

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

12-2-2015

State v. Capone Clerk's Record v. 11 Dckt. 43124

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Capone Clerk's Record v. 11 Dckt. 43124" (2015). *Idaho Supreme Court Records & Briefs, All*. 6946.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6946

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT

OF THE

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

CHARLES ANTHONY CAPONE,

Defendant-Appellant.

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS
2015 DEC - 2 PM 3:19

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

FILED - ORIGINAL
DEC - 2 2015
Supreme Court _____ Court of Appeals
Entered on ATS by BSJ

SUPREME COURT CASE NO. ~~10142~~

VOLUME XI OF XI VOLUMES

SEE AUGMENTATION RECORD

43124

TABLE OF CONTENTS

VOLUME I

Register of Actions (May 21, 2012 - April 8, 2015).....34

Affidavit for Search Warrant for GPS Tracking Device (May 21, 2012).....61

Acknowledgement of Oath and Examination of Oath (May 21, 2012)86

Return of Search Warrant for GPS Tracking Device (June 4, 2012)88

Receipt and Inventory and Warrant (June 4, 2012).....95

Motion to Seal Pursuant to Idaho Court Administrative Rule 32 **Filed Under Seal**
(June 4, 2012).....98

Order to Seal Pursuant to Idaho Court Administrative Rule 32 (June 4, 2012)100

Court Minutes (June 5, 2012) Return of Search Warrant.....102

Supplemental Return of Search Warrant for GPS Tracking Device **Filed Under Seal**
(July 5, 2012).....103

Court Minutes (July 5, 2012) Return of Search Warrant of Installation and Use of GPS
Tracking Device.....105

Order (July 5, 2012)106

Court Minutes (July 25, 2012) Return of Search Warrant of Installation and Use of
Mobile GPS Tracking Device.....108

Notice of I.C.R. 41(d) Compliance (July 25, 2012)109

Intentionally Left Blank.....111

Court Minutes (October 2, 2012) Matter of Installation and Use of Mobile GPS Tracking
Device112

Court Minutes (January 14, 2013) Matter of Installation and Use of Mobile GPS Tracking
Device113

Court Minutes (March 25, 2013) Installation of GPS Tracking Device.....114

Initial Determination of Probable Cause (May 1, 2013).....115

Criminal Complaint (May 1, 2013)	128
Court Minutes (May 1, 2013) Initial Appearance	134
No Contact Order (May 1, 2013)	136
Order Appointing Public Defender (May 2, 2013)	137
Ex Parte Motion for Appointment of Co-Counsel (May 3, 2013)	138
Affidavit in Support of Ex Parte Motion for Appointment of Co-Counsel (May 3, 2013)	140
Order Appointing Co-Counsel (May 3, 2013)	144
Waiver of Speedy Preliminary Hearing (May 8, 2013)	145
Ex Parte Motion for Appointment of Investigator (May 8, 2013)	147
Affidavit in Support of Ex Parte Motion for Appointment of Investigator (May 8, 2013)	148
Order Authorizing Funds Regarding Investigator (May 9, 2013)	151
Motion to Unseal Pursuant to Idaho Court Administrative Rule 32 **Filed Under Seal** (May 9, 2013)	152
Order to Unseal Pursuant to Idaho Court Administrative Rule 32 (May 9, 2013)	153
Court Minutes (May 9, 2013) Continuance	155
No Contact Order (May 9, 2013)	158
Order Appointing Judge to Authorize Expenditures (May 21, 2013)	159
State's Objection to "Order Appointing Judge to Authorize Expenditures" (May 23, 2013)	161
Court Minutes (June 7, 2013) Request Continuance	164
Motion to Reconsider Investigator (June 19, 2013)	165
Court Minutes (June 27, 2013) Motion to Reconsider Investigator	192
Motion for Bail for Witness (July 2, 2013)	193

VOLUME II

Order for Bail/Commitment of Witness (July 5, 2013).....208

Ex Parte Motion for Appointment of Investigator (July 8, 2013)211

Affidavit in Support of Ex Parte Motion for Appointment of Investigator (July 8, 2013)
.....213

Order Authorizing Funds Regarding Investigator (July 9, 2013)216

Affidavit in Support of Motion for Issuance of Certificate of Endorsement (July 9, 2013)
.....217

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code 19-3005(2)
(July 9, 2013).....221

Certificate of Endorsement (July 9, 2013)222

Motion for Leave to Amend (July 22, 2013)224

Objection to Motion for Leave to Amend (July 24, 2013).....226

Memorandum of Points and Authorities (July 25, 2013)230

Order for Leave to Amend (July 30, 2013).....239

Amended Criminal Complaint (July 30, 2013)241

Court Minutes (July 30, 2013) Preliminary Hearing - Day 1248

Court Minutes (July 31, 2013) Preliminary Hearing - Day 2.....257

Court Minutes (August 1, 2013) Preliminary Hearing - Day 3.....264

Order Binding Over Defendant and Scheduling Arraignment (August 2, 2013).....282

Notice of Assignment of Judge (August 2, 2013)284

Motion for Disqualification of Judge Without Cause (August 5, 2013)285

Criminal Information (August 5, 2013).....287

Order for Disqualification of Judge Without Cause (August 6, 2013)294

Order Assigning Judge (August 7, 2013).....296

Ex Parte Motion for Additional Funds Regarding Investigator (August 9, 2013).....	298
Court Minutes (August 20, 2013) Arraignment.....	300
Order Authorizing Funds Regarding Investigator (August 20, 2013)	302
Motion for Joinder (August 20, 2013).....	304
Ex Parte Motion for Additional Funds Regarding Investigator (September 4, 2013)	308
Response to “Ex Parte Motion for Additional Funds Regarding Investigator” (September 6, 2013)	310
Amended Ex Parte Motion for Additional Funds Regarding Investigator (September 10, 2013)	313
Court Minutes (September 12, 2013) Arraignment in State vs. David Stone and Motion for Joinder in State vs David Stone and State vs Charles Capone	320
Order Denying Motion for Joinder (September 19, 2013)	323
Motion for Scheduling Order (September 19, 2013)	326
Motion for Release of Evidence (September 23, 2013).....	329
Court Minutes (September 23, 2013) Defendant’s Motion to Increase Funds for the Investigator	332
Order Authorizing Funds Regarding Investigator (September 23, 2013).....	334
Receipt of Evidence (September 26, 2013).....	336
Motion to File Defense Requests for Funding Under Seal (September 27, 2013)	337
Order for Release of Evidence (September 30, 2013)	339
Order Setting Jury Trial and Scheduling Procedures (September 30, 2013)	341
Order Denying Motion to Seal Funding Request (October 2, 2013).....	343
Ex Parte Motion for Authorization to Retain Services of DNA Expert (October 2, 2013)	345
Ex Parte Motion for Authorization to Retain Services of Pharmaceutical Expert (October 2, 2013).....	348

Ex Parte Motion for Authorization to Retain Services of Blood Detection Expert (October 2, 2013).....	376
Ex Parte Motion for Authorization to Retain Services of Scent Dog Expert (October 3, 2013).....	385
Court Minutes (October 9, 2013) Ex Parte Motion Hearing.....	400

VOLUME III

Ex Parte Motion for Authorization to Retain Services of Computer Forensic Expert (October 8, 2013).....	403
Order Authorizing Retention of DNA Expert (October 9, 2013)	419
Order Authorizing Retention of Pharmaceutical Expert (October 9, 2013).....	421
Order Authorizing Retention of Blood Detection Expert (October 9, 2013).....	423
Order Authorizing Retention of Scent Dog Expert (October 9, 2013)	425
Order Authorizing Retention of Computer Forensic Expert (October 9, 2013).....	427
Motion for Additional Funds Regarding Investigator (October 22, 2013)	429
Court Minutes (November 8, 2013) Scheduling Conference	431
Order Authorizing Funds Regarding Investigator (November 8, 2013)	433
Order Scheduling Case for Trial (November 8, 2013).....	435
Motion for Additional Funds Regarding Investigator (December 10, 2013).....	437
Motion for Leave to Amend Criminal Information (December 12, 2013)	439
Order Authorizing Funds Regarding Investigator (December 12, 2013)	446
Court Minutes (December 20, 2013) State’s Motion for Leave to Amend the Criminal Information	448
Amended Criminal Information (December 20, 2013)	450
Notice of I.R.E. 404(b) Evidence (December 26, 2013)	456
Motion for Additional Funds Regarding Investigator (January 17, 2014).....	459

Order Authorizing Funds Regarding Investigator (January 21, 2014).....	461
Motion for Authorization to Retain Services of Forensic Pathologist (January 21, 2014)	463
Objection to “Motion for Authorization to Retain Services of Forensic Pathologist” (January 22, 2014)	472
State’s Motion in Limine (February 7, 2014)	475
Motion in Limine and Argument in Response to State’s Notice of I.R.E. Evidence (February 7, 2014).....	509
Motion to Suppress (February 7, 2014)	513
Memorandum in Support of Motion to Suppress (February 7, 2014)	515
Motion to Suppress and Memorandum in Support of Motion to Suppress (February 7, 2012).....	554
Motion to Suppress and Memorandum in Support of Motion to Suppress (February 7, 2012).....	563

VOLUME IV

Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 1, 2 & 3	593
--	-----

VOLUME V

Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 4, 5, 6, 7	848
---	-----

VOLUME VI

Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 8-1, 8-2,	1068
--	------

VOLUME VII

Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 9, 10, 11	1247
Motion for Change of Venue (February 7, 2014)	1344
Affidavit of Charles A. Capone (February 7, 2014).....	1346
Affidavit of Mark T. Monson (February 7, 2014).....	1348

Affidavit of Kim K. Workman (February 7, 2014).....	1357
Motion for Additional Funds Regarding Investigation (February 10, 2014)	1361
Court Minutes (February 10, 2014) Defendant’s Motion to Retain Services of a Forensic Pathologist	1363
Order Denying Defendant’s “Motion for Authorization to Retain Services of Forensic Pathologist” (February 12, 2014).....	1365
State’s Response to “Motion to Authorize Additional Funds for Computer Forensic Expert” (February 14, 2014)	1367
Court Minutes (February 24, 2014) Motion to Continue Trial.....	1370
Order Authorizing Funds Regarding Computer Expert (February 24, 2014).....	1372
Order Authorizing Funds Regarding Investigator (March 3, 2014).....	1374
Motion for Additional Funds for Investigator (March 12, 2014).....	1377
Motion for Authorization to Retain Services of Forensic Anthropologist (March 12, 2014)	1380
Motion for Protective Order-I.C.R. 16(1) – Presentence Investigation Report (March 26, 2014)	1395
Supplement to “Motion for Protective Order-I.C.R. 16(1) – Presentence Investigation Report (March 28, 2014)	1401
Response to Defendant’s Motion for Change of Venue (March 31, 2014).....	1407
Response to Defendant’s Motion to Suppress (Statements made by Rachael Anderson) (March 31, 2014)	1417
VOLUME VIII	
State’s Response to Defendant’s Motion to Suppress #1 (Statements of Defendant) (April 1, 2014)	1427
State’s Response to Defendant’s Motion to Suppress #3 (Search Warrants) (April 1, 2014)	1459
Affidavit of D. Ray Barker Re: Defendant’s Motion to Suppress as to Evidence Obtained Through Search Warrants (April 9, 2014).....	1482

Court Minutes (April 9, 2014) Pretrial Motions.....	1553
Order Authorizing Funds Regarding Investigator (April 9, 2014).....	1557
Motion for Order to File Affidavit Under Seal (April 9, 2014).....	1559
Order Granting Motion to File Affidavit Under Seal (Filed Under Seal) (April 9, 2014)	1561
No Contact Order (April 9, 2014).....	1562
Response to Defendant’s Supplemental “Request for Discovery” (Dated April 10, 2014) (April 14, 2014)	1563
Notice of Intent to Offer Forensic Testimony by Video Teleconference Per I.C.R. 43.3 (April 16, 2014)	1565
Second Motion for Authorization to Retain Services of Forensic Pathologist (May 5, 2014).....	1567
Order Re: Motions in Limine (May 9, 2015).....	1571
Motion for Permission to Supplement Discovery (May 13, 2014)	1575
Motion to Allow Defense to Show Video of Codefendant’s Statements to Law Enforcement (May 14, 2014)	1578
Memorandum in Support of Motion to Allow Defense to Show Video and Co-Defendant’s Statements to Law Enforcement (May 14, 2014).....	1581
Motion for Additional Funds for Investigator (May 14, 2014).....	1589
Motion to Quash Subpoena Duces Tecum and for Protective Order (May 16, 2014)	1592
Motion for Expedited Hearing (May 19, 2014)	1599
Amended Motion for Expedited Hearing (May 19, 2014)	1602
Juror Questionnaire (May 21, 2014).....	1605
Order Re: Juror Questionnaire (May 21, 2014)	1615
Order Authorizing Funds Regarding Investigator (May 22, 2014)	1616

Court Minutes (May 20, 2014) Hearing Regarding Witness Lists1618

Motion for Leave to Amend Criminal Information (May 23, 2014)1620

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code 19-3005(2)
(May 27, 2014).....1623

Affidavit in Support of Motion for Issuance of Certificate of Endorsement
(May 27, 2014).....1624

VOLUME IX

Certificate of Endorsement (May 28, 2014)1627

Response in Opposition to Defendant’s Motion to Allow Defense to Show Video and
Co-Defendant’s Statements to Law Enforcement (May 29, 2014).....1629

Court Minutes (May 30, 2014) Motion Hearing1634

Order Re: Motions (June 2, 2014)1636

Motion to Reconsider Trial Schedule (June 2, 2014)1639

Second Amended Criminal Information (June 2, 2014)1642

Order Re: Trial Schedule (June 3, 2014)1648

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(June 3, 2014).....1650

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)1651

Motion to Authorize Additional Funds for Computer Forensic Expert (June 3, 2014)
.....1653

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)1656

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)1658

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(June 4, 2014).....1660

Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014)1661

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(June 4, 2014).....1663

Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014)	1664
Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014)	1666
Motion for Order for Production of Prisoner (June 4, 2014)	1668
Order for Production of Prisoner (June 5, 2014)	1671
Court Minutes (June 5, 2014) Numbering Selection of Prospective Jurors	1675
Certificate of Endorsement (June 5, 2014)	1679
Certificate of Endorsement (June 5, 2014)	1681
Certificate of Endorsement (June 5, 2014)	1683
Certificate of Endorsement (June 5, 2014)	1685
Certificate of Endorsement (June 5, 2014)	1687
Certificate of Endorsement (June 5, 2014)	1689
Amended Certificate of Endorsement (June 6, 2014)	1691
Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008 (June 6, 2014)	1693
Affidavit of Defendant in Support of Issuance of Subpoenas Pursuant to Idaho Code 19-3008 (June 6, 2014)	1696
Order for Issuance of Subpoenas Pursuant to Idaho Code 19-3008 (June 9, 2014)	1699
Request for Jury Instructions (June 9, 2014)	1701
Motion for Additional Funds for Investigator (June 10, 2014)	1736
Order Authorizing Funds Regarding Computer Expert (June 12, 2014)	1738
Order Authorizing Funds Regarding Investigator (June 12, 2014)	1740
Motion for Continuance (June 12, 2014)	1742
Court Minutes (June 12, 2014) Status Conference	1744

Motion to Reconsider Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008 (June 12, 2014).....	1746
Defense Request for Jury Instruction (June 12, 2014)	1750
Order Allowing State to Remove Witness (June 12, 2014).....	1757
Amended Order for Issuance of Subpoenas Idaho Code 19-3008 (June 12, 2014)	1759
Additional Order for Issuance of Subpoena Idaho Code 19-3008 (June 12, 2014).....	1762
Motion to Reconsider Order Allowing State to Remove Witness (June 13, 2014).....	1764
Motion to Allow Defense Witness to Testify Via Teleconference (June 19, 2014)	1775
Response to Defendant’s Motion to Allow Defense Witness to Testify Via Teleconference (June 20, 2014)	1778
Court Minutes (June 23, 2014) Hearing	1781
Court Minutes (June 23, 2014) Jury Trial	1783
Order Disqualification of Judge (June 23, 2014)	1785
Stipulation for Deposition and Preservation of Testimony of Angela Cabrera (June 23, 2014).....	1786
Order Assigning Judge (June 25, 2014).....	1788
Motion to Extend No Contact Order (July 9, 2014).....	1790
Motion for Additional Funds for Investigator (July 9, 2014).....	1793
No Contact Order (July 9, 2014).....	1795
Memorandum in Support of State’s Objection to Dr. Grey Testifying as Expert (July 11, 2014).....	1796
Order Setting Jury Trial and Scheduling Proceedings (July 14, 2014).....	1801
Juror Questionnaire (July 14, 2014).....	1803
Order Authorizing Funds Regarding Investigator (July 14, 2014)	1810

Response to State’s Objection to Dr. Grey Testifying as an Expert Witness (July 14, 2014)
.....1812

Motion to Authorize Additional Funds for Computer Forensic Expert (July 21, 2014)
.....1815

Second Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008
(July 21, 2014).....1817

Order Authorizing Funds Regarding Computer Expert (July 22, 2014).....1819

Opinion and Order on Defendant’s Motion to Allow Dr. Grey to Testify Via
Teleconference (July 23, 2014)1821

VOLUME X

Additional Order for Issuance of Subpoenas Pursuant to Idaho Code §19-3008
(July 25, 2014).....1830

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(August 13, 2014).....1832

Affidavit in Support of Issuance of Certificate of Endorsement (August 13, 2014)1833

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(August 13, 2014).....1835

Affidavit in Support of Issuance of Certificate of Endorsement (August 13, 2014)1836

Ex Parte Motion for Funds for Investigator Pursuant to I.C.R. 12.2 (August 14, 2014)
.....1838

Certificate of Endorsement (August 14, 2014)1841

Certificate of Endorsement (August 14, 2014)1843

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005
(August 18, 2014).....1845

Affidavit in Support of Issuance of Certificate of Endorsement (August 18, 2014)1846

Court Minutes (August 19, 2014) Pre-Trial Conference1848

Court Minutes (August 19, 2014) Selection of Listing of Prospective Jurors1850

Certificate of Endorsement (August 19, 2014)1854

Court Minutes (August 20, 2014) Jury Trial – Day 1 – Completion of Juror Questionnaires.....	1856
Order Authorizing Funds Regarding Investigator (August 21, 2014)	1859
Court Minutes (August 27, 2014) Jury Trial – Day 2 – Individual Voir Dire Examination of Prospective Jurors.....	1861
Amended Certificate of Endorsement (August 27, 2014).....	1869
Amended Certificate of Endorsement (August 27, 2014).....	1871
Court Minutes (August 28, 2014) Defendant’s Objection to State’s Exhibits	1873
Court Minutes (August 28, 2014) Day 3 of Jury Trial-Continuation of Individual Voir Dire Examination of Prospective Jurors	1875
Court Minutes (August 29, 2014) Day 4 of Jury Trial – Continuation of Individual Voir Dire Examination of Prospective Jurors	1883
Court Minutes (August 29, 2014) Jury Trial – Day 4.....	1886
Certificate of Endorsement (August 29, 2014)	1890
Affidavit in Support of Issuance of Certificate of Endorsement (August 29, 2014)	1892
Order for Transport of Witness (August 29, 2014).....	1894
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (August 29, 2014).....	1895
Court Minutes (September 2, 2014) Jury Trial – Day 5.....	1896
Court Minutes (September 3, 2014) Jury Trial – Day 6.....	1902
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (September 4, 2014).....	1906
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (September 4, 2014).....	1907
Affidavit in Support of Issuance of Certificate of Endorsement (September 4, 2014) ..	1908
Affidavit in Support of Issuance of Certificate of Endorsement (September 4, 2014) ..	1910

Court Minutes (September 4, 2014) Jury Trial – Day 7	1912
Court Minutes (September 5, 2014) Jury Trial – Day 8.....	1918
Certificate of Endorsement (September 5, 2014).....	1923
Certificate of Endorsement (September 5, 2014).....	1925
Motion for Order for Production of Prisoner (September 8, 2014)	1927
Order for Production of Prisoner (September 8, 2014)	1930
Court Minutes (September 8, 2014) Jury Trial – Day 9.....	1933
Court Minutes (September 9, 2014) Jury Trial – Day 10.....	1938
Court Minutes (September 10, 2014) Jury Trial – Day 11.....	1942
Ex Parte Motion for Funds for Investigator Pursuant to I.C.R. 12.2 (September 11, 2014)	1945
Court Minutes (September 11, 2014) Jury Trial – Day 12.....	1948
Order Authorizing Funds Regarding Investigator (September 12, 2014).....	1953
Court Minutes (September 12, 2014) Jury Trial – Day 13.....	1955
Court Minutes (September 15, 2014) Jury Trial – Day 14.....	1960
Court Minutes (September 16, 2014) Jury Trial – Day 15.....	1964
Court Minutes (September 17, 2014) Jury Trial – Day 16.....	1967
Jury Instructions Read at the Jury Trial (September 17, 2014).....	1977
Jury Verdict (September 17, 2014)	2020
Special Verdict (September 17, 2014)	2022
No Contact Order (September 17, 2014)	2023
Ex Parte Motion for Funds for Computer Forensic Expert Pursuant to I.C.R. 12.2 (September 17, 2014)	2024

Order Authorizing Funds Regarding Forensic Computer Expert (September 17, 2014)
.....2026

Order for Presentence Report and Evaluations (September 25, 2014)2028

VOLUME XI

Ex Parte Motion for Funds for Mitigation Specialist Pursuant to I.C.R. 12.2
(October 8, 2014).....2031

Supplement to Ex Parte Motion for Funds for Mitigation Specialist Pursuant to I.C.R.
12.2 (October 20, 2014).....2036

Court Minutes (October 21, 2014) Defendant’s Motion for Funds for Mitigation
Specialist Pursuant to I.C.R. 12.2.2043

Order Denying Defendant’s Motion for Funds for Mitigation Specialist
(October 21, 2014).....2045

Letter from Idaho Department of Correction (November 6, 2014).....2048

Ex Parte Motion for Funds to Retain Services of Psychologist Pursuant to I.C.R. 12.2
(December 3, 2014).....2049

Motion to Extend Deadline to Respond to Presentence Investigation Report
(December 3, 2014).....2062

Order Granting Motion for Funds to Retain Services of a Psychologist
(December 5, 2014).....2064

Order Granting Motion to Extend Deadline to Respond to Presentence Investigation
Report (December 5, 2014).....2066

Motion to Continue Sentencing Hearing (December 11, 2014).....2068

Defendant’s Objection and Responses to Presentence Investigation Report
(December 11, 2014).....2071

Order Continuing Sentencing Hearing (December 12, 2014).....2076

Amended Order Continuing Sentencing Hearing (December 15, 2014)2078

State’s Response to Defendant’s Objection and Responses to Presentence Investigation
Report (February 9, 2015).....2080

Acknowledgment of Confidentiality (February 18, 2015).....2085

Court Minutes (February 23, 2015) Sentencing2086

Order for DNA Sample and Thumbprint Impression (February 23, 2015)2089

No Contact Order (February 24, 2015).....2090

Judgment of Conviction (March 13, 2015).....2091

Notice of Appeal (March 18, 2015)2096

Motion for Appointment of State Appellate Public Defender (March 18, 2015)2099

Order for Appointment of State Appellate Public Defender (March 23, 2015)2102

Amended Notice of Appeal (May 20, 2015)2105

Clerk’s Certificate.....2114

Clerk’s Certificate Re: Exhibits.....2115

Certificate of Service2125

INDEX

Acknowledgement of Oath and Examination of Oath (May 21, 2012) (VOL I).....86

Acknowledgment of Confidentiality (February 18, 2015) (VOL XI)2085

Additional Order for Issuance of Subpoena Idaho Code 19-3008 (June 12, 2014)
(VOL IX)1762

Additional Order for Issuance of Subpoenas Pursuant to Idaho Code §19-3008
(July 25, 2014) (VOL X).....1830

Affidavit for Search Warrant for GPS Tracking Device (May 21, 2012) (VOL I)61

Affidavit in Support of Ex Parte Motion for Appointment of Co-Counsel (May 3, 2013)
(VOL I)140

Affidavit in Support of Ex Parte Motion for Appointment of Investigator (May 8, 2013)
(VOL I)148

Affidavit in Support of Ex Parte Motion for Appointment of Investigator (July 8, 2013)
(VOL II).....213

Affidavit in Support of Issuance of Certificate of Endorsement (August 13, 2014)
(VOL X).....1833

Affidavit in Support of Issuance of Certificate of Endorsement (August 13, 2014)
(VOL X).....1836

Affidavit in Support of Issuance of Certificate of Endorsement (August 18, 2014)
(VOL X).....1846

Affidavit in Support of Issuance of Certificate of Endorsement (August 29, 2014)
(VOL X).....1892

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)
(VOL IX)1651

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)
(VOL IX)1656

Affidavit in Support of Issuance of Certificate of Endorsement (June 3, 2014)
(VOL IX)1658

Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014) (VOL IX)	1661
Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014) (VOL IX)	1664
Affidavit in Support of Issuance of Certificate of Endorsement (June 4, 2014) (VOL IX)	1666
Affidavit in Support of Issuance of Certificate of Endorsement (September 4, 2014) (VOL X).....	1908
Affidavit in Support of Issuance of Certificate of Endorsement (September 4, 2014) (VOL X).....	1910
Affidavit in Support of Motion for Issuance of Certificate of Endorsement (July 9, 2013) (VOL II).....	217
Affidavit in Support of Motion for Issuance of Certificate of Endorsement (May 27, 2014) (VOL VIII).....	1624
Affidavit of Charles A. Capone (February 7, 2014) (VOL VII)	1346
Affidavit of D. Ray Barker Re: Defendant’s Motion to Suppress as to Evidence Obtained Through Search Warrants (April 9, 2014) (VOL VIII).....	1482
Affidavit of Defendant in Support of Issuance of Subpoenas Pursuant to Idaho Code 19-3008 (June 6, 2014) (VOL IX).....	1696
Affidavit of Kim K. Workman (February 7, 2014) (VOL VII)	1357
Affidavit of Mark T. Monson (February 7, 2014) (VOL VII).....	1348
Amended Certificate of Endorsement (August 27, 2014) (VOL X).....	1869
Amended Certificate of Endorsement (August 27, 2014) (VOL X).....	1871
Amended Certificate of Endorsement (June 6, 2014) (VOL IX).....	1691
Amended Criminal Complaint (July 30, 2013) (VOL II).....	241
Amended Criminal Information (December 20, 2013) (VOL III)	450
Amended Ex Parte Motion for Additional Funds Regarding Investigator (September 10, 2013) (VOL II)	313

Amended Motion for Expedited Hearing (May 19, 2014) (VOL VIII)	1602
Amended Notice of Appeal (May 20, 2015) (VOL XI).....	2105
Amended Order Continuing Sentencing Hearing (December 15, 2014) (VOL XI)	2078
Amended Order for Issuance of Subpoenas Idaho Code 19-3008 (June 12, 2014) (VOL IX)	1759
Certificate of Endorsement (August 14, 2014) (VOL X)	1841
Certificate of Endorsement (August 14, 2014) (VOL X)	1843
Certificate of Endorsement (August 19, 2014) (VOL X)	1854
Certificate of Endorsement (August 29, 2014) (VOL X)	1890
Certificate of Endorsement (July 9, 2013) (VOL II)	222
Certificate of Endorsement (June 5, 2014) (VOL IX)	1679
Certificate of Endorsement (June 5, 2014) (VOL IX)	1681
Certificate of Endorsement (June 5, 2014) (VOL IX)	1683
Certificate of Endorsement (June 5, 2014) (VOL IX)	1685
Certificate of Endorsement (June 5, 2014) (VOL IX)	1687
Certificate of Endorsement (June 5, 2014) (VOL IX)	1689
Certificate of Endorsement (May 28, 2014) (VOL IX)	1627
Certificate of Endorsement (September 5, 2014) (VOL X).....	1923
Certificate of Endorsement (September 5, 2014) (VOL X).....	1925
Certificate of Service (VOL XI).....	2125
Clerk's Certificate Re: Exhibits (VOL XI).....	2115
Clerk's Certificate (VOL XI).....	2114

Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 4, 5, 6, 7 (VOL V)	848
Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 8-1, 8-2 (VOL VI)	1068
Continued, Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 9, 10, 11 (VOL VII)	1247
Court Minutes (April 9, 2014) Pretrial Motions (VOL VIII).....	1553
Court Minutes (August 1, 2013) Preliminary Hearing – Day 3 (VOL II)	264
Court Minutes (August 19, 2014) Pre-Trial Conference (VOL X)	1848
Court Minutes (August 19, 2014) Selection of Listing of Prospective Jurors (VOL X) .	1850
Court Minutes (August 20, 2013) Arraignment (VOL II).....	300
Court Minutes (August 20, 2014) Jury Trial – Day 1 – Completion of Juror Questionnaires (VOL X).....	1856
Court Minutes (August 27, 2014) Jury Trial – Day 2 – Individual Voir Dire Examination of Prospective Jurors (VOL X).....	1861
Court Minutes (August 28, 2014) Day 3 of Jury Trial-Continuation of Individual Voir Dire Examination of Prospective Jurors (VOL X).....	1875
Court Minutes (August 28, 2014) Defendant’s Objection to State’s Exhibits (VOL X) .	1873
Court Minutes (August 29, 2014) Day 4 of Jury Trial – Continuation of Individual Voir Dire Examination of Prospective Jurors (VOL X).....	1883
Court Minutes (August 29, 2014) Jury Trial – Day 4 (VOL X).....	1886
Court Minutes (December 20, 2013) State’s Motion for Leave to Amend the Criminal Information (VOL III)	448
Court Minutes (February 10, 2014) Defendant’s Motion to Retain Services of a Forensic Pathologist (VOL VII).....	1363
Court Minutes (February 23, 2015) Sentencing (VOL XI)	2086
Court Minutes (February 24, 2014) Motion to Continue Trial (VOL VII).....	1370

Court Minutes (January 14, 2013) Matter of Installation and Use of Mobile GPS Tracking Device (VOL I).....	113
Court Minutes (July 25, 2012) Return of Search Warrant of Installation and Use of Mobile GPS Tracking Device (VOL I).....	108
Court Minutes (July 30, 2013) Preliminary Hearing - Day 1 (VOL II).....	248
Court Minutes (July 31, 2013) Preliminary Hearing - Day 2 (VOL II).....	257
Court Minutes (July 5, 2012) Return of Search Warrant of Installation and Use of GPS Tracking Device (VOL I).....	105
Court Minutes (June 12, 2014) Status Conference (VOL IX).....	1744
Court Minutes (June 23, 2014) Hearing (VOL IX).....	1781
Court Minutes (June 23, 2014) Jury Trial (VOL IX).....	1783
Court Minutes (June 27, 2013) Motion to Reconsider Investigator (VOL I).....	192
Court Minutes (June 5, 2012) Return of Search Warrant (VOL I).....	102
Court Minutes (June 5, 2014) Numbering Selection of Prospective Jurors (VOL IX) ...	1675
Court Minutes (June 7, 2013) Request Continuance (VOL I).....	164
Court Minutes (March 25, 2013) Installation of GPS Tracking Device (VOL I).....	114
Court Minutes (May 1, 2013) Initial Appearance (VOL I).....	134
Court Minutes (May 20, 2014) Hearing Regarding Witness Lists (VOL VIII).....	1618
Court Minutes (May 30, 2014) Motion Hearing (VOL IX).....	1634
Court Minutes (May 9, 2013) Continuance (VOL I).....	155
Court Minutes (November 8, 2013) Scheduling Conference (VOL III).....	431
Court Minutes (October 2, 2012) Matter of Installation and Use of Mobile GPS Tracking Device (VOL I).....	112
Court Minutes (October 21, 2014) Defendant's Motion for Funds for Mitigation Specialist Pursuant to I.C.R. 12.2. (VOL XI).....	2043

Court Minutes (October 9, 2013) Ex Parte Motion Hearing (VOL II).....	400
Court Minutes (September 10, 2014) Jury Trial – Day 11 (VOL X).....	1942
Court Minutes (September 11, 2014) Jury Trial – Day 12 (VOL X).....	1948
Court Minutes (September 12, 2013) Arraignment in State vs. David Stone and Motion for Joinder in State vs David Stone and State vs Charles Capone (VOL II)	320
Court Minutes (September 12, 2014) Jury Trial – Day 13 (VOL X).....	1955
Court Minutes (September 15, 2014) Jury Trial – Day 14 (VOL X).....	1960
Court Minutes (September 16, 2014) Jury Trial – Day 15 (VOL X).....	1964
Court Minutes (September 17, 2014) Jury Trial – Day 16 (VOL X).....	1967
Court Minutes (September 2, 2014) Jury Trial – Day 5 (VOL X).....	1896
Court Minutes (September 23, 2013) Defendant’s Motion to Increase Funds for the Investigator (VOL II)	332
Court Minutes (September 3, 2014) Jury Trial – Day 6 (VOL X).....	1902
Court Minutes (September 4, 2014) Jury Trial – Day 7 (VOL X).....	1912
Court Minutes (September 5, 2014) Jury Trial – Day 8 (VOL X).....	1918
Court Minutes (September 8, 2014) Jury Trial – Day 9 (VOL X).....	1933
Court Minutes (September 9, 2014) Jury Trial – Day 10 (VOL X).....	1938
Criminal Complaint (May 1, 2013) (VOL I).....	128
Criminal Information (August 5, 2013) (VOL II).....	287
Defendant’s Objection and Responses to Presentence Investigation Report (December 11, 2014) (VOL XI).....	2071
Defense Request for Jury Instruction (June 12, 2014) (VOL IX)	1750
Ex Parte Motion for Additional Funds Regarding Investigator (August 9, 2013) (VOL II).....	298

Ex Parte Motion for Additional Funds Regarding Investigator (September 4, 2013) (VOL II).....	308
Ex Parte Motion for Appointment of Co-Counsel (May 3, 2013) (VOL I)	138
Ex Parte Motion for Appointment of Investigator (July 8, 2013) (VOL II)	211
Ex Parte Motion for Appointment of Investigator (May 8, 2013) (VOL I).....	147
Ex Parte Motion for Authorization to Retain Services of Blood Detection Expert (October 2, 2013) (VOL II).....	376
Ex Parte Motion for Authorization to Retain Services of Computer Forensic Expert (October 8, 2013) (VOL III).....	403
Ex Parte Motion for Authorization to Retain Services of DNA Expert (October 2, 2013) (VOL II).....	345
Ex Parte Motion for Authorization to Retain Services of Pharmaceutical Expert (October 2, 2013) (VOL II).....	348
Ex Parte Motion for Authorization to Retain Services of Scent Dog Expert (October 3, 2013) (VOL II).....	385
Ex Parte Motion for Funds for Computer Forensic Expert Pursuant to I.C.R. 12.2 (September 17, 2014) (VOL X)	2024
Ex Parte Motion for Funds for Investigator Pursuant to I.C.R. 12.2 (August 14, 2014) (VOL X).....	1838
Ex Parte Motion for Funds for Investigator Pursuant to I.C.R. 12.2 (September 11, 2014) (VOL X).....	1945
Ex Parte Motion for Funds for Mitigation Specialist Pursuant to I.C.R. 12.2 (October 8, 2014) (VOL XI).....	2031
Ex Parte Motion for Funds to Retain Services of Psychologist Pursuant to I.C.R. 12.2 (December 3, 2014) (VOL XI).....	2049
Initial Determination of Probable Cause (May 1, 2013) (VOL I).....	115
Intentionally Left Blank (VOL I)	111
Judgment of Conviction (March 13, 2015) (VOL XI).....	2091

Juror Questionnaire (July 14, 2014) (VOL IX)	1803
Juror Questionnaire (May 21, 2014) (VOL VIII).....	1605
Jury Instructions Read at the Jury Trial (September 17, 2014) (VOL X).....	1977
Jury Verdict (September 17, 2014) (VOL X).....	2020
Letter from Idaho Department of Correction (November 6, 2014) (VOL XI).....	2048
Memorandum in Support of Motion to Allow Defense to Show Video and Co-Defendant's Statements to Law Enforcement (May 14, 2014) (VOL VIII).....	1581
Memorandum in Support of Motion to Change Venue (February 7, 2014), Exhibits 1, 2, & 3 (VOL IV).....	593
Memorandum in Support of Motion to Suppress (February 7, 2014) (VOL III).....	515
Memorandum in Support of State's Objection to Dr. Grey Testifying as Expert (July 11, 2014) (VOL IX).....	1796
Memorandum of Points and Authorities (July 25, 2013) (VOL II).....	230
Motion for Additional Funds for Investigator (July 9, 2014) (VOL IX).....	1793
Motion for Additional Funds for Investigator (June 10, 2014) (VOL IX).....	1736
Motion for Additional Funds for Investigator (March 12, 2014) (VOL VII).....	1377
Motion for Additional Funds for Investigator (May 14, 2014) (VOL VIII).....	1589
Motion for Additional Funds Regarding Investigation (February 10, 2014) (VOL VII).....	1361
Motion for Additional Funds Regarding Investigator (December 10, 2013) (VOL III) ..	437
Motion for Additional Funds Regarding Investigator (January 17, 2014) (VOL III)	459
Motion for Additional Funds Regarding Investigator (October 22, 2013) (VOL III)	429
Motion for Appointment of State Appellate Public Defender (March 18, 2015) (VOL XI)	2099
Motion for Authorization to Retain Services of Forensic Anthropologist (March 12, 2014) (VOL VII).....	1380

Motion for Authorization to Retain Services of Forensic Pathologist (January 21, 2014) (VOL III)	463
Motion for Bail for Witness (July 2, 2013) (VOL I)	193
Motion for Change of Venue (February 7, 2014) (VOL VII)	1344
Motion for Continuance (June 12, 2014) (VOL IX)	1742
Motion for Disqualification of Judge Without Cause (August 5, 2013) (VOL II)	285
Motion for Expedited Hearing (May 19, 2014) (VOL VIII)	1599
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code 19-3005(2) (July 9, 2013) (VOL II)	221
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code 19-3005(2) (May 27, 2014) (VOL VIII)	1623
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (June 3, 2014) (VOL IX)	1650
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (June 4, 2014) (VOL IX)	1660
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (June 4, 2014) (VOL IX)	1663
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (August 13, 2014) (VOL X)	1832
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (August 13, 2014) (VOL X)	1835
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (August 18, 2014) (VOL X)	1845
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (August 29, 2014) (VOL X)	1895
Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (September 4, 2014) (VOL X)	1906

Motion for Issuance of Certificate of Endorsement Pursuant to Idaho Code §19-3005 (September 4, 2014) (VOL X)	1907
Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008 (June 6, 2014) (VOL IX)	1693
Motion for Joinder (August 20, 2013) (VOL II).....	304
Motion for Leave to Amend (July 22, 2013) (VOL II)	224
Motion for Leave to Amend Criminal Information (December 12, 2013) (VOL III)	439
Motion for Leave to Amend Criminal Information (May 23, 2014) (VOL VIII)	1620
Motion for Order for Production of Prisoner (June 4, 2014) (VOL IX).....	1668
Motion for Order for Production of Prisoner (September 8, 2014) (VOL X)	1927
Motion for Order to File Affidavit Under Seal (April 9, 2014) (VOL VIII).....	1559
Motion for Permission to Supplement Discovery (May 13, 2014) (VOL VIII)	1575
Motion for Protective Order-I.C.R. 16(1) - Presentence Investigation Report (March 26, 2014) (VOL VII).....	1395
Motion for Release of Evidence (September 23, 2013) (VOL II).....	329
Motion for Scheduling Order (September 19, 2013) (VOL II).....	326
Motion in Limine and Argument in Response to State's Notice of I.R.E. Evidence (February 7, 2014) (VOL III).....	509
Motion to Allow Defense to Show Video of Codefendant's Statements to Law Enforcement (May 14, 2014) (VOL VIII)	1578
Motion to Allow Defense Witness to Testify Via Teleconference (June 19, 2014) (VOL IX)	1775
Motion to Authorize Additional Funds for Computer Forensic Expert (June 3, 2014) (VOL IX)	1653
Motion to Authorize Additional Funds for Computer Forensic Expert (July 21, 2014) (VOL IX)	1815
Motion to Continue Sentencing Hearing (December 11, 2014) (VOL XI)	2068

Motion to Extend Deadline to Respond to Presentence Investigation Report (December 3, 2014) (VOL XI).....	2062
Motion to Extend No Contact Order (July 9, 2014) (VOL IX).....	1790
Motion to File Defense Requests for Funding Under Seal (September 27, 2013) (VOL II).....	337
Motion to Quash Subpoena Duces Tecum and for Protective Order (May 16, 2014) (VOL VIII)	1592
Motion to Reconsider Investigator (June 19, 2013) (VOL I).....	165
Motion to Reconsider Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008 (June 12, 2014) (VOL IX)	1746
Motion to Reconsider Order Allowing State to Remove Witness (June 13, 2014) (VOL IX)	1764
Motion to Reconsider Trial Schedule (June 2, 2014) (VOL IX)	1639
Motion to Seal Pursuant to Idaho Court Administrative Rule 32 **Filed Under Seal** (June 4, 2012) (VOL I)	98
Motion to Suppress (February 7, 2014) (VOL III).....	513
Motion to Suppress and Memorandum in Support of Motion to Suppress (February 7, 2012) (VOL III).....	554
Motion to Suppress and Memorandum in Support of Motion to Suppress (February 7, 2012) (VOL III).....	563
Motion to Unseal Pursuant to Idaho Court Administrative Rule 32 **Filed Under Seal** (May 9, 2013) (VOL I)	152
No Contact Order (April 9, 2014) (VOL VIII)	1562
No Contact Order (February 24, 2015) (VOL XI).....	2090
No Contact Order (July 9, 2014) (VOL IX).....	1795
No Contact Order (May 1, 2013) (VOL I)	136
No Contact Order (May 9, 2013) (VOL I)	158

No Contact Order (September 17, 2014) (VOL X)	2023
Notice of Appeal (March 18, 2015) (VOL XI)	2096
Notice of Assignment of Judge (August 2, 2013) (VOL II).....	284
Notice of I.C.R. 41(d) Compliance (July 25, 2012) (VOL I).....	109
Notice of I.R.E. 404(b) Evidence (December 26, 2013) (VOL III).....	456
Notice of Intent to Offer Forensic Testimony by Video Teleconference Per I.C.R. 43.3 (April 16, 2014) (VOL VIII)	1565
Objection to “Motion for Authorization to Retain Services of Forensic Pathologist” (January 22, 2014) (VOL III).....	472
Objection to Motion for Leave to Amend (July 24, 2013) (VOL II)	226
Opinion and Order on Defendant’s Motion to Allow Dr. Grey to Testify Via Teleconference (July 23, 2014) (VOL IX)	1821
Order (July 5, 2012) (VOL I).....	106
Order Allowing State to Remove Witness (June 12, 2014) (VOL IX).....	1757
Order Appointing Co-Counsel (May 3, 2013) (VOL I)	144
Order Appointing Judge to Authorize Expenditures (May 21, 2013) (VOL I).....	159
Order Appointing Public Defender (May 2, 2013) (VOL I)	137
Order Assigning Judge (August 7, 2013) (VOL II).....	296
Order Assigning Judge (June 25, 2014) (VOL IX).....	1788
Order Authorizing Funds Regarding Computer Expert (February 24, 2014) (VOL VII).....	1372
Order Authorizing Funds Regarding Computer Expert (July 22, 2014) (VOL IX).....	1819
Order Authorizing Funds Regarding Computer Expert (June 12, 2014) (VOL IX).....	1738
Order Authorizing Funds Regarding Forensic Computer Expert (September 17, 2014) (VOL X).....	2026

Order Authorizing Funds Regarding Investigator (April 9, 2014) (VOL VIII).....	1557
Order Authorizing Funds Regarding Investigator (August 20, 2013) (VOL II)	302
Order Authorizing Funds Regarding Investigator (August 21, 2014) (VOL X)	1859
Order Authorizing Funds Regarding Investigator (December 12, 2013) (VOL III)	446
Order Authorizing Funds Regarding Investigator (January 21, 2014) (VOL III)	461
Order Authorizing Funds Regarding Investigator (July 14, 2014) (VOL IX)	1810
Order Authorizing Funds Regarding Investigator (July 9, 2013) (VOL II)	216
Order Authorizing Funds Regarding Investigator (June 12, 2014) (VOL IX)	1740
Order Authorizing Funds Regarding Investigator (March 3, 2014) (VOL VII)	1374
Order Authorizing Funds Regarding Investigator (May 22, 2014) (VOL VIII)	1616
Order Authorizing Funds Regarding Investigator (May 9, 2013) (VOL I).....	151
Order Authorizing Funds Regarding Investigator (November 8, 2013) (VOL III)	433
Order Authorizing Funds Regarding Investigator (September 12, 2014) (VOL X).....	1953
Order Authorizing Funds Regarding Investigator (September 23, 2013) (VOL II).....	334
Order Authorizing Retention of Blood Detection Expert (October 9, 2013) (VOL III) ...	423
Order Authorizing Retention of Computer Forensic Expert (October 9, 2013) (VOL III)	427
Order Authorizing Retention of DNA Expert (October 9, 2013) (VOL III)	419
Order Authorizing Retention of Pharmaceutical Expert (October 9, 2013) (VOL III)	421
Order Authorizing Retention of Scent Dog Expert (October 9, 2013) (VOL III).....	425
Order Binding Over Defendant and Scheduling Arraignment (August 2, 2013) (VOL II).....	282
Order Continuing Sentencing Hearing (December 12, 2014) (VOL XI).....	2076

Order Denying Defendant’s “Motion for Authorization to Retain Services of Forensic Pathologist” (February 12, 2014) (VOL VII)	1365
Order Denying Defendant’s Motion for Funds for Mitigation Specialist (October 21, 2014) (VOL XI).....	2045
Order Denying Motion for Joinder (September 19, 2013) (VOL II)	323
Order Denying Motion to Seal Funding Request (October 2, 2013) (VOL II)	343
Order Disqualification of Judge (June 23, 2014) (VOL IX)	1785
Order for Appointment of State Appellate Public Defender (March 23, 2015) (VOL XI)	2102
Order for Bail/Commitment of Witness (July 5, 2013) (VOL II).....	208
Order for Disqualification of Judge Without Cause (August 6, 2013) (VOL II).....	294
Order for DNA Sample and Thumbprint Impression (February 23, 2015) (VOL XI)...	2089
Order for Issuance of Subpoenas Pursuant to Idaho Code 19-3008 (June 9, 2014) (VOL IX)	1699
Order for Leave to Amend (July 30, 2013) (VOL II).....	239
Order for Presentence Report and Evaluations (September 25, 2014) (VOL X).....	2028
Order for Production of Prisoner (June 5, 2014) (VOL IX).....	1671
Order for Production of Prisoner (September 8, 2014) (VOL X)	1930
Order for Release of Evidence (September 30, 2013) (VOL II)	339
Order for Transport of Witness (August 29, 2014) (VOL X)	1894
Order Granting Motion for Funds to Retain Services of a Psychologist (December 5, 2014) (VOL XI).....	2064
Order Granting Motion to Extend Deadline to Respond to Presentence Investigation Report (December 5, 2014) (VOL XI).....	2066
Order Granting Motion to File Affidavit Under Seal (Filed Under Seal) (April 9, 2014) (VOL VIII)	1561

Order Re: Juror Questionnaire (May 21, 2014) (VOL VIII)	1615
Order Re: Motions (June 2, 2014) (VOL IX).....	1636
Order Re: Motions in Limine (May 9, 2015) (VOL VIII).....	1571
Order Re: Trial Schedule (June 3, 2014) (VOL IX).....	1648
Order Scheduling Case for Trial (November 8, 2013) (VOL III)	435
Order Setting Jury Trial and Scheduling Procedures (September 30, 2013) (VOL II).....	341
Order Setting Jury Trial and Scheduling Proceedings (July 14, 2014) (VOL IX)	1801
Order to Seal Pursuant to Idaho Court Administrative Rule 32 (June 4, 2012) (VOL I).	100
Order to Unseal Pursuant to Idaho Court Administrative Rule 32 (May 9, 2013) (VOL I).....	153
Receipt and Inventory and Warrant (June 4, 2012) (VOL I)	95
Receipt of Evidence (September 26, 2013) (VOL II)	336
Register of Actions (May 21, 2012 - April 8, 2015) (VOL I)	34
Request for Jury Instructions (June 9, 2014) (VOL IX).....	1701
Response in Opposition to Defendant’s Motion to Allow Defense to Show Video and Co-Defendant’s Statements to Law Enforcement (May 29, 2014) (VOL IX).....	1629
Response to “Ex Parte Motion for Additional Funds Regarding Investigator” (September 6, 2013) (VOL II).....	310
Response to Defendant’s Motion for Change of Venue (March 31, 2014) (VOL VII) ...	1407
Response to Defendant’s Motion to Allow Defense Witness to Testify Via Teleconference (June 20, 2014) (VOL IX)	1778
Response to Defendant’s Motion to Suppress (Statements made by Rachael Anderson) (March 31, 2014) (VOL VII).....	1417
Response to Defendant’s Supplemental “Request for Discovery” (Dated April 10, 2014) (April 14, 2014) (VOL VIII)	1563

Response to State’s Objection to Dr. Grey Testifying as an Expert Witness (July 14, 2014) (VOL IX)	1812
Return of Search Warrant for GPS Tracking Device (June 4, 2012) (VOL I).....	88
Second Amended Criminal Information (June 2, 2014) (VOL IX)	1642
Second Motion for Authorization to Retain Services of Forensic Pathologist (May 5, 2014) (VOL VIII).....	1567
Second Motion for Issuance of Subpoenas Pursuant to Idaho Code §19-3008 (July 21, 2014) (VOL IX).....	1817
Special Verdict (September 17, 2014) (VOL X).....	2022
State’s Motion in Limine (February 7, 2014) (VOL III)	475
State’s Objection to “Order Appointing Judge to Authorize Expenditures” (May 23, 2013) (VOL I)	161
State’s Response to “Motion to Authorize Additional Funds for Computer Forensic Expert” (February 14, 2014) (VOL VII)	1367
State’s Response to Defendant’s Motion to Suppress #1 (Statements of Defendant) (April 1, 2014) (VOL VIII)	1427
State’s Response to Defendant’s Motion to Suppress #3 (Search Warrants) (April 1, 2014) (VOL VIII)	1459
State’s Response to Defendant’s Objection and Responses to Presentence Investigation Report (February 9, 2015) (VOL XI)	2080
Stipulation for Deposition and Preservation of Testimony of Angela Cabrera (June 23, 2014) (VOL IX).....	1786
Supplement to “Motion for Protective Order-I.C.R. 16(1) – Presentence Investigation Report (March 28, 2014) (VOL VII).....	1401
Supplement to Ex Parte Motion for Funds for Mitigation Specialist Pursuant to I.C.R. 12.2 (October 20, 2014) (VOL XI).....	2036
Supplemental Return of Search Warrant for GPS Tracking Device **Filed Under Seal** (July 5, 2012) (VOL I)	103
Waiver of Speedy Preliminary Hearing (May 8, 2013) (VOL I)	145

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

CASE NO. CR 2013-1358

2014 OCT -8 PM 4:54

CLERK OF DISTRICT COURT
LATAH COUNTY
BY: [Signature] 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

**EX PARTE MOTION FOR FUNDS FOR
MITIGATION SPECIALIST 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 funds for a defense mitigation specialist 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 defendant was convicted by jury of the charges of first degree murder, failure to notify law enforcement of a death, and conspiracy to fail to notify law enforcement of a death. In addition, the jury convicted the defendant of being a persistent offender. The defendant is facing a potential of two life sentences.

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

Page 1 of 3

002031

The Court scheduled a sentencing hearing for January 5, 2015.

It is anticipated that the defense mitigation specialist will perform investigative services in order to assist the court in determining an appropriate penalty. The role of a mitigation specialist is broad and includes identification, location and retrieval of all records regarding the client as well as records regarding immediate and extended family members. It also includes obtaining relevant military records, medical records, and mental health records. It is also anticipated that a mitigation specialist would conduct comprehensive interviews with the defendant and as many individuals as possible who have known the defendant, including friends, neighbors, military peers, teachers, counselors, coaches, church members, co-worker, physicians, mental health and social services personnel. It is anticipated that the kind of information the mitigation specialist would provide to counsel may include fetal and birth trauma, prenatal exposure to alcohol, drugs and toxins, maternal medical conditions, early developmental history, including ages at which important developmental tasks such as walking and talking were mastered, early physical health of client, including chronic illnesses, and whether medical attention was available, and, if so, the nature and extent of any intervention. A mitigation specialist would also provide information relating to signs of mental illness or deficiencies, educational history, and a history of mental, physical, or sexual abuse.

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

3. Name and location of proposed provider of services: James Hudson, PO Box 739, La Center, WA 98629.

4. Qualifications of Service Provider: Mr. Hudson has extensive experience as a mitigation specialist. Mr. Hudson has worked as a mitigation specialist since 2001. Since 2001, Mr. Hudson has worked on over 50 death penalty cases in pre-trial, trial, and post-conviction stages. He has investigated non-capital criminal cases, including conspiracy, murder, drug, domestic assault, assault with a deadly

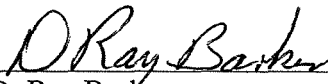
weapon, child molestation, sex abuse and pornography cases at both the state and federal level. A copy of Mr. Hudson's resume is attached hereto.

5. Estimate of costs: Mr. Hudson charges \$85 per hour, plus reasonable expenses, including the cost of travel.

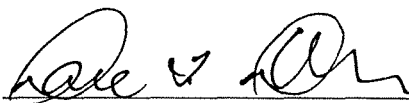
6. Location outside judicial district. Counsel has made inquiries regarding mitigation specialists but is unaware of any such specialist who resides and is available to assist with this case within the judicial district. Mr. Judson was recommended by the Kootenai County, Idaho public defender's office.

Based on the above, the undersigned respectfully request \$10,000 be approved for investigative costs.

DATED this 8 day of October, 2014



D. Ray Barker



Mark T. Monson

PACIFIC MITIGATION SPECIALISTS, LLC

JAMES D. HUDSON
P.O. BOX 739
LA CENTER, WA 98629
(360) 263-1043
FAX 263-1012
CELL 921-1306
jameshudson@tds.net

RESUME

PROFESSIONAL LICENSURE:

State of Washington Private Investigator (#3045), State of Oregon Private Investigator (#34001).

PROFESSIONAL EXPERIENCE:

Pacific Mitigation Specialists, January 2009 to Present. I am a consultant specializing in the development and preparation of mitigation investigations, expert witness coordination and trial assistance for defendants facing the death penalty. I have experience at the trial and the post conviction levels.

I worked as a mitigation specialist and investigator for M. Goody Mitigation and Investigation from May 2001 through December 2008. My duties included staffing the Washington office.

My work history includes preparation of mitigation and investigative work on federal and state death penalty cases throughout the United States, including Washington, Oregon, Idaho, Arizona, Missouri, Montana, Illinois, Utah, California, Wyoming, Colorado and Iowa.

MITIGATION SPECIALIST/INVESTIGATOR/TRIAL ASSISTANT:

Since 2001, I have worked on over 50 death penalty cases in pre-trial, trial and post-conviction stages. I have also investigated non-capital criminal cases, including conspiracy, murder, drug, domestic assault, assault with a deadly weapon, child molestation, sex abuse and pornography cases. These cases have been at the state and federal levels.

////

On the civil side, I have extensive experience investigating personal injury, wrongful death, medical malpractice, professional malpractice, domestic relations and custody disputes.

EDUCATION: I have well over 300 hours of continuing legal and capital case defense education for both pre and post conviction. Yearly attendance and training with California Attorney's for Criminal Justice, Capital Case Defense Seminars. I attended the 2011 Federal Capital Case Defense Strategy Session and the 2012 Bureau of Prisons Homicides Authorized Case Training/Consultation Conference. I have also attended numerous Oregon and Washington Criminal Defense seminars and Continuing Legal Education training, mainly focused on capital defense. I have a particular interest and extensive training in medical and mental health issues.

Bachelor of Science degree in Psychology with an emphasis in Criminal Justice and Human Development, Washington State University, May 2001. Just prior to graduation from WSU, I was awarded the "Writing with Distinction" honor.

Received AA degree from Clark Community College in Vancouver, WA. I was a member of the Dean's List while attending Clark College.

Graduated from Prairie High School in Brush Prairie, WA, June 1995.

PROFESSIONAL AFFILIATIONS: Washington and Oregon Criminal Defense Lawyers Association, Washington and Oregon Capital Defender's Association.

MISCELLANEOUS: Washington Notary Public.

REFERENCES: Available upon request.

CR 2013-1357
CASE NO

2014 OCT 20 PM 4:50

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

**SUPPLEMENT TO EX PARTE MOTION
FOR FUNDS FOR MITIGATION
SPECIALIST PURSUANT TO I.C.R. 12.2**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and provide the following supplement to defendant's Motion for a mitigation specialist.

1. Scope and details of services requested: The defendant was convicted by jury of the charges of first degree murder, failure to notify law enforcement of a death, and conspiracy to fail to notify law enforcement of a death. In addition, the jury convicted the defendant of being a persistent offender. The defendant is facing a potential of two life sentences.

The Court scheduled a sentencing hearing for January 5, 2015.

**SUPPLEMENT TO EX PARTE MOTION FOR FUNDS FOR
MITIGATION SPECIALIST PURSUANT TO I.C.R. 12.2**

James Hudson is a mitigation specialist in private practice in La Center, Washington. He has been in private practice since January 2009. His resume was attached to the motion requesting funds for a mitigation specialist filed previously. Mr. Hudson has worked as a mitigation specialists and investigator since May 2001.

Since 2001, Mr. Hudson has worked on over 50 murder cases on which he has conducted an extensive social history investigation, repaired social history reports, and assisted the attorneys in the preparation of a penalty phase case or any hearing in a post-conviction proceeding. He has worked on cases at the state level in Oregon, Missouri, Montana, Washington, Idaho, Wyoming, Utah, Iowa, and Arizona. He has worked on federal cases in the following districts: Utah, Arizona, New Mexico, Colorado, Illinois, California, Wyoming, and Missouri.

Mr. Hudson has participated in specialized training offered by the California Attorneys for Criminal Justice, Washington Association of Criminal Defenders, and the Oregon Criminal Defense Lawyers Association on a yearly basis.

A mitigation investigators an important tool for sentencing even in a non-capital murder case because often, as in many capital cases, the question of guilt or innocence is not at issue. In many murder cases, the real issue before the court is the appropriate penalty. This is true in this case as Mr. Capone has already been found guilty by a jury. A mitigation investigation is necessary to assist the court in making the appropriate sentencing determination.

The role of a mitigation specialist is broad. It includes identification, location and retrieval of all records regarding the clients that have been generated, as well as all records regarding all immediate and extended family members. Based on discussions with Mr. Hudson, it is anticipated that Mr. Hudson would obtain the following type of records:

- Mr. Capone's military records, including locations of assignment, rank and job duty, tendons, medical records, special commendations, disciplinary records.
- All medical records, including private physicians, clinics and hospitals.
- All of Mr. Capone school records, including transcripts, health records, standardized testing, attendance, special education testing and/or classes, disciplinary action for every school attended, including adult education and vocational schools.
- All social services records, counseling records, referrals, and medical and mental health treatment, progress reports, and medical, educational, mental health, and intellectual evaluations.
- All employment records, including applications, tendons, job assignments and performance evaluations, medical and psychological evaluations, relocations, pay records.
- All psychological and psychiatric records, including community mental health clinics, private doctors and counselors, hospitals and substance abuse facilities, to include intake evaluations, treatment interventions, all medical blogs, physician and nurse progress notes, referrals, and discharge reports.

In addition to obtaining records, Mr. Hudson would be anticipated to conduct comprehensive interviews with the client and as many individuals as possible who have known the client. These include:

- Family members, both immediate and extended
- Friends, neighbors, landlords in all locations where Mr. Capone has ever lived
- Military peers and superiors
- Teachers, counselors and coaches
- Church members, Sunday school teachers, pastors

- Coworkers and employees
- Girlfriends annexed girlfriends
- Physicians, nurses and technicians
- Mental health and social services personnel

Locating in interviewing lay witnesses, especially family members, is a sensitive endeavor which requires time, patience and skill. A primary reason for that is, as with the client, family members similarly suffer from multiple impairments, including mental retardation, mental illness and substance abuse. In addition there can be problems obtaining the trust of witnesses. In many cases lay witnesses are initially suspicious of talking to anyone about the client because it is assumed that the purpose is to incarcerate or in other ways hurt their loved one. Others are reluctant to reveal possibly painful and embarrassing facts regarding family history to a stranger. Consequently, a significant amount of time may be spent not only effectively evaluating and overcoming various impairments, but also demonstrating one sincere commitment to assisting the client. The limitations of witnesses, combined with length of time between childhood and the time of the offense or post conviction investigation, necessitates that lay witnesses be interviewed on more than one occasion in order to obtain valid and reliable data.

The kinds of information the mitigation specialist must identify present to the attorney include but are not limited to:

- Fetal and birth trauma, including prenatal malnutrition, prenatal exposure to alcohol, drugs and toxins, maternal medical conditions, such as diabetes, liver and thyroid disorders and toxemia, and complications of delivery such as anoxia.
- Early developmental history, including ages at which important developmental tasks such as walking and talking were mastered.

- Early physical health of client, including chronic illnesses, high fevers, Germanic injuries, infectious diseases, nutritional status; whether medical attention was available and, if so, the nature and extent of any intervention.
- Evidence of early signs of mental illness or deficiencies including mental retardation, pervasive developmental disorders and major mental illnesses such as schizophrenia or bipolar disorder, onset and course of adolescent or adult mental illnesses, treatments, including self-medication.
- Educational history, including when and where Klein attended school, the presence of any learning disorders, special education and referrals for additional assistance.
- History, nature and extent of mental, physical, or sexual abuse, including isolation and shaming; scapegoating, beatings and burnings, having to watch repeated abuse of loved ones.
- History and course of drug addiction, including who introduced client to various drugs and toxins in means of self medication
- Nature of relationships with parents and significant others, including whether or not client knew parents, the degree of bonding and trust present, presence of abandonment and betrayals by parents.
- Residential history, including foster homes, juvenile settings, moves due to eviction; complete investigation into each institution, especially evidence of mental, physical and sexual abuse.
- Presence or absence of necessary support systems within the family, school and community; presence or absence of advocates.
- Presence or absence of client skills and means by which to build a sense of self-esteem and personal competence.

- Nature and extent of poverty, including substandard living conditions, including periods of starvation or malnutrition, lack of fee, medical attention, close, etc.
- Number nature of traumatic life events, including loss, injury or illness of significant others, victims or witnesses of extreme violence, chronic or acute physical/sexual abuse, loss of home or prolonged hospitalization.
- Health history, including major accidents and head injuries, infections, hospitalizations, outpatient care, chronic untreated condition; medical treatment receiving institutions.
- Nature of work experiences, including childhood jobs and help support family; necessity to quit school in order to support family: number nature of jobs; ability to perform/master tasks; willingness to perform tasks assigned; job-related injuries/illnesses; exposure to toxins.
- Military history, including location and nature of combat experience, exposure to toxins, nature of job assignments, special training, commendations, indications of PTSD.
- Religious and spiritual experiences and activities.
- Nature of significant relationships, including family friends and coast-defendants and the effects of those relationships and/or the loss of the relationships on the client.
- Physical and mental health histories of parents and other family members; school histories of same, employment history of same.

It is essential that, whenever possible, the mitigation specialist should triangulate data; that is, obtain data from more than one source and, preferably, more than one type of source, in order to assure valid and reliable information. For example, in a head injury and the effects of the trauma should be documented by all those who witnessed injury and its aftermath, as well as by medical records and the medical personnel who treated the client. This is essential in order that experts evaluating the client can

draw accurate conclusions about the effects of the injury on the client's perception, judgment and behavior.


The mitigation specialist is responsible for summarizing and evaluating documents and interview data, and for organizing and presenting the information to the attorney and to experts. This is an ongoing and time-intensive tasks which require special skill and experience and which generally is not within the per view of the attorney or other experts. Essential elements of this organization are preparation of chronologies and genograms.

Chronologies, which constituted to salacious of thousands of pages of documents and interview data, our comprehensive, linear, documented summaries of all major conditions and life events and the effects of these events on the client. These annotated timelines provide a framework, by which both attorneys and experts can come to organize, is simile and understand critical events and the effects of those experiences on the perception, judgment and behavior the client.

Mitigation specialists require special knowledge and skill in the areas of collecting hard-to-find records, interviewing and paired clients and witnesses, mental illness, grief reactions and loss, and mediation and negotiation. A competent mitigation specialist generally has some training in the area friends except mental health issues as well as basic investigative skills.

DATED this 20 day of October, 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 participating by telephone
District Judge

No Court Reporter
Recording No. Z:02/2014-10-21
Time: 9:27 A.M.

Date: October 21, 2014

STATE OF IDAHO,)

Case No. CR-13-01358

Plaintiff,)

vs)

APPEARANCES:

CHARLES ANTHONY CAPONE,)

Mia Vowels, Deputy Prosecutor
Appearing on Behalf of the State

Defendant.)

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

Subject of Proceedings: Defendant's Motion for Funds for Mitigation Specialist Pursuant to I.C.R. 12.2

This being the time set for hearing the defendant's motion for funds for a mitigation specialist, the clerk noted the presence of counsel and the non-appearance of the defendant.

Mr. Barker presented argument in support of the defendant's motion for funds for a mitigation specialist, stating that his argument was mainly the information in the supplement to the defendant's ex-parte motion for funds for a mitigation specialist that was filed yesterday afternoon. Court stated that he has not received a copy of the supplement to the motion filed yesterday afternoon but will review it as soon as he receives a copy. Ms. Vowels presented argument in opposition to the defendant's motion. It was noted that the defendant was now present in the courtroom. In response to inquiry from the Court, Mr. Barker stated that he had no further argument to present. Court stated that he will review the supplement to the

Maureen Coleman
Deputy Clerk
Court Minutes 1

002043

defendant's motion for funds for a mitigation specialist before making his ruling. Court presented remarks to counsel. Court stated that he will prepare an order after making his ruling.

Court recessed at 9:35 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

RECORDED October 21, 2014 AT
11:36 A.M. F.M. LEWISTON, IDAHO
BY [Signature]
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,)
)
 vs.)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant.)

CASE NO. CR13-01358
ORDER DENYING DEFENDANT'S
MOTION FOR FUNDS FOR
MITIGATION SPECIALIST

Defendant's Motion for Funds for Mitigation Specialist having come before the Court for hearing on October 21, 2014, and the Court having reviewed the motion, the supplement to said motion and having heard arguments from counsel, finds and orders as follows:

The Court finds that the appointment of a mitigation specialist for the Defendant, at public expense, is not reasonable and necessary in this case. This is not a death penalty case, where mitigation specialists are more commonly appointed because of the special sentencing proceedings unique to such cases. This Court is unaware of a previous non-death penalty case in the Second District where a mitigation specialist has been appointed. This Court does not find special

ORDER DENYING DEFENDANT'S 1
MOTION FOR FUNDS FOR
MITIGATION SPECIALIST

circumstances in this case which would require appointment of a mitigation specialist. Further, it is anticipated the P.S.I. previously ordered by the Court will include much of the information that the mitigation specialist would develop.

THEREFORE, DEFENDANT'S MOTION FOR FUNDS FOR MITIGATION SPECIALIST IS HEREBY DENIED.

SO ORDERED this 21st day of October, 2014.



CARL B. KERRICK-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER DENYING DEFENDANT'S MOTION FOR FUNDS FOR MITIGATION SPECIALIST was:

_____ hand delivered via court basket, or

faxed and mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 21st day of October, 2014, to:

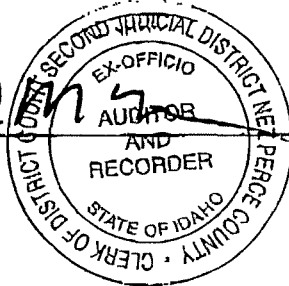
D. Ray Barker
P O Box 9408
Moscow ID 83843

Mark T. Monson
P O Box 8456
Moscow ID 83843

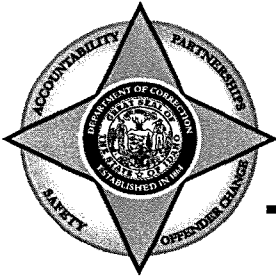
William W. Thompson, Jr.
Mia Vowels
P O Box 8068
Moscow ID 83743

PATTY O. WEEKS, Clerk

By *[Signature]*
Deputy



ORDER DENYING DEFENDANT'S
MOTION FOR FUNDS FOR
MITIGATION SPECIALIST



IDAHO DEPARTMENT OF CORRECTION

To promote a safer Idaho by reducing recidivism

C. L. "BUTCH" OTTER
Governor

CASE NO CR2013-135
BRENT D. REINKE
2014 NOV - 6 AM 11:06
Director

November 3, 2014

ORIGINAL

CLERK OF DISTRICT COURT
LATAH COUNTY

BY GM DEPUTY

cc: pa
- Barker
- Monson
- Kerrick

Honorable Carl B. Kerrick
District Court Judge
County of Latah
Moscow, ID 83843

RE: Charles A. Capone
CR2013-0001358

Dear Judge Kerrick:

On September 17, 2014, a presentence report was ordered in reference to the above case with a due date of November 14, 2014. This letter is to inform the Court that Mr. Capone refused to be interviewed for his presentence report and he failed to complete the presentence questionnaire.

On October 30, 2014, I attempted to interview Mr. Capone in the presence of his attorney, Mark Monson. However, Mr. Capone advised his attorney that he did not wish to participate in the interview process.

Due to this information, I will not be able to complete certain portions of the presentence report; however, I will proceed with the report and include as much information as I have available. If you have any questions in regards to this matter, please advise.

Sincerely,

Veronica Henry
Presentence Investigator
Community Corrections
District #2

Approved by,

Renee Behrens
Section Supervisor

c: Prosecutor, Defense, File

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

**EX PARTE MOTION FOR FUNDS TO
RETAIN SERVICES OF
PSYCHOLOGIST 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 funds for a psychologist to review the PSI to advise whether a mental health evaluation is appropriate. This motion is made pursuant to Idaho Criminal Rule 12.2 (effective date 8/1/14).

1. Scope and details of services requested: The defendant was convicted by jury of the charges of first degree murder, failure to notify law enforcement of a death, and conspiracy to fail to notify law

**EX PARTE MOTION FOR FUNDS TO RETAIN
SERVICES OF A PSYCHOLOGIST PURSUANT TO I.C.R. 12.2**

Page 1 of 2

CR 2013-1358
CASE NO

2014 DEC -3 PM 2:09

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *EM* DEPUTY

002049

enforcement of a death. In addition, the jury convicted the defendant of being a persistent offender. The defendant is facing a potential of two life sentences.

The Court scheduled a sentencing hearing for January 5, 2015.

It is anticipated that Dr. Beaver would review the Presentence Investigation Report and would advise whether he believes it appropriate to obtain a mental health evaluation prior to sentencing.

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

3. Name and location of proposed provider of services: Craig Beaver, Ph.D., 575 E. Parkcenter Blvd, Boise, ID 83706.

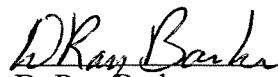
4. Qualifications of Service Provider: Dr. Beaver is a licensed psychologist in the State of Idaho and has extensive experience in psychology. Dr. Beaver has participated in both criminal and civil cases. A copy of Dr. Beaver's CV is attached hereto.

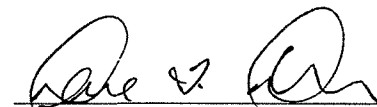
5. Estimate of costs: Dr. Beaver charges \$275 per hour.

6. Location outside judicial district. Both undersigned counsel have worked with Dr. Beaver in the past and are satisfied with his experience and expertise.

Based on the above, the undersigned respectfully request \$1,100 (4 hours) be approved to retain Dr. Beaver to provide an opinion regarding the need for a mental health evaluation.

DATED this 3rd day of December, 2014


D. Ray Barker


Mark T. Monson

CURRICULUM VITAE

CRAIG W. BEAVER, Ph.D.
Diplomate in Clinical Neuropsychology, ABPP-CN

575 E. Parkcenter Blvd, Suite 110
P.O. Box 5445
Boise, ID 83705-0445
(208) 336-2972
Fax (208) 336-4408

Education:

08/83 Ph.D. Clinical Psychology (APA Approved)
Miami University; Oxford, Ohio

12/80 M.A. Clinical Psychology
Miami University; Oxford, Ohio

06/78 B.S. Psychology (with honors)
University of Oregon; Eugene, Oregon

State Licensure:

Idaho License #PSY-173
Oregon License #PSY 2098
Forensic Evaluator Certificate

Washington License #PY 60159534
Wyoming License #T-006

Professional Experience:

09/12-present Clinical Instructor; Department of Psychiatry and Behavioral
Sciences, University of Washington Medical Center; Boise, ID.

07/00-present Private Practice; Clinical and Neuropsychology, Boise, Idaho.

05/86-12/09 Consulting Neuropsychologist (part-time); Elks Rehabilitation
Hospital; Boise, Idaho.

12/88-12/09 Director Neuropsychology Services; Inpatient and Outpatient Brain
Injury Program; Elks Rehabilitation Hospital; Boise, Idaho.

Professional Experience (continued):

- 01/98-06/01 Disability Consultant; PERSI; Boise, Idaho.
- 08/83-07/00 Private practice; Clinical and Neuropsychology; Shoreline
Psychological Associates; Boise, Idaho.
- 03/88-06/90 Consulting Neuropsychologist (part-time); Rehabilitation Unit, Saint
Alphonsus Regional Medical Center; Boise, Idaho.
- 05/87-12/88 Consulting Psychologist (part-time); Rehabilitation Medicine
Consultants; Boise, Idaho.
- 03/84-02/88 Coordinator, Psychology Service; Saint Alphonsus Regional
Medical Center; Boise, Idaho.
- 09/83-09/84 Psychologist (part-time); Nelson Institute; Boise, Idaho.
- 09/82-08/83 Clinical Psychology Intern; Ft. Miley V.A. Medical Center; San
Francisco, California (APA approved).
- 08/79-06/82 Psychotherapist (part-time); Miami University Psychology Clinic;
Oxford, Ohio.
- 08/80-01/81 Psychology Trainee (part-time); Rollmans Psychiatric Institute;
Cincinnati, Ohio.
- 05/79-08/79 Psychology Trainee (part-time); Community Mental Health Center;
Good Samaritan Hospital; Dayton, Ohio.
- 09/76-06/78 Program Coordinator (part-time); Oregon Smoking Control Project;
University of Oregon; Eugene, Oregon.
- 04/77-09/77 Acting Director (6/77-9/77), Counselor (4/77-9/77); Franklin House;
Boise, Idaho.

Community/Professional Activities (Current):

- Epilepsy League of Idaho; Professional Advisory Board; 1985-present
- ABPP/ABCN; Work Sample Reviewer; 1993-present.
- Idaho Supreme Court; Domestic Violence Assessment Committee; 1996-present

Community/Professional Activities (Current) (continued):

- Idaho State Bar, Character and Fitness Committee; 2000-present
- Lloyd, Brinegar, Short & Associates (Developmental Service Agency); Advisory Board; 2006-2010

Community/Professional Activities (Past):

- Child and Family Services, Department of Health & Welfare, State of Idaho; Psychological Consultation; 1992-2001
- Women and Children Alliance (formerly YWCA); Board of Directors; 1997-2001.
- Medicare, CIGNA, Boise, Idaho; Consultant and Reviewer; 1992-1999.
- Idaho Board of Psychology Examiners, Member; appointed 1991-1997; chairperson 9/91-9/94 and 9/95-8/97.
- Idaho Head Injury Foundation; Board of Directors; 1985-1998.
- Brain Injury Task Force; State of Idaho; 1994-1996.
- CASA (Family Advocacy Program); Professional Advisory Board; 1987-1995.
- Child Custody Guidelines Work Group; Fourth Judicial District; 1992-1995.
- Nelson Institute (Alcohol/Drug Treatment); Consultant; 1983-1991.
- Idaho Commission for Alcohol and Drug Education (ICAD); Planning Committee; 1985-1988.
- Alcohol Intoxication Treatment Act (AITA) Committee, Region IV; Contract Review Committee; 1986-1987.
- Epilepsy Assessment Unit - Saint Luke's Regional Medical Center; Consultant; 1988-1990.
- CRS Washington New Medico Head Injury Program; Consultant; 1988-1990.
- Easter Seals Society of Idaho; Advisory Board; 1989-1991.
- Governor's Commission (Idaho); Chemical Dependency Treatment Committee; 1989-1991.

Community/Professional Activities (Past) (continued):

- Vocational Rehabilitation, State of Idaho; Consultant; 1985-1992.
- United Cerebral Palsy of Idaho; Consultant; 1985-1992.
- Boise Samaritan Village Cottage Program; Professional Advisory Board; 1986-1992.

Professional Societies:

- American Psychological Association; Member, since 1983
 - Rehabilitation Psychology; Division 22; Member
 - Health Psychology, Division 38; Member
 - Clinical Neuropsychology Division 40; Member
 - Law Society; Division 41; Member
- Idaho Psychological Association; Fellow, since 1983
 - President; 1987-1989
 - Treasurer; 1985-1986
 - Executive Board: 1985-1991
- Society for Personality Assessment, Member, since 1987
- International Neuropsychological Society; Member, since 1989
- Intermountain Neuropsychology Work Group, Member, since 1989
- National Academy of Neuropsychology, Member, since 1994

Other Related Societies:

- National Head Injury Foundation; Member, since 1987
- Epilepsy Foundation of America; Member, since 1987

Professional Honors:

- Idaho Bar Association – Service Award; 2009
- Central District; Distinguished Idaho Citizens Award, Idaho Social Workers Association - Professional Contributions; 1987
- Miami University Dissertation Fellow: 1981-1982
- Graduate Research Award - Miami University; 1980
- Graduate Research Award - Miami University; 1979

Professional Publications:

Beaver, C., Brown R., and Liechtenstein, E. Effects of monitored nicotine fading and anxiety management training on smoking reduction. Addictive Behaviors, 1981, 6, 301-305.

Professional Publications (continued):

Glasgow, R., Liechtenstein, E., Beaver, C., and O'Neil, H. Subjective reactions to rapid and normal paced aversive smoking. Addictive Behaviors, in press.

Happ, A. and Beaver, C. Effects of Work at a VDT Intensive Lab Task on Performance, Mood, and Fatigue Symptoms. Proceedings from the Human Factors Society Rochester, N.Y.; October 12 - 16, 1981.

Beaver, C. Trait Anxiety, Locus of Control, and Gender as Predictors of Differential Responses to Muscular and Cognitive Relaxation; Masters Thesis, Miami University; December 1980.

Beaver, C. A Causal Analysis of the Effects of Life Events, Individual Differences, and Aspects of the Social Environment on Distress. Doctoral Dissertation, Miami University; 1983.

Beaver, C. Where Are We Going With Dementia Disorders? A review of dementia disorders, edited by C. L. E. Katona Journal of Contemporary Psychology, September 1991.

Professional Papers:

Beaver, C., Liechtenstein, E. and Brown, R. Use of an Anxiety Management and a Nicotine Fading Procedure to Control Cigarette Smoking; Association for the Advancement of Behavior Therapy annual meeting; San Francisco, California; December, 1979.

Beaver, C. Trait Anxiety, Locus of Control, and Gender as Differential Predictors of Responses to Muscular and Cognitive Relaxation; Ohio Psychology Association Convention; Columbus, Ohio; October 31, 1981.

Beaver, C. and Rorer, L. The Effects of Life Events, Cognitive Variables, and the Social Environment on Distress; Society of Multivariate Experimental Psychology annual meeting; Atlanta, Georgia; November, 1982.

Beaver, C. Medical and Legal Aspects of Disability Resulting from Brain Dysfunction: Neuropsychology Brain Injury Disability; National Social Security Disability Law Conference; Seattle, Washington; October, 1996.

Beaver, C. and Weiss, M. Training Manual for Treatment of Brain Injury Patients; State of Idaho/Idaho Elks Rehabilitation Hospital; September, 1998.

Invited Addresses and Presentations:

Neuropsychology and Closed Head Injury; Idaho Head Injury Foundation Annual Meeting; Boise, Idaho; 1984.

Behavior Management of Neuropsychology Patients; Idaho Hospital Associate Annual Conference; Sun Valley, Idaho; 1985.

Neuropsychological Issues with Handicapped Persons; State of Idaho Specialty Service Providers; Boise, Idaho; 1986.

Traumatic Brain Injury; Assessment and Outcome; Idaho Hospital Association Annual Conference; Sun Valley, Idaho; 1986.

Neuropsychology and Vocational Rehabilitation; State of Idaho Vocational Rehabilitation Department; Annual Education Conference; Boise, Idaho; 1986.

Role of Neuropsychological Assessment in Workers Compensation Litigation; Idaho Bar Association; Annual Conference; Sun Valley, Idaho; 1988.

Neuropsychology and Mental Health Needs; Ada County Mental Health Association; Boise, Idaho; 1989.

Psychosocial Problems of Brain Injured Patients and Their Families; Idaho Hospital Association; Sun Valley, Idaho; 1989.

Neuropsychological assessments with Worker Compensation patients. Idaho Industrial Commission; Boise, Idaho; 1990.

Repressed Memory Syndrome. Fact or Fiction?; Idaho Judicial Conference; Sun Valley, Idaho; 1994.

Family Dynamics and Domestic Violence; Fourth Judicial District Conference on Domestic Violence; Boise, Idaho; 1994.

Neuropsychological Assessment Following TBI; Utah Head Injury Association, Regional Conference; Park City, Utah; 1994.

Psychological Factors in Sentencing; Idaho Criminal Trial Lawyers Association; Sun Valley, Idaho; 1995.

Work Re-Entry for Brain Injured Patients; Occupational Disability Management Conference; Boise, Idaho; 1996.

NeuroPsych Issues in Workers Compensation; Surety Association; Boise, Idaho; 2000.

Invited Addresses and Presentations (continued):

Adolescent Neuropsychology: Who is Minding the Store? Troubled Youth Conference; Division of Youth Correction Center; Snowbird, Utah; 2000.

Common Mental Health Disorders; Idaho Association of Criminal Defense Lawyers; Idaho Falls, Idaho; 2001.

MMPI: Uses, Limitations and Pitfalls in Capital Litigation; Florida Public Defender Association; Lake Buena Vista, Florida; 2001

Common Mental Health Disorders; Idaho Association of Criminal Defense Lawyers; Boise, Idaho; 2001

Neuropsychology Testing - A Hands on Experience; Claims Adjusters/Employers of the Treasure Valley; Boise, Idaho; 2001

Traumatic Brain Injury & Other Neurological Disabilities; Idaho Division of Vocational Rehabilitation; Boise, Idaho; 2002

Working with Brain Injury Students; Independent School District of Emmett No. 221; Emmett, Idaho; 2003

Neuropsychology & M.S.; National Multiple Sclerosis Society; Boise, Idaho; 2004

Use of Psychological Tests in Custody Evaluations; Mountain States Chapter American Academy of Matrimonial Lawyers; Coeur d'Alene, Idaho; 2004

Models of Practice in Law and Psychology; Association of State and Provincial Psychology Boards (ASPPB); Portland, Oregon; 2005

Neuropsychology and Brain Injury; Brain Injury Association of Idaho (BIAID); Boise, Idaho; 2005

Forensic Evaluations: Diagnostic Interviewing and Clinical Expert Testimony for Social Workers and Clinicians; Region III Department of Health and Welfare; Caldwell, Idaho; 2006

Emotions and Disabilities; Arthritis Education & Support Group; Boise, Idaho; 2007

Mental Health Issues in Criminal Law; Idaho Association of Criminal Defense Lawyers; Pocatello, Idaho; 2007

Mental Health and the Law; Idaho Law Foundation, Inc.; Boise, Idaho; 2007

Invited Addresses and Presentations (continued):

Presentation to Advanced Criminal Law classes; Drake University Law School; Des Moines, Iowa; 2008

St. Luke's Regional Medical Center/Magic Valley Inpatient Rehabilitation Unit; Environmental Management of Mental Patients; Twin Falls, Idaho; 2008

Overview of Neuropsychology; University of Washington Psychiatry Residency Program; Boise, Idaho; 2009

From Progress Notes to Expert Witness; Special Needs and the Law Conference; University of Concordia School of Law; Boise, Idaho; 2012

The Dementing Millionaire; American Academy of Psychiatry and the Law; 2012 Annual Meeting, Montreal, PQ, Canada; 2012

Mental Health and Mitigation Investigation; Live Man Walking Seminar; Defense Resource Center; Portland, Oregon; 2013

Treating Worker Compensation Patients: Understanding the Process; Idaho Psychological Association; Boise, Idaho; 2014

Workshop Presentations:

Clinical Management of Patient with Neuropsychological Deficits; Boise State University Nursing Training Seminars; Boise, Idaho; 1984 (1 day).

Neuropsychological Assessment; Family Practice Residency Training Seminar; Boise, Idaho; 1984 (1/2 day).

Educational Impact of Epilepsy: Effects on Attention, Memory, and Behavior; Epilepsy League of Idaho Annual Conference; Boise, Idaho; 1985 (2 hour presentation).

Neuropsychological Aspects of Motor Development; Pediatric Physical and Occupational Therapists Organization, Idaho Chapter, Annual Conference; Boise, Idaho; 1985 (1/2 day).

Associations Between Neuropsychological Models and Cognitive Development; Boise State University, Gifted and Talented Teacher Summer Institute; Boise, Idaho; 1985 (1/2 day).

Neuropsychological Assessment and Learning Disabilities; Boise Schools' Psychologists; Boise, Idaho; 1985 (three day workshop).

Workshop Presentations (continued):

Behavior Management of Neuropsychology Patients; Idaho State School and Hospital Staff; Nampa, Idaho; 1986 (four day seminar).

Neuropsychological Deficits with Chemical Dependency; Idaho Conference on Alcohol and Drugs; Boise, Idaho; 1986 (1/2 day).

Neuropsychological Aspects of ADD; Idaho Speech and Hearing Association Annual Conference; Boise, Idaho; 1986 (1 day).

Role of Neuropsychological Assessment with Developmental Disabilities; State of Idaho Adult/Child Development Department; Annual Education Conference; Boise, Idaho; 1986 (1 day).

Neuropsychology: Behavior, Emotion, and Seizure Disorders; Idaho Epilepsy League Annual Conference; Boise, Idaho; 1987 (2 hours).

Treatment Implications of Neuropsychological Deficits; Idaho Conference on Alcohol and Drugs; Boise, Idaho; 1987 (1/2 day).

Impairment and Disability From Neuropsychological Deficits; Janzen International Rehabilitation Consultants; Annual Training Seminar; Sun Valley, Idaho; 1988 (1 day).

Psychometric Testing and Its Limitations; Idaho Region IV Judicial Unit; Boise, Idaho; 1988 (1/2 day).

Role of Neuropsychological Assessment in Vocational Rehabilitation; State of Idaho Department of Vocational Rehabilitation; Annual Education Conference; Boise, Idaho; 1988 (2 hours).

Luria's Model of the Brain and Neuropsychological Treatment Strategies; Occupational Therapists Association; Idaho Chapter; Annual Conference; Moscow, Idaho; 1991 (1 day).

Use of Psychological Tests in Assessing and Treating Issues of Child Abuse and Neglect; CASA (Family Advocacy Program); Boise, Idaho; 1991 (1 day).

Head Injury Workshop: Medical and Legal Aspects of Disability Resulting from Brain Dysfunction; National Social Security Disability Law Conference; Seattle, Washington; 1996 (1 day).

Neuropsychological Issues in Death Penalty Mitigation; Intermountain Neuropsychologists Group; Salt Lake City, Utah; 1996 (1/2 day).

Workshop Presentations (continued):

Strategies for Managing Agitated Traumatic Brain Injury Patients; Eastern Idaho Regional Medical Center; Idaho Falls, Idaho; 1997 (1 day).

Idiosyncratic Uses of Neuropsychological Assessments in the Criminal Courts; Intermountain Neuropsychologists Group; Salt Lake City, Utah; 1997 (1/2 day).

Competency and Involuntary Commitments in Idaho; Family Practice Residency Group; Boise, Idaho; 1998 (1/2 day).

Evaluating and Managing Psychiatric Emergencies; Idaho Paramedics Training; Boise, Idaho; 1999 (1/2 day).

Adolescent Neuropsychology: Who is Minding the Store; Salt Lake City, Utah; 1999 (1/2 day).

Working with the Brain Injured Patient; Idaho State School and Hospital; Nampa, Idaho; 2001 (1/2 day).

Pitfalls and Highlights in Assessing a Patients Competency: Idaho Disability Examiners Association; Boise, Idaho; 2001 (1/2 day).

Brain Injury Stages of Recovery; Idaho Speech and Hearing Association Annual Conference; Sun Valley, Idaho; 2002 (1 day).

Incapacity Workshop; Idaho Guardianship Fiduciary Association; Boise, Idaho; 2007 (1/2 day).

Neuroscience 101; Federal Defenders Annual Death Penalty Conference; Boise, Idaho; 2007 (1/2 day).

Pediatric Mental Health Conference: Putting All the Pieces Together; Effectiveness of Neurorehabilitation with Traumatic Brain Injury; Boise, Idaho; 2008 (1/2 day).

Pediatric Mental Health Conference: Putting All the Pieces Together; New Treatment Trends with Traumatic Brain Injury; Boise, Idaho; 2008 (1/2 day).

We are Family: Our Time to Shine; Idaho Parents Unlimited, Inc.; Boise, Idaho; 2009 (1/2 day).

How Good is Your Test Data, National Association of Psychometrists; New Orleans, Louisiana; 2009 (1/2 day).

Workshop Presentations (continued):

To Infinity & Beyond – The Exploding Populations of TBI in our Schools and Communities; Idaho Speech & Hearing Association; Pocatello, Idaho; 2010 (1 day)

Anatomy and Physiology 101 for Attorneys: Head Injury NBI; Boise, Idaho; 2013.

Hospital Staff Privileges:

Saint Alphonsus Regional Medical Center; Boise, Idaho
Status: Associate Medical Staff, since 1984
Privileges: Clinical Psychologist

Saint Luke's Regional Medical Center; Boise, Idaho
Status: Associate Medical Staff, since 1985
Privileges: Clinical Psychologist

Elks Rehabilitation Hospital; Boise, Idaho
Status: Associate Medical Staff, since 1986
Privileges: Neuropsychologist

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

CASE NO. CR 2013-1358

2014 DEC -3 PM 2:09

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

**MOTION TO EXTEND DEADLINE TO
RESPOND TO PRESENTENCE
INVESTIGATION REPORT**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order extending the deadline for the Defendant to respond to the Presentence Investigation Report to Friday, December 12, 2014. Ray Barker, co-counsel for Defendant represents that he spoke with the counsel for the Plaintiff who informed him that the State does not object to extending the deadline to respond to Friday, December 12, 2014.

DATED this 3rd day of December, 2014

D. Ray Barker
D. Ray Barker

Mark T. Monson
Mark T. Monson

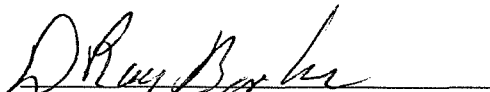
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion to Extend Deadline to Respond to Presentence Investigation Report* was served on the following individuals by the method indicated:

Latah County Prosecutor
Attorney for Plaintiff
PO Box 8608
Moscow, ID 83843

Via Facsimile:
 U.S. Mail
 Hand Delivery

on this 3rd day of December, 2014.


D. Ray Barker

RECORDED December 5, 2014 AT
10:28 P.M. LEWISTON, IDAHO
BY [Signature]
CM 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 GRANTING MOTION FOR
FUNDS TO RETAIN SERVICES OF A
PSYCHOLOGIST**

THE DEFENSE having filed its *Ex Parte Motion for Authorization to Retain Services of Psychologist*, and the court having reviewed the motion of the defendant and affidavit of defense counsel, and good cause appearing therefore;

IT IS HEREBY ORDERED that the defense is authorized to retain the services of Craig Beaver, Ph.D., to assist the defense in representing the defendant in this proceeding at the expense of Latah County. Such expenses shall not exceed \$1,100 without further order of the court.

DATED: December 5th, 2014

[Signature]
District Judge

**ORDER GRANTING MOTION TO FOR FUNDS TO
RETAIN SERVICES OF A PSYCHOLOGIST**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Granting Motion for Funds to Retain Services of a Psychologist* was served on the following individuals by the method indicated:

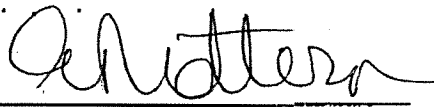
Mark T. Monson
Co-Counsel for Defendant
PO Box 8456
Moscow, ID 83843

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 5 day of December 2014.

By: 
Deputy Clerk

TO: LATAH COUNTY

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

RECORDED December 5, 2014 AT
10:30 AM P.M. LEWISTON, IDAHO
BY [Signature]
Carl B **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 GRANTING MOTION TO
EXTEND DEADLINE TO RESPOND TO
PRESENTENCE INVESTIGATION
REPORT**

THIS MATTER came before the Court on the Defendant's Motion to Extend Deadline to Respond to Presentence Investigation Report. The Court finds that good cause exists to grant the motion and enter the following order:

IT IS ORDERED that the deadline for the Defendant to respond to the Presentence Investigation Report is extended to Friday, December 12, 2014.

DATED this 5th day of December, 2014

[Signature]
Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Granting Motion to Extend Deadline to Respond to Presentence Investigation Report* 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

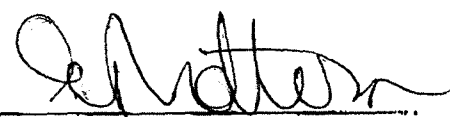
D. Ray Barker
Co-Counsel for Defendant
PO Box 9408
Moscow, ID 83843

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

Tatah County Prosecutor
Attorney for Plaintiff
PO Box 8608
Moscow, ID 83843

Via Facsimile:
 U.S. Mail
 Hand Delivery

on this 5 day of December, 2014.

By: 
Deputy Clerk

011 2013-1358
CASE NO. ...
2014 DEC 11 PM 3:35
CLERK OF DISTRICT COURT
LATAH COUNTY
BY: A 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 TO CONTINUE SENTENCING
HEARING**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order continuing the sentencing hearing currently set for January 5, 2015, for a period of approximately thirty (30) days.

The basis for this request is that the defense need additional time for a mental health examination of Mr. Capone.

The defense received the presentence report as directed on or about November 14, 2014. Thereafter, counsel was unable to begin reviewing the presentence report until November 21, 2014, due to other work related commitments. Counsel was out of the office during the period of November 25th through November 28th for the Thanksgiving holiday.

The presentence report contains significant material related to past mental health issues. Specifically the presentence report contains a copy of the Presentence Investigation Report in Federal Case No. CR-97-01687 prepared for the federal bank larceny case in 1997. That federal presentence report was also used by the state court in the aggravated assault and burglary case in Latah County in 1997, in lieu of having another presentence report prepared in the state case. The federal presentence report contains significant mental health information at paragraphs 61 through 64 at pages 14 and 15. After reviewing that material it became apparent to counsel that the mental health aspect of the report should be reviewed by an expert to determine whether a current mental health examination was appropriate and what evidence related to Mr. Capone's mental health could be presented at the sentencing hearing.

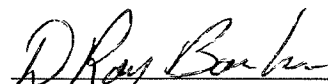
On December 2, 2014, counsel contacted the office of Dr. Craig W. Beaver to request his assistance. Counsel has previously worked with Dr. Beaver in a homicide case and considers Dr. Beaver to be an excellent resource in such matters. Communications from Dr. Beaver's office were delayed following counsel's initial contact on December 2, 2014, due to a death in Dr. Beaver's family. However on December 3, 2014, counsel filed an Ex Parte Motion for Funds to Retain Service of Psychologist Pursuant to I.C.R. 12.2 and on December 3, 2014 sent a copy of the presentence report to Dr. Beaver for his review. On December 5, 2014, the court granted that motion and Dr. Beaver was advised that the motion had been granted and that he could proceed with his review of the presentence report.

On December 9, 2014, counsel received an e-mail from Dr. Beaver's Office stating that Dr. Beaver would review the presentence report and would be ready to speak in the counsel on Tuesday, December 16, 2014, and that Dr. Beaver would be going on Christmas break on December 22, 2014.

It is doubtful that Dr. Beaver would be able to conduct an examination and generate a report prior to December 22, 2014. Therefore the defense requests that the sentencing hearing be continued for a period of approximately thirty (30) days so that adequate representation can be provided to Mr. Capone.

Counsel has discussed the bringing of this motion with the Office of the Prosecuting Attorney and has been advised they intend to take no position on this motion and leave it to the discretion of the court.

DATED this 11th day of December, 2014



D. Ray Barker

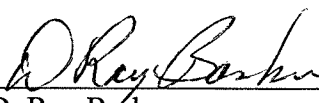
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion to Continue Sentencing Hearing* was served on the following individuals by the method indicated:

Latah County Prosecutor
Attorney for Plaintiff
PO Box 8608
Moscow, ID 83843

Via Facsimile:
 U.S. Mail
 Hand Delivery

on this 11th day of December, 2014.



D. Ray Barker

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

**DEFENDANT'S OBJECTION AND
RESPONSES TO PRESENTENCE
INVESTIGATION REPORT**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and objects to and responds to the Presentence Investigation Report filed November 14, 2014.

OBJECTIONS AND RESPONSES

1. The Defendant objects to the statement on page 1 that states that the defendant has not previously provided a DNA sample. The defendant previously provided a DNA sample in this case.

CASE NO

CR 2013-1358

2014 DEC 11 PM 2:04

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *adm* DEPUTY

2. The Defendant objects to the statement on page 3 wherein it lists an alias as "Capone, Chuck".
The Defendant asserts that he has never used an alias.
3. The Defendant objects to the consideration of "testimonial statements" attributed to Rachel Anderson that are contained in the "official version" commencing on page 3 of the presentence investigation report. Similar statements are contained in the copies of the police reports attached to the presentence investigation report (pg. 111-13, pg. 129-31, pg. 138-39, pg. 229, pg. 231).
The official version appears to be a recitation of the police reports that were produced in this case. Specifically, the Defendant objects to references of alleged statements made by Rachel Anderson to police officers. The Defendant filed a motion to suppress seeking to exclude testimonial statements pursuant to the Sixth Amendment of the United States Constitution, *Crawford v. Washington*, 541 U.S. 36 (2004), *Giles v. California*, 554 U.S. 353 (2008), and applicable state law. The Defendant's motion was granted and statements alleged to have been made by Rachel Anderson to law enforcement were not admitted at trial. The Defendant asserts that to allow those statements to remain in the presentence investigation report is a violation of his constitutional right to confrontation and should not be considered.
4. The Defendant objects to the consideration of statements attributed to the Defendant that were suppressed at trial contained in the "official version" on page 5, 6, 11, and 12 of the presentence investigation report. Similar statements are contained in the copies of the police reports attached to the presentence investigation report (pg. 155, 6163-64). The Defendant filed a Motion to Suppress regarding statements attributed to him by Dan Hally of the Asotin County Sheriff's Office made on May 6, 2010. The Court found that officers violated the Defendant's constitutional rights and suppressed the statements. The Defendant asserts that to allow these statements to remain in the presentence investigation report is a violation of his constitutional rights.

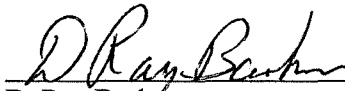
5. The Defendant objects to the statements made in the presentence investigation report on page 27 in the section entitled "Investigation's comments and analysis of Defendant's condition" wherein it states, "It appears at one point Mr. Capone had stated he would report the location of Rachel Anderson's body; however, he did not do so. Mr. Capone has never taken the responsibility for Ms. Anderson's death." The alleged statement regarding the location of Ms. Anderson's body was the subject of a Motion to Suppress, which was granted after the Court found that officers violated the Defendant's constitutional rights. To allow this statement to remain in the presentence investigation report is a violation of the Defendant's constitutional rights. With regard to the statement about Mr. Capone not taking responsibility, Defendant has maintained his innocence throughout the proceedings and exercised his constitutional right to a trial by jury. Defendant asserts that this statement is an improper comment on his right to remain silent. Defendant further asserts that it is improper to penalize a Defendant for maintaining his innocence.
6. The Defendant objects to the statement in the "official version" on page 4 (and in the police report attached to the presentence investigation report listed as pg. 114, 199) that attributes a statement to Defendant that he "stated that he was the one who was stalking and harassing Rachel Anderson..." Defendant denies that he told Dan Hally that he "stalked" Rachel Anderson.
7. Defendant objects to the statement attributed to him on page 4 of the presentence investigation report that states, "he states that he sent her numerous messages and email to scare her..." No evidence was introduced at trial to show that the Defendant sent any emails to Rachel Anderson to scare her.
8. Defendant objects to the statement on page 4 of the presentence investigation report regarding an interview with law enforcement officers scheduled for April 21, 2010, to which he did not show

up. Reports submitted in the matter reflect that the Defendant met with Detective Gleason prior to the appointment and informed him that he did not have anything further to say and that he was not sure if he would attend the meeting and referred Detective Gleason to his attorney.

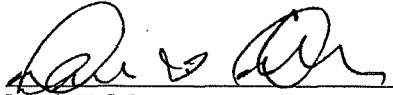
Defendant's assertion of his right to remain silent and not participate in police interviews should not be held against him.

9. Defendant objects to the statement on page 4 of the presentence investigation report that he "appeared to be evading surveillance by the Moscow Police Department with the assistance of acquaintances." The reports of surveillance reflect that the vehicle driven by the Defendant did not attempt to evade surveillance, but drove straight from the restaurant to the destination on Briton Lane. At the time that David Stone and his wife conducted counter-surveillance by following the police vehicles and confronting Officer Danny Bruce, Charles Capone was not with David Stone.
10. Defendant objects to the inclusion of items on page 15-18 of the presentence investigation report entitled "Prior Record" as follows:
 - a. Crime of attempted robbery, assault with deadly weapon, conspiracy – prosecution was rejected and no adverse finding was made.
 - b. Alien smuggling – this event was "unreported" and there was no adverse finding made.
 - c. Desertion – this event was "no reported" and there was no adverse finding made.
 - d. Robbery – the Defendant was acquitted of this charged.
 - e. Aggravated assault – No adverse finding was made.
 - f. Criminal mischief – this charge was dismissed and no adverse finding was made.
 - g. Grand theft – this charge was dismissed and no adverse finding was made.
 - h. Domestic violence – this charge was dismissed and no adverse finding was made.

DATED this 11 day of December, 2014




D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was served on the Latah County Prosecuting Attorney's office, PO Box 8068, Moscow, Idaho by hand delivery, [] facsimile, [] first class mail, postage prepaid on the 11th day of December, 2014.



RECORDED December 12, 2014 AT
10:24 P.M. LEWISTON, IDAHO
BY [Signature]
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-~~1997-01687~~ 2013-1358

ORDER CONTINUING SENTENCING
HEARING

THE COURT having reviewed the defense Motion to Continue Sentencing Hearing and being advised that the state takes no position on the motion and good cause appearing, the sentencing hearing heretofore set for January 5, 2015, at 9:00 o'clock, a.m. is hereby continued and reset for February 23, 2015 at 9:00 A m.

DATED this 12th day of December, 2014.

[Signature]
CARL B. KERRICK
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Continuing Sentencing Hearing 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

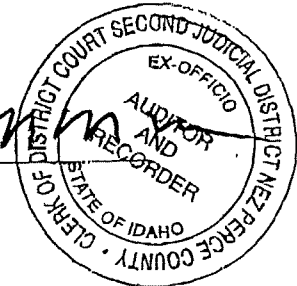
Latah County Prosecutor's Office
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

Via Facsimile
 U.S. Mail
 Hand Delivery

on this 12th day of December, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By [Signature]
Deputy Clerk



RECEIVED December 15, 2014 AT
10:07 AM
BY [Signature]
CLERK OF DISTRICT COURT
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-2013-01358

AMENDED ORDER CONTINUING
SENTENCING HEARING

THE COURT having reviewed the defense Motion to Continue Sentencing Hearing and being advised that the state takes no position on the motion and good cause appearing, the sentencing hearing heretofore set for January 5, 2015, at 9:00 o'clock, a.m. is hereby continued and reset for February 23, 2015 at 9:00, A.m.

DATED this 15th day of December, 2014.

[Signature]
CARL B. KERRICK
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Order Continuing Sentencing Hearing 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

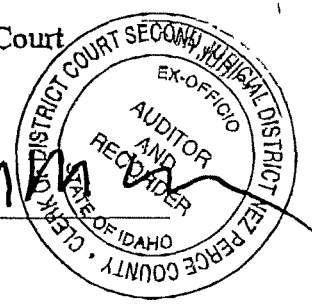
Latah County Prosecutor's Office
Latah County Courthouse
PO Box 8068
Moscow, ID 83843

Via Facsimile
 U.S. Mail
 Hand Delivery

on this 15th day of December, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By [Signature]
Deputy Clerk



CASE NO. CR 2013-1358

2015 FEB -9 PM 4:00

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

LATAH COUNTY PROSECUTOR'S OFFICE
William W. Thompson, Jr., ISB No. 2613
Prosecuting Attorney
Mia M. Vowels, ISB No. 6564
Sr. Deputy Prosecuting Attorney
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843
(208) 883-2246

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-2013-01358
)	
V.	)	STATE'S RESPONSE TO
	)	DEFENDANT'S OBJECTION AND
CHARLES ANTHONY CAPONE,	)	RESPONSES TO PRESENTENCE
Defendant.	)	INVESTIGATION REPORT
_____)	

COMES NOW, the State of Idaho, by and through the Latah County Sr. Deputy Prosecuting Attorney, and respectfully submits the following response to the "Defendant's Objection and Responses to Presentence Investigation Report."

The Defendant is objecting to use of testimonial statements attributed to Rachael Anderson that were made to law enforcement based on the Sixth Amendment of the United States Constitution and Crawford (see item #3 on p. 2 of defendant's filing).

ORIGINAL 002080

The Idaho Supreme Court has specifically held “(T)he Confrontation Clause is inapplicable to the presentation of testimony relevant only to the sentencing authority's selection decision.” *State v. Dunlap*, 155 Idaho 345, 378, 313 P.3d 1, 34. Thus, the Confrontation Clause should not apply at sentencing.

The Defendant is also objecting to the Statements the Defendant made to Capt. Dan Hally that were suppressed at trial (see Item #4 on p. 2 of Defendant's filing). The Defendant claims allowing those statements to remain in the presentence investigation report would be a violation of the Defendant's constitutional rights. While the admissibility at sentencing of previously excluded, un*Mirandized* statements has not been directly addressed by the Idaho Supreme Court, a defendant's statements, taken in violation of *Miranda* and excluded at trial, may be admissible at sentencing.

While a defendant's unwarned statements may be excluded at trial, “the *Miranda* presumption, though irrebuttable [sic] for purposes of the prosecution's case in chief, does not require that the statements and their fruits be discarded as inherently tainted.” *Oregon v. Elstad*, 470 U.S. 298, 307, 105 S. Ct. 1285, 1292 (1985). Similar to the Confrontation Clause, the differences between the guilt phase and sentencing proceedings are important when determining what evidence the sentencing judge will consider.

A special concurrence by Judge Lansing of the Idaho Court of Appeals, addressed the subsequent use of evidence that had been excluded at trial:

I write separately to disavow any implication, which might otherwise be drawn from the Court's opinion, that evidence which has been suppressed from use at trial must be excluded in sentencing proceedings if a timely objection is made. That is an issue that we have not decided in this case.

Several jurisdictions addressing the question have held that the purpose of the exclusionary rule—to deter police misconduct—is sufficiently served by excluding the unlawfully acquired evidence at trial and does not justify its exclusion in sentencing proceedings if the evidence was not coerced and is otherwise reliable. For example, in *United States v. Nichols*, the court determined that the Fifth Amendment does not prohibit consideration at sentencing of statements obtained from the defendant in violation of *Miranda v. Arizona*. The court said:

We believe that in most cases, the exclusion of evidence obtained in violation of *Miranda* from the government's case-in-chief at trial will provide ample deterrence against police misconduct.... [T]he additional deterrent effect of excluding illegally obtained evidence from sentencing usually would be minimal.

In addition, absent coercive tactics by police, there is nothing inherently unreliable about otherwise voluntary statements obtained in violation of *Miranda*

State v. Person, 145 Idaho 293, 300, 178 P.3d 658, 665 (Ct. App. 2007) quoting *United States v. Nichols*, 438 F.3d 437, 443 (4th Cir. 2006) (internal citations omitted).

Although the Idaho Supreme Court has not considered this issue, in *State v. Wilkins*, 125 Idaho 215, 218-19, 868 P.2d 1231, 1234-35 (1994), the Court did list some possible considerations on whether statements excluded at trial should be admissible at sentencing:

whether [a Defendant] was advised of his *Miranda* rights, whether or how [a Defendant] invoked his right to counsel, what statements were made by a [Defendant], whether the statements at issue were made before or after


his asserted invocation of his right to counsel, and whether [a Defendant] initiated further conversations with police officers.

Id.

Thus, the sentencing judge should balance his or her need for “the fullest information” with the factors listed in *Wilkins*.

Based on the above, the State trusts this Court will decide what weight, if any, to give the statements the Defendant is seeking to be excluded from this Court’s consideration. As to the balance of the Defendant’s objection, the State leaves the answer to the sound discretion of the Court and to the argument of counsel at sentencing.

DATED this 9 day of February, 2015.


Mia M. Vowels
Sr. Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the foregoing STATE'S RESPONSE TO DEFENDANT'S OBJECTION AND RESPONSES TO PRESENTENCE INVESTIGATION REPORT 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

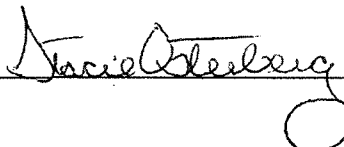
Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

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

The Honorable Michael J. Griffin
District Judge
320 W. Main Street
Grangeville, ID 83530

U.S. Mail
 Overnight Mail
 Fax - 208-983-2376
 Hand Delivery

Dated this 9 day of February, 2015.



CR2013-1358

CASE NO.

2015 FEB 18 PM 1:13

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *QM* REBUT

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 2613

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

ACKNOWLEDGMENT OF
CONFIDENTIALITY

I hereby acknowledge my obligation pursuant to Idaho Code 19-5306(1)(h) to maintain the confidentiality of the presentence report to the Court herein, and shall not disclose its contents to any person except in speaking directly with the Latah County Prosecuting Attorney's office or the Court.

DATED this 18TH day of February, 2015.

Dennis Plunkett
Dennis Plunkett

ACKNOWLEDGEMENT OF CONFIDENTIALITY

ORIGINAL 002085

**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:03/2015-2-23
Time: 9:03 A.M.

Date: February 23, 2015

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

Case No. CR-13-01358

APPEARANCES:

William Thompson Jr., Prosecutor
Mia Vowels, Deputy Prosecutor

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

Subject of Proceedings: Sentencing

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

Court explained the process he intends to follow in today's sentencing hearing. Court stated that a presentence investigation report was ordered by the Court and that report has been prepared and filed, and reviewed by the Court. Court noted that an addendum to the presentence investigation report has also been filed of which has also been reviewed by the Court. In response to inquiry from the Court, Mr. Capone stated that he has reviewed the addendum to the presentence investigation report.

Mr. Barker informed the Court that there are witnesses in the courtroom that he intends to call in the event that the State has any objections. In response to inquiry from the Court, Mr. Thompson stated that he had no objection to the witnesses remaining in the courtroom.

Mr. Barker stated corrections to the presentence investigation report and presented argument in support of the defendant's objection to portions of the presentence investigation report. Mr. Thompson presented argument in opposition to the defendant's objections to the

Maureen Coleman
Deputy Clerk
Court Minutes Page 1

presentence investigation report. Court presented remarks and stated that he accepted Mr. Barker's position in regard to items #1 and #2 in the defendant's objection to the presentence investigation report and stated that they will not make any difference in the Court's sentence. Court addressed the number of statements that were subject to motions to suppress, noting that both he and Judge Griffin have made rulings on those statements. Court stated that he does not believe that those statements will be affecting his sentence. Court stated that his focus on sentencing is the charges and the evidence presented at the jury trial. Court stated that he does not put any weight on the issues addressed in paragraph #10 of the defendant's motion. Court stated that he does not place any weight on any charges that may have been charged and ultimately dismissed.

Dennis John Plunkett came forward and made a victim's impact statement to the Court.

Amber Griswold came forward and made a victim's impact statement to the Court.

Maline Sue Geppson came forward and made a victim's impact statement to the Court.

Ashley Colbert came forward and made a victim's impact statement to the Court.

Green Kent was called, sworn, and testified on behalf of the defendant, being questioned by Mr. Barker. Mr. Thompson conducted cross examination of the witness. Mr. Barker had no redirect examination. The witness stepped down.

John Merrick was called, sworn, and testified on behalf of the defendant, being questioned by Mr. Monson. Mr. Thompson had no cross examination of the witness. The witness stepped down.

Ethan Ogden was called, sworn, and testified on behalf of the defendant, being questioned by Mr. Monson. Cross examination of the witness by Mr. Thompson. Mr. Monson had no redirect examination for the witness. The witness stepped down.

Mr. Barker presented argument in mitigation of punishment. Ms. Vowels presented argument in aggravation of punishment. The Court having afforded the defendant the opportunity, the defendant presented remarks to the Court on his own behalf. The defendant read a prepared statement to the Court.

Court recessed at 11:06 a.m.

Court reconvened at 11:17 a.m., all being present in Court as before.

Charles Anthony Capone presented remarks to the Court and continued to read a prepared statement to the Court.

Court informed the defendant of his right to appeal. Court presented remarks to the defendant. Court stated that the defendant was found guilty by a jury of the offenses of murder in the first degree, failure to notify the coroner or law enforcement of a death and conspiracy to

Maureen Coleman
Deputy Clerk
Court Minutes Page 2

002087

commit failure to notify the coroner or law enforcement of a death on September 14, 2014. Court informed the defendant of the maximum penalty Count 1, murder in the first degree, carries of not less than ten (10) years in the state penitentiary and with a mandatory life sentence. Court stated that Counts 2 and 3, failure to notify the coroner or law enforcement of a death and conspiracy to commit failure to notify the coroner or law enforcement of a death each carry a maximum of ten (10) years in the state penitentiary and up to a \$50,000.00 fine. Court stated that the jury also found the defendant was a persistent violator which carries a penalty of not less than five (5) years in the state penitentiary and may be extended to life in the state penitentiary.

Court read the elements that the jurors found had been met at the jury trial. Court directed remarks to the defendant. Court stated that some of the victim impact statements suggested what sentence the Court should impose. The Court stated that he is ignoring those requests. Court continued to present remarks. Court detailed the four categories the Court needs to review in imposing sentence. Court briefly reviewed the defendant's past criminal convictions. Court found that the defendant is likely to reoffend. Court found that he does not believe that the defendant can be rehabilitated as the defendant does not acknowledge that he committed any crimes. Court found that the defendant does need to be punished due to the seriousness of the offenses, his prior criminal history, and because he is a multiple offender.

Court found that the defendant should never be eligible for parole. Court sentenced the defendant to a fixed life sentence on Count 1, Murder in the First Degree. Court sentenced the defendant in Count 2, Failure to Notify Coroner or Law Enforcement of a Death and Count 3, Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of a Death to a twenty (20) year fixed sentence on each count, which are to run concurrently. Court ordered that Counts 2 and 3 are to run consecutive to Count 1.

Court entered a civil judgment in the amount of \$5,000.00. Court ordered the defendant pay court costs on each count which is to be paid on a schedule arranged between him and the Department of Correction.

Court remanded the defendant into the custody of the Latah County Sheriff for implementation of the Court's sentence and to be transferred into the custody of the Idaho State Department of Correction.

Mr. Thompson moved the Court sign an order for DNA sample and thumbprint impression of the defendant and moved the Court renew the no contact order for life. Court signed both orders presented.

Court recessed at 12:00 p.m.

APPROVED BY:



CARL B. KERRICK
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

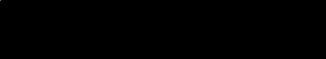
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH ^{CASE NO.} CR13-1258

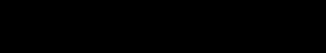
2015 FEB 23 PM 12:37

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 Charles Anthony Capone,)
)
 Defendant.)

Case No. CR-2013-01358

^{BY} LATAH COUNTY ^{DEFENDANT}
ORDER FOR DNA SAMPLE AND THUMBPRINT IMPRESSION

DOB: 

SSN: 

OFFENSE: Murder - 1st Degree; Principal to Failure to Notify Law Enforcement or Coroner of Death Conspiracy to Commit Failure to Notify Law Enforcement or Coroner of Death

In accordance with the Idaho DNA Database Act of 1996, I.C. §19-5501 *et. seq.*, the above-named defendant is hereby ordered to provide a DNA sample and thumbprint impression to law enforcement personnel at the following designated sample collection facility:


- Jail (to be collected during the intake process), or other Law Enforcement facility.
- Idaho Department of Corrections (to be collected during the intake process)
- Department of Probation and Parole (to be collected w/in 10 working days if not incarcerated)

These samples will be forwarded to the Idaho State Police. The results of the DNA analysis will be included in the Idaho DNA database system as well as the National DNA Index System. The thumbprint may be used for identification purposes.

Duly authorized law enforcement agencies and correction personnel shall employ reasonable force to collect the DNA sample and thumbprint impression in any case where the above-named individual is incarcerated and refuses or resists submission procedures for collecting a DNA sample and/or thumbprint impression.

Failure to provide the required DNA sample and/or thumbprint impression is a felony and can result in the violation of parole or probation.

IT IS SO ORDERED, this 23rd day of February, 2015.


District Court Judge

Original (white) to: Court
Yellow to: Designated Collection Facility
Pink copy to: Defendant
Goldenrod copy to: ISP Forensic Services

002089
COLLECTION FACILITY SHALL MAKE
RETURN TO ISP WITHIN 20 DAYS

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

CASE NO. _____

STATE OF IDAHO, Plaintiff

Case No. CR-2013-01358

2015 FEB 24 AM 8:06

vs. **CHARLES ANTHONY CAPONE**
Defendant

NO CONTACT ORDER

Eff. July 1, 2009

DOB: [REDACTED]

CLEARING COURT
LATAH COUNTY
BY [Signature]

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: Murder in the First Degree, I.C. 18-204, 18-4001, 4003; 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, Dennis Plunkett, Gavin Plunkett, William Wilcox, Adin Wilcox, Kristina Bonefield, Carolyn Reilly, Ed Reilly, Robert Anderson, Crystal Kurzenberger 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 _____ 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 the duration of _____, OR UNTIL THIS CASE IS DISMISSED.**
Defendant's sentence.

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.

2-23-2015
Date of Order
2-23-2015
Date of Service
2-23-2015
Date of Service

[Signature]

JUDGE
+ [Signature]

DEFENDANT/ ATTORNEY Signature of Service
[Signature] 301 LCSR

OFFICER/AGENCY SERVING (include badge no.)

002090

cc: Arresting Agency, County Sheriff, Victim, Prosecuting Attorney, Defendant/Defendant's Attorney

ORIGINAL

CASE NO. CR 2013-1358

2015 MAR 13 AM 7:41

CLERK OF DISTRICT COURT
LATAH COUNTY
BY EM DEPUTY

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

THE STATE OF IDAHO,

Plaintiff,

vs.

CHARLES ANTHONY CAPONE,

DOB [REDACTED]

SSN: [REDACTED]

Defendant.

CASE NO. CR-2013-01358

JUDGMENT OF CONVICTION

This case having come on regularly for trial on August 29, 2014, before the Honorable Carl B. Kerrick, sitting as Judge in the above-entitled case, with a jury duly and regularly empaneled, the defendant present in court and represented by D. Ray Barker and Mark Monson and present on behalf of the State of Idaho were William W. Thompson, Jr. and Mia M. Vowels.

The defendant was charged by Second Amended Criminal Information with the crimes of MURDER IN THE FIRST DEGREE, Idaho Code §§ 18-14001, 18-4003(a), a Felony as

ORIGINAL

002091

charged in Count I, committed on or about the 16th day of April, 2010; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 18-204, 19-4301(A)(1)(3), a Felony as charged in Count II, committed commencing on or about the 16th day of April, 2010; and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 19-4301(A)(1)(3), 18-1701, a Felony as charged in Count III, committed commencing on or about the 16th day of April, 2010; and, verdicts of guilty to the crimes of MURDER IN THE FIRST DEGREE, Idaho Code §§ 18-14001, 18-4003(a), a Felony as charged in Count I; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 18-204, 19-4301(A)(1)(3), a Felony as charged in Count II; and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 19-4301(A)(1)(3), 18-1701, a Felony as charged in Count III, were rendered by the jury on September 17, 2014. Also on September 17, 2014, the defendant was found guilty by special jury verdict of EXTENDED SENTENCE FOR PERSISTENT VIOLATOR, Idaho Code § 19-2514, as charged in PART II;

On February 23, 2015, the Court, having considered the Presentence Investigation Report filed herein, the evidence, if any, of circumstances in aggravation and in mitigation of punishment, the arguments of counsel and any statement of the defendant, thereupon asked the defendant if there was any legal cause to show why judgment should not be pronounced at this time to which defendant replied that there was none.

Good cause appearing, the Court rendered its judgment as follows:

IT IS HEREBY, ORDERED, ADJUDGED AND DECREED that Defendant is guilty of the crime of MURDER IN THE FIRST DEGREE, Idaho Code §§ 18-14001, 18-4003(a), a Felony as charged in Count I, and that defendant is SENTENCED to the custody of the IDAHO DEPARTMENT OF CORRECTION, Boise, Idaho, for a **FIXED TERM OF LIFE**.

IT IS FUTHER, ORDERED, ADJUDGED AND DECREED that Defendant is guilty of the crime of FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 18-204, 19-4301(A)(1)(3), a Felony, as charged in Count II, and that defendant is SENTENCED to the custody of the IDAHO DEPARTMENT OF CORRECTION, Boise, Idaho, for a **FIXED TERM OF TWENTY (20) YEARS**.

IT IS FUTHER, ORDERED, ADJUDGED AND DECREED that Defendant is guilty of the crime of CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code §§ 19-4301(A)(1)(3), 18-1701, a Felony, as charged in Count III, and that defendant is SENTENCED to the custody of the IDAHO DEPARTMENT OF CORRECTION, Boise, Idaho, for a **FIXED TERM OF TWENTY (20) YEARS**.

PROVIDED FURTHER, the sentences imposed above on Counts II and III shall be served concurrently, but shall be served consecutively to the sentence imposed on Count I.

NOTICE OF RIGHT TO APPEAL

YOU, CHARLES ANTHONY CAPONE, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED this 12th day of March, 2015, *nunc pro tunc* for February 23, 2015.



CARL B. KERRICK-District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing JUDGMENT OF CONVICTION 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

William W. Thompson, Jr.
Latah County Prosecuting Attorney
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Jail
Latah County Sheriff's Office
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Idaho DOC - Central Records
E-mail: centralrecords@idoc.idaho.gov

E-Mail

Idaho DOC - Dist 2 Probation & Parole
E-mail: Dist2@idoc.idaho.gov

E-Mail

Idaho DOC - CCD Sentencing Team
E-mail: CCDSentencingD2@idoc.idaho.gov

E-Mail

on this 13 day of March, 2015.

Mark Manson }
Attorney at Law } email

HENRIANNE K. WESTBERG
Latah County Clerk of the Court

By: [Signature]
Deputy Clerk

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-Respondent,

v.

CHARLES ANTHONY CAPONE

Defendant-Appellant.

Case No. CR-2013-1358

NOTICE OF APPEAL

TO: CLERK OF THE COURT

TO: THE ABOVE-NAMED RESPONDENT STATE OF IDAHO, AND ITS ATTORNEY
WILLIAM THOMPSON, JR.
PO BOX 8068
MOSCOW, ID 83843

TO: LAWRENCE WASDEN, ATTORNEY GENERAL
PO BOX 83720
BOISE, ID 83720-0010

NOTICE IS HEREBY GIVEN THAT:

CASE NO. CR 2013-1358
2015 MAR 18 PM 3:50
CLERK OF DISTRICT COURT
LATAH COUNTY
BY EM DEPUTY

1. **Designation of the Judgment or Order Appealed From.** The above-named appellant Charles Anthony Capone, appeals against the above-named Respondent to the Idaho Supreme Court from the Judgment and Conviction entered on March 13, 2015, the Honorable Judge Carl B. Kerrick presiding.

2. **Jurisdictional Statement.** Defendant has a right to appeal to the Idaho Supreme Court and the judgment described in paragraph 1 above is an appealable judgment under and pursuant to Idaho Appellate Rules 11(c)(1)(6).

3. **Issues.** A preliminary statement of the issues which the appellant may assert on appeal is as follows:

- a. Appellant appeals the sentence imposed in this matter;
- b. Appellant appeals the denial of the Motion for Change of Venue in this matter.
- c. Appellant appeals the sufficiency of the evidence upon which the convictions were based.
- d. The District Judge erred by imposing an excessive sentence in this matter.

4. **Transcript.** A reporter's standard transcript as defined in Idaho Appellate Rule 25 is requested; In addition, transcripts of the following hearings or proceedings are requested:

- a. Voir dire examination of the jury.
- b. Closing arguments of counsel.
- c. The trial testimony of witness Angela Cabrera presented by video recording.
- d. Instructions verbally given by court.
- e. Preliminary Hearing held on July 30, 2013, July 31, 2013, and August 1, 2013.
- f. Motion Hearing held on April 9, 2014 with Court Reporter Keith Evans present.

The Appellant requests the preparation of the reporter's transcript in both hard copy and electronic format.

5. **Record.** The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Rule 28, I.A.R.: NONE

6. **Certification.** I certify:

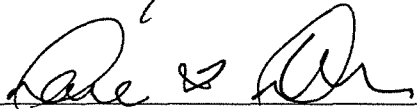
- a. That a copy of this Notice of Appeal was served on each reporter of whom a transcript has been requested as named below at the address set forth:
 1. Terry Odenborg – PO Box 8068, Moscow, ID 83843
 2. Keith Evans – PO Box 574, Lewiston, ID 83501
 3. Nancy Towler – 235 Larkspur Lane, Lewiston, ID 83501

- b. That the Appellant is exempt from paying the estimated transcript fee because Appellant is indigent, without funds, and the undersigned counsel was been appointed to represent the Defendant.
- c. That service has been made upon all parties required to be served pursuant to I.A.R. 20 and the Attorney General of the State of Idaho.

DATED this 18th day of March, 2015



 D. Ray Barker



 Mark T. Monson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was served on the following individuals by the method indicated on the 18th day of March, 2015.

Latah County Prosecuting Attorney
 PO Box 8068
 Moscow, ID 83843

Hand delivery
 First class mail, postage prepaid

Terry Odenborg
 PO Box 8068
 Moscow, ID 83843

Hand delivery
 First class mail, postage prepaid

Keith Evans
 PO Box 574
 Lewiston, ID 83501

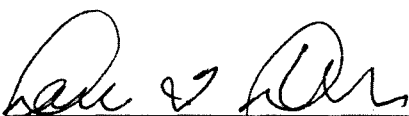
Hand delivery
 First class mail, postage prepaid

Idaho Attorney General's Office
 PO Box 83720
 Boise, ID 83720-0010

Hand delivery
 First class mail, postage prepaid

Nancy Towler
 235 Larkspur Lane
 Lewiston, ID 83501

Hand delivery
 First class mail, postage prepaid



CASE NO. CR 2013-1

2015 MAR 18 PM 3:50

CLERK OF DISTRICT COURT
LATAH COUNTY
BY EM 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,)	
	)	LATAH COUNTY NO. CR-2013-1358
v.)	
	)	MOTION FOR APPOINTMENT
CHARLES ANTHONY CAPONE,	)	OF STATE APPELLATE PUBLIC
	)	DEFENDER
Defendant.)	
)	

COMES NOW, Charles Anthony Capone, by and through his attorneys of record, D. Ray Barker and Mark T. Monson, and hereby moves this Court for its order pursuant to Idaho Code § 19-867, appointing the State Appellate Public Defender's Office to represent the appellant in all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record. This motion is brought on the grounds and for the reasons that the appellant is currently represented by D. Ray Barker and Mark T. Monson and the State Appellate Public

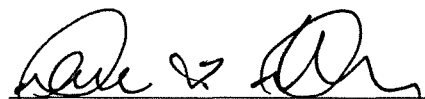
Defender is authorized by Idaho Code § 19-870 to represent the defendant in all felony appellate proceedings. The defendant has been found indigent and it is in the interest of justice for the State Appellate Public Defender to do so in this case.

The appointment of the State Appellate Public Defender is for the purposes of the appeal only.

DATED this 18th day of March, 2015.



D. Ray Barker
Attorney for Defendant



Mark T. Monson
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of March, 2015, I served a true and correct copy of the MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER upon the parties below as follows:

Charles Anthony Capone #53834
Idaho State Correction Institution Unit 08
P.O. Box 14
Boise, ID 83707

Latah County Prosecutor's Office
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

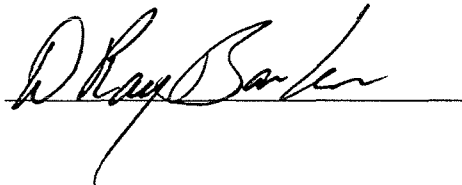
Terry Odenborg
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

Keith Evans
P.O. Box 574
Lewiston, ID 83501

Nancy Towler
235 Larkspur Lane
Lewiston, ID 83501

Sara B. Thomas
State Appellate Public Defender
3050 Lake Harbor Lane, Suite 100
Boise, Idaho 83703

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, Id 83720-0010

A handwritten signature in black ink, appearing to read "D. Ray Barker", is written over a horizontal line.

CASE NO. CR 2013-1358

2015 MAR 23 AM 11:28

COURT OF APPEALS
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,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER FOR APPOINTMENT OF STATE
APPELLATE PUBLIC DEFENDER

THE COURT, having reviewed Defendant's Motion for Appointment of State Appellate Public Defender dated March 18, 2015, and good cause appearing therefore,

IT IS HEREBY ORDERED that the State Appellate Public Defender's Office is hereby appointed to represent the appellant in all further appellate proceeding and current counsel for the defendant may withdraw as counsel of record.

DATED this 23rd day of March, 2015.

Leslie O
JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order for Appointment of State Appellate Public Defender 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

Charles Anthony Capone #538334
Idaho State Correction Institution
Unit 08
P.O. Box 14
Boise, ID 83707

Via Facsimile
 U.S. Mail
 Hand Delivery

Latah County Prosecutor's Office
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

Via Facsimile
 U.S. Mail
 Hand Delivery

Terry Odenborg
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

Via Facsimile
 U.S. Mail
 Hand Delivery

Keith Evans
P.O. Box 574
Lewiston, ID 83501

Via Facsimile
 U.S. Mail
 Hand Delivery

Nancy Towler
235 ~~Larsput~~ ^{LARKS PUT} Lane
Lewiston, ID 83501

Via Facsimile
 U.S. Mail
 Hand Delivery

Sara B. Thoms
State Appellate Public Defender
3050 Lake Harbor Lane, Suite 100
Boise, ID 83703

Via Facsimile
 U.S. Mail
 Hand Delivery

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010

Via Facsimile
 U.S. Mail
 Hand Delivery

on this 23rd day of March, 2015.

HENRIANNE WESTBERG
Latah County Clerk of the Court

By: Ranae Converse
Deputy Clerk

SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

CASE NO. CR-13-1358

2015 MAY 20 PM 2:51

CLERK OF DISTRICT COURT
LATAH COUNTY
BY RC DEPUTY

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

STATE OF IDAHO,
Plaintiff-Respondent,
v.
CHARLES ANTHONY CAPONE,
Defendant-Appellant.

CASE NO. CR 2013-1358
S.C. DOCKET NO. 43124
AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, BILL THOMPSON, LATAH COUNTY PROSECUTOR, P.O. BOX 8068, MOSCOW, ID, 83843, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment of Conviction entered in the above-entitled action on the 13th day of March, 2015, the Honorable Carl B. Kerrick, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).
3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

- (a) Did the district court err in failing to grant the appellant's Motion for Change of Venue in this Matter?
- (b) Was there sufficient evidence to support convictions in this matter?
- (c) Did the district court err by imposing an excessive sentence?
4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).
5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:
- (a) Jury Trial held between the dates of September 2-17, 2014, to include the voir dire, opening statements, closing arguments, jury instruction conferences, any hearings regarding questions from the jury during deliberations, trial testimony of witness Angela Cabrera presented by video recording, return of the verdict, and any polling of the jurors (Court Reporter: Nancy Towler, estimation of 2000 pages);
- (b) ~~Preliminary Hearing held on July 30, 2013, July 31, 2013, and August 1, 2013;~~
- (c) Motion Hearing held April 9, 2014 (Court Reporter: Keith Evans, no estimation of pages listed on the Register of Actions); and

(d) Sentencing Hearing held on February 23, 2015 (Court Reporter: Nancy Towler, no estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2) and all exhibits, recordings, and documents per I.A.R.

31. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2) and I.A.R. 31:

- (a) Acknowledgment of Oath and Examination of Oath filed May 21, 2012;
- (b) Affidavit of Search Warrant for GPS tracking device filed May 21, 2012;
- (c) Receipt and Inventory of Warrant filed June 4, 2012;
- (d) Return of Search Warrant for GPS tracking device filed June 4, 2012;
- (e) Supplemental Return of Search Warrant for GPS tracking device filed July 5, 2012;
- (f) Notice of I.C.R. 41(d) Compliance filed July 25, 2012;
- (g) Affidavit of Probable Cause filed May 1, 2013;
- (h) State's Objection to "Order Appointing Judge to Authorize Expenditures" filed May 23, 2013;
- (i) Affidavits in Support of Motion for Issuance of Certificate of Endorsement filed July 9, 2013, May 27, 2014, June 3, 2014, June

- 4, 2014, August 13, 2014, August 18, 2014, August 29, 2014, and September 4, 2014;
- (j) Certificates and Amended Certificates of Endorsement filed July 9, 2013, May 28, 2014, June 5, 2014, June 6, 2014, August 14, 2014, August 19, 2014, August 27, 2014, August 29, 2014, and September 5, 2014;
- (k) Objection to Motion for Leave to Amend filed July 24, 2013;
- (l) Memorandum of Points and Authorities filed July 25, 2013;
- (m) Response to "Ex Parte Motion for Additional Funds Regarding Investigator" filed September 6, 2013;
- (n) Preliminary Hearing Transcript filed September 9, 2013;
- (o) Receipt of Evidence filed September 26, 2013;
- (p) Notice of I.R.E. 404(b) Evidence filed December 26, 2013;
- (q) Objection to Motion to Authorization to Retain Services of Forensic Pathologist filed January 22, 2014;
- (r) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the motion to Suppress, filed or lodged, by the state, appellant or the court including, but not limited to the Memorandum in Support of Motion to Suppress lodged February 7, 2014, Response to Defendant's Motion to Suppress filed March 31, 2014, State's Response to Defendant's Motion to Suppress #1 filed April 1, 2014, State's Response to Defendant's Motion to Suppress #3 filed April 1, 2014,

- Affidavit of D. Ray Barker Re: Defendant's Motion to Suppress as to Evidence Obtained Through Search Warrants filed April 9, 2014;
- (s) Argument in Response to State's Notice of I.R.E. Evidence filed February 7, 2014;
- (t) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the motion for change of venue, filed or lodged, by the state, appellant or the court including, but not limited to, the Affidavit of Charles A. Capone filed February 7, 2014, Affidavit of Mark T. Monson filed February 7, 2014, Affidavit of Kim K. Markman filed February 7, 2014, and Memorandum in Support of Motion to Change Venue filed February 7, 2014, Response to Defendant's Motion for Change of Venue filed March 31, 2014;
- (u) State's Response to "Motion to Authorize Addition Funds for Computer Forensic Expert" filed February 14, 2014;
- (v) Supplement to "Motion for Protective Order I.C.R. 16(1) – Presentence Investigation Report" filed March 28, 2014;
- (w) Notice of Intent to Offer Forensic Testimony by Video Teleconference Per I.C.R. 43.3 filed April 16, 2014;
- (x) Memorandum in Support of Motion to Allow Defense to Show Video and Co-Defendant's Statement's to Law Enforcement filed May 14, 2014;

- (y) Response to Opposition to Defendant's Motion to Allow Defense to Show Video and Co-Defendant's Statements to Law Enforcement filed May 29, 2014;
- (z) All proposed and given jury instructions including, but not limited to, the Request for Jury Instructions filed June 9, 2014, Defense Request for Jury Instruction filed June 12, 2014, and Jury Instructions Read at the Jury Trial filed September 17, 2014;
- (aa) Response to Defendant's Motion to Allow Witness to Testify Via Teleconference filed June 20, 2014;
- (bb) Stipulation for Deposition and Preservation of Testimony of Angela Cabrera filed June 23, 2014;
- (cc) Memorandum in Support of State's Objection to Dr. Grey Testifying as Expert filed July 11, 2014;
- (dd) Response to State's Objection to Dr. Grey Testifying as an Expert Witness filed July 14, 2014;
- (ee) Jury Questionnaire filed July 14, 2014;
- (ff) Excerpts of Proceedings filed September 15, 2014, and September 16, 2014;
- (gg) Correspondence from IDOC filed November 6, 2014;
- (hh) Defendant's Objection and Responses to Presentence Investigation Report filed December 11, 2014;
- (ii) State's Response to Defendant's Objection and Responses to Presentence Investigation Report filed February 9, 2015;

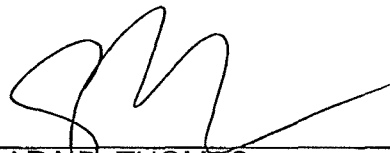
- (jj) Addendum to Presentence Report filed February 11, 2015;
- (jj) Acknowledgment of Confidentiality filed February 19, 2015; and
- (kk) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing. Except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but may be sought later by motion to the Idaho Supreme Court.

7. I certify:

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

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

DATED this 20th day of May, 2015.



SARAH B. THOMAS
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 20th day of May, 2015, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

RAY BARKER
ATTORNEY AT LAW
PO BOX 9408
MOSCOW ID 83843

KEITH EVANS
COURT REPORTER
320 W MAIN
GRANGEVILLE ID 83530

NANCY TOWLER
COURT REPORTER
PO BOX 896
LEWISTON ID 83501

BILL THOMPSON
LATAH COUNTY PROSECUTOR
LATAH COUNTY COURTHOUSE
PO BOX 8068
MOSCOW ID 83843

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court



CINTHYA R. HERRERA
Administrative Assistant

SBT/tmf/crh

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

STATE OF IDAHO,)	
	)	Supreme Court Case No. 43142
Plaintiff-Respondent,)	
	)	CLERK'S CERTIFICATE
v.)	
)	
CHARLES ANTHONY CAPONE,)	
)	
Defendant-Appellant.)	
)	
_____)	

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 16th day of July 2015

Henrienne K. Westberg, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

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-Respondent,)
)
 vs.)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant-Appellant)
 _____)

Supreme Court No. 43142
**CLERK'S CERTIFICATE
RE: EXHIBITS**

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the following TRIAL EXHIBITS:

JURY TRIAL HELD SEPTEMBER 2, 2014 THROUGH SEPTEMBER 17, 2014

STATE'S EXHIBITS:

- #1 Photo - Rachael Anderson and her sons - Admitted 9/2/14
- #2 Photo of Rachael Anderson and her daughters -Admitted 9/2/14
- #3a Missing Person flyer, red - Admitted 9/2/14
- #3b Missing Person flyer "Have you seen me?" - Admitted 9/2/14
- #3c Missing Person flyer, green - Admitted 9/2/14
- #3d Missing Person flyer "Not Forgotten!" - Admitted 9/2/14
- #3e Missing Person flyer, posting in window - Admitted 9/2/14
- #4 Spooof call recording - Admitted 9/2/14
- #5 Cell Phone Screen Shot - Admitted 9/2/14
- #6 Photos of Rachael Anderson's house, window shelf w/ green pots
- Admitted 9/2/14
- #7 Photos of Rachael Anderson's house, gun in green pot - Admitted 9/2/14
- #8 Photos of Rachael Anderson's house, close up of gun with clip out
-Admitted 9/3/14
- #9 Houser's sermon, CD recording - **Not Offered**
- #10 Print out of Charles Capone's bank statement - Admitted 9/4/14
- #11 Photo of Yukon at Dyna Mart, driver's side - Admitted 9/2/14
- #12 Photo of Yukon at Dyna Mart, front - Admitted 9/4/14
- #13 Photo of Yukon at Dyan Mart, passenger side - Admitted 9/4/14
- #14 Photo of Yukon at Dyna Mart, back and passenger - Admitted 9/4/14
- #15 Photo of Yukon at Dyna Mart, back - Admitted 9/4/14

CLERK'S CERTIFICATE RE: EXHIBITS - 1

002115

- #16 Photo of gold Saturn parked behind Yukon at Dyna Mart - Admitted 9/4/14
- #17 Photo of Jeep parked in front of Yukon at Dyna Mart - Admitted 9/4/14
- #18 Photo of inside of Yukon at Dyna Mart showing purse - Admitted 9/2/14
- #19 Photo of glove tip on seat in Yukon at Dyna Mart - Admitted 9/4/14
- #20 Photo of inside of Yukon at Dyna Mart showing paper on floor
- Admitted 9/4/14
- #21 Photo of Dyna Mart, looking from street - Admitted 9/4/14
- #22 Photo of Dyna Mart, back side looking from street - Admitted 9/4/14
- #23 Photo of Dyna Mart, back side looking from street - Admitted 9/4/14
- #24 Photo of Dyna Mart, back side looking down street - Admitted 9/4/14
- #25 Photo of Dyna Mart, back side looking down street, closer view
- Admitted 9/4/14
- #26a Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26b Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26c Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26d Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26e Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26f Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26g Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #26h Text messages from Robert Bogden's phone to Rachael - **Rejected 9/3/14**
- #27a Anderson's toothbrush & chain of custody envelope - Admitted 9/2/14
- #27b Four Buccal swabs from Stone - Admitted 9/4/14
- #27c Four Buccal swabs from Capone - Admitted 9/4/14
- #28 Photo of outside of Palouse Multiple Services, Rachael's car - Admitted 9/4/14
- #29 Photo of outside of Palouse Multiple Services, car and white pickup
- Admitted 9/2/14
- #30 Photo of outside of Palouse Multiple Services, pickup - Admitted 9/4/14
- #31 Photo of outside of Palouse Multiple Services, side - Admitted 9/4/14
- #32a Photo of showing outside of Palouse Multiple Services, white pickup
- Admitted 9/4/14
- #32b Photo of showing outside of Palouse Multiple Services, bed of white pickup
- Admitted 9/4/14
- #33 Photo of white Dodge pickup outside of Palouse Multiple Services, passenger
Side - Admitted 9/4/14
- #34 Photo of Dodge pickup outside of Palouse Multiple Services, front
- Admitted 9/4/14
- #35 Photo of inside Dodge pickup showing receipts - Admitted 9/4/14
- #36a Photo of box of gloves inside Dodge pickup - Admitted 9/4/14
- #36b Box of Raven black nitrile gloves - Admitted 9/4/14
- #37 Photo of registration for Dodge pickup - Admitted 9/4/14
- #38a Photo of Stinker Station receipt from 4-16-10 found in Dodge (under seat)
- Admitted 9/4/14
- #38b Original Stinker Station receipt found in Dodge pickup - Admitted 9/4/14
- #39 Photo of receipts found in Dodge pickup (ashtray) - Admitted 9/4/14
- #40 Original receipts found in Dodge pickup - Admitted 9/4/14
- #41 Photo of outside of Palouse Multiple Services - Admitted 9/4/14

- #42 Photo of outside of Palouse Multiple Services, side view - Admitted 9/4/14
- #43 Photo of inside of Palouse Multiple Services, shop man door and roll up door
- Admitted 9/4/14
- #44 Photo of inside Palouse Multiple Services, roll up door and East wall
- Admitted 9/4/14
- #45 Photo of inside of Palouse Multiple Services, blue car - Admitted 9/4/14
- #46 Photo of inside of Palouse Multiple Services, roll up door and blue SUV
- Admitted 9/4/14
- #47 Photo of inside of Palouse Multiple Services, mop bucket - Admitted 9/4/14
- #48 Photo of inside of Palouse Multiple Services, SUV and loft with blue tarp
- Admitted 9/4/14
- #49 Photo of inside of Palouse Multiple Services, sink and water cooler
- Admitted 9/4/14
- #50 Photo of West wall inside of Palouse Multiple Services - Admitted 9/4/14
- #51 Photo inside Palouse Multiple Services, hanging file basket - Admitted 9/4/14
- #52 Photo inside Palouse Multiple Services, hanging file basket close up
- Admitted 9/4/14
- #53 Original Palouse Multiple Services invoice for Rachael Anderson
- Admitted 9/4/14
- #54 Photo of desk inside Palouse Multiple Services office - Admitted 9/4/14
- #55 Photo of divorce paperwork found in office inside Palouse Multiple Services
- Admitted 9/4/14
- #56 Photo of notebook cover written by Rachael Anderson found in office inside
Palouse Multiple Services - Admitted 9/4/14
- #57 Photo of receipts found in office inside Palouse Multiple Services (in desk
Drawer) - Admitted 9/4/14
- #58 Photo of receipt found in office inside Palouse Multiple Services
- Admitted 9/4/14
- #59 Eight misc. receipts from inside Palouse Multiple Services shop (including
Walmart trac phone) - Admitted 9/4/14
- #60 Photo of inside Palouse Multiple Services, roll up door and blue car
- Admitted 9/4/14
- #61 Photo of inside of Palouse Multiple Services, loft with tarps - Admitted 9/4/14
- #62 Photo of inside of Palouse Multiple Services, shelving on west wall
- Admitted 9/4/14
- #63 Photo of inside of Palouse Multiple Services, Tim with tarp - Admitted 9/4/14
- #64 Photo of inside of Palouse Multiple Services, green tarp (close up)
- Admitted 9/4/14
- #65 Photo of inside of Palouse Multiple Services, loft with blue tarp
- Admitted 9/4/14
- #66 Photo of garbage bag with red rags and black gloves inside Palouse Multiple
Services - Admitted 9/4/14
- #67 Photo of black gloves on floor inside Palouse Multiple Services
- Admitted 9/4/14
- #68 Photo of pink bag and child seat in Yukon - Admitted 9/3/14
- #69 Photo of pink bag and contents - Admitted 9/4/14

- #70 Gavin's artwork found in pink bag in Yukon - Admitted 9/4/14
- #71 Photo of contents of pink bag laid out - Admitted 9/4/14
- #72 Photo of electronics found in pink bag - Admitted 9/4/14
- #73 Anderson v. Capone: Divorce documents from pink bag, 1/6/10 (11 pages)
- Admitted 9/4/14
- #74 Anderson v. Capone: Petition for Dissolution of Marriage from pink bag,
1/8/10 (10 pages) - Admitted 9/4/14
- #75 Anderson v. Capone: Affidavit Re: Out of State Service from pink bag,
1/13/10 (4 pages) - Admitted 9/4/14
- #76 Anderson v. Capone: Affidavit of Service of divorce documents from pink bag,
1/14/10 (3 pages) - Admitted 9/4/14
- #77 Anderson v. Capone: 1/25/10 Clark and Feeney statement from pink bag,
(2 pages) - Admitted 9/4/14
- #78 Photo of front interior of Yukon - Admitted 9/4/14
- #79 Photo of purse in Yukon, close up - Admitted 9/4/14
- #80a Photo of purse on brown paper - Admitted 9/4/14
- #80b Black leather purse - Admitted 9/2/14
- #81 Photo of blue paper "divorce" from purse - Admitted 9/4/14
- #82 Photo of white paper from purse - Admitted 9/4/14
- #83 Photo of Nokia black AT&T cell phone from purse - Admitted 9/4/14
- #84 Photo of keys to Yukon from purse - Admitted 9/4/14
- #85a Photo of checkbook of Rachael Anderson from purse - Admitted 9/4/14
- #85b Black checkbook with contents from purse - Admitted 9/4/14
- #86 Photo of checkbook open showing blank check - Admitted 9/4/14
- #87 Photo of Rachael Anderson checkbook open showing void check
- Admitted 9/4/14
- #88 Photo of check register - Admitted 9/4/14
- #89 Photo of contents of checkbook holder of Rachael Anderson - Admitted 9/4/14
- #90 Photo of Rachael Anderson's driver's license - Admitted 9/4/14
- #91 Photo of Charles Capone's driver's license - Admitted 9/4/14
- #92 Blue paper with handwriting "filed"/"served" divorce papers and dates from
purse - Admitted 9/4/14
- #93 Palouse Multiple Services Visa Wells Fargo check card from purse
- Admitted 9/4/14
- #94 Wells Fargo ATM Transaction Record receipt from 4/16/10 from purse
- Admitted 9/4/14
- #95 McDonalds receipt April 16, 2010 from purse - Admitted 9/4/14
- #96 White paper with notes and phone numbers "4/14 Susan Martz, Prosecutor's
Office" from purse - Admitted 9/4/14
- #97 Pepper spray canister and keys from purse - Admitted 9/4/14
- #98 Photo of front passenger seat of Yukon with glove tip - Admitted 9/4/14
- #99 Photo of glove tip, close up - Admitted 9/4/14
- #100 Glove tip with chain of custody envelope - Admitted 9/4/14
- #101 Photo of folded paper with blood - Admitted 9/4/14
- #102a Photo of full page Office Depot computer ad with blood - Admitted 9/4/14

- #102b Original Office Depot Computer ad in chain of custody envelope
- Admitted 9/4/14
- #103 Office Depot Take One ticket for notebook computer - Admitted 9/4/14
- #104 Photo of registration for Yukon, Bogden - Admitted 9/4/14
- #105 Photo of measurement of driver seat position - Admitted 9/4/14
- #106 Photo of measure of driver seat position, close up - Admitted 9/4/14
- #107 Photo of female being measured - Admitted 9/4/14
- #108 Photo of female in driver's seat of Yukon - Admitted 9/4/14
- #109 Photo of Durango, back passenger side (2/6/14 @ Pull and Save)
- Admitted 9/5/14
- #110 Photo of Durango, driver's side front (2/6/14 @ Pull and Save)
- Admitted 9/5/14
- #111 Photo of Durango, back open with contents (2/6/14 @ Pull and Save)
- Admitted 9/5/14
- #112 Photo of Durango, back open, seats down, contents cleared (2/6/14 @ Pull and
Save - Admitted 9/5/14
- #113 DVD of David Stone interview on Red Wolf Bridge - Admitted 9/5/14
- #114 Spence Hardware receipt for tarp, 4/17/10 - Admitted 9/8/14
- #115 O'Reilly Auto Parts receipt, 4/16/10 - Admitted 9/9/14
- #116 Photo of inside of Palouse Multiple Services, loft and tarps - Admitted 9/9/14
- #117 Photo of Tim Fountain's residence - Admitted 9/8/14
- #118 Photo of Tim Fountain's pool looking toward Palouse Multiple Services
- Admitted 9/8/14
- #119 Photo of Tim Fountain's pool looking toward Palouse Multiple Services, closer
view - Admitted 9/8/14
- #120 Photo of Tim Fountain's residence/road and Palouse Multiple Services
- Admitted 9/8/14
- #121 Photo of Moscow City Shop yard - Admitted 9/9/14
- #122 Photo of Moscow City Shop scrap iron pile - Admitted 9/9/14
- #123 Photo of Moscow City Shop scrap iron pile, close up - Admitted 9/9/14
- #124 Photo of chains, 2 sets - Admitted 9/9/14
- #125a David Stone's timesheet, 4/5/10 - 4/18/10 (2 pages) - Admitted 9/9/14
- #125b David Stone's timesheet, 4/19/10 - 5/2/10 - Admitted 9/9/14
- #125c David Stone's timesheet codes - Admitted 9/9/14
- #126a Photo of Mingles, front door - Admitted 9/11/14
- #126b Photo of Mingles, tables - Admitted 9/11/14
- #126c Photo of Mingles, tables and bar - Admitted 9/11/14
- #126d Photo of Mingles, bar - Admitted 9/11/14
- #126e Photo of Mingles, back room - Admitted 9/11/14
- #126f Photo of Mingles, pool tables - Admitted 9/11/14
- #127a Aerial view of Dyna Mart - Admitted 9/2/14
- #127b CD of Dyna Mart surveillance video [21:16 - 21:35] - Admitted 9/11/14
- #127c Photo from Dyna Mart surveillance video [21:20:58] - Admitted 9/11/14
- #127d Photo from Dyna Mart surveillance video [21:20:59] - Admitted 9/11/14
- #128 Photo of Durango, driver's side - Admitted 9/11/14
- #129 Photo of Durango, back - Admitted 9/11/14

- #130 Photo of Durango, passenger side - Admitted 9/11/14
- #131 Photo of Durango, front - Admitted 9/11/14
- #132a CD of Dyna Mart surveillance video [23:17 - 23:38] - Admitted 9/11/14
- #132b Photo from Dyna Mart surveillance video [2010-04-16 23:21:45]
- Admitted 9/11/14
- #133a CD of Dyna Mart surveillance video [23:38 - 23:59] - Admitted 9/11/14
- #133b Photo from Dyna Mart surveillance video [2010-04-16 23:46:51]
- Admitted 9/11/14
- #134 Text messages between Rachael and Capone (77 pgs.) - Admitted 9/8/14
- #135a Time zone map - Admitted 9/8/14
- #135b GMT Chart - Admitted 9/8/14
- #136 Third Street Market Place Receipt (Grolsch Beer) 4/16/10 - Admitted 9/8/14
- #137 Photo of Grolsch Beer - Admitted 9/2/14
- #138 Moscow City Aerial Photo, showing Palouse Multiple Services, Hwy. 95 &
The Plantation - Admitted 9/4/14 - **Not Sent**
- #139 Moscow City Aerial Photo, showing Moscow City Shop & David Stone's
Residence - Admitted 9/9/14 - **Not Sent**
- #140.1 Slides: phone numbers - Admitted 9/11/14
- #140.2 Spoof calls from Capone cell phone and PMS shop to Anderson cell & home
- Admitted 9/11/14
- #140.3 Anderson's cell, 4/16/10 @ 3:39 p.m. to 3:41 p.m., Lewiston
- Admitted 9/11/14
- #140.4 Lewiston Hill cell tower - Admitted 9/11/14
- #140.5 Anderson's cell, 4/16/10 @ 3:48 p.m., Lewiston - Admitted 9/11/14
- #140.6 Cell tower Lewiston 6th Street - Admitted 9/11/14
- #140.7 Anderson's cell, 4/16/10 @ 4:12 p.m., Lewiston Hill - Admitted 9/11/14
- #140.8 Anderson's cell 4/16/10 @ 4:51 p.m., Paradise Ridge - Admitted 9/11/14
- #140.9 Paradise Ridge tower - Admitted 9/11/14
- #140.10 Palouse Multiple Services looking towards Paradise Ridge - Admitted 9/11/14
- #140.11 Paradise Ridge looking towards Palouse Multiple Services - Admitted 9/11/14
- #140.12 Anderson's cell, 4/16/10 @ 6:11 p.m., Moscow Dormitory - Admitted 9/11/14
- #140.13 Moscow Dormitory tower - Admitted 9/11/14
- #140.14 Anderson's cell, 4/16/10 @ 6:11 p.m., Moscow Dormitory - Admitted 9/11/14
- #140.15 Anderson's cell, 4/16/10 @ 6:55 p.m., Paradise Ridge - Admitted 9/11/14
- #140.16 Anderson's cell, 4/16/10 @ 7:15 p.m., Moscow Dormitory - Admitted 9/11/14
- #140.17 Anderson's cell, 4/16/10 @ 7:21 p.m., Paradise Ridge - Admitted 9/11/14
- #140.18 Anderson's cell, 4/16/10 @ 7:30 p.m., Paradise Ridge - Admitted 9/11/14
- #140.19 Anderson's cell, 4/16/10 @ 7:56 p.m., Paradise Ridge - Admitted 9/11/14
- #140.20 Anderson's cell, 4/16/10 @ 8:09 p.m., Paradise Ridge - Admitted 9/11/14
- #140.21 Anderson's cell, 4/16/10 @ 8:27 p.m., Paradise Ridge - Admitted 9/11/14
- #140.22 Anderson's cell, 4/16/10 @ 9:20 p.m to 9:57 p.m., Lewiston Orchard
- Admitted 9/11/14
- #140.23 Lewiston Orchard tower - Admitted 9/11/14
- #140.24 Anderson's Phone, Out of Service, Voice 8:09 p.m. to 9:57 p.m.
- Admitted 9/11/14

- #140.25 Anderson's Phone, Out of Service, SMS, 8:27 p.m. to 9:20 p.m.
- Admitted 9/11/14
- #140.26 Capone's cell, 4/16/10 @ 5:09 p.m. and 5:39 p.m., Paradise Ridge
-Admitted 9/11/14
- #140.27 Capone's cell, 4/16/10 @ 4:12 p.m. - 7:30 p.m., Paradise Ridge
- Admitted 9/11/14
- #140.28 Capone's cell 4/16/10 @ 9:57 p.m. - 10:15 p.m., Paradise Ridge
- Admitted 9/11/14
- #140.29 During the calls to and from PMS Shop phone, 4/16/10 @ 4:58 p.m. and
5:39 p.m., 5:44 p.m., Paradise Ridge - Admitted 9/11/14
- #140.30 Phone calls between Capone and Stone cell, 4/16/10 @ 4:29 p.m., 4:31 p.m.,
5:39 p.m., 5:44 p.m., Paradise Ridge - Admitted 9/11/14
- #140.31 Phone calls between David Stone and Alisa Stone, 4/16/10 @ 7:19 p.m. and
6:58 p.m., Paradise Ridge - Admitted 9/11/14
- #140.32 Phone calls between David Stone and Alisa Stone, 4/16/10 @ 7:19 p.m. and
8:40 p.m., Paradise Ridge - Admitted 9/11/14
- #140.33 Calls Voice, from Stone cell to PMS shop phone - Admitted 9/11/14
- #140.34 Calls from PMS shop phone to Stone cell - Admitted 9/11/14
- #140.35 Stone's cell phone, no voice activity and no SMS activity - Admitted 9/11/14
- #140.36 Capone/ Anderson, no activity - Admitted 9/11/14
- #140.37 Voice calls Capone to Anderson (3/16/10 to 4/23/10) - Admitted 9/11/14
- #140.38 SMS messages Capone to Anderson (3/16/10 to 4/23/10) - Admitted 9/11/14
- #140.39 Capone's cell phone usage (4/1/10 to 4/20/10) - Admitted 9/11/14
- #140.40 Capone cell CPRS text usage, 4/17/10 @ 2:14 a.m., Paradise Ridge
- Admitted 9/11/14
- #140.41 Capone cell CPRS text usage, 4/17/10 @ 4:14 a.m., Armstrong
- Admitted 9/11/14
- #140.42 Armstrong tower - Admitted 9/11/14
- #141 Map of North Lewiston to Red Wolf Bridge - Admitted 9/9/14
- #142 2010 Calendar - Admitted 9/11/14
- #143a Transcript of Angela Cabrera deposition, June 24, 2014 - **Not Offered**
- #143b Video of Angela Cabrera deposition, June 24, 2014 - Admitted 9/2/14
- #144a SpoofoCard, front - Admitted 9/8/14
- #144b SpoofoCard, back - Admitted 9/8/14
- #145a Photos from Capone's iPhone, top of pickup - Admitted 9/8/14
- #145b Photos from Capone's iPhone - Admitted 9/8/14
- #146 "Tail Spin" book - Admitted 9/5/14
- #147 "Tail Spin" cover and 1st page - Admitted 9/5/14
- #148 Glass "Kite" to Nichols - Admitted 9/5/14
- #149 Spoofo call recording - Admitted 9/3/14
- #150 Receipt from Shari's restaurant dated 4/17/10 for \$28.00 - Admitted 9/9/14
- #151a Sealed box, pink bag and contents of pink bag - Admitted 9/5/14
- #151b Copies of contents of State Exhibit #151a - Admitted 9/5/14
- #152-#159 **Exhibits were reserved by State, and never offered**
- #160 Letter dated 4/4/14 to Doug Mushlitz from William Thompson Jr.
- Admitted 9/5/14

- #161 Photocopy of Plea Agreement dated 12/4/13 in Case No. CR-13-1359, St. vs. David Christopher Stone - Admitted 9/9/14
- #162 Free-talk letter/agreement dated 11/6/13 to Brandie Rouse from William Thompson, Jr. - Admitted 9/9/14
- #163 Photo, shelves in Charles Capone's shop - Admitted 9/11/14
- #164 Photo of Charles Capone's shop - Admitted 9/11/14
- #166 Certified copy of Judgment of Conviction, Navajo County, Arizona - Admitted 9/17/14
- #168 Certified copy of Judgment of Conviction, Latah County Case No. CR-97-01687 - Admitted 9/17/14

DEFENDANT'S EXHIBITS:

- #A April 13, 2010, email with Robert Bogden - Admitted 9/3/14
- #B Photograph of front of Capone's shop - Admitted 9/5/14
- #C Photograph of Capone's shop - Admitted 9/5/14
- #D Photograph of trash can in Capone's shop - Admitted 9/5/14
- #E Photograph of inside of Capone's shop - Admitted 9/5/14
- #F Photograph of storage room beside office in Capone's shop - Admitted 9/5/14
- #G Photograph of tire chains in back of Capone's truck - Admitted 9/5/14
- #H Photograph of vacuum bag in Capone's shop - Admitted 9/5/14
- #I Photograph of front of Capone's shop - **Not Offered**
- #J Photograph of West side of Capone's shop - **Not Offered**
- #K DVD Video of Yukon and Shop Searches - Admitted 9/5/14
- #L Photo for front of white truck in Capone's shop - **Not Offered**
- #M Photo of front of Capone's shop looking East - Admitted 9/5/14
- #N Photograph of inside of Capone's shop, West wall - Admitted 9/5/14
- #O Photograph of Capone's shop inside office showing pants - Admitted 9/5/14
- #P Safelite Glass Repair Receipt - Admitted 9/5/14
- #Q Protection order found in Pink bag - Admitted 9/5/14
- #R Settlement Agreement and Memorandum, Brent Glass - Admitted 9/5/14
- #S Printout from Examination Report from Capone's phone 265-69 - Admitted 9/8/14
- #T Photograph of Truck from Capone's phone showing black lights - Admitted 9/8/14
- #U Photograph of Truck from Capone's phone showing passenger side - Admitted 9/8/14
- #V Photograph of Truck from Capone's phone showing black lights lit - Admitted 9/8/14
- #W Photograph of inside of Yukon showing paper and binoculars - Admitted 9/11/14
- #X Photograph of U-Haul Storage Unit - **Not Offered**
- #Y Photograph of U-Haul Storage Unit with Tarp - **Not Offered**
- #Z Photograph of front of white truck in Capone's shop - Admitted 9/8/14
- #AA Stone, Rule 11 Agreement - **Not Offered**
- #BB Michael East, Jail Property Sheet - **Not Offered**

#CC Michael East, letter from Bill Thompson to Parole Commission - **Not Offered**

#DD Printout from Examination Report from Capone's phone 273-77
- Admitted 9/8/14

#EE FBI Lab Report, hair from Durango - Admitted 9/12/14

#FF David Stone's debit/credit card statement - Admitted 9/11/14

#GG Photo of Yukon with back doors open - Admitted 9/11/14

#HH Photo of garbage can in Capone's Shop #1 - Admitted 9/11/14

#II Photo of garbage can in Capone's Shop #2 - Admitted 9/11/14

#JJ SCAMP records, Rachel Text on 4/16/10 - Admitted 9/11/14

#KK SCAMO records, Stone phone calls on 4/16/10 - Admitted 9/11/14

#LL Photo of SunTek receipt in Rachael Anderson's car - Admitted 9/11/14

#MM Photo of keys on front seat of Rachael Anderson's car - Admitted 9/11/14

#NN1 Dyna Mart video, Camera 8 angle individual frame shot - Admitted 9/11/14

#NN2 Dyna Mart video, Camera 8 angle individual frame shot - Admitted 9/11/14

#OO1 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO2 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO3 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO4 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO5 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO6 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO7 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO8 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO9 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO10 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO11 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO12 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO13 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO14 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO15 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO16 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO17 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO18 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO19 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#OO20 Dyna Mart video, Camera 4 angle individual frame shot - Admitted 9/11/14

#PP SCAMP records, Rachael texts from 4/16/10 to 4/19/10 - Admitted 9/12/14

#QQ Teresa Mullen Capone calls with David Stone June 15 - July 14, 2012
- Admitted 9/12/14

#RR Teresa Mullen Capone calls with David Stone July 15 - August 14, 2012
- Admitted 9/12/14

#SS Teresa Mullen Capone calls with David Stone August 15 - September 14, 2012
- Admitted 9/12/14

#TT Charles Capone's glasses - Admitted 9/12/14

#UU1 Printout from Examination Report from Capone's phone: 186
- Admitted 9/15/14

#UU2 Picture from Capone's phone, Capone holding fish - Admitted 9/15/14

#VV1 Printout from Examination Report from Capone's phone: 223
 - Admitted 9/15/14
 #VV2 Picture from Capone's phone, Capone with car on rack - Admitted 9/15/14
 #WW1 Printout from Examination Report from Capone's phone: 155
 - Admitted 9/15/14
 #WW2 Picture from Capone's phone, Capone in house with cup - Admitted 9/15/14
 #XX1 Printout from Examination Report from Capone's phone 211
 - Admitted 9/15/14
 #XX2 Picture from Capone's phone, Capone in shop - Admitted 9/15/14
 #YY Printout from Examination Report, text messages: Items 1030 to 1044
 - Admitted 9/15/14
 #ZZ Wysup Receipt - Admitted 9/15/14
 #AAA Pathology Regional Laboratory, Employee Documentation
 - Admitted 9/15/14
 #BBB Punch Detail Report, Pathology Regional Laboratory - Admitted 9/15/14
 #CCC Tire Chains in bag - Admitted 9/15/14
 #DDD Time Distance Measurements - Admitted 9/15/14

AND FURTHER that the transcripts of the Motion Hearing held on April 9, 2014, Excerpts of Proceedings held September 2-5, 2014, September 8-12, 2014, and September 15, 2014, Completion of Jury Questionnaires held on August 20, 2014, Individual Voir Dire Examination of Prospective Jurors held on August 27, 2014, Continuation of Individual Voir Dire Examination of Prospective Jurors held August 28-29, 2014, Jury Trial held September 9-17, 2014, Sentencing Hearing held on February 23, 2015, Presentence Investigation Report dated November 13, 2014, Addendum to the Presentence Investigation Report dated February 11, 2015, and a Victim Impact Statement dated February 12, 2015, will be lodged as exhibits as provided by Rule 31(a)(3), IAR.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 16th day of July, 2015.

Henrienne K. Westberg, Clerk of the District Court, Latah County, ID

By R. Converse
 Deputy Clerk

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-Respondent,)
)
 v.)
)
 CHARLES ANTHONY CAPONE,)
)
 Defendant-Appellant.)
 _____)

Supreme Court No. 43142

CERTIFICATE OF SERVICE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that I have mailed, by United States mail, one copy of the Presentence Investigation Report, Addendum to the Presentence Investigation Report, Reporter's Transcripts and Clerk's Record to each of the attorneys of record in this cause as follows:

SARA B. THOMAS
STATE APPELLANT PUBLIC DEFENDER
3050 N. LAKE HARBOR LANE SUITE 100
BOISE, ID 83703

KENNETH K. JORGENSEN
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 83720
BOISE, ID 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 16th day of July 2015.

Henrienne K. Westberg, Clerk of the
District Court, Latah County, ID

By R. Converse
Deputy Clerk