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IN THE SUPREME COURT

OF THE

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

CHARLES ANTHONY CAPONE,

Defendant-Appellant.

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HONORABLE CARL B. KERRICK, DISTRICT JUDGE

SARA B. THOMAS
STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

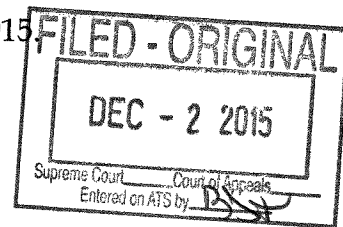
KENNETH K. JORGENSEN

ATTORNEY FOR RESPONDENT

Filed this ___ day of _____, 2015

STEPHEN W. KENYON, CLERK

By _____
Deputy



SUPREME COURT CASE NO. ~~40112~~

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SEE AUGMENTATION RECORD

43124

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LODGED July 25, 2014
7:55 AM
BY [Signature] JAY P. GASKILL AM

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**ADDITIONAL ORDER FOR ISSUANCE
OF SUBPOENAS PURSUANT TO
IDAHO CODE §19-3008**

THIS MATTER came before the Court on the *Second Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008*. The Court, having reviewed the file and having met with counsel for the plaintiff and defendant on July 14, 2014, finds that the individuals listed below are material to the Defense and that good cause exists to enter the following order:

IT IS HEREBY ORDERED THAT the Clerk of the Court may issue subpoenas to the following individuals:

- | | | |
|----------------|----------------|----------------------|
| Brett Bennett | Wayne Boyer | Brian Birdsell |
| Ed Button | Anthony Capone | Teresa Capone Mullen |
| Ed Comer | Nathan Donner | Bruce Dager |
| Dan Evans | John Houser | Steve Jackson |
| Jeff Johnson | Alan Giusti | Eric Kjornes |
| Dan MacPherson | Stephanie Rath | Mike Mastro |
| Chris Montambo | Blake Nelson | Don Reed |
| Angel Rivera | Mack Snyder | Alison Pierce |
| Debbie Stamper | Earl Stamper | Mike Mooney |

Alisa Stone	Skyler Sullivan	Joshua Michel
Jesse Thacker	Matthew Tournay	Travis Williams
Greg Wilson, Ph.D	Bonita Lawhead	Todd Grey, MD
Leon Merrill		

DATED this 25th day of June, 2014.

[Handwritten Signature]
 District Judge
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served on the following individuals by the method indicated:

Mark T. Monson
 Co-Counsel for Defendant
 PO Box 8456
 Moscow, ID 83843

Via Facsimile: (208) 882-0589
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 Hand Delivery

D. Ray Barker
 Co-Counsel for Defendant
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Latah County Prosecuting Attorney
 Latah County Courthouse
 Moscow, ID 83843

Hand delivery
 U.S. Mail
 Via Facsimile

on this 25th day of July, 2014.

By *[Handwritten Signature]*
 Deputy Clerk

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Attorneys for Defendant

CR 2013-13
2014 AUG 13 PM 12:53
CLERK OF DISTRICT COURT
LATAH COUNTY
BY *AM*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Angel Rivera-Zuniga**. This motion is based upon the Affidavit of Mark T. Monson.

Date: August 13, 2014

D Ray Barker

D. Ray Barker

Mark T Monson

Mark T. Monson

**MOTION FOR ISSUANCE OF CERTIFICATE OF
ENDORSEMENT PURSUANT TO IDAHO CODE §19-3005**

Page 1 of 1

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CR 2013-1358
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CLERK OF DISTRICT COURT
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

Mark T. Monson, being first duly sworn, states as follows:

1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

**AFFIDAVIT IN SUPPORT OF ISSUANCE
OF CERTIFICATE OF ENDORSEMENT**

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Angel Rivera-Zuniga is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Angel Rivera-Zuniga was employed by a local auto parts store. On April 16, 2010, Angel Rivera-Zuniga delivered parts to Palouse Multiple Services, the location where the state has alleged the murder of Rachel Anderson took place. Mr. Rivera-Zuniga interacted with the defendant, and provided a statement to police regarding his observations of the scene and in particular vehicles that were either present or not present at the time.

That Mr. Rivera-Zuniga's testimony is estimated to occur between the dates of September 2, 2014 to September 19, 2014;

5. That Angel Rivera-Zuniga, is currently residing at 13118 Peppergate Lane, Houston, TX 77044-6588, approximately 2,250 miles from Moscow, Idaho.


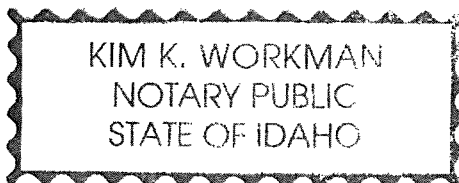
6. That it is anticipated that appropriate flight arrangements will be made for this witness to attend trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 13 day of August, 2014.



SUBSCRIBED AND SWORN to before me this 13 day of August, 2014.



NOIARY PUBLIC for Idaho
Residing at: Bovill
Commission expires: 8-7-18

CR 2013-135

2014 AUG 13 PM 12:53

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *AM* DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Alan M. Giusti**. This motion is based upon the Affidavit of Mark T. Monson.

Date: August 13, 2014

D. Ray Barker

D. Ray Barker

Mark T. Monson

Mark T. Monson

001835

CR 2013-1358

2013 AUG 19 PM 12:53

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: *AM* DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
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MARK T. MONSON, P.A.
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(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

Mark T. Monson, being first duly sworn, states as follows:

1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

**AFFIDAVIT IN SUPPORT OF ISSUANCE
OF CERTIFICATE OF ENDORSEMENT**

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Alan Giusti is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Alan Giusti is employed by the FBI Laboratory in Quantico, Virginia. Mr. Giusti examined specific items of evidence in the nuclear DNA unit of the laboratory and provided an examination report to local law enforcement with results of his testing.

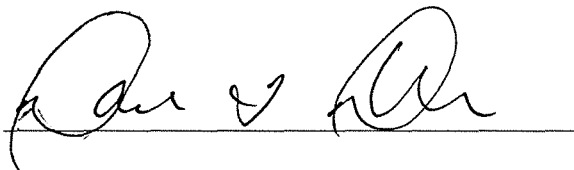
That Mr. Giusti's testimony is estimated to occur between the dates of September 2, 2014 to September 19, 2014;

5. That Alan Giusti, is currently employed at the FBI Laboratory located at 2501 Investigation Parkway, Quantico, Virginia, 22135, approximately 2,500 miles from Moscow, Idaho.

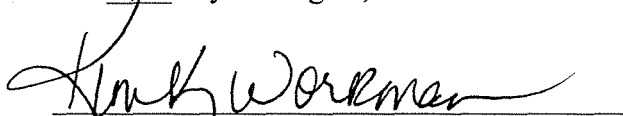
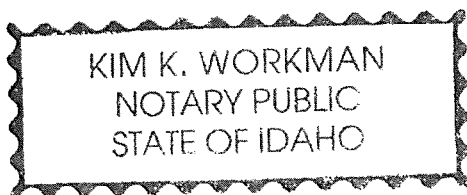
6. That it is anticipated that appropriate flight arrangements will be made for this witness to attend trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 13 day of August, 2014.



SUBSCRIBED AND SWORN to before me this 13 day of August, 2014.



NOTARY PUBLIC for Idaho
Residing at: Bovill
Commission expires: 8-7-18

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
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MARK T. MONSON, P.A.
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(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR FUNDS FOR
INVESTIGATOR PURSUANT TO I.C.R.
12.2**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order authorizing additional funds for investigation costs in the above-referenced matter. This motion is made pursuant to Idaho Criminal Rule 12.2 (effective date 8/1/14).

1. Scope and details of services requested: The court has previously approved investigative costs in this matter. Additional funds are hereby requested. Mr. Schoonover is the Defendant's primary investigator and it is expected that he will attend trial that is scheduled to commence on September 2, 2014 and is expected to last three weeks. Mr. Schoonover will also be expected to assist counsel in the

EX PARTE MOTION FOR FUNDS FOR INVESTIGATOR PURSUANT TO I.C.R. 12.2

Page 1 of 3

CASE NO. CR 2013-1358

2014 AUG 14 PM 3:21

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *am* DEPUTY

001838

evenings and weekends in order to facilitate the Court's anticipated trial schedule. Mr. Schoonover continues to locate and interview witnesses located in Washington and Idaho and consult with court-appointed counsel. In addition, Mr. Schoonover has assisted in organizing voluminous amounts of cell phone data that has taken the state a significant amount of time to compile. Mr. Schoonover is also assisting in organizing witness testimony and extrapolating data from specific reports provided by the state in discovery in anticipation of preparing specific trial exhibits. Mr. Schoonover has also met with expert witnesses and counsel in Spokane and has been available and on call in order to locate specific items of evidence as requested by counsel. It is anticipated that Mr. Schoonover will continue to assist in locating witnesses, interviewing witnesses, serving subpoenas and other activities as described above.

The Defendant respectfully notes that the state has formed a taskforce to investigate the disappearance of Rachel Anderson, which includes most, if not all, of the local law enforcement agencies in Latah County, Nez Perce County, and Asotin County Washington. The state has also involved the United States Coast Guard, the ATF, FBI, and law enforcement agencies from Florida. These agencies have been investigating the disappearance for approximately four years, and continue to investigate. The Defendant also respectfully notes that updated information continues to be discovered to the defense and expects additional discovery. The Defendant anticipates that the state will continue to involve the previously mentioned agencies up to the point of trial.

2. Relevancy and Necessity of Requested Services: See above.

3. Name and location of proposed provider of services: Cuck Schoonover, dba Action Agency.
PO Box 704, Sandpoint, ID 83864.

4. Qualifications of Service Provider: Mr. Schoonover has significant experience as a police officer and sheriff's deputy. Mr. Schoonover has worked as a private investigator since 1985. In the

course of his work experience as a private investigator, Mr. Schoonover has worked on many murder cases and has performed private investigative services for attorneys in both state and federal courts.

5. Estimate of costs: Mr. Schoonover charges \$70 per hour and .65 per mile travel. The court has previously approved funding. It is estimated that an additional \$15,000 is necessary to conclude services through the end of trial. It is anticipated that Mr. Schoonover will assist during the trial process.

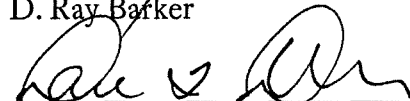
6. Location outside judicial district. The defendant previously retained an investigator who resided within the judicial district. Due to a perceived conflict of interest from the State, the defendant sought appointment of Mr. Schoonover, who was subsequently approved by the court. Counsel for the defendant has utilized Mr. Schoonover's services in prior cases, including a murder case.

Based on the above, the undersigned respectfully request an additional \$15,000 be approved for investigative costs.

DATED this 14 day of August, 2014



D. Ray Barker



Mark T. Monson

D. RAY BARKER
Attorney at Law
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Moscow, ID 83843
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Washington State Bar No. 30497

Attorneys for Defendant

RECORDED August 14, 2014 AT
1:04 P.M. LEWISTON, IDAHO
BY Carl B. Kerrick
CARL B. KERRICK
Carl

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Alan Giusti, is currently employed at the FBI Laboratory located at 2501 Investigation Parkway, Quantico, Virginia, 22135 is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 14th day of August 2014.


District Judge

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

FILED August 14, 2014 AT
1:05 P.M. LEVISTON, IDAHO
BY Carl B. Kerrick
CARL B. KERRICK

am

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

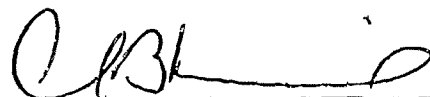
CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Angel Rivera-Zuniga, who currently resides at 13118 Peppergate Lane, Houston, TX 77044-6588 is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 14th day of August 2014.



District Judge

CASE NO. CR 2013-1358

2014 AUG 18 PM 4:44

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *[Signature]* DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Alison Pierce**. This motion is based upon the Affidavit of Mark T. Monson.

Date: August 18, 2014

[Signature: D. Ray Barker]

D. Ray Barker

[Signature: Mark T. Monson]

Mark T. Monson

CR 2013-1358
CASE NO

2014 AUG 18 PM 4:44

CLERK OF DISTRICT COURT
LATAH COUNTY
BY: [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
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(208) 882-6749
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Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

Mark T. Monson, being first duly sworn, states as follows:

1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Allison Pierce is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Alison Pierce is employed by the Washington State Patrol Crime Laboratory located in Cheney, Washington. Ms. Pierce examined specific items of evidence regarding DNA and provided an examination report to local law enforcement with results of her testing.

That Ms. Pierce's testimony is estimated to occur between the dates of September 2, 2014 to September 19, 2014;

5. That Alison Pierce, is currently employed at the Washington State Patrol Laboratory located at 580 W. 7th Street, Cheney, WA 99004-2492, approximately 90 miles from Moscow, Idaho.

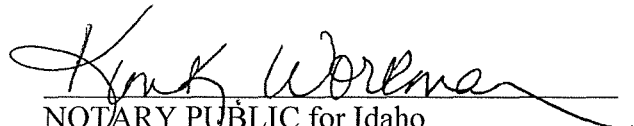
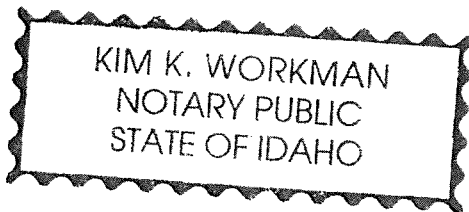
6. That it is anticipated that appropriate travel arrangements will be made for this witness to attend trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 18 day of August, 2014.



SUBSCRIBED AND SWORN to before me this 18 day of August, 2014.



NOTARY PUBLIC for Idaho
Residing at: Bovill
Commission expires: 8-7-18

The clerk will provide counsel copies of the completed juror questionnaires along with the juror voir dire forms tomorrow afternoon.

Counsel stipulated to excusing the following prospective jurors for cause: Janice Becker, Janell Benjamin, William Langford, Robert Lynd, Charles Mabbutt, Lois Reed, and Clyde Sheffler.

Ms. Vowels stated that they would like to add two names to the State's witness list. There being no objection, Court allowed the names of Suzanne Banks and Donald White to be added to the State's witness list.

Mr. Monson informed the Court that he had previously filed a motion to pay the remaining balance of \$523.50 on the payment of the dog expert. There being no objection, Court signed the proposed order.

Court stated that he will allow one television camera in the courtroom during the jury trial and the feed can be shared. Court will not allow any audio in the courtroom. Court stated that no cameras will be allowed in the courtroom during the completing of the juror questionnaires.

Ms. Vowels questioned whether Judge Griffin had signed the order allowing the filing of the second amended criminal information.

Court stated that he will give preliminary instructions to the jurors on August 29, 2014. In response to inquiry from the Court, counsel had nothing further.

Court recessed at 10:30 a.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

14. Joanne Reece
15. Jason Albrecht
16. Stacy Morrow
17. Brian Sumption
18. Mary Abbott
19. Jennifer Sanderson
20. Anne Dwelle
21. Steven Barr Jorgensen
22. Jim Prall
23. Sheila Kilcoyne
24. Nancy Largent
25. Gretalyn Leibnitz
26. Rex Lunsford
27. Beverly Larsen
28. Rachael Johnston
29. Thomas Hansen
30. Sharon Dunn
31. Katherine Knickerbocker
32. Darren Duke
33. Ross Converse
34. James Bizeau
35. Juanita Robinson
36. Scott Johnston
37. Jana Argersinger
38. Kimberly Hammond
39. Monica Ray
40. Joydene Andrews
41. C. Richard Shumway
42. Penny Skinner
43. Jennie Hall
44. Gina Young
45. Anthony Johnson
46. Tony Summers
47. Barbara Chatburn
48. Kathy Minden
49. Catherine Merickel
50. Dale Sorbel
51. Kimberly Cirka
52. Michael Souders
53. Harry Moore
54. Sheena McManus
55. Rick Harper
56. Linda Hanson
57. Matthew Jepsen

58. Anne Wessels
59. Pamela Burnett
60. James Wallace
61. Jason Heath
62. Glenda Germen
63. Duane Chandler
64. Kelly Graber
65. Sally Browning
66. Dan Crimmins
67. Brenda Allen
68. Mary Ann Linderman
69. Kerri Vierling
70. Cherie Boydell
71. Julian Mount
72. John Hatley
73. Richard Bostrom
74. Dean Klas
75. Melody Corner
76. Daniel Seegmiller
77. Doug Krehbiel
78. Corinna Cox
79. Sherry Caisley
80. Manfred Zysk
81. Trudy Hespelt
82. Jill Niehenke
83. Monte Boisen, Jr.
84. John Nelson
85. Catherine Kilborn
86. Katherine Old
87. Joseph Law
88. Sandra Fraley
89. Leslie Proctor
90. Lonnie Way
91. William Ettenhofer
92. Ryan Higginbotham
93. Mei Fen Lin
94. Mark Wintz
95. Kelly Caldwell
96. Steven Fischer
97. John Carnahan
98. Brian Gardner
99. Irene Akins
100. Henry Willard
101. Michelle Hill
102. Amanda Hopper

103. Lloyd Martinson
104. Patti Calene
105. John Lawrence
106. Bryan Marsh
107. Maurice Raquet Jr.
108. Jeanne Gayler
109. Peter Warwick
110. Collette Gantenbein
111. Brian Robertson
112. Sean Taylor
113. Dewey Warner
114. Janelle Swanson
115. David Casebolt
116. Emily Chamberlin

Court recessed at 10:59 a.m.

CASE NO. CR 2013-1358

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

2014 AUG 19 AM 11:55

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

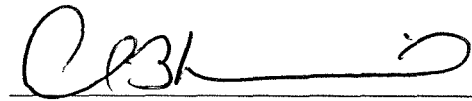
CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Alison Pierce, currently employed at the Washington State Patrol Laboratory located at 580 W. 7th Street, Cheney, WA 99004-2492, is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by herself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 19th day of August 2014.



District Judge

Court greeted the prospective jurors. Court called into the record the case before the Court of State vs Charles Anthony Capone. In response to inquiry from the Court, Mr. Thompson and Mr. Monson stated that they were prepared to proceed. Upon direction of the Court, the clerk called the roll of the prospective jurors with all prospective jurors responding that they were present except for Sheena McManus, Mark Wintz, Collette Gantenbein, and Emily Chamberlin. In response to inquiry from the Court, there were no challenges to the prospective jurors. Upon direction of the Court, the clerk administered the oath to the prospective jurors.

Court directed remarks to the prospective jurors. Court explained to the prospective jurors the schedule to be followed during the jury trial, working 9:00 A.M. to 2:00 P.M. with two fifteen minute breaks. Court explained the voir dire process that will be followed on August 27, 2014 through August 29, 2014. Court introduced the court personnel.

Prospective juror, Emily Chamberlain, was now present in court at 9:31 a.m.

Upon direction of the Court, counsel introduced themselves and the defendant.

Court read the charging portion of second criminal information, charging the defendant with murder in the first degree, failure to notify the coroner or law enforcement of death and conspiracy to commit failure to notify the coroner or law enforcement of death of which the defendant has entered pleas of not guilty.

Court read preliminary instructions to the prospective jurors.

Prospective juror, Mark Wintz, was now present in Court at 9:38 A.M.

Court read the list of names of prospective jurors and the times that they are to reappear for individual voir dire examination. Court read the admonishment instruction to the prospective jurors. In response to inquiry from the Court, counsel stated that they had nothing further. Upon direction of the Court, the clerk administered the oath to prospective jurors Emily Chamberlain and Mark Wintz.

Court directed prospective jurors #1 through #36 to go to the jury room and the law library to complete the juror questionnaires.

Court recessed at 9:53 A.M.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

Prospective juror, Sheena McManus, was now present in the courtroom at 10:05 A.M. The clerk administered the oath to Ms. McManus off the record. Ms. McManus was given a juror questionnaire to complete.

Prospective juror, Collette Gantenbein, was now present in the courtroom at 10:10 A.M. The clerk administered the oath to Ms. Gantenbein off the record. Ms. Gantenbein was given a juror questionnaire to complete.

RECORDED August 21, 2014 AT
11:55 AM R.M. LEWISTON, CLERK
BY CARL B. KERRICK

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING FUNDS
REGARDING INVESTIGATOR

THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator* dated August 14, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$ 15,000⁰⁰ for investigative costs is hereby authorized. Such costs shall not exceed \$ _____ in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 21st day of August 2014.

Carl B. Kerrick
JUDGE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Authorizing Funds Regarding Investigator was served on the following individuals by the method indicated:

Mark T. Monson
Co-Counsel for Defendant
PO Box 8456
Moscow, ID 83843

Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

D. Ray Barker
Co-Counsel for Defendant
PO Box 9408
Moscow, ID 83843

Via Facsimile: (208) 882-7604
 U.S. Mail
 Hand Delivery

on this 21 day of August, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: Sue Anderson
Deputy Clerk

Court reconvened at 9:09 a.m., with Court, counsel, defendant, Nancy Towler, court reporter, Matthew Stinebaugh, bailiff, Ryan O'Toole, bailiff, and Maureen Coleman, deputy clerk being present in the jury room.

Court and counsel conducted individual voir dire questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Linda Hennigar was escorted into the jury room at 9:10 a.m. Court greeted Linda Hennigar and explained the individual voir dire process to be followed. Court questioned Ms. Hennigar. Court excused Linda Hennigar for cause at 9:12 a.m. Ms. Hennigar was escorted out of the jury room.

Teresa McNeel was escorted into the jury room. Court greeted Ms. McNeel and explained the individual voir dire process to be followed. Court questioned Ms. McNeel. Court excused Teresa McNeel for cause at 9:16 a.m. Ms. McNeel was escorted out of the jury room.

Nancy Holmes was escorted into the jury room. Court greeted Ms. Holmes and explained the individual voir dire process to be followed. Court questioned Ms. Holmes. Mr. Thompson questioned Ms. Holmes. Mr. Barker questioned Ms. Holmes. Mr. Monson requested permission to question Ms. Holmes. There being no objection Mr. Monson questioned Ms. Holmes. Court requested Ms. Holmes report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Holmes was escorted out of the jury room.

Nancy Nelson was escorted into the jury room. Court greeted Ms. Nelson and explained the individual voir dire process to be followed. Court questioned Ms. Nelson. Mr. Thompson questioned Ms. Nelson. Mr. Barker questioned Ms. Nelson. Court further questioned Ms. Nelson. Court requested Ms. Nelson report to courtroom #3 at 1:00 p.m. on August 29, 2014. Ms. Nelson was escorted out of the jury room. Mr. Barker challenged Ms. Nelson for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the motion for challenge for cause on Nancy Nelson.

Kyle Peterson was escorted into the jury room. Court greeted Mr. Peterson and explained the individual voir dire process to be followed. Court questioned Mr. Peterson. Mr. Barker questioned Mr. Peterson. Court further questioned Mr. Peterson. Court requested that Mr. Peterson report to courtroom #3 at 1:00 p.m. on August 29, 2014. Mr. Peterson was escorted out of the jury room. Mr. Barker challenged Mr. Peterson for cause and presented argument in support of his motion. Mr. Thompson argued in opposition. Court denied the motion for challenge for cause on Mr. Peterson.

Elizabeth Allen was escorted into the jury room. Court greeted Ms. Allen and explained the individual voir dire process to be followed. Court questioned Ms. Allen. Court excused Elizabeth Allen for cause at 10:12 a.m. Ms. Allen was escorted out of the jury room.

Kathleen Drage was escorted into the jury room. Court greeted Ms. Drage and explained the individual voir dire process to be followed. Court questioned Ms. Drage. Mr. Thompson questioned Ms. Drage. Mr. Barker questioned Ms. Drage. Ms. Drage reviewed the witness lists that were attached to the juror questionnaire and stated the names of those witnesses that she knew. Mr. Barker continued to question Ms. Drage. Court requested Ms. Drage report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Drage was escorted out of the jury room. Mr. Barker challenged Ms. Drage for cause. Mr. Thompson presented argument in opposition. Court denied the motion for challenge for cause on Ms. Drage.

Jeanette Montgomery was escorted into the jury room. Court greeted Ms. Montgomery and explained the individual voir dire process to be followed. Court questioned Ms. Montgomery. Court excused Jeanette Montgomery for cause at 10:36 a.m.. Ms. Montgomery was escorted out of the jury room.

Court recessed at 10:36 a.m.

Court reconvened at 10:43 a.m., with Court, counsel, defendant, Nancy Towler, court reporter, Matthew Stinebaugh, bailiff, Ryan O'Toole, bailiff, and Maureen Coleman, deputy clerk being present in the jury room.

Court and counsel continued with individual voir dire questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Mary McDonnell was escorted into the jury room. Court greeted Ms. McDonnell and explained the individual voir dire process to be followed. Court questioned Ms. McDonnell. Court excused Mary McDonnell for cause at 10:47 a.m. Ms. McDonnell was escorted out of the jury room.

Gary Sanderson was escorted into the jury room. Court greeted Mr. Sanderson and explained the individual voir dire process to be followed. Court questioned Mr. Sanderson. Court excused Gary Sanderson for cause at 10:50 a.m. Mr. Sanderson was escorted out of the jury room.

William Hebert was escorted into the jury room. Court greeted Mr. Hebert and explained the individual voir dire process to be followed. Court questioned Mr. Hebert. Court excused William Hebert for cause at 10:52 a.m.. Mr. Hebert was escorted out of the jury room.

Jason Albrecht was escorted into the jury room being taken out of order as Marjorie French had not yet arrived. Court greeted Mr. Albrecht and explained the individual voir dire process to be followed. Court questioned Mr. Albrecht. Mr. Thompson questioned Mr. Albrecht. Mr. Monson questioned Mr. Albrecht. Court requested Mr. Albrecht report to courtroom #3 on Friday August 29, 2014 at 1:00 p.m. Mr. Albrecht was escorted out of the courtroom.

Marjorie French was escorted into the jury room. Court greeted Ms. French and explained the individual voir dire process to be followed. Court questioned Ms. French. Court excused Marjorie French for cause at 11:08 a.m.. Ms. French was escorted out of the jury room.

Stacy Morrow was escorted into the jury room. Court greeted Ms. Morrow and explained the individual voir dire process to be followed. Court questioned Ms. Morrow. Mr. Thompson questioned Ms. Morrow. Mr. Monson questioned Ms. Morrow. Court requested Ms. Morrow report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Morrow was escorted out of the jury room.

Brian Sumption was escorted into the jury room. Court greeted Mr. Sumption and explained the individual voir dire process to be followed. Court questioned Mr. Sumption. Mr. Thompson questioned Mr. Sumption. Mr. Monson questioned Mr. Sumption. Court requested Mr. Sumption report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Mr. Sumption was escorted out of the jury room.

Mary Abbott was escorted into the jury room. Court greeted Ms. Abbott and explained the individual voir dire process to be followed. Court questioned Ms. Abbott. Mr. Thompson questioned Ms. Abbott. Mr. Monson questioned Ms. Abbott. Court requested Ms. Abbott report to courtroom Friday, August 29, 2014 at 1:00 p.m.. Ms. Abbott was escorted out of the jury room.

Court stated that he was informed the counsel wished to address the issue of a transcript of a witness. Court scheduled the hearing for 8:50 a.m. on August 28, 2014.

Court informed counsel that there are several requests for television cameras and recording devices to be allowed the courtroom during the jury trial. There being no objection by counsel, Court stated that he will allow a recording device on the witness stand, no videotaping of the jurors, will allow still photographs, and only one television camera in the courtroom. Court requested that the microphone on the witness stand not be intimidating. Court agreed.

Court recessed at 11:50 a.m.

Court reconvened at 1:02 p.m., with Court, counsel, defendant, Nancy Towler, court reporter, Matthew Stinebaugh, bailiff, Ryan O'Toole, and Maureen Coleman, deputy clerk, present in the jury room.

Court and counsel continued individual voir dire questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Jennifer Sanderson was escorted into the jury room. Court greeted Ms. Sanderson and explained the individual voir dire process to be followed. Court questioned Ms. Sanderson. Mr. Thompson questioned Ms. Sanderson. Mr. Monson questioned Ms. Sanderson. Court requested Ms. Sanderson report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Sanderson was escorted out of the jury room.

Anne Dwelle was escorted into the jury room. Court greeted Ms. Dwelle and explained the individual voir dire process to be followed. Court questioned Ms. Dwelle. Court excused Anne Dwelle for cause at 1:18 p.m. Ms. Dwelle was escorted out of the jury room.

Steven Barr Jorgenson was escorted into the jury room. Court greeted Mr. Barr Jorgenson and explained the individual voir dire process to be followed. Court questioned Mr. Barr Jorgenson. Court excused Steven Barr Jorgenson for health reasons at 1:22 p.m. Mr. Barr Jorgenson was escorted out of the jury room.

Jim Prall was escorted into the jury room. Court greeted Mr. Prall and explained the individual voir dire process to be followed. Court questioned Mr. Prall. Mr. Thompson questioned Mr. Prall. Mr. Monson questioned Mr. Prall. Court requested Mr. Prall to report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Mr. Prall was escorted out of the jury room.

Sheila Kilcoyne was escorted into the jury room. Court greeted Ms. Kilcoyne and explained the individual voir dire process to be followed. Court questioned Ms. Kilcoyne. Mr. Thompson questioned Ms. Kilcoyne. Mr. Monson questioned Ms. Kilcoyne. Court requested Ms. Kilcoyne report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Kilcoyne was escorted out of the jury room. Mr. Monson challenged Sheila Kilcoyne for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the challenge for cause on Sheila Kilcoyne.

Nancy Largent was escorted into the jury room. Court greeted Ms. Largent and explained the individual voir dire process to be followed. Court questioned Ms. Largent. Mr. Thompson questioned Ms. Largent. Mr. Monson questioned Ms.

Largent. Court requested Ms. Largent report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Largent was escorted out of the jury room.

Gretalyn Leibnitz was escorted into the jury room. Court greeted Ms. Leibnitz and explained the individual voir dire process to be followed. Court questioned Ms. Leibnitz. Court excused Gretalyn Leibnitz for cause at 2:17 p.m. Ms. Leibnitz was escorted out of the jury room.

Rex Lunsford was escorted into the jury room. Court greeted Mr. Lunsford and explained the individual voir dire process to be followed. Court questioned Mr. Lunsford. Court excused Rex Lunsford for cause at 2:20 p.m. Mr. Lunsford was escorted out of the jury room.

Beverly Larsen was escorted into the jury room. Court greeted Ms. Larsen and explained the individual voir dire process to be followed. Court questioned Ms. Larsen. Mr. Thompson questioned Ms. Larsen. Mr. Barker questioned Ms. Larsen. Court requested Ms. Larsen report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Larsen was escorted out of the jury room.

Rachael Johnston was escorted into the jury room. Court greeted Ms. Johnston and explained the individual voir dire process to be followed. Court questioned Ms. Johnston. Mr. Thompson questioned Ms. Johnston. Mr. Barker questioned Ms. Johnston. Mr. Thompson further questioned Ms. Johnston. Court requested Ms. Johnston report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Johnston was escorted out of the jury room.

Thomas Hansen was escorted into the jury room. Court greeted Mr. Hansen and explained the individual voir dire process to be followed. Court questioned Mr. Hansen. Mr. Thompson questioned Mr. Hansen. Mr. Barker questioned Mr. Hansen. Court requested Mr. Hansen report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Mr. Hansen was escorted out of the jury room.

Sharon Dunn was escorted into the jury room. Court greeted Ms. Dunn and explained the individual voir dire process to be followed. Court questioned Ms. Dunn. Mr. Thompson questioned Ms. Dunn. Mr. Barker questioned Ms. Dunn. Court requested Ms. Dunn report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Dunn was escorted out of the jury room. Mr. Barker challenged Sharon Dunn for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the challenge for cause on Sharon Dunn.

Court recessed at 3:15 p.m.

Court reconvened at 3:23 p.m., all being present in the jury room as before.

Court and counsel continued with individual voir dire questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Katherine Knickerbocker was escorted into the jury room. Court greeted Ms. Knickerbocker and explained the individual voir dire process to be followed. Court questioned Ms. Knickerbocker. Mr. Thompson questioned Ms. Knickerbocker. Mr. Monson questioned Ms. Knickerbocker. Court requested Ms. Knickerbocker report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Knickerbocker was escorted out of the jury room.

Darren Duke was escorted into the jury room. Court greeted Mr. Duke and explained the individual voir dire process to be followed. Court questioned Mr. Duke. Court excused Darren Duke for cause at 3:38 p.m. Mr. Duke was escorted out of the jury room.

Ross Converse was escorted into the jury room. Court greeted Mr. Converse and explained the individual voir dire process to be followed. Court questioned Mr. Converse. Mr. Thompson questioned Mr. Converse. Mr. Monson questioned Mr. Converse. Court requested Mr. Converse report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Mr. Converse was escorted out of the jury room.

James Bizeau was escorted into the jury room. Court greeted Mr. Bizeau and explained the individual voir dire process to be followed. Court questioned Mr. Bizeau. Mr. Thompson questioned Mr. Bizeau. Mr. Monson questioned Mr. Bizeau. Court requested Mr. Bizeau report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Mr. Bizeau was escorted out of the jury room.

Juanita Robinson was escorted into the jury room. Court greeted Ms. Robinson and explained the individual voir dire process to be followed. Court questioned Ms. Robinson. Mr. Thompson questioned Ms. Robinson. Mr. Monson questioned Ms. Robinson. Court requested Ms. Robinson report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Robinson was escorted out of the jury room.

Scott Johnston was escorted into the jury room. Court greeted Mr. Johnston and explained the individual voir dire process to be followed. Court questioned Mr. Johnston. Court excused Scott Johnston for cause at 4:23 p.m. Mr. Johnston was escorted out of the jury room.

Court stated that he will convene in courtroom #3 tomorrow at 8:45 a.m. to hear argument on the issue of evidence.

Court recessed at 4:25 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C.B. Kerrick', written over a horizontal line.

CARL B. KERRICK
DISTRICT JUDGE

CASE NO. CR2013-135

2014 AUG 27 AM 8:42

CLERK DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

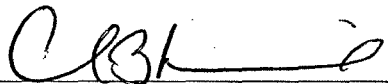
**AMENDED CERTIFICATE OF
ENDORSEMENT**

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code 19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Christopher Montambo, who currently resides in the State of Washington, at 818 7th Street, Clarkston, WA 99403, is a necessary and material witness in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 through September 19, 2014;
5. That the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 27th day of August, 2014.



District Judge

CASE NO. CR 2013-1358

2014 AUG 27 AM 8:42

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

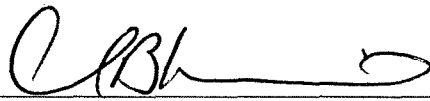
**AMENDED CERTIFICATE OF
ENDORSEMENT**

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code 19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Jesse Thacker, who currently resides in the State of Washington, at Walla Walla Corrections Center, 1313 N. 13th Ave, Walla Walla, WA 99362, is a necessary and material witness in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 through September 19, 2014;
5. That the witness will be transported through the Interstate Transport to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 27th day of August, 2014.

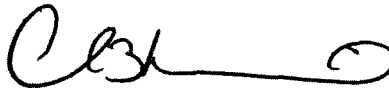


District Judge

exception defined as an excited utterance. Court overruled the objection and will allow the testimony.

Court recessed at 8:49 A.M.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C. B. Kerrick', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

Barker questioned Ms. Hammond. Court requested Ms. Hammond report to courtroom #3 on August 29, 2014 at 1:00 p.m.. Ms. Hammond was escorted out of the jury room.

Jana Argersinger was escorted into the jury room. Court greeted Ms. Argersinger and explained the individual voir dire examination process to be followed. Court questioned Ms. Argersinger. Mr. Thompson questioned Ms. Argersinger. Mr. Barker questioned Ms. Argersinger. Court requested Ms. Argersinger report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Argersinger was escorted out of the jury room.

Monica Ray was escorted into the jury room. Court greeted Ms. Ray and explained the individual voir dire examination process to be followed. Court questioned Ms. Ray. Court excused Ms. Ray for cause at 9:27 a.m.. Ms. Ray was escorted out of the jury room.

Joydene Andrews was escorted into the jury room. Court greeted Ms. Andrews and explained the individual voir dire examination process to be followed. Court questioned Ms. Andrews. Court excused Ms. Andrews for cause at 9:31 a.m.. Ms. Andrews was escorted out of the jury room.

C. Richard Shumway was escorted into the jury room. Court greeted Dr. Shumway and explained the individual voir dire examination process to be followed. Court questioned Dr. Shumway. Dr. Shumway chose to remain as a prospective juror even though he is over the age of seventy. Court continued to question Dr. Shumway. Mr. Thompson questioned Dr. Shumway. Mr. Barker questioned Dr. Shumway. Court further questioned Dr. Shumway. Court requested Dr. Shumway report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Dr. Shumway was escorted out of the jury room. Mr. Barker challenged Dr. Shumway for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the challenge for cause on Dr. Shumway.

The bailiff, Matthew Stinebaugh, informed the Court that prospective juror, Rick Harper, was supposed to appear at 11:00 a.m. but was here early. Court and counsel agreed to take Rick Harper out of order. Rick Harper was escorted into the jury room at 9:57 a.m.. Court greeted Mr. Harper and explained the individual voir dire examination process to be followed. Court questioned Mr. Harper. Mr. Thompson questioned Mr. Harper. Mr. Barker questioned Mr. Harper. Court further questioned Mr. Harper. Court requested Mr. Harper report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Mr. Harper was escorted out of the jury room. Mr. Barker challenged Rick Harper for cause due to his financial hardship. Mr. Thompson left the decision up to the discretion of the Court. Court stated that he would revisit the motion at a later time but denied the challenge for cause at this time.

Jennie Hall was escorted into the jury room. Court greeted Ms. Hall and explained the individual voir dire examination process to be followed. Court questioned Ms. Hall. Court excused Jennie Hall for cause at 10:23 a.m.. Ms. Hall was escorted out of the jury room.

Gina Young was escorted into the jury room. Court greeted Ms. Young and explained the individual voir dire examination process to be followed. Court questioned Ms. Young. Mr. Thompson questioned M. Young. Mr. Monson questioned Ms. Young. Court requested Ms. Young report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Young was escorted out of the jury room.

Anthony Johnson was escorted into the jury room. Court greeted Mr. Johnson and explained the individual voir dire examination process to be followed. Court questioned Mr. Johnson. Court excused Anthony Johnson for cause at 10:38 a.m.. Mr. Johnson was escorted out of the jury room.

Tony Summers was escorted into the jury room. Court greeted Mr. Summers and explained the individual voir dire examination process to be followed. Court questioned Mr. Summers. Court excused Tony Summers for cause at 10:42 a.m.. Mr. Summers was escorted out of the jury room.

Barbara Chatburn was escorted into the jury room. Court greeted Ms. Chatburn and explained the individual voir dire examination process to be followed. Court questioned Ms. Chatburn. Court excused Ms. Chatburn for cause at 10:47 a.m.. Ms. Chatburn was escorted out of the jury room.

Kathy Minden was escorted into the jury room. Court greeted Ms. Minden and explained the individual voir dire examination process to be followed. Court questioned Ms. Minden. Court excused Kathy Minden for cause at 10:48 a.m.. Ms. Minden was escorted out of the jury room.

Court recessed at 10:48 a.m.

Court reconvened in the jury room at 10:59 a.m., all being present as before.

Court and counsel continued with individual question of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Catherine Merickel was escorted into the jury room. Court greeted Ms. Merickel and explained the individual voir dire examination process to be followed. Court questioned Ms. Merickel. Mr. Thompson questioned Ms. Merickel. Mr. Barker questioned Ms. Merickel. Court requested Ms. Merickel report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m.. Ms. Merickel was escorted out of the jury room.

Dale Sorbel was escorted into the jury room. Court greeted Mr. Sorbel and explained the individual voir dire examination process to be followed. Court questioned Mr. Sorbel. Mr. Thompson questioned Mr. Sorbel. Mr. Barker questioned Mr. Sorbel. Court requested Mr. Sorbel report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Mr. Sorbel was escorted out of the jury room.

Kimberly Cirka was escorted into the jury room. Court greeted Ms. Cirka and explained the individual voir dire examination process to be followed. Court questioned Ms. Cirka. Court excused Kimberly Cirka for cause at 11:30 a.m. Ms. Cirka was escorted out of the jury room.

Michael Souders was escorted into the jury room. Court greeted Mr. Souders and explained the individual voir dire examination process to be followed. Court questioned Mr. Souders. Mr. Thompson questioned Mr. Souders. Mr. Barker questioned Mr. Souders. Court requested Mr. Souders report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Mr. Souders was escorted out of the jury room.

Harry Moore was escorted into the jury room. Court greeted Mr. Moore and explained the individual voir dire examination process to be followed. Court questioned Mr. Moore. Mr. Thompson questioned Mr. Moore. Court further questioned Mr. Moore. Court excused Harry Moore at 11:52 a.m.. Mr. Moore was escorted out of the jury room.

John Carnahan was escorted into the jury room. Court greeted Mr. Carnahan. It was noted that Mr. Carnahan was changed from reporting at 1:00 p.m. on Friday to today due to a wedding. Court questioned Mr. Carnahan and excused him at 11:57 a.m. Mr. Carnahan was escorted out of the jury room.

Court recessed at 11:57 a.m.

Court reconvened at 1:03 p.m., with Court, counsel, defendant, Nancy Towler, court reporter, Matthew Stinebaugh, bailiff, Ryan O'Toole, bailiff, and Maureen Coleman, deputy clerk being present in the jury room.

Court and counsel continued with individual voir dire questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Linda Hanson was escorted into the jury room. Court greeted Ms. Hanson and explained the individual voir dire examination process to be followed. Court questioned Ms. Hanson. Court excused Linda Hanson for cause at 1:05 p.m. Ms. Hanson was escorted out of the jury room.

Matthew Jepsen was escorted into the jury room. Court greeted Mr. Jepsen and explained the individual voir dire examination process to be followed. Court questioned Mr. Jepsen. Court excused Matthew Jepsen at 1:08 p.m. Mr. Jepsen was escorted out of the jury room.

Anne Wessels was escorted into the jury room. Court greeted Ms. Wessels and explained the individual voir dire examination process to be followed. Court questioned Ms. Wessels. Court excused Anne Wessels for cause at 1:11 p.m. Ms. Wessels was escorted out of the jury room.

Pamela Burnett was escorted into the jury room. Court greeted Ms. Burnett and explained the individual voir dire examination process to be followed. Court questioned Ms. Burnett. Mr. Thompson questioned Ms. Burnett. Mr. Monson questioned Ms. Burnett. Court requested Ms. Burnett report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Ms. Burnett was escorted out of the jury room. Mr. Monson challenged Pamela Burnett for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the challenge for cause on Pamela Burnett.

James Wallace was escorted into the jury room. Court greeted Mr. Wallace and explained the individual voir dire examination process to be followed. Court questioned Mr. Wallace. Court excused James Wallace for cause at 1:34 p.m. Mr. Wallace was escorted out of the jury room.

Jason Heath was escorted into the jury room. Court greeted Mr. Heath and explained the individual voir dire examination process to be followed. Court questioned Mr. Heath. Mr. Thompson questioned Mr. Heath. Mr. Monson questioned Mr. Heath. Mr. Barker questioned Mr. Heath. Court requested Mr. Heath report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Mr. Heath was escorted out of the jury room.

Glenda Germen was escorted into the jury room. Court greeted Ms. Germen and explained the individual voir dire examination process to be followed. Ms. Germen informed Court and counsel of something she had neglected to write on her juror questionnaire. Court questioned Ms. Germen. Mr. Thompson questioned Ms. Germen. Mr. Barker questioned Ms. Germen. Court requested Ms. Germen report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Ms. Germen was escorted out of the jury room.

Duane Chandler was escorted into the jury room. Court greeted Mr. Chandler and explained the individual voir dire examination process to be followed. Court questioned Mr. Chandler. Court excused Duane Chandler for cause at 2:01 p.m. Mr. Chandler was escorted out of the jury room.

Kelly Graber was escorted into the jury room. Court greeted Mr. Graber and explained the individual voir dire examination process to be followed. Court questioned Mr. Graber. Mr. Thompson questioned Mr. Graber. Mr. Barker questioned Mr. Graber. Court requested Mr. Graber report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Mr. Graber was escorted out of the jury room. Mr. Barker challenged Kelly Graber for cause and presented argument in support of his motion. Mr. Thompson left the decision to the Court's discretion. Court denied the challenge for cause on Kelly Graber.

Sally Browning was escorted into the jury room. Court greeted Ms. Browning and explained the individual voir dire examination process to be followed. Court questioned Ms. Browning. Mr. Thompson questioned Ms. Browning. Mr. Barker made an inquiry of the Court. Court explained to Ms. Browning that she may opt out of jury duty due to her age if she so desired. Ms. Browning stated that she did not wish to opt out of jury duty. Mr. Barker questioned Ms. Browning. Court requested Ms. Browning report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Ms. Browning stated that she had an obligation to drive a friend to attend a funeral at 1:00 p.m. on Friday. Colloquy was had between Ms. Browning and the Court. Ms. Browning stated that she could work it out. Ms. Browning was escorted out of the jury room.

Don Crimmins was escorted into the jury room. Court greeted Mr. Crimmins and explained the individual voir dire examination process to be followed. Court questioned Mr. Crimmins. Court excused Don Crimmins for cause at 2:42 p.m. Mr. Crimmins was escorted out of the jury room.

Brenda Allen was escorted into the jury room. Court greeted Ms. Allen and explained the individual voir dire examination process to be followed. Court questioned Ms. Allen. Court excused Brenda Allen for cause at 2:50 p.m. Ms. Allen was escorted out of the jury room.

Court recessed at 2:50 p.m.

Court reconvened at 3:00 p.m., all being present in the jury room as before.

Court and counsel continued with individual questioning of the prospective jurors on their responses on the juror questionnaires that were completed on August 20, 2014.

Mary Ann Linderman was escorted into the jury room. Court greeted Ms. Linderman and explained the individual voir dire examination process to be followed. Court questioned Ms. Linderman. Court excused Mary Ann Linderman for cause at 3:04 p.m. Ms. Linderman was escorted out of the jury room.

Kerri Vierling was escorted into the jury room. Court greeted Ms. Vierling and explained the individual voir dire examination process to be followed. Court questioned Ms. Vierling. Mr. Thompson questioned Ms. Vierling. Mr. Monson questioned Ms. Vierling. Court further questioned Ms. Vierling. Court requested Ms. Vierling report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Ms. Vierling was escorted out of the jury room. Mr. Monson challenged Ms. Vierling for cause and presented argument in support of his motion. Mr. Thompson presented argument in opposition. Court denied the challenge for cause on Kerri Vierling.

The bailiff, Matthew Stinebaugh, informed the Court that as Ms. Vierling was leaving that she mentioned that she was supposed to leave on a trip tomorrow morning. Court directed the bailiff to bring Ms. Vierling back into the jury room. Ms. Vierling was again present in the jury room. Court questioned Ms. Vierling in regards to her trip. Court again requested that she report to courtroom #3 on Friday, August 29, 2014 at 1:00 p.m. Ms. Vierling was escorted out of the jury room.

Cherie Boydell was escorted into the jury room. Court greeted Ms. Boydell and explained the individual voir dire examination process to be followed. Court questioned Ms. Boydell. Mr. Thompson questioned Ms. Boydell. Mr. Monson questioned Ms. Boydell. Court requested Ms. Boydell report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Ms. Boydell was escorted out of the jury room.

Julian Mount was escorted into the jury room. Court greeted Mr. Mount and explained the individual voir dire examination process to be followed. Court questioned Mr. Mount. Mr. Thompson questioned Mr. Mount. Mr. Monson questioned Mr. Mount. Court requested Mr. Mount report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014.

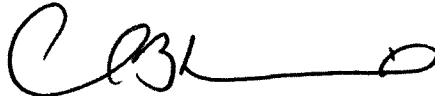
John Hatley was escorted into the jury room. Court greeted Mr. Hatley and explained the individual voir dire examination process to be followed. Court questioned Mr. Hatley. Mr. Thompson questioned Mr. Hatley. Mr. Monson questioned Mr. Hatley. Court requested Mr. Hatley report to courtroom #3 at 1:00 p.m. on Friday, August 29, 2014. Mr. Hatley was escorted out of the jury room. Mr. Thompson challenged Mr. Hatley for cause and presented argument in support of his motion. Mr. Monson left the decision to the discretion of the Court. Court granted Mr. Thompson's challenge for cause and excused John Hatley for cause at 4:24 p.m. Court directed the bailiff, Matthew Stinebaugh to inform Mr. Hatley that he has been excused.

Richard Bostrom was escorted into the jury room. Court greeted Mr. Bostrom and explained the individual voir dire process to be followed. Court questioned Mr.

Bostrom. Court excused Mr. Bostrom at 4:28 p.m. Mr. Bostrom was escorted out of the jury room.

Court recessed at 4:28 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C B K' followed by a long horizontal stroke.

CARL B. KERRICK
DISTRICT JUDGE

Melody Corner was escorted into the jury room. Court greeted Ms. Corner and explained to Ms. Corner the individual voir dire examination process to be followed. Mr. Thompson questioned Ms. Corner. Mr. Barker questioned Ms. Corner. Court further questioned Ms. Corner. Court requested Ms. Corner report to courtroom #3 at 1:00 p.m. today. Ms. Corner was escorted out of the jury room.

Daniel Seegmiller was escorted into the jury room. Court greeted Mr. Seegmiller and explained the individual voir dire examination process to be followed. Court questioned Mr. Seegmiller. Mr. Thompson questioned Mr. Seegmiller. Mr. Barker questioned Mr. Seegmiller. Court requested that Mr. Seegmiller report to courtroom #3 at 1:00 p.m. today. Mr. Seegmiller was escorted out of the jury room.

Doug Krehbiel was escorted into the jury room. Court greeted Mr. Krehbiel and explained to him the individual voir dire examination process to be followed. Court questioned Mr. Krehbiel. Mr. Thompson questioned Mr. Krehbiel. Mr. Barker questioned Mr. Krehbiel. Court requested that Mr. Krehbiel report to courtroom #3 at 1:00 p.m. today. Mr. Krehbiel was escorted out of the jury room.

Corinna Cox was escorted into the jury room. Court greeted Ms. Cox and explained to her the individual voir dire examination process to be followed. Court questioned Ms. Cox. Mr. Thompson questioned Ms. Cox. Mr. Barker questioned Ms. Cox. Court requested that Ms. Cox report to courtroom #3 at 1:00 p.m. today. Ms. Cox was escorted out of the jury room.

Sherry Caisley was escorted into the jury room. Court greeted Ms. Caisley and explained to her the individual voir dire examination process to be followed. Court questioned Ms. Caisley. Mr. Thompson questioned Ms. Caisley. Mr. Barker questioned Ms. Caisley. Court requested that Sherry Caisley report to courtroom #3 at 1:00 p.m. today. Ms. Caisley was escorted out of the jury room.

Colloquy was had between Court and counsel. Court stated that he intends to have the first thirty six prospective jurors seated in the strike panel prior to court convening. Court will explain peremptory challenges to the prospective jurors and that the peremptory challenges will be exercised in the jury room, outside of their presence. Once a jury is selected he will excuse those not selected to serve and will have the jury sworn. The Court will then give preliminary instructions to the jurors and then the jurors will be excused until Tuesday, September 02, 2014 at 9:00 a.m.

Colloquy was had between Court and counsel in regard to prospective jurors Kyle Peterson and Rick Harper. There being no objection by counsel, the Court

Excused Kyle Peterson and Rick Harper and informed the bailiff, Matthew Stinebaugh, to inform Kyle Peterson and Rick Harper that they have been excused and do not have to appear at 1:00 p.m. today.

Court recessed at 10:32 a.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C. B. Kerrick', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

This being the time set for exercising peremptory challenges in this case, Court noted the presence of counsel and the defendant.

Court greeted the prospective jurors and explained peremptory challenges and explained that the peremptory challenges would be exercised in the jury room, outside of their presence.

Court recessed at 1:13 P.M.

Court reconvened at 1:15 p.m. in the jury room, with Court, counsel, defendant, Ryan O'Toole, bailiff, Matthew Stinebaugh, bailiff, and Maureen Coleman, deputy clerk present in the jury room. There was no court reporter present in the jury room.

Peremptory challenges were exercised by counsel.

State's Peremptory Challenges

1. Thomas Hansen
2. Jim Prall
3. Rachael Johnston
4. James Bizeau
5. C. Richard Shumway
6. Kimberly Hammond
7. Dale Sorbel
8. Pass
9. Glenda Germen
10. Kelly Graber
11. Sally Browning

Defendant's Peremptory Challenges

1. Stacy Morrow
2. Nancy Nelson
3. Katherine Knickerbocker
4. Kathleen Drage
5. Jennifer Sanderson
6. Sheila Kilcoyne
7. Sharon Dunn
8. Pamela Burnett
9. Pass
10. Pass

Upon request of Mr. Barker, Court, Mia Vowels, William Thompson Jr., and Maureen Coleman left the jury room in order for the defendant and defense counsel could discuss their last peremptory challenge at 1:48 p.m..

Court reconvened at 1:54 p.m. in the jury room, with Court, counsel, defendant, Ryan O'Toole, bailiff, Matthew Stinebaugh, bailiff, and Maureen Coleman, deputy clerk. There was no court reporter present in the jury room.

The defense exercised their eleventh peremptory challenge, that being a pass.

Court listed the names of the jurors to be seated in the jury box in chairs #1-#14, those being:

- | | |
|-------------------|-----------------------|
| 1. Nancy Holmes | 8. Catherine Merickel |
| 2. Kerri Vierling | 9. Ross Converse |
| 3. Gina Young | 10. Michael Souders |
| 4. Jason Albrecht | 11. Nancy Largent |

- | | |
|---------------------|----------------------|
| 5. Jana Argersinger | 12. Beverly Larsen |
| 6. Brian Sumption | 13. Juanita Robinson |
| 7. Mary Abbott | 14. Jason Heath |

Court recessed at 1:55 p.m.

Court reconvened in the courtroom at 1:55 p.m., with Court, counsel, and the defendant being present in the courtroom.

Court listed the names of those prospective jurors not selected that were seated in the strike panel to be seated in the back of the courtroom. Court seated the following jurors in their respective chairs #1-#14.

- | | |
|---------------------|-----------------------|
| 1. Nancy Holmes | 8. Catherine Merickel |
| 2. Kerri Vierling | 9. Ross Converse |
| 3. Gina Young | 10. Michael Souders |
| 4. Jason Albrecht | 11. Nancy Largent |
| 5. Jana Argersinger | 12. Beverly Larsen |
| 6. Brian Sumption | 13. Juanita Robinson |
| 7. Mary Abbott | 14. Jason Heath |

Upon direction of the Court, the clerk administered the oath to the jurors.

Upon inquiry from the Court, counsel accepted the jury. Court excused those prospective jurors not selected at 1:58 p.m.

Court directed remarks to the jurors. Court read preliminary instructions to the jurors.

Court read the charging portion of the second amended criminal information as follows: "Count I, Murder in the First Degree under Idaho Code 18-4001, 18-4003(a), alleges that the defendant, Charles Anthony Capone, on or about the 16th day of April, 2010, in Latah County, State of Idaho, did willfully, deliberately, with premeditation and with malice aforethought, unlawfully kill and murder Rachael Anderson, a human being, to that count Mr. Capone has pled not guilty".

"Count II, Failure to Notify Coroner or Law Enforcement of Death under Idaho Code 18-204, 19-4301A(1)(3) alleges that the defendant, Charles Anthony Capone, commencing on or about the 16th day of April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully fail to notify, or aid and abet David Christopher Stone in failing to notify, law enforcement or the Latah County Coroner of the death of Rachael Anderson, and/or failed to take reasonable precautions to preserve the body, body fluids and the scene of the event, with the intent to prevent discovery of the manner of death of Rachael Anderson, to that count Mr. Capone has pled not guilty".

“Count III alleges Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death under Idaho Code 19-4301A(1)(3), 18-1701 alleges that the defendant, Charles Anthony Capone, commencing on or about the 16th day of April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully combine or conspire with David Christopher Stone to commit the crime of failure to notify coroner or law enforcement of death, Idaho Code 19-4301A(1)(3).; in furtherance of the conspiracy and to effect the purpose thereof, the following overt acts were performed:

1. Charles Capone killed and murdered Rachael Anderson;
2. Charles Capone and David Stone hid/disposed of Rachael Anderson’s body after she was murdered;
3. David Stone lied to his wife, Alisa, to hide his and Charles Capone’s true activities;
4. Charles Capone purchased a tarp to replace one used in the murder of Rachael Anderson and/or disposal of her body;
5. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachael Anderson in order to remove evidence of her death;
6. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
7. Charles Capone left fictitious communications on Rachael Anderson’s phone after her death in order to hide the fact of her death and the circumstances of her death;
8. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators. To these charges Charles Capone has pled not guilty”.

Court continued to read preliminary instructions to the jurors. In response to inquiry from the Court, counsel stated that they had nothing further.

The jurors were excused to the jury room at 2:22 p.m. to speak to the bailiff about instructions he has for them.

Court reconvened at 2:22 p.m. with Court, counsel, and the defendant being present in the courtroom outside the presence of the jurors.

Mr. Monson stated that there is an outstanding motion for change of venue that has not been ruled upon. Court denied the motion for change of venue.

Court recessed at 2:22 P.M.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

CR 2013-1358

CASE NO _____

2014 AUG 29 PM 2:29

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *AS* REP-10

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358


CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Constance Fisher, Ph.D., is currently employed at the FBI Laboratory located at 2501 Investigation Parkway, Quantico, Virginia, 22135 is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 29th day of August 2014.



District Judge

CASE NO. CR 2013-1352

2014 AUG 29 PM 2:29

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: *AS* DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
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(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

Mark T. Monson, being first duly sworn, states as follows:

1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

**AFFIDAVIT IN SUPPORT OF ISSUANCE
OF CERTIFICATE OF ENDORSEMENT**

Page 1 of 2

001892

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Constance L. Fisher, Ph.D is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Dr. Fisher is employed by the FBI Laboratory in Quantico, Virginia. Dr. Fisher examined specific items of evidence in the nuclear DNA unit of the laboratory and provided an examination report to local law enforcement with results of his testing.

That Dr. Fisher's testimony is estimated to occur between the dates of September 2, 2014 to September 19, 2014;

5. That Dr. Fisher is currently employed at the FBI Laboratory located at 2501 Investigation Parkway, Quantico, Virginia, 22135, approximately 2,500 miles from Moscow, Idaho.

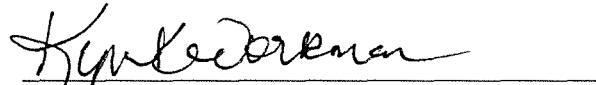
6. That it is anticipated that appropriate flight arrangements will be made for this witness to attend trial.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 29 day of August, 2014.



SUBSCRIBED AND SWORN to before me this 28 day of August, 2014.



NOTARY PUBLIC for Idaho

Residing at: Bovill

Commission expires: 8-7-18

CASE NO. CR2013-000135

2014 AUG 29 AM 11:13

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CM DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**ORDER FOR TRANSPORT OF
WITNESS**

It is hereby **ORDERED** that Jesse Dean Thacker (WA DOC #336804) be transported to the Latah County Jail for participation in the trial in the above-captioned case, to commence on September 2, 2014, in Courtroom #3 of the Latah County Courthouse in Moscow, Idaho. Mr. Thacker currently is an inmate in the Washington State Department of Corrections and his housed at the Washington State Penitentiary located at 1313 North 13th Avenue, Walla Walla, WA 99362.

It is **FURTHER ORDERED** that Jesse Dean Thacker be transported to the Latah County, Idaho jail for the aforementioned trial by a duly authorized representative of the State Board of Correction, a duly authorized representative of the Washington Department of Correction, or a duly authorized deputy of the sheriff of Latah County no later than September 10, 2014. Jesse Dean Thacker shall be returned to the custody of the Washington State Department of Corrections at the Washington State Penitentiary located at 1313 North 13th Avenue, Walla Walla, WA 99362 at the conclusion of the trial in the above-captioned case.

DATED this 29th day of August, 2014.



Hon. Carl Kerrick
District Judge

CR 2013-1358
CASE NO _____

2014 AUG 29 PM 2:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY sa DEPUTY

D. RAY BARKER
Attorney at Law
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Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

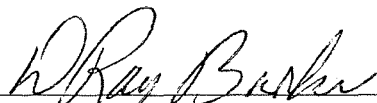
Defendant.

Case No. CR-2013-1358


**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Constance Fisher, Ph.D.** This motion is based upon the Affidavit of Mark T. Monson.

Date: August 29, 2014



D. Ray Barker



Mark T. Monson

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording No. Z:03-2014-9-2
Time: 9:00 A.M.

Date: September 2, 2014

STATE OF IDAHO,)

Case No. CR-13-01358

Plaintiff,)

vs)

APPEARANCES:

CHARLES ANTHONY CAPONE,)

Mia Vowels, Deputy Prosecutor
William Thompson, Jr., Prosecutor
Appearing on Behalf of the State

Defendant.)

Defendant present with counsel,
D. Ray Barker and Mark Monson
Court Appointed Counsel

Subject of Proceedings: Jury Trial-Day 5

Prior to Court convening, State's exhibits #1-#148 with respective subparts, were marked by the State, as listed on the attached exhibit log.

This being the time set for opening statements of counsel and the commencement of testimony, Court noted the presence of counsel and the defendant outside the presence of the jurors.

Upon inquiry from the Court, counsel stated that they were prepared to have the jurors returned to the courtroom. The jurors were escorted into the courtroom, being present in number and in person. Court greeted the jurors.

Mr. Monson moved to exclude witnesses from the courtroom. There being no objection by counsel, Court ordered witnesses excluded from the courtroom with the exception of Detective Tim Besst, an agent for the State and any victims as provided by law.

Maureen Coleman
Deputy Clerk
Court Minutes 1

001896

Ms. Vowels presented an opening statement. Mr. Barker presented an opening statement.

William David Wilcox was called, sworn, and testified for the State. State's exhibit #1 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. State's exhibit #2 was offered and admitted into evidence without objection by Mr. Barker. Cross examination of the witness by Mr. Barker. Mr. Thompson had no redirect examination of the witness. Upon motion of Mr. Thompson, without objection by Mr. Barker, Court excused the witness.

Aiden Wilcox was called, sworn, and testified for the State. Mr. Barker had no cross examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Ms. Vowels stated that the next witness for the State is the video deposition of Angela Cabrera, with the transcript being State's exhibit #143A and the video deposition of Angela Cabrera being State's exhibit #143B. Upon request of Ms. Vowels, without objection by Mr. Barker, the jurors were provided a copy of the transcript of Angela Cabrera to follow along with the playing of the video deposition. There were technical difficulties with the playing of State's exhibit #143B.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:01 a.m.

Court recessed at 10:02 a.m.

Court reconvened at 10:11 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jurors.

Court stated that he had a discussion with counsel in chambers during the break regarding objections by defense counsel on the video deposition of Angela Cabrera. Court stated that he will advise the jurors that he has ruled on the objections and that they are to consider the evidence.

Court further stated that defense counsel has an objection to Gavin Plunkett testifying. Mr. Barker presented argument in support of his objection to the testimony of Gavin Plunkett. Mr. Barker stipulated that Gavin Plunkett has not seen his mother since the time of his mother's disappearance. Ms. Vowels presented argument in support of calling Gavin Plunkett as a witness. Court overruled the objection. Mr. Barker added to his objection as the testimony of Gavin Plunkett as being cumulative.

The jurors were returned to the courtroom at 10:14 a.m., being present in number and in person.

Court informed the jurors that there are objections by Mr. Barker during the video testimony of Angela Cabrera and that those objections have been ruled on by the Court. Court informed the jurors that they are to consider the evidence. State's exhibit #143B, the video deposition of Angela Cabrera, was played in open court.

State's exhibit #143B was offered and admitted into evidence without objection by defense counsel.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:50 a.m.

Court recessed at 10:51 a.m.

Court reconvened at 11:02 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, counsel stated that they were prepared to proceed. The jurors were returned to the courtroom at 11:02 a.m., being present in number and in person.

Amber Griswold was called, sworn, and testified for the State. State's exhibit #29, was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness. State's exhibit #4 was offered. Mr. Barker requested that State's exhibit #4 be played outside the presence of the jury.

The jurors were escorted out of the courtroom at 11:14 a.m. State's exhibit #4 was played in open court, outside the presence of the jury. Mr. Barker presented argument in opposition to the admission of State's exhibit #4. Ms. Vowels presented argument in support of admission of State's exhibit #4. Court overruled the objection and ordered State's exhibit #4 admitted into evidence.

The jurors were returned to the courtroom at 11:17 a.m., being present in number and in person. Court informed the jurors that the defense had an objection to the admission of State's exhibit #4 and that the Court has overruled that objection. State's exhibit #4 was played in open court. Ms. Vowels continued with direct examination of the witness. State's exhibits #6 and #7 were offered. Mr. Barker stated his objection to the admission of State's exhibits #6 and #7. Court sustained the objection. Ms. Vowels continued with direct examination of the witness. State's exhibits #6 and #7 were reoffered. Mr. Barker questioned the witness in aide of an

objection. Mr. Barker having no objection, Court ordered State's exhibits #6 and #7 admitted into evidence. State's exhibits #6 and #7 were published to the jurors.

The jurors were escorted out of the courtroom at 11:28 a.m. Ms. Vowels questioned the witness outside the presence of the jurors. Ms. Vowels presented argument in support of allowing the testimony of the witness. Court ruled that he will allow the witness to explain her mother's state of mind. Mr. Barker requested a clarification. Court so clarified. The jurors were returned to the courtroom at 11:32 a.m., being present in number and in person. Court explained to the jurors that he has sustained the objection in part and overruled the objection in part. Ms. Vowels continued with direct examination of the witness. State's exhibits #3A-#3E, were offered and admitted into evidence without objection by Mr. Barker. State's exhibit #11 was offered and admitted into evidence without objection by Mr. Barker. State's exhibit #18 was offered and admitted into evidence without objection by Mr. Barker. State's exhibit #80B was offered and admitted into evidence without objection by Mr. Barker. State's exhibit #27A was offered and admitted into evidence without objection by Mr. Barker. Mr. Barker requested a short recess. The jurors were escorted out of the courtroom at 11:55 a.m.. The witness stepped down.

Court recessed at 11:56 a.m.

Court reconvened at 12:09 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

Amber Griswold resumed the witness stand, previously being sworn. The jurors were returned to the courtroom at 12:09 p.m., being present in number and in person.

Mr. Barker conducted cross examination of the witness. Redirect examination of the witness by Ms. Vowels. Mr. Barker conducted re-cross examination of the witness. Ms. Vowels had no re-redirect examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Dennis Plunkett was called and placed under oath. Mr. Plunkett stated that he was hearing impaired and was having trouble hearing. The bailiff gave Mr. Plunkett a hearing aide device. Dennis Plunkett was again placed under oath. Dennis Plunkett began testifying under direct examination for the State. State's exhibit #5 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. State's exhibit #127A was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. State's exhibit #137 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. Cross examination of the witness

by Mr. Barker. Mr. Thompson had no redirect examination for the witness. There being no objection by counsel, Court excused the witness.

Gavin Plunkett was called to testify. Ms. Vowels informed the Court that Dennis Plunkett, father of Gavin Plunkett, was going to sit next to the witness box during his son's testimony due to his age. There being no objection, Court so allowed. Gavin Plunkett was placed under oath. Court explained to the witness what the oath meant. Gavin Plunkett began to testify under direct examination for the State. Mr. Barker had no cross examination for the witness. The witness stepped down.

Ashley Colbert was called, sworn, and testified for the State. Cross examination of the witness by Mr. Barker. Redirect examination of the witness by Ms. Vowels. Mr. Barker conducted re-cross examination of the witness. Ms. Vowels had no further questions for the witness. Upon motion of Ms. Vowels, without objection by defense counsel, Court excused the witness.

The jurors were escorted out of the courtroom at 1:44 p.m.

Court recessed at 1:45 p.m.

Court reconvened at 1:50 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

The jurors were returned to the courtroom at 1:50 p.m., being present in number and in person.

Kristina Bonefield was called, sworn, and testified for the State. State's exhibit #4 was played in open court.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 2:02 p.m.

Ms. Vowels presented argument in support of the hearsay exception allowing the witness to testify as to the declarant's state of mind. Mr. Monson stated his concerns as to allowing only the declarant's state of mind during the telephone conversation. Ms. Vowels had no further argument to present. Court stated that it does not sound that the State and defense are very different in their arguments. Court stated he will allow the witness to testify as to the declarant's state of mind.

Court stated he would like to speak to counsel in chambers at the conclusion of the court proceedings.

Court recessed at 2:06 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C. B. Kerrick', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording No. Z:03-2014-9-3
Time: 9:14 A.M.

Date: September 3, 2014

STATE OF IDAHO,)

Case No. CR-13-01358

)
)
Plaintiff,)

vs)

APPEARANCES:

CHARLES ANTHONY CAPONE,)

Mia Vowels, Deputy Prosecutor
William Thompson, Jr., Prosecutor
Appearing on Behalf of the State

)
)
Defendant.)

)
)
)
Defendant present with counsel,
D. Ray Barker and Mark Monson
Court Appointed Counsel

Subject of Proceedings: Jury Trial-Day 6

Prior to court convening Defendant's exhibit A, as listed on the attached Defendant's Exhibit Log, was marked for identification. State's exhibit #149 was marked for identification by the State, as listed on the State's Exhibit Log.

This being the time set for the continuation of the jury trial in this case, court noted the presence of counsel and the defendant, outside the presence of the jurors.

Court noted that he met in chambers with counsel prior to court convening discussing a limiting instruction when referring to prior witness statements, law enforcement reports, and other reports when used to impeach witnesses. Court stated that Mr. Thompson has drawn up a proposed instruction and it is the Court's understanding that it has been reviewed by defense counsel and there is no objection. Mr. Barker stated that he has reviewed the instruction and has no objection. Court

informed counsel to let him know when the appropriate time would be to read the instruction.

Kristina Bonefield came forward and was seated in the witness box, previously being sworn. In response to inquiry from the Court, counsel stated that they were prepared to have the jurors returned to the courtroom.

The jurors were returned to the courtroom at 9:16 a.m., being present in number and in person. Court greeted the jurors.

Kristina Bonefield continued to testify under direct examination for the State with Ms. Vowels conducting the direct examination. State's exhibit #149 was offered and admitted into evidence without objection by Mr. Monson. State's exhibit #149 was played in open court. Ms. Vowels continued with direct examination of the witness. Mr. Monson questioned the witness in aide of an objection. Mr. Monson stated his objection. Ms. Vowels presented argument. Court sustained the objection. Ms. Vowels continued with direct examination of the witness. Mr. Monson conducted cross examination of the witness. Ms. Vowels conducted redirect examination of the witness. Mr. Monson conducted re-cross examination. Ms. Vowels had no further questions for the witness. Upon motion of Ms. Vowels, without objection, Court excused the witness.

Jennifer Norberg was called, sworn and testified for the State, with Ms. Vowels conducting the direct examination. State's exhibit #68 was offered and admitted into evidence without objection by defense counsel.

Court admonished the jurors as provide by law. The jurors were escorted out of the courtroom at 10:29 a.m.

Court recessed at 10:29 a.m.

Court reconvened at 10:47 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

Jennifer Norberg resumed the witness stand, previously being sworn. In response to inquiry from the Court, counsel stated that they were prepared to have the jurors returned to the courtroom.

The jurors were returned to the courtroom at 10:47 a.m., being present in number and in person.

Mr. Monson conducted cross examination of the witness. Mr. Monson informed the Court that it would be an appropriate time to read the impeachment instruction to the jurors. Court read an impeachment instruction to the jurors. Mr. Monson

continued with cross examination of the witness. Redirect examination of the witness by Ms. Vowels. Ms. Monson conducted re-cross examination of the witness. Ms. Vowels had no further questions for the witness. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Jess David Rogers was called, sworn, and testified for the State, with Ms. Vowels conducting the direct examination. State's exhibit #149 was played in open court. Ms. Vowels continued with direct examination of the witness. State's exhibit #8 was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness. Cross examination of the witness by Mr. Barker. Ms. Vowels had no redirect examination for the witness. Upon motion of Ms. Vowels, without objection by defense counsel, Court excused the witness.

Robert Bogden was called, sworn, and testified for the State, with Ms. Vowels conducting the direct examination. Mr. Barker requested a conference outside the presence of the jurors. The jurors were escorted out of the courtroom at 11:55 a.m.

Mr. Barker stated his concerns and stated his objection under I.C.R. 404(b) and I.C.R. 403 regarding the defendant's prior criminal record and the defendant not being allowed to possess weapons. Ms. Vowels stated that she is not going to deal with that issue in her questioning at this time but presented argument in opposition to the objection. Ms. Vowels stated that she will be questioning Mr. Bogden on what the defendant told him regarding possessing a firearm. Court ruled that he will allow a generic reference to a prior felony. Court cautioned the witness that he cannot testify about any potential penalty for a felon in possession of a firearm. Mr. Barker presented argument. Mr. Barker stated that Mr. Bogden testified as to the conference he had on May 5th in reference to arming himself and moved to exclude that testimony. Ms. Vowels presented argument in opposition. Mr. Barker presented further argument. Court ruled it is an expression to the reaction. Court overruled the objection, stating that he will allow it.

The jurors were returned to the courtroom at 12:01 p.m., being present in number and in person.

Robert Bogden resumed the witness stand, previously being sworn. Ms. Vowels continued with direct examination of the witness. State's exhibits #26A - #26H were offered. Mr. Barker stated his objection to the admission of State's exhibits #26A-#26H and presented argument. Ms. Vowels presented argument in support of admission of State's exhibits #26A - #26H. Court sustained the objection, articulating the reasons into the record.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:16 p.m.

Court recessed at 12:16 p.m.

Court reconvened at 12:32 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 12:32 p.m., being present in number and in person.

Robert Bogden resumed the witness stand, previously being sworn, and continued to testify under direct examination by Ms. Vowels. Mr. Barker conducted cross examination of the witness. Defendant's exhibit A was offered and admitted into evidence without objection by Ms. Vowels. Mr. Barker continued with cross examination of the witness. Redirect examination by Ms. Vowels. Mr. Barker conducted re-cross examination of the witness. Ms. Vowels had no further questions for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Carole Bogden was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Barker. Redirect examination by Ms. Vowels. Mr. Barker conducted re-cross examination of the witness. Ms. Vowels had no further questions for the witness. There being no objection by counsel, Court excused the witness.

John Houser was called, sworn, and testified for the State, with William Thompson conducting direct examination. Mr. Monson asserted the defendant's religious privilege. Mr. Thompson stated that he was not intending to question the witness regarding any religious privilege. Mr. Thompson continued with direct examination of the witness. Cross examination of the witness by Mr. Monson. Redirect examination by Mr. Thompson. Mr. Monson had no re-cross examination of the witness. Upon motion of Mr. Thompson, without objection by Mr. Monson, Court excused the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 1:55 p.m.

Court recessed at 1:56 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

CASE NO. CR 2013-1358

2014 SEP -4 AM 10:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *[Signature]* DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Mike Sheurman** This motion is based upon the Affidavit of D. Ray Barker.

Date: September 3, 2014

[Signature]
D. Ray Barker

[Signature]
Mark T. Monson

CR 2013-1358

CASE NO _____

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

2014 SEP -4 AM 10: 29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY  DEPUTY

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

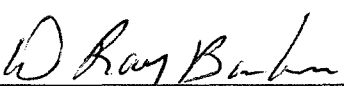
Defendant.

Case No. CR-2013-1358

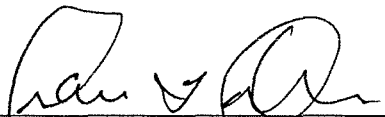
**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of a Certificate of Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal Cases, Idaho Code §19-3005, for **Jan Sheurman** This motion is based upon the Affidavit of D. Ray Barker.

Date: September 3, 2014



D. Ray Barker



Mark T. Monson

CASE NO. CR 2013-1358

2014 SEP -4 AM 10: 29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
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(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

D. Ray Barker, being first duly sworn, states as follows:

1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

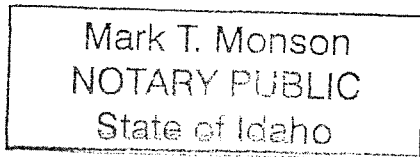
4. That Mike Sheurman is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: That on April 17, 2010, Nathan Donner was at the Salmon River Jet Boat Races, in Riggins, Idaho.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3rd day of September, 2014.

D Ray Busher

SUBSCRIBED AND SWORN to before me this 3 day of September, 2014.



Mark T. Monson
NOTARY PUBLIC for Idaho
Residing at: *MOSCOW*
Commission expires: *10-15-18*

CR 2013-1358
CASE NO _____

2014 SEP -4 AM 10:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
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Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT IN SUPPORT OF
ISSUANCE OF CERTIFICATE OF
ENDORSEMENT**

D. Ray Barker, being first duly sworn, states as follows:


1. That the affiant co-counsel for the Defendant;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code §§18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§19-4301(A)(1)(3), 18-1701;

3. That the above entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Jan Sheurman is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: That on April 17, 2010, Nathan Donner was at the Salmon River Jet Boat Races, in Riggins, Idaho.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3rd day of September, 2014.



SUBSCRIBED AND SWORN to before me this 3 day of September, 2014.

Mark T. Monson
NOTARY PUBLIC
State of Idaho



NOTARY PUBLIC for Idaho
Residing at: MOSCOW
Commission expires: 10-15-18

with direct examination of the witness. Cross examination of the witness by Mr. Monson. Mr. Thompson conducted redirect examination of the witness. Re-cross examination of the witness by Mr. Monson. Mr. Thompson had no further questions for the witness. Mr. Thompson moved to excuse the witness. Mr. Monson stated his objection, moving to reserve his right to recall Mr. Hally. Mr. Thompson informed the Court that he does not believe that Mr. Hally is under subpoena by the defense. The witness stepped down. Court suggested to Mr. Hally that he might stay available. Mr. Hally stated he would leave his telephone on.

Court admonished the jurors as provided by law, who were escorted out of the courtroom at 10:29 a.m.

Court recessed at 10:30 a.m.

Court reconvened at 10:51 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were ready for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 10:52 a.m., being present in number and in person.

Jackie Nichols was called, sworn, and testified for the State. Cross examination of the witness by Mr. Monson. Ms. Vowels conducted redirect examination. Mr. Monson requested he be heard outside the presence of the jury. The jurors were escorted out of the courtroom at 11:25 a.m.

Mr. Monson stated his objection to the testimony in regard to the experiment at the river, stating that Judge Griffin had previously entered an order in regard to the experiment at the river. Ms. Vowels presented argument in opposition. Mr. Monson presented further argument. Court sustained the objection.

The jurors were returned to the courtroom at 11:28 a.m., being present in number and in person. Ms. Vowels had no further questions for the witness. Mr. Monson had no questions for the witness. Jackie Nichols stepped down. Mr. Barker moved to reserve his right to recall Jackie Nichols.

Kent Zachow was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibit #102A was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness. State's exhibit #103 was offered. Mr. Barker reviewed State's exhibit #103 and questioned the witness in aid of an objection. Mr. Barker having no objection, Court ordered State's exhibit #103 admitted into evidence. Ms. Vowels continued with direct examination of the witness. Cross examination of the witness by Mr. Barker. Redirect examination by Ms. Vowels. Mr. Barker had no re-

cross examination of the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Brian Birdsell was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibits #12 - #17 and #19 and #20 were offered and admitted into evidence without objection by defense counsel. Ms. Vowels continued with direct examination of the witness. State's exhibits #21 - #25 were offered and admitted into evidence without objection. Ms. Vowels continued with direct examination of the witness. Mr. Monson conducted cross examination of the witness. Ms. Vowels had no redirect examination of the witness. Ms. Vowels informed the Court that this witness will be called again at a later time. The witness stepped down.

Danny Lee Combs was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Mr. Barker requested a short recess. Court so allowed.

The jurors were escorted out of the courtroom at 12:10 p.m.

Court recessed at 12:10 p.m.

Court reconvened at 12:14 p.m., with Court, counsel and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were ready for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 12:14 p.m., being present in number and in person. Mr. Barker stated that he had no cross examination for the witness. Mr. Barker stated that he intends to call the witness at a later time.

The jurors were escorted out of the courtroom at 12:16 p.m. The witness stepped down.

Court recessed at 12:16 p.m.

Court reconvened at 12:34 p.m., Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were ready for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 12:34 p.m., being present in number and in person.

Mike Mooney was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibits #31, #32A, #32B, #33, #34, #41, and

#42 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #35, #36A, #37, #38A, and #39 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #36B was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #38B was offered. Mr. Monson reviewed the exhibit and had no objection to the admission of State's exhibit #38B. Court ordered State's exhibit #38B admitted into evidence without objection. Ms. Vowels continued with direct examination of the witness.

State's exhibit #40 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #43 through #50 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #51 and #52 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #53 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #54 through #58 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #59 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #60 through #67 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #69, #71, and #72 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #70 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #73 through #77 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #78, #79, and #80A were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #81 through #85A and #86 through #91 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #86B was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #92 through #97 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #98 and #99 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #100 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #101 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #102B was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #104 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibits #105 through #108 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #27B was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

State's exhibit #27C was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 2:03 p.m. The witness stepped down and was requested to return tomorrow morning.

Court recessed at 2:03 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'Carl B. Kerrick', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

State will be taking three witnesses out of order due to scheduling before Mike Mooney continues to testify.

Scott Gallina was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Mr. Monson had no cross examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Rylene Nowlin was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination by Mr. Monson. Ms. Vowels conducted redirect examination of the witness. Mr. Monson had no re-cross examination. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Stacy Guess was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination by Mr. Monson. Ms. Vowels had no redirect examination for the witness. Upon motion of Ms. Vowels without objection by Mr. Monson, Court excused the witness.

Mike Mooney resumed the witness stand, previously being sworn, and continued to testify under direct examination for the State, with Ms. Vowels conducting the direct examination. State's exhibits #109-#112 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness. State's exhibit #113 was offered. Mr. Monson questioned the witness in aide of an objection. Mr. Monson having no objection to the admission of State's exhibit #113, Court ordered State's exhibit #113 admitted into evidence. Ms. Vowels moved for a short recess. Court so allowed. The jurors were escorted out of the courtroom at 9:55 a.m.

Court recessed at 9:56 a.m.

Court reconvened at 10:10 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 10:10 a.m., being present in number and in person.

Mike Mooney resumed the witness stand, previously being sworn, and continued to testify under direct examination for the State, with Ms. Vowels conducting the direct examination. State's exhibits #151B and #151A were offered and admitted into evidence without objection by Mr. Monson. Cross examination by Mr. Monson.

Defendant's exhibit K was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibits B, C, D, E, F, G, H, M, N, and O were offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit P was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit Q was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness. Redirect examination by Ms. Vowels. Mr. Monson conducted re-cross examination of the witness. Ms. Vowels had no further questions for the witness. The witness stepped down.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:39 a.m.

Court recessed at 10:39 a.m.

Court reconvened at 10:57 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 10:58 a.m., being present in number and in person.

Joshua Lynn Voss was called, sworn, and testified for the State, with Ms. Vowels conducting the direct examination. Mr. Barker conducted cross examination of the witness. Redirect by Ms. Vowels. Re-cross examination by Mr. Barker. Ms. Vowels had no further questions for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Brent Glass was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibit #148 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness. State's exhibits #146 and #147 were offered. Mr. Monson stated his objection to the admission of State's exhibits #146 and #147. Court ordered State's exhibits #146 and #147 admitted into evidence over objection. Cross examination of the witness by Mr. Monson. Mr. Monson requested a conference outside the presence of the jury. Court so allowed. The jurors were escorted out of the courtroom at 12:02 p.m.

Mr. Monson made a statement to the Court in the form of an offer of proof. Ms. Vowels presented argument. Mr. Monson presented further argument. Court requested a conference with counsel in chambers.

Court recessed at 12:06 p.m.

Court reconvened at 12:25 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

Court thanked counsel for meeting with him in chambers. Court stated the issue of whether there was consideration for pending charges against Mr. Glass and what he expected for any reduction of sentence. Court ruled it is appropriate for Mr. Monson to question the witness on that issue. Court stated that he has reviewed the transcript of the preliminary hearing and could not find it in the transcript. Mr. Monson referred the Court to pages 968, 969 and 970 of the transcript of the preliminary hearing. Mr. Monson read portions of transcript of the preliminary hearing from pages 968, 969 and 970. Ms. Vowels presented argument. Mr. Monson agreed with Ms. Vowels. Court questioned Mr. Monson. Court stated he will allow Mr. Monson to question the witness over objection by the State.

The jurors were returned to the courtroom at 12:32 p.m., being present in number and in person.

Brent Glass resumed the witness stand, previously being sworn, and continued to testify under cross examination by Mr. Monson. Defendant's exhibit R was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness. Redirect by Ms. Vowels. Mr. Monson conducted re-cross examination of the witness. Ms. Vowels further questioned the witness. The witness stepped down. The jurors were escorted out of the courtroom at 1:01 p.m.

Court recessed at 1:01 p.m.

Off the record Ms. Vowels moved to excuse Brent Glass. There being no objection by defense counsel, Court excused Brent Glass at 1:02 p.m.

Court reconvened at 1:16 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared to have the jurors returned to the courtroom.

The jurors were returned to the courtroom at 1:17 p.m., being present in number and in person.

Maureen Coleman
Deputy Clerk
Court Minutes - 4

001921

Nathan Donner was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Barker. Mr. Donner stated that his attorney is present in the courtroom. Mr. Barker continued with cross examination of the witness. Ms. Vowels conducted redirect examination of the witness. Mr. Barker conducted re-cross examination of the witness. Ms. Vowels further questioned the witness. State's exhibit #160 was offered and admitted into evidence without objection by Mr. Barker. The witness stepped down. Mr. Barker informed the Court that he had another question for the witness. Court explained to Mr. Barker the reason why he was not allowing him to ask any further questions. Mr. Barker acknowledged the reasoning of the Court. Upon motion of Ms. Vowels, Court excused the witness.

Court informed the jurors that it is anticipated that the schedule for Monday will be from 9:00 a.m. to 3:00 p.m. Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 2:09 p.m.

Court recessed at 2:12 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

CASE NO. CR 2013-1358

2014 SEP -5 AM 9:09

CLERK OF DISTRICT COURT
LETAH COUNTY
BY [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358


CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of D. Ray Barker, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Jan Sheurman, is currently located at 2626 Critchfield Road, Clarkston, WA, is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5th day of September 2014.



District Judge

CASE NO. CR 2013-1358

2014 SEP -5 AM 9:10

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358


CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of D. Ray Barker, does hereby certify, pursuant to Idaho Code §19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Mike Sheurman, is currently located at 2626 Critchfield Road, Clarkston, WA, is a necessary and material witness for the Defense in this matter;

3. That the trial in this matter is scheduled to commence on September 2, 2014, at 9:00 a.m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between September 2, 2014 and September 19, 2014.
5. That appropriate travel arrangements will be made so that the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5th day of September 2014.



District Judge

CASE NO. CR 2013-1358

2014 SEP -8 PM 1:54

CLERK OF DISTRICT COURT
LATAH COUNTY
BY gm DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
MIA M. VOWELS
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. BOX 8068
Moscow, Idaho 83843-0565
Phone: (208) 883-2246
ISB No. 6564

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

STATE OF IDAHO,)
Plaintiff,)
V.)
CHARLES ANTHONY CAPONE,)
Defendant.)
_____)

Case No. CR-2013-0001358
MOTION FOR ORDER FOR
PRODUCTION OF PRISONER

COMES NOW the State by and through its attorney, Mia M. Vowels, Latah County Deputy Prosecutor, and moves the Court pursuant to I.C. 19-3012, 19-4601, and 9-711, et. seq., for an order for production of a prisoner, Luis A. Avila, to Latah County as a witness herein for the following reasons:

1. That Luis A. Avila, DOC# 369547, is currently residing at Airway Heights Correctional Center, 11919 W. Sprague Avenue, Spokane County, Airway Heights, WA 99001-1899, approximately eighty-five (85) miles from Moscow, Idaho

ORIGINAL
001927

2. That the above-entitled case has been set for trial to begin on September 2, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

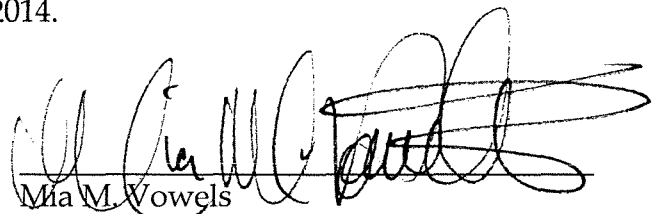
3. That Luis A. Avila is a necessary and material witness to the state in this case and his testimony may include, but not be limited to, the following: Luis Avila was in custody at the Asotin County Jail with Charles Capone. While incarcerated together, they spoke about their ex-wives. Capone told Mr. Avila to bury his ex-wife. Capone told Mr. Avila it would be easy to just dig a hole and cover her. On a different day, Mr. Capone got upset with Mr. Avila and told him something to the effect of "You're not the first one I'm going to bury." In another conversation Mr. Capone told Mr. Avila the police were never going to find Rachael Anderson;

4. That Luis A. Avila's testimony is estimated to occur between the dates of September 9, 2014, thru September 23, 2014;

Wherefore the State respectfully requests an order to transport Luis A. Avila to the Latah County Sheriff's Office.

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

DATED this 8 day of September, 2014.


Mia M. Vowels
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the MOTION FOR ORDER FOR PRODUCTION OF PRISONER were served on the following in the manner indicated below:

D. Ray Barker
Attorney at Law
P.O. Box 9408
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery
 E-mail - d.raybarker@turbonet.com

Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery
 E-mail - mark@mosmanlaw.com

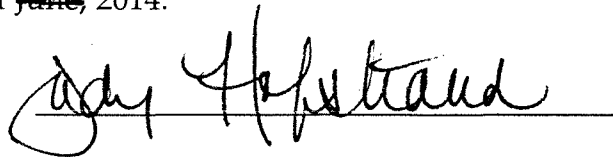
Honorable Carl B. Kerrick
District Judge
Nez Perce County
P.O. Box 896
Lewiston, ID 83501

U.S. Mail
 Overnight Mail
 Fax - (208-799-3058)
 Hand Delivery

Airway Heights Corrections Center
Attn: Deanna - Records

U.S. Mail
 Overnight Mail
 Fax - 509-244-6708
 Hand Delivery
 E-mail: deanna.leyerle@doc.wa.gov

Dated this 8th day of September, 2014.



CASE NO. CR 2013-1358

2014 SEP -8 PM 2:04

CLERK OF DISTRICT COURT
LATAH COUNTY
BY am DEPUTY

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

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2013-0001358
)	
V.	)	ORDER FOR PRODUCTION
	)	OF PRISONER
CHARLES A. CAPONE,)	
Defendant.)	
_____)	

The above matter having come before the Court pursuant to the State's "Motion for Order for Production of Prisoner," the Court being fully advised in the premises and good cause appearing;

IT IS HEREBY ORDERED pursuant to Idaho Code 19-4601, 19-3012 and 9-711, that Luis A. Avila, a prisoner currently in the custody of the Airway Heights Corrections Center, 11919 W. Sprague Avenue, Spokane County, Airway Heights, WA

ORIGINAL 001930

99001-1899, be brought before this Court no later than the 10th day of September, 2014, for the purpose of testifying at the trial herein.

The Sheriff of Latah County shall be responsible for execution of this order.

IT IS FURTHER ORDERED, that the defendant be transported to Airway Heights Corrections Center upon completion of his testimony and the Sheriff of Latah County shall be responsible for execution of this order.

SO ORDERED this 8th day of September, 2014.



Carl B. Kerrick
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing ORDER FOR PRODUCTION OF PRISONER were delivered to the following as indicated:

D. Ray Barker
Attorney at Law
P.O. Box 9408
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery
 E-mail - d.raybarker@turbonet.com

Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery
 E-mail - mark@mosmanlaw.com

William W. Thomson, Jr.
Latah County Prosecutor
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Lt. Ron Manell
Latah County Sheriff's Office
Latah County Courthouse
Moscow, ID 83843

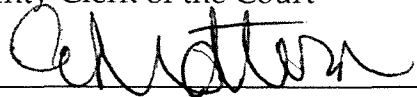
U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Airway Heights Corrections Center
Attn: Deanna - Records

U.S. Mail
 Overnight Mail
 Fax - 509-244-6708
 Hand Delivery
 E-mail: deanna.leyerle@doc.wa.gov

on this 8 day of September, 2014.

SUSAN PETERSEN
Latah County Clerk of the Court

By: 
Deputy Clerk

Vowels had no redirect examination of the witness. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Eric Kjorness was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibit #134 was offered. Mr. Monson requested he be allowed to argue his objection outside the presence of the jurors. Court so allowed. The jurors were escorted out of the courtroom at 9:16 a.m. Mr. Monson stated his objection to the admission of State's exhibit #134, stating that he did not believe he had any grounds for an objection for the out-going text messages but stated his objection to the in-coming text messages from Rachael Anderson. Court stated that he will take a ten minute recess to review the exhibit.

Court recessed at 9:19 a.m.

Court reconvened at 9:36 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

Court reviewed the argument presented by counsel. Court overruled the defendant's objection and stated he will allow the admission of State's exhibit #134. Court articulated findings. Court stated that he will instruct the jurors that they are not to take the text messages from Rachael Anderson for the truth but only to show the context of the exchanges.

The jurors were returned to the courtroom at 9:40 a.m., being present in number and in person. Court informed the jurors that State's exhibit #134 is admitted into evidence and informed the jurors that they are not to consider any of the text messages from Rachael Anderson as the truth but strictly to put the text messages in context.

Eric Kjorness resumed the witness stand, previously being sworn, and continued to testify for the State under direct examination by Ms. Vowels.

State's exhibits #135A and #135B were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness. State's exhibits #145A and #145B were offered and admitted into evidence without objection by Mr. Monson. State's exhibits #144A and #144B were offered. Mr. Monson questioned the witness in aid of an objection. Mr. Monson stated his objection to the admission of State's exhibits #144A and #144B. Court ordered State's exhibits #144A and #144B admitted into evidence over objection.

Ms. Vowels continued with direct examination of the witness. Cross examination of the witness by Mr. Monson.

Defendant's exhibit S was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit Z was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit U was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit DD was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit T was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit V was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness. Redirect examination by Ms. Vowels. Mr. Monson had no re-cross examination. Ms. Vowels moved to excuse the witness. Mr. Monson stated that the defense has Mr. Kjorness under subpoena but had objection to him being excused at this time. The witness stepped down.

James Dale Fry, Jr. was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibit #136 was offered and admitted into evidence without objection by Mr. Monson. Cross examination of the witness by Mr. Monson. Ms. Vowels had no redirect examination of the witness. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:42 a.m.

Court recessed at 10:43 a.m.

Court reconvened at 10:58 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 10:58 a.m., being present in number and in person.

Brian Spence was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. State's exhibit #114 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct

examination of the witness. Mr. Barker conducted cross examination of the witness. Redirect examination by Mr. Thompson. Mr. Barker had no re-cross examination. Upon motion of Mr. Thompson, without objection by Mr. Barker, Court excused the witness.

Timothy Lee Besst was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. Cross examination of the witness by Mr. Barker. Mr. Thompson had no redirect examination for the witness. The witness stepped down.

Noah Meyer was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Monson. Ms. Vowels had no redirect examination for the witness. Upon motion of Ms. Vowels, without objection by defense counsel, Court excused the witness.

James Gibson was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Barker. Ms. Vowels had no redirect examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Louis Soule was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Barker. Redirect examination by Ms. Vowels. Mr. Barker had no re-cross examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Tim Fountain was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibit #117 was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness.

State's exhibit #118 was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness.

State's exhibit #119 was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness.

State's exhibit #120 was offered and admitted into evidence without objection by Mr. Barker. Ms. Vowels continued with direct examination of the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:49 p.m.

Court recessed at 12:50 p.m.

Court reconvened at 1:05 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom. Tim Fountain resumed the witness stand, previously being sworn. The jurors were returned to the courtroom at 1:06 p.m., being present in number and in person. Mr. Barker began cross examination of the witness. Ms. Vowels had no redirect examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Charles Oliver Whiteley was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom.

Court recessed at 1:32 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

Seth Richmond was called, sworn, and testified on behalf of the State, with Mr. Thompson conducting direct examination. State's exhibit #115 was offered and admitted into evidence without objection by Mr. Barker. Cross examination of the witness by Mr. Barker. Redirect examination by Mr. Thompson. Re-cross examination by Mr. Barker. Mr. Thompson had no further questions for the witness. Upon motion of Mr. Thompson, without objection by Mr. Barker, Court excused the witness. Mr. Thompson informed the Court that it may be a few minutes before the next witness arrives. The jurors were escorted out of the courtroom at 9:09 a.m.

Court recessed at 9:11 a.m.

Court reconvened at 9:29 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury. The jurors were returned to the courtroom at 9:29 a.m., being present in number and in person.

David Stone was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. State's exhibit #139 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness.

State's exhibit #116 was offered. Mr. Barker requested he be allowed to review the exhibit. Mr. Barker having reviewed State's exhibit #116 and having no objection to its admission, Court ordered State's exhibit #116 admitted into evidence. Mr. Thompson continued with direct examination of the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:36 a.m.

Court recessed at 10:36 a.m.

Court reconvened at 10:53 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Mr. Thompson and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom. David Stone resumed the witness stand, previously being sworn. The jurors were returned to the courtroom at 10:54 a.m., being present in number and in person.

Mr. Thompson continued with direct examination of David Stone. State's exhibits #121, #122 and #123 were offered. Mr. Barker questioned the witness in aide of an objection. Mr. Barker stated his objection to the admission of State's exhibits #121, #122, and #123. Mr. Thompson continued with direct examination of the witness. Mr. Thompson again offered State's exhibits #121, #122, and #123. Court overruled the objection and ordered State's exhibits #121, #122, and #123 admitted

into evidence over objection. Mr. Thompson continued with direct examination of the witness.

State's exhibit #124 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness.

State's exhibit #141 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. State's exhibit #113 was played in open court. Mr. Thompson continued with direct examination of the witness. State's exhibit #150 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness.

State's exhibits #125A, #125B, and #125C were offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. Brandie Rouse, attorney for David Stone, was acknowledged as being in the courtroom.

State's exhibit #162 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness. State's exhibit #161 was offered and admitted into evidence without objection by Mr. Barker. Mr. Thompson continued with direct examination of the witness.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:23 p.m.

Court recessed at 12:24 p.m.

Court reconvened at 12:42 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

David Stone resumed the witness stand, previously being sworn. In response to inquiry from the Court, Mr. Thompson and Mr. Barker stated that they were prepared to have the jurors returned to the courtroom. The jurors were returned to the courtroom at 12:42 p.m., being present in number and in person. Mr. Barker conducted cross examination of David Stone.

Court directed comments to the jurors. The jurors were escorted out of the courtroom at 2:02 p.m. Court requested he meet with counsel in chambers.

Court recessed at 2:03 p.m.

Court reconvened at 2:10 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 2:10 p.m., being present in number and in person. Court informed the jurors of the schedule for tomorrow. Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 2:11 p.m.

Court recessed at 2:12 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'CBK', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

prior theories of the State prior to Mr. Stone coming forward not be used. Mr. Barker made a statement to the Court. Mr. Thompson presented further argument. Mr. Barker agreed with Mr. Thompson in regard to testimony regarding the drug Ambien. Mr. Barker stated that he was not aware of an order not allowing the defense to bring up alternate theories of the State. Mr. Thompson made a statement to the Court. Court sustained each objection. Mr. Barker questioned the Court. Mr. Thompson made a statement to the Court. Court ruled Mr. Barker may inquire about the use of a backhoe.

Court recessed at 10:29 a.m.

Court reconvened at 10:47 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury. David Stone resumed the witness stand, previously being sworn. Mr. Barker requested counsel meet with the Court in chambers. Court so allowed.

Court recessed at 10:47 a.m.

Court reconvened at 10:54 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury. David Stone resumed the witness stand, previously being sworn. In response to inquiry from the Court, Mr. Barker and Mr. Thompson stated that they were prepared for the jurors to be returned to the courtroom.

The jurors were returned to the courtroom at 10:54 a.m., being present in number and in person.

Mr. Barker read a portion of the transcript that he was reading prior to recessing. Mr. Barker continued with cross examination of David Stone. Upon request of Mr. Thompson, without objection by Mr. Barker, Court read the limiting hearsay instruction to the jurors. Mr. Barker continued with direct examination of the witness. Mr. Thompson questioned the witness in aid of an objection, stating his objection. Court sustained the objection. Mr. Barker continued with direct examination of the witness. Mr. Thompson stated his objection to the testimony being cumulative. Mr. Barker presented argument in support of his line of questioning. Court overruled the objection. Mr. Barker continued with direct examination of the witness.

Mr. Barker requested a recess. Court requested a bench conference with counsel. Following a bench conference, Court stated they would now take the fifteen minute break and would like to see counsel in chambers. The jurors were escorted out of the courtroom at 12:24 p.m.

Court recessed at 12:25 p.m.

Court reconvened at 12:45 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Mr. Barker and Mr. Thompson stated that they were prepared to have the jurors returned to the courtroom. David Stone resumed the witness stand, previously being sworn. The jurors were returned to the courtroom at 12:45 p.m., being present in number and in person.

Mr. Barker continued with cross examination of David Stone. Court questioned Mr. Thompson. Court directed remarks to the jurors and asked them to decide whether they wanted to continue and finish with this witness or recess for the day. The jurors were escorted out of the courtroom at 2:17 p.m.

Court recessed at 2:17 p.m.

Court reconvened at 2:24 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

David Stone resumed the witness stand, previously being sworn. The jurors were returned to the courtroom at 2:25 p.m., being present in number and in person. Mr. Thompson conducted redirect examination of David Stone. Mr. Barker had no re-cross examination for the witness. The witness stepped down.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom.

Court recessed at 2:33 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

D. RAY BARKER
Attorney at Law
P.O. Box 9408
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Idaho State Bar No. 1380

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Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR FUNDS FOR
INVESTIGATOR PURSUANT TO I.C.R.
12.2**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order authorizing additional funds for investigation costs in the above-referenced matter. This motion is made pursuant to Idaho Criminal Rule 12.2 (effective date 8/1/14).

1. Scope and details of services requested: The court has previously approved investigative costs in this matter. Additional funds are hereby requested. Mr. Schoonover is the Defendant's primary investigator and it is expected that he will attend trial that is scheduled to commence on September 2, 2014 and is expected to last three weeks. Mr. Schoonover will also be expected to assist counsel in the

EX PARTE MOTION FOR FUNDS FOR INVESTIGATOR PURSUANT TO I.C.R. 12.2

Page 1 of 3

CASE NO. CR 2013-1358

2014 SEP 11 PM 1:02

CLERK OF DISTRICT COURT
LATAH COUNTY

BY:  DEPUTY

001945

evenings and weekends in order to facilitate the Court's anticipated trial schedule. Mr. Schoonover continues to locate and interview witnesses located in Washington and Idaho and consult with court-appointed counsel. In addition, Mr. Schoonover has assisted in organizing voluminous amounts of cell phone data that has taken the state a significant amount of time to compile. Mr. Schoonover is also assisting in organizing witness testimony and extrapolating data from specific reports provided by the state in discovery in anticipation of preparing specific trial exhibits. Mr. Schoonover has also met with expert witnesses and counsel in Spokane and has been available and on call in order to locate specific items of evidence as requested by counsel. It is anticipated that Mr. Schoonover will continue to assist in locating witnesses, interviewing witnesses, serving subpoenas and other activities as described above.

The Defendant respectfully notes that the state has formed a taskforce to investigate the disappearance of Rachel Anderson, which includes most, if not all, of the local law enforcement agencies in Latah County, Nez Perce County, and Asotin County Washington. The state has also involved the United States Coast Guard, the ATF, FBI, and law enforcement agencies from Florida. These agencies have been investigating the disappearance for approximately four years, and continue to investigate. The Defendant also respectfully notes that updated information continues to be discovered to the defense and expects additional discovery. The Defendant anticipates that the state will continue to involve the previously mentioned agencies up to the point of trial.

2. Relevancy and Necessity of Requested Services: See above.

3. Name and location of proposed provider of services: Cuck Schoonover, dba Action Agency.
PO Box 704, Sandpoint, ID 83864.

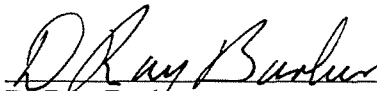
4. Qualifications of Service Provider: Mr. Schoonover has significant experience as a police officer and sheriff's deputy. Mr. Schoonover has worked as a private investigator since 1985. In the course of his work experience as a private investigator, Mr. Schoonover has worked on many murder cases and has performed private investigative services for attorneys in both state and federal courts.

5. Estimate of costs: Mr. Schoonover charges \$70 per hour and .65 per mile travel. The court has previously approved funding. It is estimated that an additional \$12,000 is necessary to conclude services through the end of trial. It is anticipated that Mr. Schoonover will assist during the trial process.

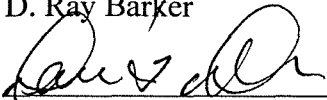
6. Location outside judicial district. The defendant previously retained an investigator who resided within the judicial district. Due to a perceived conflict of interest from the State, the defendant sought appointment of Mr. Schoonover, who was subsequently approved by the court. Counsel for the defendant has utilized Mr. Schoonover's services in prior cases, including a murder case.

Based on the above, the undersigned respectfully request an additional \$12,000 be approved for investigative costs.

DATED this 10th day of September, 2014



D. Ray Barker



Mark T. Monson

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording: Z:03/2014-9-11
Time: 9:01 A.M.

Date: September 11, 2014

STATE OF IDAHO,	)	Case No. CR-13-01358
)	
Plaintiff,)	
	)	APPEARANCES:
vs.)	
	)	Mia Vowels, Deputy Prosecutor
CHARLES ANTHONY CAPONE,	)	William Thompson, Jr., Prosecutor
	)	Appearing on Behalf of the State
)	
Defendant.	)	Defendant present with counsel,
	)	D. Ray Barker and Mark Monson
	)	Court Appointed Counsel

Subject of Proceedings: Jury Trial—Day 12

Defendant's exhibits GG through MM were marked by the defense prior to Court convening.

This being the time set for the continuation of the jury trial in this case, Court noted the presence of counsel and the defendant, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 9:03 a.m., being present in number and in person. Court greeted the jurors.

Tyler Palmer was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination of the witness by Mr. Monson.

Ms. Vowels had no redirect examination. Ms. Vowels requested the Court read the limited hearsay instruction. Court read the limited hearsay instruction to the jurors. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Rick Benjamin was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Cross examination by Mr. Barker. Ms. Vowels had no redirect examination. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court excused the witness.

Alisa Anderson was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. Cross examination by Mr. Monson. Defendant's exhibit FF was offered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with cross examination of the witness. Redirect examination by Mr. Thompson. Mr. Monson had no re-cross examination for the witness. Upon motion of Mr. Thompson, without objection by Mr. Monson, Court excused the witness.

Donald Skyler Schlueter was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. State's exhibits #126A through #126F were offered and admitted into evidence without objection by Mr. Monson. Mr. Monson had no cross examination of the witness. Upon motion of Mr. Thompson, without objection by Mr. Monson, Court excused the witness.

Dave Lehmitz was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. Mr. Barker had no cross examination for the witness. Court excused the witness without objection by Mr. Thompson or Mr. Barker.

Mike Mooney was called, previously sworn and testified for the State, with Mr. Thompson conducting direct examination. State's exhibits #163 and #164 was offered and admitted into evidence without objection by Mr. Monson. Mr. Thompson continued with direct examination of the witness. Cross examination of the witness by Mr. Monson.

Defendant's exhibit LL was offered. Mr. Thompson stated his objection. Mr. Monson continued with cross examination. Defendant's exhibit LL was reoffered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with cross examination.

Defendant's exhibit MM was offered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with cross examination.

The jurors were escorted out of the courtroom at 10:34 a.m.

Court recessed at 10:35 a.m.

Court reconvened at 10:51 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Mr. Thompson and Mr. Monson stated that they were prepared for the jurors to be returned to the courtroom. Mike Mooney resumed the witness stand, previously being sworn. The jurors were returned to the courtroom being present in number and in person. Mr. Monson continued with cross examination of the witness.

Defendant's exhibit K was played in open court. Mr. Monson continued with cross examination of the witness.

Defendants exhibit HH and II were offered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with cross examination of the witness. Redirect by Mr. Thompson. Mr. Monson had no re-cross examination. The witness stepped down.

Alfred Earl Aston was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. State's exhibit #127B was offered and admitted into evidence without objection by Mr. Monson. State's exhibits #127D and #127C were offered and admitted into evidence without objection by Mr. Monson. State's exhibit #127B was having technical difficulties in being played.

The jurors were escorted out of the courtroom at 11:27 a.m.

Court recessed at 11:28 a.m.

Court reconvened at 11:36 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom being present in number and in person. Mr. Thompson continued with direct examination of the witness. State's exhibit #127B was played in open court. Mr. Thompson continued with direct examination of the witness.

State's exhibit's #128, #129, #130 and #131 were offered and admitted into evidence without objection by Mr. Monson. Mr. Thompson continued with direct examination.

State's exhibit #132A was offered and admitted into evidence without objection by Mr. Monson. Mr. Thompson continued with direct examination of the witness.

State's exhibit #132B was offered and admitted into evidence without objection by Mr. Monson. Mr. Thompson continued with direct examination of the witness.

The jurors were escorted out of the courtroom at 11:50 a.m.

Court recessed at 11:51 a.m.

Court reconvened at 11:55 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 11:55 a.m., being present in number and in person.

Mr. Thompson continued with direct examination of the witness. State's exhibit #132A was played in open court. State's exhibits #133A and #133B were offered and admitted into evidence without objection by Mr. Monson. State's exhibit #133A was played in open court. Mr. Thompson continued with direct examination of the witness. Cross examination of the witness by Mr. Monson. Defendant's exhibits OO-1 through OO-20 were offered. Mr. Thompson stated his objection. Mr. Monson made a statement to the Court.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:05 p.m.

Court recessed at 12:06 p.m.

Court reconvened at 12:22 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 12:23 p.m., being present in number and in person. Mr. Monson continued with cross examination of the witness. Defendant's exhibits OO-1 through OO-20 were reoffered and admitted into evidence without objection by Mr. Thompson. Defendant's exhibits NN-1 and NN-2 were offered and admitted into evidence without objection by Mr. Monson. Mr. Thompson had no redirect examination. Upon motion of Mr. Thompson, without objection by Mr. Monson, Court excused the witness.

Brian Birdsell was called, previously sworn, and testified for the State, with Ms. Vowels conducting direct examination. State's exhibits #140.1 through #140.42 were offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with direct examination of the witness. Cross examination of the witness by Mr. Monson.

Defendant's exhibit W was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness. Defendant's exhibit GG was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination of the witness. Defendant's exhibit JJ was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination.

Defendant's exhibit KK was offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with cross examination. Redirect examination by Ms. Vowels.

State's exhibit #142 was offered and admitted into evidence without objection by Mr. Monson. Ms. Vowels continued with redirect examination. Mr. Monson had no re-cross examination for the witness. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Catherine Mabbutt was called, sworn, and testified for the State, with Mr. Thompson conducting direct examination. Mr. Barker had no cross examination for the witness. The witness stepped down.

Ethan Ogden was called, sworn, and testified for the State, with Ms. Vowels conducting direct examination. Mr. Barker had no cross examination for the witness. The witness stepped down.

State rested.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 2:05 p.m.

Court recessed at 2:06 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

CASE NO. CR 2013-1358

2014 SEP 12 AM 8:50

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING FUNDS
REGARDING INVESTIGATOR

THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator* dated September 10, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$ 12,000⁰⁰ for investigative costs is hereby authorized. Such costs shall not exceed \$ _____ in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 12th day of September, 2014.

[Signature]
JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Authorizing Funds Regarding Investigator** was served on the following individuals by the method indicated:

Mark T. Monson
Co-Counsel for Defendant
PO Box 8456
Moscow, ID 83843

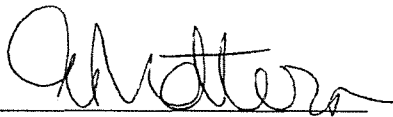
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

D. Ray Barker
Co-Counsel for Defendant
PO Box 9408
Moscow, ID 83843

Via Facsimile: (208) 882-7604
 U.S. Mail
 Hand Delivery

on this 12 day of September, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk

LATAH Auditor - Hand Deliver

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording: Z:03/2014-9-12
Time: 9:00 A.M.

Date: September 12, 2014

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLES ANTHONY CAPONE,)
)
Defendant.)

Case No. CR-13-01358

APPEARANCES:

Mia Vowels, Deputy Prosecutor
William Thompson, Jr., Prosecutor
Appearing on Behalf of the State

Defendant present with counsel,
D. Ray Barker and Mark Monson
Court Appointed Counsel

Subject of Proceedings: Jury Trial—Day 13

This being the time set for the continuation of the jury trial, Court noted the presence of counsel and the defendant, outside the presence of the jury.

Mr. Monson informed the Court that the State has stipulated to the admission of Defendant's exhibit PP. In response to inquiry from the Court, Ms. Vowels agreed. Court ordered Defendant's exhibit PP admitted into evidence. Mr. Barker requested a brief recess in order to speak to a witness. Court so allowed.

Court recessed at 9:02 a.m.

Court reconvened at 9:04 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

The jurors were returned to the courtroom at 9:04 a.m., being present in number and in person.

Anthony Capone was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination of the witness by Mr. Thompson. Mr. Barker had no redirect examination. The witness stepped down.

Teresa Capone Mullen was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Defendant's exhibit TT was offered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with direct examination.

Defendant's exhibits QQ, RR, and SS were offered and admitted into evidence without objection by Mr. Thompson. Mr. Monson continued with direct examination. Cross examination by Mr. Thompson. Mr. Monson had no redirect examination for the witness. The witness stepped down.

Angel Rivera was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Cross examination of the witness by Mr. Thompson. Mr. Monson had no redirect examination. The witness stepped down.

Bonita Lawhead was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Cross examination by Ms. Vowels. Mr. Monson had no redirect examination for the witness. The witness stepped down.

Mr. Monson stated that the defendant's next two witnesses will be participating by telephone and stated it could take a few minutes to get them on the telephone. Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 9:48 a.m.

Court recessed at 9:50 a.m.

Court reconvened at 10:00 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

The jurors were returned to the courtroom at 10:00 a.m., being present in number and in person. Court informed the jurors that the next two witnesses will be participating by telephone.

Alan Giusti was placed under oath and testified for the defendant, with Mr. Monson conducting direct examination. Cross examination of the witness by Ms. Vowels. Mr. Monson had no redirect examination. The telephone conversation with Alan Giusti was discontinued.

Dr. Constance L. Fisher was participating by telephone. Dr. Constance L. Fisher was placed under oath and testified for the defendant with Mr. Monson conducting direct examination. Defendant's exhibit EE was offered and admitted into evidence without objection by Ms. Vowels. Ms. Vowels had no cross examination. The telephone conversation with Dr. Constance L. Fisher was discontinued.

Joshua Michel was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Ms. Vowels had no cross examination for the witness. The witness stepped down.

Daniel MacPherson was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Ms. Vowels had no cross examination for the witness.

The jurors were escorted out of the courtroom at 10:50 a.m.. The witness stepped down.

Court recessed at 10:51 a.m.

Court reconvened at 11:08 a.m., with Court, counsel and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Mr. Monson and Ms. Vowels stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 11:08 a.m., being present in number and in person.

Jesse Dean Thacker was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Upon request of Ms. Vowels, Court read the limiting hearsay instruction to the jurors. Cross examination of the witness by Ms. Vowels. Mr. Monson had no redirect examination for the witness.

The jurors were escorted out of the courtroom at 11:15 a.m.. The witness stepped down.

Court recessed at 11:17 a.m.

Court reconvened at 11:18 a.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 11:18 a.m., being present in number and in person.

Stephanie Rath was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Ms. Vowels had no cross examination. The witness stepped down.

Ed Button was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Upon request of Mr. Thompson, Court read the limiting hearsay instruction. Mr. Barker continued with direct examination of the witness. Cross examination of the witness by Mr. Thompson. Redirect by Mr. Barker. Mr. Thompson had no re-cross examination for the witness. The witness stepped down.

Daniel J. Evans was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination of the witness by Mr. Thompson. Mr. Barker had no redirect examination. The witness stepped down.

The jurors were escorted out of the courtroom at 11:43 a.m.

Court recessed at 11:44 a.m.

Court reconvened at 11:46 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 11:47 a.m., being present in number and in person.

Blake Nelson was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination of the witness by Ms. Vowels. Mr. Barker had no redirect examination.

The jurors were escorted out of the courtroom at 11:50 a.m.

The witness stepped down.

Court recessed at 11:51 a.m.

Court reconvened at 12:02 p.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Mr. Monson and Ms. Vowels stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 12:03 p.m., being present in number and in person.

Michael Mastro was called, sworn, and testified for the defendant, with Mr. Monson conducting direct examination. Cross examination of the witness by Mr. Thompson. Mr. Monson had no redirect examination. The witness stepped down.

Court informed the jurors of the anticipated schedule for next week. Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:15 p.m.

Court recessed at 12:16 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording: Z:03/2014-9-15
Time: 9:00 A.M.

Date: September 15, 2014

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLES ANTHONY CAPONE,)
)
Defendant.)

Case No. CR-13-01358

APPEARANCES:

Mia Vowels, Deputy Prosecutor
William Thompson, Jr., Prosecutor
Appearing on Behalf of the State

Defendant present with counsel,
D. Ray Barker and Mark Monson
Court Appointed Counsel

Subject of Proceedings: Jury Trial—Day 14

Defendant's exhibits UU-1, UU-2, VV-1, VV-2, WW-1, WW-2, XX-1, XX-2, YY, ZZ, AAA, BBB, CCC, and DDD were marked for identification prior to Court convening.

This being the time set for the continuation of the jury trial, Court noted the presence of counsel and the defendant, outside the presence of the jury.

In response to inquiry from the Court, Mr. Barker and Ms. Vowels stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 9:01 a.m., being present in number and in person. Court greeted the jurors.

Eric Kjorness was called, previously sworn, and testified for the defendant, with Mr. Monson conducting direct examination.

Maureen Coleman
Deputy Clerk
Court Minutes --Page 1

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Defendant's exhibits UU-1 and UU-2 were offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with direct examination of the witness. Defendant's exhibits VV-1 and VV-2 were offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with direct examination of the witness.

Defendant's exhibits WW-1 and WW-2 were offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with direct examination. Defendant's exhibit XX-1 and XX-2 were offered and admitted into evidence without objection by Ms. Vowels. Mr. Monson continued with direct examination. Defendant's exhibit YY was offered and admitted into evidence without objection by Ms. Vowels. Cross examination of the witness by Ms. Vowels. Mr. Monson had no redirect examination. Upon motion of Ms. Vowels, without objection by Mr. Monson, Court excused the witness.

Scot Gleason was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Upon request of Ms. Vowels, Court read the limiting hearsay instruction to the jurors. Mr. Barker continued with direct examination of the witness. Cross examination of the witness by Ms. Vowels. Mr. Barker had no redirect examination. Court excused the witness without objection by counsel.

Daniel Sean Hally was called, previously sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination by Mr. Thompson. Mr. Barker had no redirect examination. Court excused the witness without objection by counsel.

Jackie Nichols was called to testify. Mr. Barker informed the Court that Ms. Nichols was not supposed to appear until 10:00 a.m. today, so he would call another witness out of order. Court so allowed.

Rebecca Montosa was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Defendant's exhibit AAA was offered and admitted into evidence without objection by Ms. Vowels. Defendant's exhibit BBB was offered and admitted into evidence without objection by Ms. Vowels. Mr. Barker continued with direct examination of the witness. Cross examination of the witness by Ms. Vowels. Mr. Barker conducted redirect examination. Re-cross examination by Ms. Vowels. Mr. Barker had no further questions for the witness. Court excused the witness without objection by counsel.

James Dale Fry, Jr. was called, previously sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Ms. Vowels had no cross examination for the witness. The witness stepped down.

Jackie Nichols was called, previously sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Defendant's exhibit ZZ was offered and admitted into evidence without objection by Ms. Vowels. Ms. Vowels had no cross examination of the witness. The witness stepped down.

Jeffery Johnson was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination by Ms. Vowels. Mr. Barker had no redirect examination. The witness stepped down.

The jurors were escorted out of the courtroom at 10:06 a.m.

Court recessed at 10:07 a.m.

Court reconvened at 10:16 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 10:16 a.m., being present in number and in person.

Charles Schoonover was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Defendant's exhibit CCC was offered and admitted into evidence without objection by Ms. Vowels. Mr. Barker continued with direct examination of the witness. Defendant's exhibit DDD was offered and admitted into evidence without objection by Ms. Vowels. Mr. Barker continued with direct examination. Ms. Vowels conducted cross examination of the witness. Mr. Barker had no redirect examination for the witness. The witness stepped down.

Deborah Stamper was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination by Mr. Thompson. Mr. Barker had no redirect examination for the witness. The witness stepped down.

Robert Bogden was called, previously sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Cross examination by Ms. Vowels. Mr. Barker had no redirect examination. The witness stepped down.

Jackye Squire was called, sworn, and testified for the defendant, with Mr. Barker conducting direct examination. Mr. Barker requested to be heard outside the presence of the jury. The jurors were escorted out of the courtroom at 10:50 a.m.

Mr. Barker presented argument. Court questioned Mr. Barker. Mr. Thompson made a clarification. Court sustained the objection as to the noise and stated that he will allow testimony regarding the bleach.

The jurors were returned to the courtroom at 10:54 a.m., being present in number and in person.

Mr. Barker continued with direct examination of the witness. Mr. Thompson had no cross examination for the witness. Court excused the witness without objection by counsel.

The jurors were escorted out of the courtroom at 10:56 a.m.

In response to inquiry from the Court, Mr. Monson stated that the defense intends to rest their case. Court questioned the defendant on his understanding of his right to testify to which the defendant stated that he chose not to testify. Court read the jury instruction he intends to read to the jurors regarding when the defendant does not testify.

Court explained to counsel what he intends to explain to the jurors when they are returned to the courtroom after the defense rests their case. Court requested to meet with counsel at noon to go over the jury instructions.

Court recessed at 10:59 a.m.

Court reconvened at 11:18 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

The jurors were returned to the courtroom at 11:19 a.m., being present in number and in person.

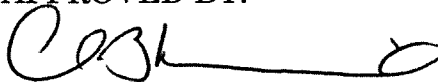
Mr. Monson stated that the defense rested.

In response to inquiry from the Court, Ms. Vowels stated that the State had no rebuttal witnesses to present.

Court explained to the jurors the schedule to be followed tomorrow and informed the jurors that the admonishment still applies. The jurors were excused for the day and escorted out of the courtroom at 11:24 a.m.

Court recessed at 11:24 a.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

Court read the final jury instructions to the jurors. Court explained to the jurors that they would not be allowed to have any transcripts of any witnesses in the jury room. Ms. Vowels presented closing argument on behalf of the State.

Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 10:13 a.m.

Court recessed at 10:14 a.m.

Court reconvened at 10:30 a.m., with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were ready for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 10:31 a.m., being present in number and in person.

Mr. Monson presented closing argument on behalf of the defendant. Court admonished the jurors as provided by law. The jurors were escorted out of the courtroom at 12:19 p.m.

Court recessed at 12:19 p.m.

Court reconvened at 12:33 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

Upon inquiry from the Court, Ms. Vowels and Mr. Monson were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 12:34 p.m., being present in number and in person.

Mr. Monson continued to present closing argument on behalf of the defendant. Mr. Thompson presented rebuttal argument on behalf of the State.

Upon direction of the Court, the clerk randomly selected two names, Nancy Holmes and Kerri Vierling, as alternate jurors. Court requested they go into the jury room to retrieve any of their belongings and return to the courtroom. Nancy Holmes and Kerri Vierling were again present in the courtroom and seated next to the jury box.

Upon direction of the Court, the clerk administered the oath to the bailiff.

The jurors retired to the jury room at 1:32 p.m. for deliberations.

Court directed remarks to the alternate jurors and admonished the alternate jurors as provided by law. Court thanked the alternate jurors for their service.

Court directed remarks to counsel.

Court recessed at 1:35 p.m.

Court reconvened at 5:56 p.m., with Court, counsel and the defendant being present in the courtroom, outside the presence of the jury.

Court informed counsel that the bailiff has been informed by the jurors that they would like to work until 6:00 p.m. today and reconvene at 9:00 a.m. tomorrow.

In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were prepared for the jurors to be returned to the courtroom. The jurors were returned to the courtroom at 5:57 p.m., being present in number and in person. Court informed the jurors that their notes and the exhibits would be locked in the vault tonight and be given back to them in the morning. Court explained to the jurors that they would be brought back into the courtroom in the morning and then sent back into the jury room to continue deliberations. Court reminded the jurors of the continuing admonishment. The jurors were excused for the evening and escorted out of the courtroom at 6:00 p.m.

Court recessed at 6:00 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

Court informed counsel that the bailiff has been informed that that the jury has reached a verdict. Court directed remarks to all those seated in the back of the courtroom. Court informed all those seated in the back of the courtroom that if Mr. Capone is found guilty, that the Court will proceed with Phase 2 of the jury trial immediately following the reading of the verdict. In response to inquiry from the Court, Ms. Vowels and Mr. Monson stated that they were prepared to receive the verdict.

The jurors were returned to the courtroom at 2:02 p.m., being present in number and in person. In response to inquiry from the Court, Brian Sumption, presiding juror, stated that the jury had reached a verdict. Upon direction of the Court, Brian Sumption handed the verdict form to the bailiff who in turn handed the verdict form to the Court.

The verdict form was given to the clerk and upon direction of the Court; the clerk read the verdict of the jury. "We the jury in the above-entitled case, for our verdict unanimously answer the questions submitted to us as follows: Is the defendant, Charles Anthony Capone, guilty or not guilty of Murder in the First Degree, as alleged in Count I? Guilty. Is the defendant, Charles Anthony Capone, guilty or not guilty of Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II? Guilty. Is the defendant, Charles Anthony Capone, guilty or not guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II? Guilty. Dated this 17th day of September, 2014, Brian Sumption, presiding juror."

Upon inquiry from the Court, Brian Sumption, presiding juror, stated that the verdict read was the verdict of the jury. Upon inquiry from the Court, each juror nodded in affirmatively that the verdict read was the verdict of the jury. In response to inquiry from the Court, Ms. Vowels did not wish the jurors to be polled. Mr. Barker requested that the jurors be polled. Court polled each juror individually, with Gina Young, Jason Albrecht, Jana Argersinger, Brian Sumption, Mary Abbott, Catherine Merickel, Ross Converse, Michael Souders, Nancy Largent, Beverly Larsen, Juanita Robinson, and Jason Heath stating that guilty was their verdicts. Court informed the jurors that there is a Phase 2 to the jury trial and explained the procedure to be followed. The jurors were escorted out of the courtroom at 2:07 p.m.

Court recessed at 2:08 p.m.

Court reconvened at 2:20 p.m. with Court, counsel, and the defendant being present in the courtroom, outside the presence of the jury.

In response to inquiry from the Court, Ms. Vowels had no objection to the jury instructions for Phase 2 of the jury trial. Ms. Vowels withdrew #3 of jury instruction

#32. Mr. Barker stated that he did not have any objection to the jury instructions for Phase 2. In response to inquiry from the Court, neither Ms. Vowels nor Mr. Barker had any objection to the special verdict form.

The jurors were returned to the courtroom at 2:21 p.m., being present in number and in person.

Court read the jury instructions to the jurors for the Phase 2 portion of the jury trial. State's exhibits #166, #168, and #169 were offered and admitted into evidence without objection by Mr. Barker. In response to inquiry from the Court, Mr. Barker had no evidence to present.

Ms. Vowels presented closing argument. Mr. Barker had no closing argument to present.

The jurors retired to the jury room for deliberations at 2:29 p.m.

Court recessed at 2:30 p.m.

Court reconvened at 2:51 p.m., with Court, counsel, and the defendant being present in the courtroom outside the presence of the jury.

The Court informed counsel that the bailiff has been advised that the jurors have reached a verdict. In response to inquiry from the Court, Ms. Vowels and Mr. Barker stated that they were prepared for the jurors to be returned to the courtroom.

The jurors were returned to the courtroom at 2:52 p.m., being present in number and in person. In response to inquiry from the Court, Brian Sumption, presiding juror, stated that the jury had reached a verdict. Mr. Sumption handed the verdict form to the bailiff who in turn handed the verdict form to the Court. The verdict form was handed to the clerk. Upon direction of the Court, the clerk read the special verdict of the jury. "We the jury in the above entitled case, for our verdict unanimously answer the question submitted to us as follows: Question Number 1: Has the defendant, Charles Anthony Capone, been previously convicted of at least two felony offenses? Yes. Dated this 17th day of September, 2014. Brian Sumption, presiding juror."

In response to inquiry from the Court, Brian Sumption, presiding juror, stated that the verdict read was the verdict of the jury. The Court asked the jurors if the special verdict read was the verdict of the jury to which each juror nodded in the affirmative. Ms. Vowels stated that she did not wish the jurors to be polled. Mr. Barker requested that the jurors be polled. Court polled each juror individually, with Gina Young, Jason Albrecht, Jana Argersinger, Brian Sumption, Mary Abbott, Catherine Merickel, Ross Converse, Michael Souders, Nancy Largent, Beverly Larsen,

Juanita Robinson and Jason Heath stating that they had answered yes to the question that the defendant had been previously convicted of at least two felony offenses. Court thanked the jurors for their service. The jurors were escorted out of the courtroom at 2:56 p.m.

Court informed counsel that he would contact them next week to schedule the sentencing. Upon motion of Ms. Vowels, without objection by Mr. Barker, Court extended the no contact order. Court ordered a pre-sentence investigation report be prepared. Court thanked counsel for their hard work during the jury trial.

The defendant was remanded back into the custody of the Latah County Sheriff pending his next court appearance.

Court recessed at 2:59 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'C.B. Kerrick', with a long horizontal flourish extending to the right.

CARL B. KERRICK
DISTRICT JUDGE

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

- COURT MINUTES -

Carl B. Kerrick
District Judge

Nancy Towler
Court Reporter
Recording No. Z:03-2014-9-2
Time: 9:00 A.M.

Date: September 2, 2014
through September 17, 2014

STATE OF IDAHO,)

Case No. CR-13-01358

)
)
Plaintiff,)

vs)

APPEARANCES:

CHARLES ANTHONY CAPONE,)

Mia Vowels, Deputy Prosecutor
William Thompson, Jr., Prosecutor
Appearing on Behalf of the State

)
)
Defendant.)

)
)
)
)
Defendant present with counsel,
D. Ray Barker and Mark Monson
Court Appointed Counsel

Subject of Proceedings: Jury Trial

WITNESSES

FOR THE STATE:

Z:03/2014-9-2-14

September 2, 2014

935 William David Wilcox

952 Aiden Wilcox

1016 Angela Cabrera-by video deposition

1103 Amber Griswold

1242 Dennis Plunkett
115 Gavin Plunkett
119 Ashley Colbert
151 Kristina Bonefield

SEPTEMBER 3, 2014

Z:03/2014-9-3

915 Kristina Bonefield
947 Jennifer Norberg
1116 Jess David Rogers
1139 Robert Bogden
120 Carole Bogden
136 John Houser

SEPTEMBER 4, 2014

Z:03/2014-9-4

859 Daniel Sean Hally
1052 Jackie Nichols
1131 Kent Zachow
1146 Brian Birdsell
1206 Danny Lee Combs
1235 Mike Mooney

SEPTEMBER 5, 2014

Z:03/2014-9-5

- 901 Scott Gallina
- 910 Rylene Nowlin
- 930 Stacy Guess
- 948 Mike Mooney
- 1058 Joshua Lynn Voss
- 1133 Brent Glass
- 117 Nathan Donner

SEPTEMBER 8, 2014

Z:03/2014-9-8

- 901 Chelsea Dahl
- 908 Eric Kjorness
- 1019 James Dale Fry, Jr.
- 1100 Brian Spence
- 1118 Timothy Lee Besst
- 1135 Noah Meyer
- 1146 James Gibson
- 1152 Louis Soule
- 1217 Tim Fountain
- 125 Charles Oliver Whiteley

SEPTEMBER 9, 2014

Z:03/2014-9-9

900 Timothy Lee Besst

902 Seth Richmond

930 David Stone

SEPTEMBER 10, 2014

Z:03/2014-9-10

903 David Stone

SEPTEMBER 11, 2014

Z:03/2014-9-11

903 Tyler Palmer

916 Rick Benjamin

923 Alisa Anderson

1007 Donald Skyler Schlueter

1015 Dave Lehmitz

1020 Mike Mooney

1115 Alfred Earl Aston

1232 Brian Birdsell

200 Catherine Mabbutt

202 Ethan Ogden

FOR THE DEFENDANT

SEPTEMBER 12, 2014

Z:01/2014-9-12

- 905 Anthony Capone
- 913 Teresa Capone Mullen
- 934 Angel Rivera
- 944 Bonita Lawhead
- 1001 Alan Giusti
- 1017 Dr. Constance L. Fisher
- 1029 Joshua Michel
- 1043 Daniel MacPherson
- 1109 Jesse Dean Thacker
- 1119 Stephanie Rath
- 1124 Ed Button
- 1131 Daniel J. Evans
- 1147 Blake Nelson
- 1204 Michael Mastro

SEPTEMBER 15, 2014

Z:03/2014-9-15

- 902 Eric Kjorness
- 920 Scot Gleason
- 930 Daniel Sean Hally
- 936 Rebecca Montosa
- 955 James Dale Fry, Jr.
- 957 Jackie Nichols
- 1001 Jeffery Johnson
- 1017 Charles Schoonover
- 1034 Deborah Stamper
- 1039 Robert Bogden
- 1043 Jackye Squire

CASE NO. CR13-1358

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

2014 SEP 17 PM 4:39

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant,)
 _____)

Case No. CR-13-01358

JURY INSTRUCTIONS
READ AT THE JURY TRIAL

The appended jury instructions, one through thirty-one, and thirty-two through thirty-five are the jury instructions read at the jury trial in this case on Wednesday, September 17, 2014.

Dated this 17th day of September, 2014.

[Signature]
CARL B. KERRICK
DISTRICT JUDGE

JURY INSTRUCTIONS READ AT JURY TRIAL

INSTRUCTION NO. 1

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. 2

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 consisted 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 have been made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I was 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 sustained an objection to a question or to an exhibit, the witness could not answer the question or the exhibit should not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I told 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 deliberations.

During the trial I may have talked with the parties about the rules of law which

should apply in this case. Sometimes we talked here at the bench. At other times I excused you from the courtroom so that you could be comfortable while we worked out any problems. You are not to speculate about any such discussions. They were necessary from time to time to 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 role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion.

You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 3

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

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; 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. 4

YOU ARE INSTRUCTED THAT the Defendant, CHARLES ANTHONY CAPONE, is charged by Second Amended Information with the crimes of: COUNT I – MURDER IN THE FIRST DEGREE, Idaho Code §§ 18-4001, 18-4003, COUNT II – FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, I.C. § 18-204, 19-4301A(1)(3), and COUNT III—CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, I.C. § 19-4301A(1)(3), 18-1701, felonies, charged as follows:

COUNT I

That the Defendant, CHARLES ANTHONY CAPONE, on or about the 16th day of April, 2010, in Latah County, State of Idaho, did willfully, deliberately, with premeditation and with malice aforethought, unlawfully kill and murder Rachael Anderson, a human being.

COUNT II

That the Defendant, CHARLES ANTHONY CAPONE, commencing on or about the 16th day of April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully fail to notify, or aid and abet David Christopher Stone in failing to notify, law enforcement or the Latah County Coroner of the death of Rachael Anderson, and/or failed to take reasonable precautions to preserve the body, body fluids and the scene of the event, with the intent to prevent discovery of the manner of death of Rachael Anderson.

COUNT III

That the Defendant, CHARLES ANTHONY CAPONE, commencing on or about the 16th day of April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully combine or conspire with David Christopher Stone to commit the crime of Failure to Notify the Coroner or Law Enforcement of Death, Idaho Code 19-4301A(1)(3);

in furtherance of the conspiracy and to effect the purpose thereof, the following overt acts were performed:

1. Charles Capone killed and murdered Rachael Anderson;

2. Charles Capone and David Stone hid/disposed of Rachael Anderson's body after she was murdered;
3. David Stone lied to his wife, Alisa, to hide his and Charles Capone's true activities;
4. Charles Capone purchased a tarp to replace the one used in the murder of Rachael Anderson and/or the disposal of her body;
5. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachael Anderson in order to remove evidence of her death;
6. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
7. Charles Capone left fictitious communications on Rachael Anderson's phone after her death in order to hide the fact of her death and the circumstances of her death;
8. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators.

To these charges, the Defendant pled "not guilty."

INSTRUCTION NO. 5

An Information is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

INSTRUCTION NO. 6

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on each separate offense charged.

INSTRUCTION NO. 7

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 NO. 8

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 the defendant 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 NO. 9

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.

INSTRUCTION NO. 10

Murder is the killing of a human being with malice aforethought.

INSTRUCTION NO. 11

Malice may be express or implied.

Malice is express when there is manifested a deliberate intention unlawfully to kill a human being.

Malice is implied when:

1. The killing resulted from an intentional act,
2. The natural consequences of the act are dangerous to human life, and
3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed.

The word "aforethought" does not imply deliberation or the lapse of time. It only means that the malice must precede rather than follow the act.

INSTRUCTION NO. 12

In order for the defendant to be guilty of First Degree Murder with malice aforethought, as charged in Count I, the state must prove each of the following:

1. On or about April 16, 2010;
2. in the state of Idaho;
3. the defendant CHARLES ANTHONY CAPONE engaged in conduct which caused the death of Rachael Anderson;
4. with malice aforethought, and
5. the murder was a willful, deliberate, and premeditated killing. Premeditation means to consider beforehand whether to kill or not to kill, and then to decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered, as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not premeditation.

If you find that the state has failed to prove beyond a reasonable doubt any of the elements one (1) through five (5) above, you must find the defendant not guilty of First Degree Murder.

If you find that elements one (1) through five (5) above have been proven beyond a reasonable doubt, you must find the defendant guilty of First Degree Murder.

INSTRUCTION NO. 13

If your unanimous verdict is that the defendant is not guilty of FIRST DEGREE MURDER, you must acquit him of that charge. In that event, you must next consider the included offense of SECOND DEGREE MURDER.

In order for CHARLES ANTHONY CAPONE to be guilty of SECOND DEGREE MURDER, the state must prove each of the following:

1. On or about April 16, 2010;
2. in the State of Idaho;
3. CHARLES ANTHONY CAPONE engaged in conduct which caused the death of Rachael Anderson, and;
4. the defendant acted with malice aforethought which resulted in the death of Rachael Anderson.

If you find the state had failed to prove any of the above, you must find the defendant not guilty of second degree murder. If you find that all of the above have been proven beyond a reasonable doubt, then you must find the defendant guilty of second degree murder.

INSTRUCTION NO. 14

If your unanimous verdict is that the defendant is not guilty of SECOND DEGREE MURDER, you must acquit him of that charge. In that event, you must next consider the included offense of VOLUNTARY MANSLAUGHTER.

In order for CHARLES ANTHONY CAPONE to be guilty of VOLUNTARY MANSLAUGHTER, the state must prove each of the following:

1. On or about April 16, 2010;
2. in the State of Idaho;
3. CHARLES ANTHONY CAPONE engaged in conduct which caused the death of Rachael Anderson, and;
4. the defendant acted unlawfully upon a sudden quarrel or heat of passion and without malice aforethought in causing such death.

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

INSTRUCTION NO. 15

In order for the defendant to be guilty of FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, I.C. § 18-204, 19-4301A(1)(3), as charged in Count II, the state must prove each of the following:

1. On or about April 16, 2010;
2. in the State of Idaho;
3. Rachael Anderson died as a result of violence, or under suspicious or unknown circumstances;
4. CHARLES ANTHONY CAPONE found or had custody of the body of Rachael Anderson;
5. failed to take reasonable precautions to preserve the body and body fluids;
6. CHARLES ANTHONY CAPONE failed to notify, or did aid and abet David Christopher Stone in failing to notify law enforcement or the Latah County Coroner of the death of Rachael Anderson;
7. with the intent to prevent discovery of the manner of death of Rachael Anderson.

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

INSTRUCTION NO. 16

The law makes no distinction between a person who directly participates in the acts constituting a crime and a person who, either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps or hires another to commit a crime with intent to promote or assist in its commission. Both can be found guilty of the crime. Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not sufficient to make one an accomplice.

INSTRUCTION NO. 17

All persons who participate in a crime either before or during its commission, by intentionally aiding and abetting another to commit the crime with intent to promote or assist in its commission are guilty of the crime. All such participants are considered principals in the commission of the crime. The participation of each defendant in the crime must be proved beyond a reasonable doubt.

INSTRUCTION NO. 18

Failure to Notify Coroner or Law Enforcement of Death is defined by law as:

Where any death occurs which would be subject to investigation by the coroner under section 19-4301(1), Idaho Code, the person who finds or has custody of the body shall promptly notify either the coroner, who shall notify the appropriate law enforcement agency, or a law enforcement officer or agency, which shall notify the coroner. Pending arrival of a law enforcement officer, the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation.

Any person who, with the intent to prevent discovery of the manner of death, fails to notify or delays notification to the coroner or law enforcement as required above shall be guilty of a felony.

I.C. § 19-4301 requires a coroner to investigate a death if:

- (a) The death occurred as a result of violence, whether apparently by homicide, suicide or by accident;
- (b) The death occurred under suspicious or unknown circumstances.

INSTRUCTION NO. 19

The crime of Conspiracy involves an agreement by two or more persons to commit a crime. They need not agree upon every detail. The agreement may be established in any manner sufficient to show an understanding of the parties to the agreement. It may be shown by evidence of an oral or written agreement, or may be implied from the conduct of the parties.

INSTRUCTION NO. 20

In order for the defendant to be guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as charged in Count III, the state must prove each of the following:

1. On or about April 16, 2010;
2. in the state of Idaho;
3. the defendant CHARLES ANTHONY CAPONE and David Christopher Stone agreed;
4. to commit the crime Failure to Notify Coroner or Law Enforcement of Death;
5. the defendant intended that the crime would be committed;
6. one of the parties to the agreement performed at least one of the following acts:
 - a. Charles Capone killed and murdered Rachael Anderson;
 - b. Charles Capone and David Stone hid/disposed of Rachael Anderson's body after she was murdered;
 - c. David Stone lied to his wife, Alisa, to hide his and Charles Capone's true activities;
 - d. Charles Capone purchased a tarp to replace the one used in the murder of Rachael Anderson and/or the disposal of her body;
 - e. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachael Anderson in order to remove evidence of her death;
 - f. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
 - g. Charles Capone left fictitious communications on Rachael Anderson's phone after her death in order to hide the fact of her death and the circumstances of her death;
 - h. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators;
7. and such act was done for the purpose of carrying out the agreement.

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

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doubt, you must find the defendant guilty.

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INSTRUCTION NO. 21

An act is "wilful" or done "wilfully" when done on purpose. One can act wilfully without intending to violate the law, to injure another, or to acquire any advantage.

INSTRUCTION NO. 22

Certain evidence was admitted for a limited purpose.

At the time this evidence was admitted you were admonished that it could not be considered by you for any purpose other than the limited purpose for which it was admitted.

Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

INSTRUCTION NO. 23

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

INSTRUCTION NO. 24

The death penalty is not a sentencing option for the court or the jury in this case.

INSTRUCTION NO. 25

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

At times I may have used the word "victim" in these instructions or in the course of this trial. This word was used only to refer to a person or persons who are alleged to have been victimized, and was used only for convenience. It does not indicate any opinion on my part that a person is a victim, or that the defendant has committed an offense. Whether a person is a victim, and whether the defendant is guilty of any offense, are matters for you alone to determine based on the evidence presented at trial.

INSTRUCTION NO. 26

In reaching your verdict in this action, you are to be guided and controlled only by the evidence adduced at this trial and the instructions now given to you by the Court. In case any of you have received information, or what purports to be information, from any other source other than the facts in this case, you are admonished and instructed to exclude such extraneous information or purported information from all consideration. Your verdict should be based exclusively upon the evidence offered at this trial, and should in no way be influenced by any rumor, feeling, or influence coming from any quarter either before or during this trial.

INSTRUCTION NO. 27

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. 28

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 will 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. 29

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.

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. 30

Upon retiring to the jury room, select one of you as a presiding officer, 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 officer 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. 31

The state will now be given the opportunity to present summation to you. Following this, the defense will be afforded the opportunity to present summation. Then, the state may present rebuttal argument.

When you have agreed upon a verdict, your presiding officer will sign the verdict form and notify the Bailiff, and you will then be returned into court where your presiding officer will, at my direction, hand the verdict to the Bailiff, who will hand it to me. The Clerk, after recording the verdict, will read it aloud. Your presiding officer will be asked if this is your verdict, and that juror will give your answer to the Court.

Although the verdict form is self-explanatory, it is part of my instructions to you. I will now read the verdict form to you. It states:

“We, the Jury in the above-entitled case, for our verdict unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Murder in the First Degree, as alleged in Count I?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 “Guilty,” then proceed to answer Question No. 4. If you unanimously answered Question No. 1 “Not Guilty,” then proceed to answer Question No. 2.

QUESTION NO. 2: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Murder in the Second Degree, as included in Count I?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 2 “Guilty,” then proceed to answer Question No. 4. If you unanimously answered Question No. 2 “Not Guilty,” then proceed to answer Question No. 3.

QUESTION NO 3: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Voluntary Manslaughter, as included in Count I?

Not Guilty _____ Guilty _____

Answer Question No. 4.

QUESTION NO. 4: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II?

Not Guilty _____ Guilty _____

Answer Question No. 5.

QUESTION NO. 5: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count III?

Not Guilty _____ Guilty _____.”

The verdict form then has a place for it to be dated and signed. You should sign the verdict form as directed above.

INSTRUCTION NO. 32

Having found the defendant guilty of Murder in the First Degree, Failure to Notify Coroner or Law Enforcement of Death, and Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, you must next consider whether the defendant has been convicted on at least two prior occasions of felony offenses.

The State alleges the defendant has prior convictions as follows:

1. On or about the 18th day of May, 1987, the defendant was convicted of Attempted Armed Robbery, a Felony, in Navaho County, Arizona, Superior Court case number 9293;
2. On or about the 18th day of May, 1987, the defendant was convicted of Theft, a Felony, in Navaho County, Arizona, Superior Court case number 9293;
3. On or about the 27th day of October, 1997, the defendant was convicted of Bank Larceny, a Felony, in case no. 1:97CR00064-001 in the United States District Court for the District of Idaho;
4. On or about the 18th day of February, 1998, the defendant was convicted of Aggravated Assault, a Felony, in Latah County, Idaho, case no. CR-97-01687;
5. On or about the 18th day of February, 1998, the defendant was convicted of Burglary, a Felony, in Latah County, Idaho, case no. CR-97-01687;
6. On or about the 27th day of September, 2010, the defendant was convicted of Felon in Possession of a Firearm, Unlawful Possession of a Weapon, a Felony, in case no. 2:10CR00119-001-N-EJL, in the United States District Court for the District of Idaho.

The existence of the prior convictions must be proved beyond a reasonable doubt

and your decision must be unanimous.

002016

INSTRUCTION NO. 33

A person who has pled guilty to an offense, or found guilty by a jury or court, has been “convicted” of the offense.

INSTRUCTION NO. 34

A judicial record may be proven by the production of the original, or by a copy, certified by the Clerk or other person having legal custody of the record.

INSTRUCTION NO. 35

In this case you will return a special verdict consisting of one question. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

“We, the Jury in the above-entitled case, for our verdict unanimously answer the question submitted to us as follows:

QUESTION NO. 1: Has the defendant, CHARLES ANTHONY CAPONE, been previously convicted of at least two felony offenses?

Yes _____ No _____.”

The verdict form then has a place for it to be dated and signed. You should sign the verdict form as directed in the previous instructions.

CASE NO. CR13-1358

[Signature] 9-17-14 at 2:47 p
CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant.)
 _____)

CASE NO. CR 2013-01358

JURY VERDICT

We, the Jury in the above-entitled case, for our verdict unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Murder in the First Degree, as alleged in Count I?

Not Guilty _____ Guilty

If you unanimously answered Question No. 1 "Guilty," then proceed to answer Question No. 4. If you unanimously answered Question No. 1 "Not Guilty," then proceed to answer Question No. 2.

QUESTION NO. 2: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Murder in the Second Degree, as included in Count I?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 2 "Guilty," then proceed to answer Question No. 4. If you unanimously answered Question No. 2 "Not Guilty," then proceed to answer Question No. 3.

QUESTION NO 3: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Voluntary Manslaughter, as included in Count I?

Not Guilty _____ Guilty _____

Answer Question No. 4.

QUESTION NO. 4: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II?

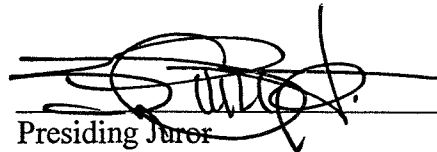
Not Guilty _____ Guilty

Answer Question No. 5.

QUESTION NO. 5: Is the defendant, CHARLES ANTHONY CAPONE, guilty or not guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count III?

Not Guilty _____ Guilty

DATED this 17 day of September, 2014



Presiding Juror

CASE NO. CR13-1338

J. J. [Signature] 9-17-14 at 3:52
CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant.)
 _____)

CASE NO. CR 2013-01358

SPECIAL VERDICT

We, the Jury in the above-entitled case, for our verdict unanimously answer the question submitted to us as follows:

QUESTION NO. 1: Has the defendant, CHARLES ANTHONY CAPONE, been previously convicted of at least two felony offenses?

Yes ✓ No _____

DATED this 17 day of September, 2014

[Signature]
Presiding Juror

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

CASE NO. CR-13-1358

STATE OF IDAHO, Plaintiff

Case No. CR-2013-01358

vs. CHARLES ANTHONY CAPONE

NO CONTACT ORDER

Defendant

DOB: [REDACTED]

Eff. July 1, 2009

The Defendant has been charged with or convicted of violating Idaho Code Section(s):

- 18-901 Assault 18-903 Battery 18-905 Aggravated Assault 18-907 Aggravated Battery
 - 18-909 Assault with Intent to Commit Felony 18-911 Battery with Intent to Commit Felony
 - 18-913 Felonious Administering of Drug 18-915 Assault or Battery upon Certain Personnel
 - 18-918 Domestic Assault or Battery 18-919 Sexual Exploitation by Medical Provider
 - 18-6710 Use of Telephone – Lewd/Profane 18-6711 Use of Telephone – False Statements
 - 18-7905 Stalking (1st °) 18-7906 Stalking (2nd °) 39-6312 Violation of a Protection Order
- x Other: Principal to Murder in the First Degree, I.C. 18-204, 18-4001, 4003; Conspiracy to Commit Murder in the First Degree, I.C. 18-4001, 4003, 18-1701; Failure to Notify Coroner or Law Enforcement of Death, I.C. 19-4301A(1)(3) and Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, I.C. 19-4301A(1)(3).

THE COURT, having jurisdiction, and having provided the Defendant with notice of his/her opportunity to be heard, either previously or herein, **ORDERS THE DEFENDANT TO HAVE NO DIRECT OR INDIRECT CONTACT except through an attorney, WITH THE FOLLOWING PROTECTED PERSON(S): Amber Griswold, Ashley Colbert, Kristina Bonefield, Dennis Plunkett and Jennifer Norberg.** The Defendant shall not harass, follow, contact, attempt to contact, communicate with (in any form or by any means including another person), or knowingly go or remain within 300 feet of the protected person(s) or the protected person(s)' property, residence, workplace or school. This order is issued under Idaho Code 18-920, Idaho Criminal Rule 46.2 and Administrative Order 2009 - 2.

IF THIS ORDER REQUIRES THE DEFENDANT TO LEAVE A RESIDENCE SHARED WITH THE PROTECTED PERSON(S), the Defendant must contact an appropriate law enforcement agency for an officer to accompany the Defendant while the Defendant remove any necessary personal belongings, including any tools required for Defendant's work. If disputed, the officer will make a preliminary determination as to what are necessary personal belongings; and in addition, may restrict or reschedule the time spent on the premises.

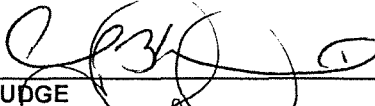
NOTICE OF RIGHT TO A HEARING: The Defendant is hereby notified of the right to a hearing before a Judge on the continuation of this Order within a reasonable time of its issuance. To request that hearing, and TO AVOID GIVING UP THIS RIGHT the Defendant must contact the Clerk of Court, Latah County Courthouse, 522 S. Adams, Moscow ID 83843, 208-883-2255.

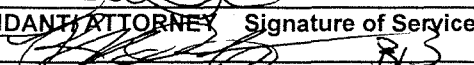
A VIOLATION OF THIS ORDER IS A SEPARATE CRIME UNDER Idaho Code 18-920 for which bail will only be set by a judge; it is punishable by up to one year in jail and up to a \$1,000 fine. If the Defendant has pled guilty to or been found guilty of two violations of Idaho Code 18-920 and/or a substantially conforming foreign criminal violation within five years, then a violation of this order is a felony punishable up to five years imprisonment and a \$5,000 fine. **THIS ORDER CAN ONLY BE MODIFIED BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON September 17th, 2014, OR UNTIL THIS CASE IS DISMISSED.**


If another **DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT** (Title 39, Chapter 63 of the Idaho Code), the most restrictive of any conflicting provisions between the orders will control; however, entry or dismissal of another order shall not result in dismissal of this order.

The Clerk of the Court shall give written notification to the records department of the sheriff's office in the county of issuance IMMEDIATELY and this order shall be entered into the Idaho Law Enforcement Telecommunications System.

9.17.2014
Date of Order
09.17.2014
Date of Service
9-17-14
Date of Service



JUDGE


DEFENDANT ATTORNEY Signature of Service


OFFICER/AGENCY SERVING (include badge no.)

CASE NO. CR 2013-1358

2014 SEP 17 PM 2:16

CLERK DISTRICT COURT
LATAH COUNTY
BY AW DEPUTY

D. RAY BARKER
Attorney at Law
P.O. Box 9408
Moscow, ID 83843
(208) 882-6749
Idaho State Bar No. 1380

MARK T. MONSON, P.A.
Attorney at Law
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES A. CAPONE

Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR FUNDS FOR
COMPUTER FORENSIC EXPERT
PURSUANT TO I.C.R. 12.2**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court to authorize additional funds for computer forensic services in the above-referenced matter. This motion is made pursuant Idaho Criminal Rule 12.2 (effective date 8/1/14).

1. Scope and details of services requested: The court has previously approved computer forensic expert costs in this matter. Additional funds are hereby requested. Counsel retained Joshua Michel and associates of Global CompuSearch, LLC in anticipation that he would present to the jury and admit as evidence various timelines and chronologies/summaries of the evidence. Det.

**EX PARTE MOTION FOR FUNDS FOR COMPUTER
FORENSIC EXPERT PURSUANT TO I.C.R. 12.2**

Brian Birdsell of the Lewiston Police Department presented a significant amount of information regarding cell phone data at the preliminary hearing in this matter. Det. Birdsell has received training in cell phone data – counsel for the defendant has not. The defendant agrees that the information that will be presented is complex and voluminous.

2. Relevancy and Necessity of Requested Services: See above.

3. Name and location of proposed provider of services: Joshua Michel, Digital Forensic Examiner, Global CompuSearch, LLC, 225 W. Main, Suite 100, Spokane, WA 99201.

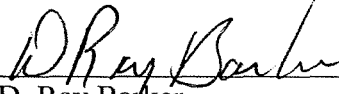
4. Qualification of Service Provider: The qualifications of Joshua Michel have been provided to the state by letter dated May 28, 2014, and made part of the court file when the defendant obtained permission to retain Mr. Michel's firm.

5. Estimate of costs: The court previously approved funding. On June 12, 2014, the court approved funds in the amount of \$3,302.20. On July 22, 2014, the court approved an additional \$1,800. The final unpaid balance for services rendered in this matter is \$9,303.56. Those funds have not yet been expended. Therefore, the defense is requesting additional authorization of \$4,201.36 in order to pay the outstanding balance ($\$9,303.56 - \$3,302.20 - \$1,800 = \$4,201.36$).

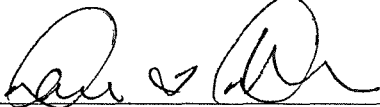
6. Location outside of judicial district: Firms with the necessary experience and expertise were not located within the judicial district. Global CompuSearch, LLC was located in Spokane Washington and was located within 90 miles of Moscow, ID.

In order to properly interpret the information provided by the state and to adequately prepare to cross examine the state's witnesses, it was necessary and reasonable to retain Global CompuSearch, LLC.

DATED the 17th day of September, 2014



D. Ray Barker
Co-Counsel for Defendant



Mark T. Monson
Co-Counsel for Defendant

CASE NO. CR 2013-1358

2014 SEP 17 PM 2:16

JUDICIAL DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**ORDER AUTHORIZING FUNDS
REGARDING FORENSIC COMPUTER
EXPERT**

THE COURT, having reviewed Defendant's *Motion for Additional Funds for Forensic Computer Expert* dated September 17, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$4,201.36.00 for expert costs is hereby authorized.

DATED this 17th day of September 2014.

[Signature]
JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Authorizing Funds Forensic Computer Expert was served on the following individuals by the method indicated:

Mark T. Monson
Co-Counsel for Defendant
PO Box 8456
Moscow, ID 83843

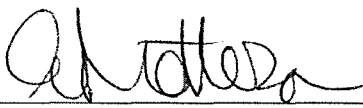
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

D. Ray Barker
Co-Counsel for Defendant
PO Box 9408
Moscow, ID 83843

Via Facsimile: (208) 882-7604
 U.S. Mail
 Hand Delivery

on this 17 day of September, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk

RESET (Clerk, check if applicable)

Assigned to: _____
Assigned: CASE NO. CR13-1358

Second District Judicial District Court, State of Idaho
In and For the County of Court Latah
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

CLERK OF DISTRICT COURT
Case No. CR13-1358
BY [Signature] DEPUTY

STATE OF IDAHO
Plaintiff,
vs.
Charles Anthony Capone
811 1/2 East 6th
Moscow, ID 83843
Defendant.

CHARGE(s):
118-4001-I Murder I
119-4301A(3) Death-Fail to Notify or Delay Notification of Death
119-4301A(3) Death-Fail to Notify or Delay Notification of Death
119-2514 Persistent Violator
REQUIRED ROA CODES: (Enter the appropriate code)

PSI01- Order for Presentence Investigation Report (only)
PSMH1- Order for Presentence Investigation Report and
Mental Health Assessment
PSSA1- Order for Presentence Investigation Report and
Substance Abuse Assessment

On Wednesday, September 17, 2014, a Pre-sentence Investigation Report was ordered by the Honorable Carl B. Kerrick to be completed by November 14, 2014 for Court appearance on Monday, January 05, 2015 at: 09:00 AM at the above stated courthouse. PRESENTENCE REPORT MUST BE RECEIVED BY COURT NO LATER THAN November 14, 2014.

- Waiver under IC 19-2524 2(e) allowing assessment and treatment service by the same person or facility
- Behavioral Health Assessments waived by the Court (PSI01 ROA Code)

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

Sex Offender Domestic Violence Other _____ Evaluator: _____

DEFENSE COUNSEL: D. Ray Barker and Mark Monson

PROSECUTOR: William W. Thompson Jr. and Mia Vowels

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

PLEA AGREEMENT: State recommendation

WHJJOC Probation PD Reimb Fine ACJ Restitution Retained Jurisdiction

Other: _____

Date: 9-25-2014 Signature: [Signature]
Judge

DEFENDANT'S INFORMATION: PLEASE PRINT DO YOU NEED AN INTERPRETER? NO YES

Name: Charles Anthony Capone Sex: M RACE: Caucasian Hispanic Other

Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____ Marital Status: _____

Veteran Status: Active Veteran None Email: _____

Telephone: _____ Message Phone: _____ Work Phone: _____

Employer: _____ Work Address: _____

Date of Birth: 7/16/1961 Social Security Number: [Redacted]

It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

Name & Phone Number of nearest relative. _____

Date of Arrest: _____ Arresting Agency: _____

It is your responsibility to contact your assigned Pre-sentence Investigator. Please contact your assigned Investigator to schedule an interview using the above information. Please have your Pre-sentence Investigation Personal History Questionnaire filled out completely for interview.

CERTIFICATE OF MAILING

I do hereby certify that on this 25th day of September, 2014 a true and correct copy of the Order for Presentence Report and Evaluations was hand delivered to:

William Thompson, Jr.
Latah County Prosecutor
Latah County Courthouse
Moscow, ID 83843

Mia Vowels
Latah County Deputy Prosecutor
Latah County Courthouse
Moscow, ID 83483

D. Ray Barker
Attorney at Law
Latah County Courthouse
Moscow, ID 83843

And mailed to:

Mark Monson
Attorney at Law
P.O. Box 8456
Moscow, ID 83843

And sent by e-mail to:

Renee Behrens at RBEHRENS@idoc.idaho.gov

Dated this 25th day of September, 2014.


Deputy Clerk

CERTIFICATE OF MAILING

002030