motion to suppress the identification evidence. 752 N.W.2d at 84-85.

During the trial Officer Natalie Wing testified that she was a patrol officer with the Boise Police Department and had been for about six years. March 15, 2015 Jury Trial Transcript, at 5-6. She said her training include making identifications. *Id.* at 7. She was on duty on the evening of May 8, 2015, at about 10:48 p.m., in the area of Curtis and Franklin. She was on patrol in a marked car when she noticed a vehicle in front of her with a tail light that was not functioning. That was an equipment violation that she wanted to stop and talk to the driver of the vehicle about. *Id.* at 8.

Officer Wing followed the vehicle for a short period of time to determine where she wanted to make the stop and to call dispatch. *Id.* She was just north of the intersection of Curtis and Cassia when she attempted to make the traffic stop. *Id.* at 9. She picked that area because it was near a church parking lot and a side street where the driver could safely stop out of traffic. *Id.* at 9-10.

Officer Wing testified she got the vehicle's license plate number and noticed it was a Utah plate. *Id.* at 10. She called into dispatch and activated her red and blue lights. The vehicle she was following slowed down but did not stop. *Id.* at 10-11. She said she then turned on her siren, after which the vehicle she was following rapidly

accelerated, fishtailing, going up the hill towards Overland Road. *Id.* at 11. Officer Wing said she was about fifty feet, or closer, to the vehicle while this was occurring. *Id.* at 11-12. During this time, she said the driver made multiple glances in her side driver's mirror. *Id.* at 12-13.

Officer Wing testified she was able to get a good look at the driver while this was occurring. *Id.* at 13-14. She said she observed a Hispanic female, mid to upper 30s in age. *Id.* at 14. She was confident in her description of the driver. The lighting, the angles of the vehicles, and the number of times the driver looked in her mirror combined to give her what she said was a very good picture of the driver. *Id.* at 16. Officer Wing did not continue the pursuit due to the policy of the Boise Police Department not to do so when the public could be put at risk by the pursuit. *Id.* at 17. Officer Wing made an in-court identification of the driver of the vehicle as Ms. Vargas. *Id.* at 19.

Officer Wing had the license plate number of the vehicle. The vehicle was registered in Utah. The owner of the vehicle said he allowed Ms. Vargas to use the vehicle. The officer obtained a Utah issued identification photograph of Ms. Vargas which she testified, to "98 percent" certainty, was the same individual who was driving the vehicle that fled from her. *Id.* at 18-20.

The appellant has not shown that Officer Wings' identification of the appellant by viewing her driver's license photo, after her observations and obtaining the license plate number and registration information, was the result of improper ("tainted") state conduct. The identification does not implicate due process concerns, as the Minnesota Court of Appeals held in *Hooks*. One may have serious concerns about the reliability of the identification, but the process leading to the identification is not violative of due process.

Had the officer presented a single photo lineup to an independent witness due process concerns would certainly be apparent. But those concerns are not apparent when the officer is the investigator attempting to locate and identify the offender.

The magistrate did not violate due process rights in allowing the officer's in-court identification of Ms. Vargas. Officer Wing testified she had a "very good" look at the driver of the vehicle she was pursuing, and she identified the person she saw driving as the person in court. She had the vehicle's license plate number and her investigation determined that the vehicle she was pursuing was registered to a person who allowed Ms. Vargas to use it. Finally, she testified that the license photograph of the person in the vehicle she was pursuing was the same person she saw driving the vehicle when it was eluding her. See, e.g., *State v. Williams*, 2015 WL 631570, *4 (Id. Ct. App.) (noting in a situation, argued to be "overly suggestive," where an individual was identified by a police officer as the driver of a vehicle by viewing him and his driver's license photograph, "in addition to Officer Bateman's identification of Williams as the driver, the jury was also presented with evidence that Williams was the registered owner of the vehicle . . ."). See also *State v. Hoisington*, 104 Idaho 153, 161, 657 P.2d 17, 25 (1983): "[T]he due process test for suppression of an in-court identification that is allegedly tainted by an impermissibly suggestive out-of-court identification is whether the out-of-court identification was so suggestive that there is a very substantial likelihood of misidentification." Reliability concerns exist but they are not the product of improper police conduct. The jury had all the evidence before it and found the appellant guilty beyond a reasonable doubt. The Court will not second guess the jury determination.

VI. CONCLUSION

The judgment of conviction is affirmed.

Dated this 22 day of December 2016.



Gerald F. Schroeder
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail (or email), one copy of the OPINION ON APPEAL as notice pursuant to the Idaho Rules to each of the parties of record in this cause as follows:

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BOISE, ID 83701-2616

BOISE CITY ATTORNEY
VIA INTERDEPARTMENTAL MAIL

HON. MICHAEL OTHS
VIA INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: January 12, 2017

By *Shaitha Lyke*
Deputy Clerk



NO. _____
A.M. _____ P.M. _____

FEB 15 2017

CHRISTOPHER D. RICH, Clerk
By GRICELDA TORRES
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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

TANYA ANDREA VARGAS,

Defendant/Appellant.

Case No. CR-MD-2015-0007985

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, BOISE CITY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, TANYA ANDREA VARGAS, appeals against the above named Respondent to the Idaho Supreme Court, from the Opinion on Appeal, entered in the above entitled action on or about the 12th day of January, 2017, the Honorable Gerald F. Schroeder, 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 Rule 11(c)(1), I.A.R.

3. A preliminary statement of the issues on appeal which the Appellant 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.

(a) Whether the Court erred in denying Appellant's Appeal and affirming the judgment of conviction.

(b) The Appellant reserves the right to present other issues after the review of the clerk's record and reporter's transcripts to be prepared in this appeal.

4. Has an order been entered sealing all or any portion of the record? If so, what portion?

No.

5 (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the **entire reporter's standard transcript** as defined in Rule 25(a), I.A.R. The appellant also requests the preparation of the additional portions of the reporter's transcript in ☒ hard copy ☐ electronic format ☐ both (check one):

(1) Hearing on Defendant's Motion in Limine and Jury trial held on the 15th day of March, 2016; and

(2) Oral Argument held on November 17, 2016 (Court Reporter Nicole Julson).

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

- (a) Any or other items offered at the jury trial on March 15, 2016;
- (b) Appellant's Brief filed on or about September 12, 2016;
- (c) Respondent's Brief filed on or about October 4, 2016;
- (d) Appellant's Reply Brief filed on or about October 18, 2016; and
- (e) Opinion on Appeal.

7. I certify:

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

Rae Ann Nixon
Court Reporter
Ada County District Court
200 W. Front Street
Boise, ID 83702

Nicole Julson
Court Reporter
Ada County District Court
200 W. Front Street
Boise, ID 83702

(b) (1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) ☒ That the Appellant is exempt from paying the estimated transcript fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(c) (1) ☐ That the estimated fee for preparation of the clerk's or agency's record has been paid.

(2) [X] That the Appellant is exempt from paying the estimated fee for the preparation of the record because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

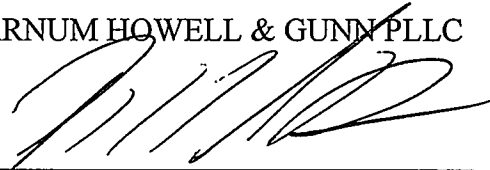
(d) (1) [] That the appellate filing fee has been paid.

(2) [X] That Appellant is exempt from paying the appellate filing fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 15th day of February, 2017.

BARNUM HOWELL & GUNN PLLC



RANDALL S. BARNUM
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of February, 2017, I caused to be served a true copy of the foregoing NOTICE OF APPEAL by the method indicated below, and addressed to each of the following:

Boise City Prosecutor
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☒ E-file & Serve: bcao@cityofboise.org
☐ Facsimile

Rae Ann Nixon, Court Reporter
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

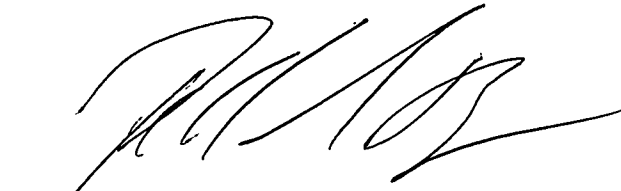
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile

Nicole Julson
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile

Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Facsimile: (208) 854-8074

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ E-mail
☐ Facsimile



Randall S. Barnum

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

NO. _____
A.M. 10:01 FILED _____
P.M. _____
MAR 17 2017
CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY


(SC No. 44757
(
(
(STATE
(
(vs.
(
(VARGAS

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on March 16, 2017, I
lodged a appeal transcript of 72 pages in length in the
above-referenced appeal with the District Court Clerk of the
County of Ada in the 4th Judicial
District.

This transcript contains hearings held on

.....March 15, 2016, Jury Trial


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

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
(208) 334-2616

NO. _____
A.M. 10:01 FILED P.M. _____
MAR 17 2017
CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

IN THE SUPREME COURT OF THE STATE OF IDAHO

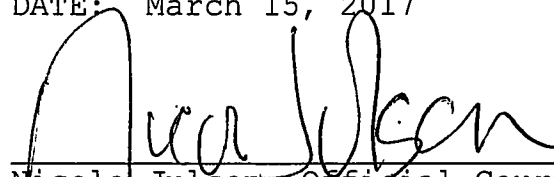
- - - - - x Docket No. 44843
STATE OF IDAHO, :
Plaintiff-Respondent, :
vs. :
TANYA ANDREA VARGAS, :
Defendant-Appellant. :
- - - - - x

NOTICE OF TRANSCRIPT OF 29 PAGES LODGED

Appealed from the District Court of the
Fourth Judicial District of the State of
Idaho, in and for the County of Ada,
Gerald Schroeder, Judge Presiding.

This transcript contains hearing held on:
November 17, 2016

DATE: March 15, 2017



Nicole Julson, Official Court Reporter
Official Court Reporter,
Judge Deborah Bail
Ada County Courthouse
Idaho Certified Shorthand Reporter No. 699

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TANYA ANDREA VARGAS,

Defendant-Appellant.

Supreme Court Case No. 44843

CERTIFICATE OF EXHIBITS

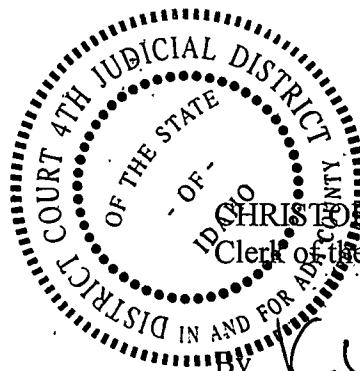
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

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

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

1. Transcript of Jury Trial held March 15, 2016, Boise, Idaho, lodged May 10, 2016.
2. Transcript of Motion in Limine held March 15, 2016, Boise, Idaho, lodged July 12, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 17th day of March, 2017.



CHRISTOPHER D. RICH
Clerk of the District Court

By K. Wegener
Deputy Clerk

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

HONORABLE MICHAEL OTHS

3/15/16

CLERK: Kristi Gardner

CT REPORTER:

THE STATE OF IDAHO,

Plaintiff,

vs.

TANYA ANDREA VARGAS,

Defendant.

Case No. CR-MD-2015-0007985

EXHIBIT LIST

Counsel for State: Boise City Prosecutor- Generic

Counsel for Defendant: Matthew Gunn

STATE'S EXHIBITS / EVIDENCE

Admitted

Date Admit

(DR # If evidence, include property number here)

1.	KNOW	X	3/15/16
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DEFENDANT'S EXHIBITS

Admitted

Date Admit

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TANYA ANDREA VARGAS,

Defendant-Appellant.

Supreme Court Case No. 44843

CERTIFICATE OF SERVICE

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

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

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

RANDALL S. BARNUM

ATTORNEY FOR APPELLANT

BOISE, IDAHO

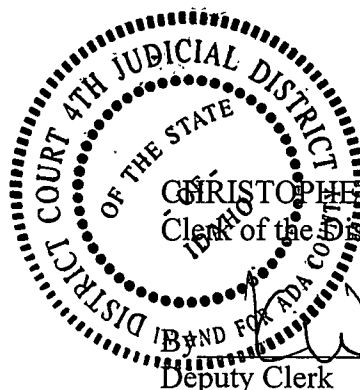
LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: _____

MAR 17 2017



CHRISTOPHER D. RICH
Clerk of the District Court

Deputy Clerk

CERTIFICATE OF SERVICE

000173

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

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

TANYA ANDREA VARGAS,

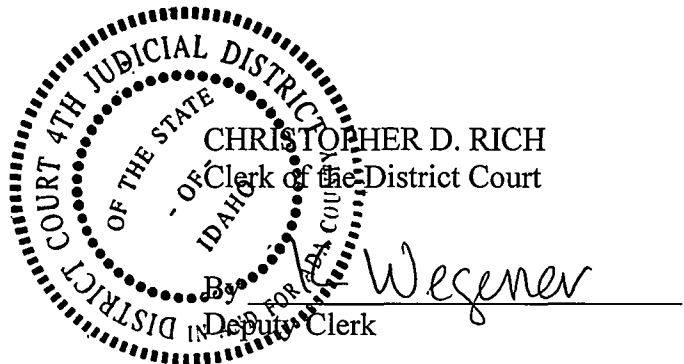
Defendant-Appellant.

Supreme Court Case No. 44843

CERTIFICATE TO RECORD

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

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 15th day of February, 2017.



CERTIFICATE TO RECORD

000174