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### State v. Capone Clerk's Record v. 2 Dckt. 43124

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IN THE SUPREME COURT

OF THE

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

CHARLES ANTHONY CAPONE,

Defendant-Appellant.

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

HONORABLE CARL B. KERRICK, DISTRICT JUDGE  
-----

SARA B. THOMAS  
STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

KENNETH K. JORGENSEN

ATTORNEY FOR RESPONDENT  
-----

Filed this \_\_\_ day of \_\_\_\_\_, 2015.

STEPHEN W. KENYON, CLERK

By \_\_\_\_\_  
Deputy

SUPREME COURT CASE NO. ~~43142~~

VOLUME II OF XI VOLUMES

SEE AUGMENTATION RECORD

43124

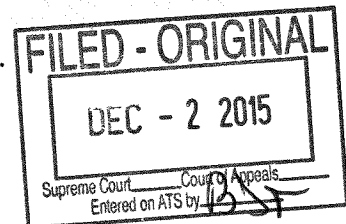


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CR 2013-1358  
CASE NO

2013 JUL -5 AM 9:37

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

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

STATE OF IDAHO,	)	
Plaintiff,	)	
	)	Case No. CR-2013-01358
V.	)	
	)	ORDER FOR BAIL/COMMITMENT
CHARLES ANTHONY CAPONE,	)	OF WITNESS
Defendant.	)	
_____	)	

The above matter having come before the court pursuant to the motion of the State, the Court having reviewed the same and the case file, and good cause appearing:

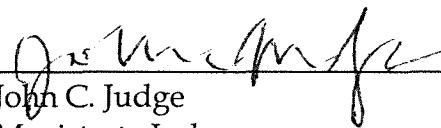
The Court DOES HEREBY FIND that Christopher Porter is a material witness herein and that there is reason to believe that said witness will not appear and testify, or that it may become impractical to secure the witness's appearance by subpoena, all for the reasons articulated in the State's motion.

ORIGINAL  
000208

NOW, THEREFORE, IT IS HEREBY ORDERED that the said witness, Christopher Porter, shall give bail for his appearance as a witness herein in the amount of \$ 2,500.00, to be held by Latah County District Court Clerk, as and for assurance that the witness will appear at such date and time ordered by the Court; and, FURTHER, if said witness fails to post said bail upon service of this order, IT IS HEREBY ORDERED that he be committed to the custody of the Latah County Sheriff pending final disposition of this matter.

The Latah County Sheriff shall be responsible for service and execution of this order, and a subpoena for the next scheduled court proceeding at which the witnesses' presence is required, including the collection and receipt of bail or, alternatively, if said witness fails to give bail upon service of this order, take said witness into custody pending further order of the Court.

SO ORDERED this 21<sup>st</sup> day of July, 2013.

  
\_\_\_\_\_  
John C. Judge  
Magistrate Judge

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the ORDER FOR BAIL/COMMITMENT FOR WITNESS were served on the following in the manner indicated below:

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, ID 83483

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

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

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Dated this 5 day of July, 2013.

SUSAN PETERSEN  
Latah County Clerk of the Court

By: Sue Anderson  
Deputy Clerk

CR 2013-1358  
CASE NO

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

2013 JUL -8 PM 4:45

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

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

STATE OF IDAHO, )  
 )  
 Plaintiff, ) Case No. CR-2013-0001358  
 )  
 vs. ) **Ex Parte MOTION FOR**  
 ) **APPOINTMENT OF INVESTIGATOR**  
 CHARLES ANTHONY CAPONE, )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 Defendant. )

COMES NOW the defendant, Charles Anthony Capone, by and through his appointed counsel, D. Ray Barker, and hereby moves the court for an order authorizing counsel to retain Charles Schoonover, as investigator in the above entitled case. This motion is supported by the Affidavit in Support of *Ex Parte* Motion for Appointment of Investigator. Mr. Schoonover would work on this case at an hourly rate of \$70.00. Request is hereby made for the authorization of up to \$15,000.00 in investigative costs and expenses. Such costs in the amount of \$10,000.00 were previously approved of which \$5,675.00 has been expended. Authorization for an additional \$5,000.00 is hereby requested.

DATED this 8th day of July, 2013.

*D. Ray Barker*

---

D. Ray Barker  
Attorney for Defendant

CR 2013-1358  
CASE NO. \_\_\_\_\_

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

2013 JUL -8 PM 4:46  
CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY    AN    DEPUTY

Attorney 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,                     )  
  )  
vs.                                     )  
  )  
CHARLES ANTHONY CAPONE,        )  
  )  
      Defendant.                    )

Case No. CR-2013-0001358

**AFFIDAVIT IN SUPPORT OF  
Ex Parte MOTION FOR  
APPOINTMENT OF INVESTIGATOR**

State of Idaho             )  
                              : ss.  
County of Latah         )

D. Ray Barker, being first duly sworn upon his oath, deposes and says:

1. I am the Court-appointed counsel for Charles Anthony Capone.
2. I have been an attorney for approximately 37 years, during which time I have tried over twenty criminal jury trials.
3. I am familiar with *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny.

**AFFIDAVIT IN SUPPORT OF EX PARTE MOTION  
FOR APPOINTMENT OF INVESTIGATOR -1**

000213



4. Absent the requested assistance of an investigator, my client will be denied effective assistance of counsel as guaranteed by the Sixth Amendment to the U.S. Constitution, as well as Article I, Section 13 of the Idaho Constitution, and Idaho Code § 19-852, which requires that indigent citizens be provided with the same defense as do accused who have privately retained counsel.

5. Any competent counsel, private or court appointed, would necessarily need and seek the assistance of an investigator to adequately prepare for trial and try the case.

6. I am a sole practitioner, with a contract to perform public defender services for Latah County when the primary public defenders have a conflict of interest. I have a private practice in which I do primarily criminal defense work, which makes up approximately 52% of my practice. The remainder of my practice consists of bankruptcy, family law, wills and estates, and elder law. I have one full time secretary and a Legal Intern who is a student at the University of Idaho School of Law.

7. This is a complicated case involving allegations of first degree murder and conspiracy.

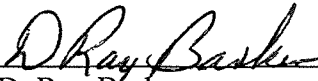
8. Because of the serious nature and complexity of the case, a sole practitioner will not be able to provide competent representation without the assistance of an investigator.

9. I am mindful of my fiduciary duty to Latah County and I will incur only the investigatory costs that are necessary to discharge my professional obligations. The decisions I now make will be the focus of future post-conviction litigation.

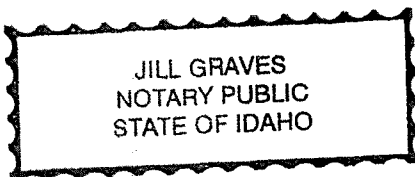
10. The State has formidable resources at its disposal that it has used and will continue to use: including the Latah County Prosecutor's Office; The Asotin County Sheriff's Office; Lewiston Police Department; Clarkston Police Department; Idaho State Police; Federal agencies; the Moscow Police Department; the Latah County Sheriffs Department; state labs; and whatever expert witnesses and specialists as it deems appropriate. By contrast, I do not have such resources.

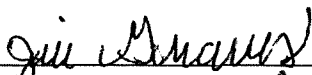
11. My client faces the possibility of a life imprisonment.

12. The State has already invested substantial resources into the investigation of this case and I anticipate the State will continue to do so. Without an investigator to aid Mr. Capone, he will be denied his statutory and constitutional rights as outlined in this motion. Investigative help is a necessity because I cannot investigate and discover evidence and thereby become a potential witness. I have talked with Charles Schoonover and he is prepared to assist me in this matter, at a rate of \$70.00 an hour, mileage at \$.60 per mile plus out of pocket expenses. I have previously worked with Mr. Schoonover and been pleased with his work.

  
\_\_\_\_\_  
D. Ray Barker

Subscribed and sworn to before me on the 8<sup>th</sup> day of July, 2013.



  
\_\_\_\_\_  
Residing at: MOSCOW  
My Commission Expires: 03-26-16

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

CASE NO. CR 2013-1358

2013 JUL -9 PM 12:22

CLERK OF DISTRICT COURT  
BY AM COUNTY 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, )  
)  
vs. )  
)  
CHARLES ANTHONY CAPONE, )  
)  
)  
)  
Defendant. )

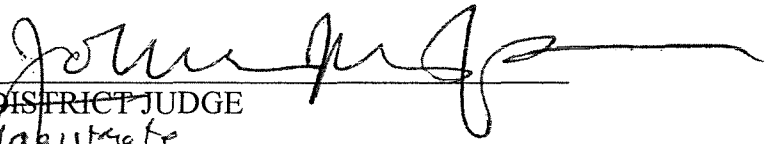
Case No. CR-2013-0001358

**ORDER AUTHORIZING  
FUNDS REGARDING INVESTIGATOR**

THE COURT, having reviewed defendant's Motion for Appointment of Investigator dated July 8th, 2013, and good cause appearing therefore,

IT IS HEREBY ORDERED that the defense is authorized to retain Charles Schoonover, as an investigator for the defense in the above entitled case at a rate of \$70.00 per hour. Investigative costs in the amount of \$10,000.00 were previously approved, of which \$5,675.00 has been expended. Such costs shall not exceed \$15,000.00 in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 9<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
DISTRICT JUDGE  
Magistrate

CASE NO. CR-2013-1358

2013 JUL -9 PM 2:58

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

LATAH COUNTY PROSECUTOR'S OFFICE  
MICHELLE M. EVANS  
DEPUTY PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
(208) 883-2246  
ISB No. 4795

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

STATE OF IDAHO,	)	
Plaintiff,	)	
	)	Case No. CR-2013-0001358
V.	)	
	)	AFFIDAVIT IN SUPPORT OF
CHARLES ANTHONY CAPONE,	)	MOTION FOR ISSUANCE OF
Defendant.	)	CERTIFICATE OF ENDORSEMENT
_____	)	

Michelle M. Evans, being first duly sworn, states as follows:

1. That the affiant is a Deputy Prosecuting Attorney for the County of Latah, State of Idaho;
2. That the Defendant, Charles Anthony Capone, is charged with the felony offenses of: PRINCIPAL TO MURDER IN THE FIRST DEGREE, Idaho Code 18-204, 18-4001, 4003, committed on April 16, 2010; CONSPIRACY TO COMMIT MURDER IN THE

**ORIGINAL**  
000217

FIRST DEGREE, Idaho Code 18-4001, 4003, 18-1701, committed during the months of January through April, 2010; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), committed on April 16, 2010; and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, committed commencing April 16, 2010, Felonies in FOUR (4) COUNTS.

3. That the above-entitled case has been set for preliminary hearing to begin on 30<sup>th</sup> day of July, 2013 at 9:00 a.m., and the preliminary hearing is expected to last for four days;

4. That **Tim Wheaton** is a necessary and material witness to the state in this case and his testimony may include, but not be limited to, the following:

- That he has known Charles Capone (co-conspirator of David Stone) since 2001 or 2002, and knew of Rachael Anderson (Capone's wife since 2009, and the victim in this case) through Capone;
- That Charles spoke to him about fights he had with his wife Rachael Anderson; in particular, a fight in November or December 2009, where Capone admitted getting physically violent with Rachael;
- That he has information regarding Capone's continuous "bad" texting/voicemails he sent to Rachael after they separated in December 2009, including that Capone's

pastor counseled him to stop texting/contacting Rachael;

- That in early February, 2010, Capone had been in a tirade about his relationship with Rachael and wanted the marriage to continue. Capone also admitted to him that he borrowed the cars of customers of his auto repair shop in Moscow, ID to drive by Rachael's house in Clarkston, Washington to check up on her activities and that he had a friend who lived near Rachael that he also had driving by Rachael's house to check on her activities.
- That in early February, 2010, Capone told him (in reference to Rachael) that he could "kill the bitch" and "bury her body and nobody would ever find it."
- That Capone told him his business was not doing well and that he was about \$250,000 to \$300,000 in the hole.
- That he also has information about Capone's stalking/harassment behavior of one Capone's prior wives and a prior girlfriend.
- That he has information about how Capone has a drinking problem and that when he drinks he becomes "vicious and mean."

5. That Tim Wheaton's testimony is estimated to take less than one (1) day;

6. That Tim Wheaton is currently residing at 7613 Highway 291, Ford, Stevens

County, Washington 99014, approximately one hundred eighteen (118) miles from

Moscow, Idaho;

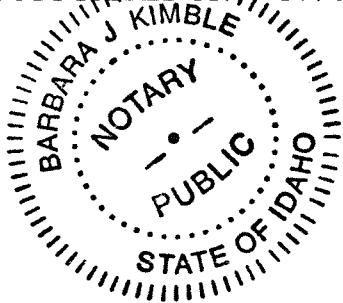
7. That a witness fee of five dollars (\$5.00) for each day of travel and attendance will be tendered, and mileage of fifteen cents (15¢) a mile (one way to and from the court) will be tendered.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9<sup>th</sup> day of July, 2013.

Michelle M. Evans  
Michelle M. Evans  
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 9 day of July, 2013.



Barbara J. Kimble  
Notary Public for Idaho.  
Residing at Boise  
Commission expires: 5/31/2014

CR 2013-1358  
CASE NO

2013 JUL -9 PM 2:58

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY      DEPUTY

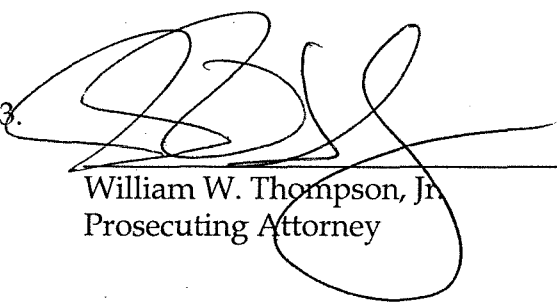
LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
Phone: (208) 883-2246  
ISB No. 2613

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,	)	Case No. CR-2013-0001358
	)	
V.	)	MOTION FOR ISSUANCE OF
	)	CERTIFICATE OF ENDORSEMENT
CHARLES ANTHONY CAPONE,	)	PURSUANT TO IDAHO CODE
Defendant.	)	19-3005(2)
_____	)	

COMES NOW the State of Idaho, by and through the Prosecuting Attorney,  
William W. Thompson, Jr., and hereby moves this court for the issuance of a Certificate of  
Endorsement under the Uniform Act to Secure Attendance of Witnesses in Criminal  
Cases, Idaho Code 19-3005, for Tim Wheaton. This motion is based upon the Affidavit of  
Michelle M. Evans.

DATED this   9   day of July, 2013.

  
\_\_\_\_\_  
William W. Thompson, Jr.  
Prosecuting Attorney

MOTION FOR ISSUANCE OF CERTIFICATE  
OF ENDORSEMENT PURSUANT TO IDAHO  
CODE 19-3005(2)

**ORIGINAL**  
000221



CR 2013-1358  
CASE NO.

2013 JUL -9 PM 4:21

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY                      DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
(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-2013-0001358

CERTIFICATE OF ENDORSEMENT

The Court, having been fully advised through the Affidavit of Michelle M. Evans,  
does hereby certify, pursuant to Idaho Code 19-3005(2):

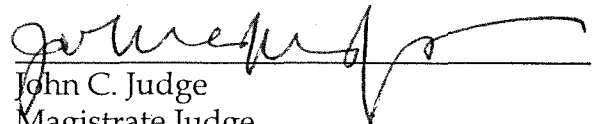
- (1) That the above-referenced matter is a prosecution pending in the Second  
Judicial District court of the State of Idaho, in and for the County of Latah;
- (2) That Tim Wheaton, who currently resides in the State of Washington, is a  
necessary and material witness for the State in this matter;

**ORIGINAL**

000222

- (3) That the preliminary hearing in this matter is scheduled to commence on the 30<sup>th</sup> day of July, 2013 at 9:00 a.m., and that the witness shall be required to attend the trial;
- (4) That the preliminary hearing is estimated to take three to four (3 - 4) days, with the witness' testimony expected to take one (1) day of that hearing;
- (5) That the witness will be tendered a witness fee of five dollars (\$5.00) for each day of testimony or travel, and fifteen cents (15¢) a mile for each mile by the ordinarily traveled route, one (1) way, to and from the court where the hearing or prosecution is pending;
- (6) That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 9<sup>th</sup> day of July, 2013.

  
John C. Judge  
Magistrate Judge

CASE NO. CR2013-1358

2013 JUL 22 PM 1:57

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY am DEPUTY

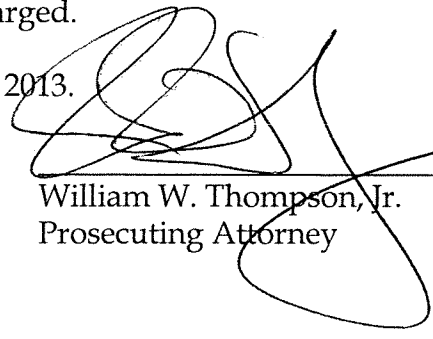
LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
Phone: (208) 883-2246  
ISB No.

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.	)	
	)	MOTION FOR LEAVE TO AMEND
CHARLES ANTHONY CAPONE,	)	
Defendant.	)	

COMES NOW the State of Idaho, by and through William W. Thompson, Jr., Latah County Prosecuting Attorney, and respectfully moves this court pursuant to Idaho Code 19-1420 and Idaho Criminal Rule 7(e) for leave to amend the Criminal Complaint by filing the Amended Criminal Complaint lodged herewith. The State respectfully submits that no additional or different offense is charged.

DATED this 22 day of July, 2013.




---

William W. Thompson, Jr.  
Prosecuting Attorney

ORIGINAL  
000224

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing MOTION FOR LEAVE TO AMEND was

mailed, United States mail, postage prepaid

hand delivered

sent by e-mail (d.raybarker@turbonet.com), original by mail

to the following:

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

Dated this 22nd day of July, 2013.

Yeto Meham

CASE NO. CR 13-1358

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

2013 JUL 24 AM 10:46

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY [Signature] DEPUTY

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

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

<sup>2013-1358</sup>  
Case No. CR-2009-3162

**OBJECTION TO MOTION FOR  
LEAVE TO AMEND**

COMES NOW the Defendant, Charles Anthony Capone, by and through his attorneys, D. Ray Barker and Mark T. Monson, and objects to the State's Motion for Leave to Amend. The basis of this objection is that the proposed Amended Criminal Complaint at page 5 under Part II alleges two convictions in Navaho County, Arizona, Superior Court Case Number 9293, designated as Paragraphs (1) and (2). Paragraph (1) alleges a conviction for Attempted Armed Robbery and Paragraph (2) alleges a conviction for Theft.

According to criminal history records received from the Asotin County Prosecutor's Office the original charge was Attempted Armed Robbery which was amended to Theft. Therefore it appears that Paragraphs (1) and (2) are referring to the same event which resulted in a conviction for Theft and there was no conviction for Attempted Armed Robbery.

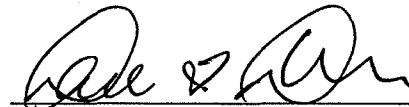
A copy of the referred criminal history record is attached hereto and incorporated herein  
by this reference.

DATED this 24<sup>th</sup> day of July, 2013.



---

D. Ray Barker  
Attorney for Defendant



---

Mark T. Monson  
Attorney for Defendant

with arrest date of 2010/12/10)  
Photo Image Available FBI-CJIS DIV-CLRKSBG CLARKSBURG WVFBINFOO  
Available Image Other  
(No Photo Image Transmitted

Comment:FBI has three photos associated with  
arrest date of 2010/05/07)

Photo Image Available ATF SPOKANE WAATF0100  
Available Image Other  
(No Photo Image Transmitted

Comment:Arresting agency has photo associated  
with arrest date of 2010/05/07)

Photo Image Available FEDERAL CORRECT INST SHERIDAN OR036017C  
Available Image Other  
(No Photo Image Transmitted

Comment:Arresting agency has photo associated  
with arrest date of 1997/12/03)

Photo Image Available USM BOISE IDUSM0100  
Available Image Other  
(No Photo Image Transmitted

Comment:Arresting agency has photo associated  
with arrest date of 1997/08/13)

Photo Image Available USBP-SAN YSIDRO SAN DIEGO CAINS0100  
Available Image Other  
(No Photo Image Transmitted

Comment:Arresting agency has photo associated  
with arrest date of 1984/03/25)

\*\*\*\*\* CRIMINAL HISTORY \*\*\*\*\*

==== Cycle 001 =====

Earliest Event Date 1984-03-25

Arrest Date 1984-03-25

Arrest Case Number

Arresting Agency CAINS0100 USBP-SAN YSIDRO SAN DIEGO

Charge 01

Charge Literal ALIEN SMUG

Agency CAINS0100 USBP-SAN YSIDRO SAN DIEGO

Severity

==== Cycle 002 =====

Earliest Event Date 1986-12-12

Arrest Date 1986-12-12

Arrest Case Number 86-4969

Arresting Agency AZ0090100 POLICE DEPARTMENT HOLBROOK

Charge 01

Charge Literal 1299-ARMED ROBBER/F

Agency AZ0090100 POLICE DEPARTMENT HOLBROOK

Severity

Court Disposition (Cycle 002)

Court Disposition Date 1987-05-18

Court Agency Unknown

Charge 01

Charge Literal ATTEMPTED ARMED ROBBERY AMEND THEFT

Severity

Disposition (Other 1987-05-18; 6M CONFINEMENT, GUILTY JL

CC 4YRS PROBATION)

==== Cycle 003 =====

Earliest Event Date 1988-04-21

Arrest Date 1988-04-21

Arrest Case Number 88-1436

Arresting Agency AZ0090100 POLICE DEPARTMENT HOLBROOK

Charge 01

Charge Literal 1203-WARR F-ORIG-CHG/ROBBERY-BUSINESS-STGARM

Agency AZ0090100 POLICE DEPARTMENT HOLBROOK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this <sup>24th</sup>~~25th~~ day of July, 2013, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Latah County Prosecuting Attorney  
Attn: William W. Thompson, Jr.  
P.O. Box 8068  
Moscow ID 83843

- First-class mail
- Hand-delivered
- Facsimile

By:

  
D. Ray Barker



CASE NO. CR 2013-1358

2013 JUL 25 AM 10:55

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY Jim DEPUTY

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.

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.	)	
	)	MEMORANDUM OF
CHARLES ANTHONY CAPONE,	)	POINTS AND AUTHORITIES
Defendant.	)	
_____	)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully submits the following selected points and authorities of law with the hope that they will be of assistance to the Court in addressing issues that may arise during the course of the upcoming preliminary hearing. This memo is not intended to be a comprehensive analysis of all applicable law. Rather, the State felt it appropriate to highlight what it believes to be controlling principles as a conceptual reference.

ORIGINAL  
000230

I.

STATEMENTS OF VICTIM, RACHAEL ANDERSON

A. At the preliminary hearing, the State intends to offer evidence of statements made by the victim, Rachael Anderson, prior to her April 16, 2010, disappearance that may include statements regarding her relationship with the Defendant, Charles Capone; their pending divorce proceedings; her intentions and plans regarding her marriage to Mr. Capone; her plans regarding other actions she was intending to take (such as traveling to Moscow to meet with Mr. Capone); and similar statements.

Because Rachael Anderson has been missing since April 16, 2010, and the State asserts that she is deceased, she will obviously not be "available" to testify at the preliminary hearing (or at any other proceedings in this case). As such, she will not be available for confrontation or cross-examination by the defense. However, the Confrontation Clause applies to what the Courts have characterized as "testimonial" statements of a witness. See Crawford v. Washington, 541 U.S. 36, 53-54 (2004); Michigan v. Bryant, 131 S.Ct. 1143, 1153 (2011).

In Crawford, the United States Supreme Court described a "core class of testimonial statements" as including statements "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." Crawford, supra at 52. By way of example, Crawford would apply to

“prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations [emphasis added].” Id. at 68. “(T)he most important instance in which the Clause restricts the introduction of out-of-court statements are those in which state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial.” Bryant, supra at 1155.

The Court in Crawford distinguished the “formal statement to government officers,” which is testimonial, from the “casual remark to an acquaintance,” which is non-testimonial. Id. at 51. In doing so, the Court noted that an “accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not.” Id. at 51.

In Crawford, the Supreme Court also gave further guidance in determining whether a statement is “testimonial” for purposes of the Confrontation Clause. These categories of core testimonial statements are:

1. Ex-parte in-court testimony or its functional equivalent - that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pre-trial statements that declarants would reasonably expect to use prosecutorially;
2. Extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony or confessions; and
3. Statements that were made under circumstances which would lead an objective

witness reasonably to believe that the statement would be available for use at a later trial. Id. At 51-52.

Two years later, in Davis v. Washington, 547 U.S. 813 (2006), the Supreme Court specifically carved out an ongoing emergency exception for statements made to law enforcement.

Five years later, the Court observed that there may be other circumstances where a statement is not testimonial.

“When, as in Davis, the primary purpose of an interrogation is to respond to an “ongoing emergency,” its purpose is not to create a record for trial and thus it is not within the scope of the Clause. But there may be other circumstances, aside from ongoing emergencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony. In making the primary purpose determination, standard rules of hearsay, designed to identify some statements as reliable, will be relevant. Where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause.” Michigan v. Bryant, 131 S.Ct. 1143, 1155 (2011).

Based on the above, the State respectfully submits that its contemplated evidence of statements by Rachael Anderson to third parties is not testimonial unless they can objectively be seen as having a primary purpose to create an out-of-court substitute for testimony.

B. Even though her statements are non-testimonial, statements by Rachael to third parties would only be admissible if they are either non-hearsay (under I.R.E. 801) or fit within an exception to the hearsay rule under I.R.E. 803 or 804.

To the extent that a statement from Rachael Anderson may be offered not for the truth of the statement but merely to provide context and foundation for the actions of others, it would be non-hearsay under I.R.E. 801(c).

To the extent that statements by Rachael Anderson to third parties fall within the definition of hearsay, the State believes that the evidence it will be adducing at the preliminary hearing will fall into at least one of six possible exceptions to the hearsay rule;

1. I.R.E. 803(1) - Present Sense Impression - allows hearsay statements which were made by the person while perceiving the event or immediately thereafter.
2. I.R.E. 803(2) - Excited Utterance - allows hearsay statements which relate to a startling event or condition while the declarant is under the stress or excitement of the particular event.
3. I.R.E. 803(3) - Then-Existing Mental/Emotional/Physical Condition - allows the admission of hearsay statements which relate to the declarant's state of mind, plan, mental feelings, etc.

In addition to the exceptions under I.R.E. 803, I.R.E. 804 applies in this case because of Rachael Anderson's "unavailability" as a witness;

1. I.R.E. 804(b)(4) - Personal/Family History - allows hearsay statements that relate to an unavailable declarant's personal or family history including marriage, divorce, relationship by marriage, etc.
2. I.R.E. 804(b)(5) - Forfeiture by Wrongdoing - allows the admission of hearsay

statements from an unavailable witness "offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness." In this particular case, the State respectfully submits that the evidence will show that the Defendants are responsible for the death and resulting "unavailability" of Rachael Anderson (note: the Supreme Court in Davis, supra, discusses the forfeiture by wrongdoing rule in further detail, and it expressly accepted this doctrine in Crawford, supra at 62).

3. I.R.E. 804(b)(6) - allows the admission of hearsay statements by an unavailable declarant where the Court determines that:
  - a. The statement is offered as evidence of a material fact;
  - b. The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
  - c. The general purposes of these rules and interests of justice will best be served by admission of the statement into evidence.

## II.

### PRIOR STATEMENTS OF THIRD PARTY WITNESSES

The State anticipates that there may be witnesses who may refuse to testify at the

preliminary hearing or assert that they have no current memory of the subject matter on which they are being questioned. If such occurs, the State intends to offer evidence of the substance of these witnesses' prior statements, most likely in the forms of a recorded conversation with transcript or a written statement from the witness, under I.R.E. 803(5) ("recorded recollection" made or adopted by the witness when the matter was fresh in his/her memory) and/or I.R.E. 804(6).

The State respectfully submits that so long as the witness is physically present in court and thereby available for cross-examination, the Confrontation Clause does not apply. In that regard, the State respectfully refers the Court to State v. Davis, 152 Idaho 652 (Ct. App. 2011). In Davis, a witness claimed no recollection of the underlying events at issue (due to having been injured in a traffic accident). The Court of Appeals nonetheless held that "(t)hough it may impede Davis's ability to cross-examine, the confrontation right does not guarantee effective confrontation in the way a defendant desires. Effective confrontation is possible where the witness is present, affirms the statement as her own, and the defendant has the opportunity to expose the infirmities of that witness." Id. at 658.

### III.

#### DEFENDANT'S STATEMENTS OFFERED AGAINST THEMSELVES AND EACH OTHER

The State intends to offer evidence of statements made by each of the defendants,

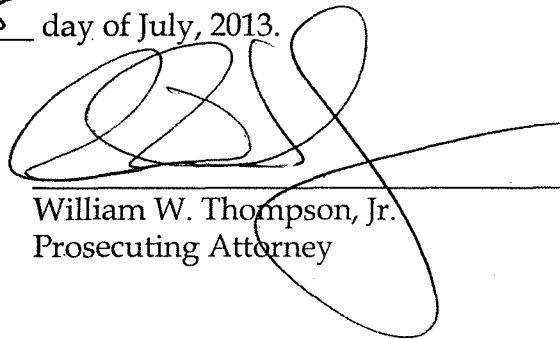
not only against each of them individually, but each against the other.

I.R.E. 801(d)(2) provides that statements by a party-opponent are not hearsay when offered against the party-opponent, and this includes statements made by co-conspirators "during the course and in furtherance of the conspiracy." In the case at bar, the State intends to offer statements of each defendant against themselves and also, by virtue of the allegations that the defendants conspired to not only commit the murder, but to cover it up by failing to report the death, against each other.

It is important to note that these types of statements are non-hearsay only if offered by a party-opponent. Neither defendant can attempt to elicit their own out-of-court statements through a third party. See State v. Burton, 115 Idaho 1154 (Ct. App. 1989); State v. Vivian, 129 Idaho 375 (Ct. App. 1996).

The State hopes that the above will prove of assistance to the Court and stands ready to provide such other briefing as the Court may desire.

Respectfully submitted this 25 day of July, 2013.



William W. Thompson, Jr.  
Prosecuting Attorney



CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing MEMORANDUM  
OF POINTS AND AUTHORITIES was

mailed, United States mail, postage prepaid

hand delivered

sent by e-mail (d.raybarker@turbonet.com), original by mail

to the following:

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

Dated this 25th day of July, 2013.

Kate Mecham

CASE NO. CR13-1338  
7-30-13 at 8:26 AM  
CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY [Signature] DEPUTY

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

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

Case No. CR-2013-01358  
ORDER FOR LEAVE TO AMEND

The above matter having come before the court pursuant to the motion of the State and good cause appearing therefrom:

IT IS HEREBY ORDERED that the Criminal Complaint herein be and the same hereby is amended by the filing of the Amended Criminal Complaint.

DATED this 30<sup>th</sup> day of July, 2013.

[Signature]  
John C. Judge  
Magistrate Judge

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the **ORDER FOR LEAVE TO AMEND** were served on the following in the manner indicated below:

D. Ray Barker	<input type="checkbox"/> U.S. Mail
Attorney at Law	<input type="checkbox"/> Overnight Mail
P.O. Box 9408	<input type="checkbox"/> Fax
Moscow, ID 83843	<input checked="" type="checkbox"/> Hand Delivery

William W. Thompson, Jr.	<input type="checkbox"/> U.S. Mail
Prosecuting Attorney	<input type="checkbox"/> Overnight Mail
Latah County Courthouse	<input type="checkbox"/> Fax
Moscow, ID 83843	<input checked="" type="checkbox"/> Hand Delivery

Dated this 30 day of July, 2013.

SUSAN PETERSEN

Latah County Clerk of the Court

By: \_\_\_\_\_

Deputy Clerk

CASE NO. CR12-1358  
7-30-13 at 8:36AM  
CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY mc DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843  
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. ) Case No. CR-2013-01358  
 )  
CHARLES ANTHONY CAPONE, ) AMENDED CRIMINAL COMPLAINT  
DOB: [REDACTED] )  
SSN: [REDACTED] )  
Defendant. )  
\_\_\_\_\_ )

William W. Thompson, Jr., Latah County Prosecuting Attorney, complains and says that CHARLES ANTHONY CAPONE, in Latah County, State of Idaho, commencing in January, 2010, and from then forward, did then and there commit crimes against the People of the State of Idaho: PRINCIPAL TO MURDER IN THE FIRST DEGREE, Idaho Code 18-204, 18-4001, 18-4003(a); CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a), 18-1701; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, Felonies in FOUR (4) COUNTS, committed as follows:

ORIGINAL  
000241

COUNT I  
Principal to Murder in the First Degree  
I.C. 18-4001, 18-4003(a)

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

COUNT II  
Conspiracy to Commit Murder in the First Degree  
I.C. 18-4001, 18-4003(a), 18-1701

That the Defendant, CHARLES ANTHONY CAPONE, during the months of January through April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully combine or conspire with David Christopher Stone to commit the crime of Murder in the First Degree, Idaho Code 18-4001, 18-4003(a);

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

1. Charles Capone and David Stone surveilled, stalked and followed Rachael Anderson;
2. Charles Capone exchanged text messages and telephone communications with Rachael Anderson for the purpose of luring her to Capone's business in Latah County, Idaho;
3. Charles Capone gave an ultimatum to Rachael Anderson for her to return to him and not pursue divorce;

4. David Stone sought and received instructions on the operation of a backhoe;
5. Charles Capone stole a prescription drug known as Ambien;
6. David Stone went to Charles Capone's business on April 16, 2010;
7. Charles Capone and/or David Stone put Ambien into Rachael Anderson's beer for the purpose of drugging her;
8. Charles Capone and/or David Stone killed and murdered Rachael Anderson.

#### COUNT III

##### Failure to Notify Coroner or Law Enforcement of Death

I.C. 19-4301A(1)(3)

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

#### COUNT IV

##### Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death

I.C. 19-4301A(1)(3), 18-1701

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

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

1. David Stone sought and received instructions on the operation of a backhoe;
2. David Stone went to Charles Capone's business on April 16, 2010;
3. David Stone lied to his wife, Alisa, to hide his and Charles Capone's true activities;
4. Charles Capone and/or David Stone killed and murdered Rachael Anderson;
5. Charles Capone and David Stone hid/disposed of Rachael Anderson's body after she was murdered;
6. Charles Capone and/or David Stone purchased a tarp to replace one used in the murder of Rachael Anderson and/or the disposal of her body;
7. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachael Anderson in order to remove evidence of her death;
8. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
9. Charles Capone left fictitious communications on Rachael Anderson's phone after her death in order to hide the fact of her death and the circumstances of her death;
10. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators;

11. Charles Capone told investigators that he would reveal the location of Rachael Anderson's body only if he was released from custody.

## PART II

EXTENDED SENTENCE FOR PERSISTENT VIOLATOR; Idaho Code 19-2514, AND FURTHER, that the said Defendant, CHARLES ANTHONY CAPONE, has been previously convicted of the commission of a Felony offense at least two times, to-wit:

- (1) On or about the 18th day of May, 1987, the defendant was convicted of Attempted Armed Robbery, a Felony, in Navaho County, Arizona, Superior Court case number 9293;
- (2) On or about the 18th day of May, 1987, the defendant was convicted of Theft, a Felony, in Navaho County, Arizona, Superior Court case number 9293;
- (3) On or about the 27th day of October, 1997, the defendant was convicted of Bank Larceny, a Felony, in case no. 1:97CR00064-001 in the United States District Court for the District of Idaho;
- (4) On or about the 18th day of February, 1998, the defendant was convicted of Aggravated Assault, a Felony, in Latah County, Idaho, case no. CR-97-01687;
- (5) On or about the 18th day of February, 1998, the defendant was convicted of Burglary, a Felony, in Latah County Idaho, case no. CR-97-01687;
- (6) On or about the 27th day of September, 2010, the defendant was convicted of Felon in Possession of Firearm, Unlawful Possession of a Weapon, a Felony, in case no. 2:10CR00119-001-N-EJL in the United States District Court for the District of Idaho.

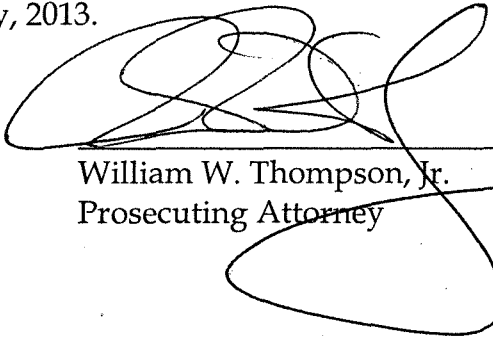
and that by virtue of these prior convictions and the convictions for the crimes charged in the Criminal Complaint in Latah County Case number CR-2013-01538, the Defendant is therefore subject to sentencing pursuant to Idaho Code 19-2514.



All of which is contrary to the form, force and effect of the statutes above cited, and against the peace and dignity of the People of the State of Idaho.

WHEREFORE complainant REQUESTS that the defendant be dealt with according to law.

Dated this 22 day of July, 2013.



William W. Thompson, Jr.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Amended Criminal  
Complaint was

mailed, United States mail, postage prepaid

hand delivered

sent by facsimile, original by mail

to the following:

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

Dated this 22nd day of July, 2013.

Kate Muehman

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

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Title of Action	State vs Charles Capone and David Stone	Judge: John C. Judge
Type of Hearing	Preliminary Hearing-Day 1	Clerk: M.Coleman
Attorneys for Plf.	William Thompson, Jr., Michelle Evans and Mia Vowels	Recording: Z:03/2013-7-30
Attorney for Def.	Defendant Charles Capone present with counsel, D. Ray Barker, Court appointed counsel and Mark Monson, Court appointed co-counsel	Case No. CR-13-01358 and CR-13-1359
Others Present	Defendant David Stone present with counsel, Charles Kovis, Public Defender and Amanda Montalvo	Date July 30, 2013

Time 8:34 A.M.

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BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

State's exhibits #1-#71B, as listed on the attached exhibit log, were marked for identification by the State, prior to Court convening.

This being the time set for conducting a preliminary hearing in each case, Court noted the presence of counsel and the defendants.

Court cautioned those seated in the back of the courtroom regarding any outbursts or disruptions during the proceedings and directed all those present to turn off their cell phones.

Court noted that an objection to the State's motion to amend the criminal complaint was filed by Mr. Barker. Mr. Barker withdrew his objection to the filing of the amended criminal complaint.

Maureen Coleman  
Court Minutes  
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836 Court ordered the amended complaint be filed.

836 Mr. Monson moved to exclude witnesses from the courtroom. Mr. Thompson had no objection to excluding witnesses from the courtroom, requesting that Detective Tim Besst, representative for the State, and Amber Griswold, a family representative and daughter of Rachel Anderson be allowed to remain in the courtroom. Mr. Monson had no objection. Court granted Mr. Monson's motion to exclude witnesses from the courtroom excluding Detective Tim Besst and Amber Griswold.

Mr. Monson asserted defendant's Charles Capone's, privilege in regard to John Houser, who is Mr. Capone's pastor. Mr. Thompson made a statement to the Court. Court stated that he take up the matter at the time that Mr. Houser is called to testify.

Mr. Monson stated his concern about having a media microphone on the defense table. Mr. Kovic joined in the objection. Court ordered all media microphones be immediately removed from the defense table. Court ordered all audio devices be turned off when Court is not in active session and that no conversations between counsel and the defendants are to be recorded. Court noted that Ms. Montalvo was now present in the courtroom and seated at the defense table with Mr. Kovic. Mr. Kovic joined in Mr. Monson's motion to exclude witnesses from the courtroom and presented argument. Court ordered Ms. Griswold be excluded from the courtroom. Mr. Thompson stated his objection to the Court's ruling. Court stated that his ruling stands explaining the reason for the ruling.

842 Dennis Plunkett was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.

844 State's exhibit #1 was offered and admitted into evidence without objection by Mr. Monson and Mr. Kovic.

850 State's exhibit #2 was offered.

850 Mr. Barker questioned the witness in aid of an objection. Mr. Barker stated his objection to the admission of State's exhibit #2. Mr. Kovic had no objection.

850 Court overruled the objection and ordered State's exhibit #2 admitted into evidence.

853 Cross examination of the witness by Mr. Barker.

859 Cross examination of the witness by Mr. Kovic.

907 Mr. Thompson had no redirect examination of the witness.

Maureen Coleman

Court Minutes

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- 907 Mr. Barker questioned the witness in light of Mr. Kovic's questions.
- 908 Mr. Thompson and Mr. Kovic had no questions in light of Mr. Barker's questions.
- 908 There being no objection by counsel, Court excused Mr. Plunkett.
- 908 William Wilcox was called, sworn, and testified on behalf of the State, with Mr. Thompson conducting direct examination.
- 916 Cross examination of the witness by Mr. Monson.
- 931 Cross examination of the witness by Mr. Kovic.
- 931 Mr. Thompson had no redirect examination of the witness.
- 931 Upon inquiry from the Court, Mr. Monson, Mr. Barker and Mr. Kovic had no further questions for the witness.
- 931 There being no objection by counsel, Court excused Mr. Wilcox.
- 932 Amber Griswold was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Evans.
- 951 Cross examination of the witness by Mr. Barker.
- 1013 Cross examination of the witness by Mr. Kovic.
- 1016 Redirect examination of the witness by Ms. Evans.
- 1017 Neither Mr. Barker nor Mr. Kovic had any re-cross examination of the witness.
- 1017 There being no objection by counsel, Court excused Amber Griswold.
- 1017 Danny Lee Combs was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.
- 1020 Cross examination of the witness by Mr. Barker.
- 1028 Cross examination of the witness by Mr. Kovic.
- 1033 Redirect examination of the witness by Mr. Thompson.

1034 Mr. Barker conducted re-cross examination of the witness.

1036 Court recessed at 10:36 A.M.

1046 Court reconvened at 10:46 A.M., all being present in the courtroom as before.

1046 Chris Porter was called to testify and placed under oath. Mr. Barker requested the Court wait for Mr. Monson to return to the courtroom. Court so allowed.

1048 Mr. Monson was now present in the courtroom.

1049 Mr. Thompson began direct examination of the witness.

1050 Mr. Thompson moved to briefly recess this witness to call Detective Tim Besst. Court so allowed. The witness stepped down and left the courtroom.

1053 Tim Besst was called, sworn, and testified on behalf of the State, being questioned by Mr. Thompson.

1056 Mr. Thompson moved the Court play State's exhibit #3 under Idaho Rule 803(5) as a recorded recollection of Chris Porter and requested Mr. Porter be brought back into the courtroom during the playing of the cd.

1058 Mr. Kavis and Mr. Barker stated their objections to the playing of the cd. Court overruled the hearsay objection and presented remarks regarding the confrontation objection. Court overruled the confrontation objection. Court ordered the playing of the recorded conversation between Detective Tim Besst and Chris Porter. Mr. Porter was brought back into the courtroom. Court clarified that State's exhibit #3 is not being offered as an exhibit. Mr. Kavis stated a further objection on relevance. Mr. Thompson presented further argument. Court overruled the objection and ordered the cd be played. Mr. Porter was again seated in the witness box.

1104 The cd of a conversation between Detective Tim Besst and Chris Porter was played in open court.

1132 Mr. Monson conducted cross examination of Chris Porter.

1136 Mr. Kavis conducted cross examination of Chris Porter.

1138 Mr. Thompson conducted redirect examination of the witness.

1139 Mr. Monson conducted re-cross examination of the witness.

Maureen Coleman

Court Minutes

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1139 Mr. Kovic had no re-cross examination of the witness.

1139 Court excused Chris Porter without objection by counsel.

1140 Daniel Sean Hally was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.

1201 State's exhibit #5 was offered. There being no objection by Mr. Kovic or Mr. Monson, Court ordered State's exhibit #5 admitted into evidence.

1202 Mr. Thompson continued with direct examination of the witness.

1211 State's exhibit #32 was offered and admitted into evidence without objection by counsel.

1214 State's exhibit #6 and #7 were offered and admitted into evidence without objection by Mr. Kovic and Mr. Monson.

1215 State's exhibit #8 was offered and admitted into evidence without objection by Mr. Kovic and Mr. Monson.

1215 Mr. Thompson continued with direct examination of Daniel Sean Hally.

1219 Mr. Monson questioned the witness in aide of an objection and stated his objection.

1219 Mr. Thompson further questioned the witness to clarify the objection.

1221 Court recessed at 12:21 p.m.

112 Court reconvened at 1:12 p.m., with Court and counsel present in the courtroom. The defendants were not present in the courtroom.

114 Court recessed at 1:14 p.m.

117 Court reconvened at 1:17 p.m., with Court, counsel, and the defendants being present in the courtroom.

118 Daniel Sean Hally resumed the witness stand, previously being sworn.

118 Mr. Monson conducted cross examination of the witness.

203 Cross examination of the witness by Mr. Kovic.

- 216 Redirect examination of the witness by Mr. Thompson.
- 220 Re-cross examination of the witness by Mr. Monson.
- 236 Mr. Kavis had no re-cross examination of the witness.
- 236 Mr. Thompson conducted re-redirect examination of the witness.
- 236 Mr. Monson had no further questions for the witness.
- 236 There being no objection by counsel, Court excused Daniel Hally.
- 236 Dan Bruce was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.
- 248 Mr. Kavis conducted cross examination of the witness.
- 254 Cross examination of the witness by Mr. Monson.
- 302 Redirect examination by Mr. Thompson.
- 303 Upon inquiry from the Court neither Mr. Kavis nor Mr. Monson had any re-cross examination of the witness.
- 303 There being no objection by counsel, Court excused the witness.
- 303 Scot Gleason was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.
- 327 State's exhibit #9 was offered. Mr. Barker and Mr. Kavis stated their objections to the admission of State's exhibit #9. Mr. Thompson presented argument in support of the admission of State's exhibit #9. Court questioned Mr. Thompson. Mr. Barker presented further argument. Mr. Thompson presented further argument. Court overruled the objections and ordered State's exhibit #9 admitted into evidence.
- 332 Mr. Thompson continued with direct examination of the witness.
- 334 State's exhibits #10A and #10B were offered under Rule 5.1 for the purpose of the preliminary hearing only.
- 334 Mr. Barker questioned Mr. Thompson in aide of an objection in regard to State's exhibits



#10A and #10B.

334 Mr. Kovic stated his objection to the admission of State's exhibits #10A and #10B. Mr. Thompson presented argument in support of the offer to admit State's exhibits #10A and #10B. Mr. Kovic presented argument in opposition. Court reviewed the affidavit. Court sustained the objection.

338 Cross examination of the witness by Mr. Kovic.

344 Cross examination of the witness by Mr. Barker.

350 Redirect examination of the witness by Mr. Thompson.

351 Upon inquiry from the Court, neither Mr. Kovic nor Mr. Barker had any re-cross examination.

351 Court excused the witness without objection by counsel.

354 Court recessed at 3:54 p.m.

414 Court reconvened at 4:14 p.m., all being present in Court as before.

414 Alisa Stone was called to testify. Mr. Kovic objection to Ms. Stone testifying and asserted the spousal privilege. Mr. Thompson presented argument in opposition to the objection. Mr. Kovic had no argument.

415 Alisa Stone was placed under oath and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.

419 State's exhibit #11 was offered. Mr. Kovic and Mr. Barker stated their objections to the admission of State's exhibit #11. Court overruled the objections and ordered State's exhibit #11 admitted into evidence.

421 State's exhibits #12 and #13 were offered. Mr. Kovic and Mr. Barker stated their objections to the admission of State's exhibits #12 and #13. Mr. Thompson presented argument. Court overruled the objection and ordered State's exhibits #12 and #13 admitted into evidence.

422 Mr. Thompson continued with direct examination of the witness.

425 Mr. Kovic questioned the witness in aid of an objection and asserted the spousal privilege. Mr. Thompson presented argument in opposition.

427 Mr. Thompson questioned the witness regarding spousal privilege and argued the statements are not confidential communications. Mr. Kovic questioned the witness. Mr. Thompson submitted the issue to the Court. Court questioned Mr. Thompson.

430 Mr. Thompson further questioned the witness as an offer of proof. Mr. Kovic presented argument. Mr. Thompson presented further argument. Mr. Kovic presented further argument. Court articulated findings and found there was a waiver due to subsequent disclosure. Mr. Kovic presented further argument. Court overruled the objection.

436 Mr. Thompson continued with direct examination of the witness.

437 Upon motion of Mr. Kovic, Court allowed Mr. Kovic a continuing objection.

437 Mr. Thompson continued with direct examination of the witness.

439 Court inquired of the witness and asked her to turn her written statement over, informing her that if she needed to refresh her memory that she could ask to do so. Mr. Thompson continued with direct examination of the witness.

441 Mr. Kovic had no cross examination of the witness.

442 Cross examination of the witness by Mr. Monson.

443 Mr. Kovic and Mr. Thompson had no further questions for the witness.

444 Court excused the witness without objection by counsel.

444 Seth L. Richmond was called, sworn, and testified on behalf of the State, with direct examination being conducted by Mr. Thompson.

449 State's exhibits #14 and #15 were offered. Mr. Barker questioned the witness in aid of an objection. Neither Mr. Barker nor Mr. Kovic having an objection, Court ordered State's exhibits #14 and #15 admitted into evidence.

452 Cross examination of the witness by Mr. Kovic.

456 Redirect examination of the witness by Mr. Thompson.

457 Upon inquiry from the Court, neither Mr. Barker nor Mr. Kovic had any re-cross examination.

457 Upon motion of Mr. Thompson, without objection, Court excused the witness.

459 Mike Mooney was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Evans.

504 State's exhibits #16 and #17 were offered and admitted into evidence without objection by counsel.

505 State's exhibit #18 was offered and admitted into evidence without objection by counsel.

507 State's exhibits #61A and 61B were offered. Mr. Monson questioned the witness in aid of an objection and stated his objection to the admission of State's exhibits #61A and #61B. Mr. Kovis had no objection to the admission of State's exhibits #61A and #61B. Mr. Monson presented argument. Court questioned Ms. Evans. Court ordered State's exhibits #61A and #61B admitted into evidence for the limited purpose of showing the documents that were in the Yukon at the time the warrant was executed.

517 State's exhibits #19-#31 were offered and admitted into evidence without objection by counsel. Ms. Evans continued with direct examination of the witness.

Court directed the witness to bring his notes back tomorrow for counsel to review.

530 Court recessed at 5:30 p.m.

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

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Title of Action	State vs Charles Capone and David Stone	Judge: John C. Judge
Type of Hearing	Preliminary Hearing-Day 2	Clerk: M.Coleman
Attorneys for Plf.	William Thompson, Jr., Michelle Evans and Mia Vowels	Recording: Z:03/2013-7-31
Attorney for Def.	Defendant Charles Capone present with counsel, D. Ray Barker, Court appointed counsel and Mark Monson, Court appointed co-counsel	Case No. CR-13-01358 and CR-13-1359
Others Present	Defendant David Stone present with counsel, Charles Kovic, Public Defender and Amanda Montalvo	Date July 31, 2013

Time 8:29 A.M.

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BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

831 Mike Mooney was called, sworn, and continued to testify under direct examination by Ms. Evans.

834 State's exhibits #49 and #50 were offered and admitted into evidence without objection by counsel.

835 State's exhibits #51 and #52 were offered. Mr. Monson had no objection to the admission of State's exhibits #51 and #52. Mr. Kovic stated his objection. Court ordered State's exhibits #51 and #52 admitted into evidence over objection.

837 State's exhibits #33-#38 were offered and admitted into evidence without objection by counsel.

842 State's exhibits #39-#41 were offered and admitted into evidence without objection by counsel.

844 State's exhibit #62 was offered and admitted into evidence without objection by counsel.

000257

847 State's exhibits #42 and #43 were offered and admitted into evidence without objection by counsel.

849 State's exhibits #44 and #45 were offered and admitted into evidence without objection by counsel.

853 State's exhibits #46, #47, and #48 were offered and admitted into evidence without objection by counsel.

859 State's exhibits #53, #54, and #55 were offered. Mr. Monson stated his objection to the admission of the exhibits. Mr. Kovis had no objection to the admission of State's exhibits #53, #54, and #55. Court ordered State's exhibits #53, #54, and #55 admitted into evidence over objection.

908 State's exhibits #58, #59, and #60 were offered and admitted into evidence without objection by counsel.

909 State's exhibits #56 and #57 were offered under Rule 5.1 and admitted into evidence without objection by counsel.

912 Cross examination of the witness by Mr. Monson.

954 Cross examination of the witness by Mr. Kovis.

956 Ms. Evans had no redirect examination for the witness.

958 Court recessed at 9:58 A.M.

1013 Court reconvened at 10:13 A.M., with Court, counsel, and the defendants being present in the courtroom.

1013 Ronda Bowser was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Evans.

1042 Cross examination of the witness by Mr. Monson.

1051 Cross examination of the witness by Mr. Kovis.

1055 Redirect examination of the witness by Ms. Evans.

1101 Re-cross examination of the witness by Mr. Monson.

1107 Re-cross examination of the witness by Mr. Kovis.

1109 Re-redirect examination by Ms. Evans.

1110 Mr. Monson and Mr. Kovis had no further questions for the witness.

1110 There being no objection by counsel, Court excused the witness.

1110 Scott Gallina was called to testify on behalf of the State. Mr. Monson stated Mr. Gallina was Ms. Anderson's attorney and asserted the attorney/client privilege. Ms. Vowels made a statement to the Court. Mr. Monson requested a continuing objection to any testimony that would be under the attorney/client privilege. Court denied the request at this time.

1112 Scott Gallina was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination. Mr. Monson stated his objection regarding the attorney/client privilege. Court overruled the objection, stating he believes that Mr. Gallina has the right to waive the attorney/client privilege. Court reminded counsel that State's exhibits #61A and #61B were previously admitted into evidence for a limited purpose.

1120 Mr. Monson presented argument in support of his objection. Court overruled the objection.

1123 Ms. Vowels continued with direct examination of the witness.

1124 Ms. Vowels moved the Court fully admit State's exhibits #61A and #61B and not on a limited basis. Mr. Monson stated his objection. Mr. Kovic had no objection.

1125 Court stated he will consider State's exhibits #61A and #61B that Mr. Capone was served the petition for dissolution of marriage and will consider those exhibits fully admitted and not admitted on a limited basis.

1126 In response to inquiry from the Court, neither Mr. Monson nor Mr. Kovic had any cross examination for the witness.

1126 There being no objection by counsel, Court excused the witness.

1127 Jennifer Norberg was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Vowels.

1142 Mr. Monson questioned the witness in aid of an objection and stated his objection. Court overruled the objection.

1143 Ms. Vowels continued with direct examination of the witness. Mr. Monson and Mr. Kovic presented argument on their objection.

1147 Court articulated his findings and rulings.

1149 Ms. Vowels continued with direct examination of the witness.

1149 Mr. Monson stated his objection to each statement being made by the witness.

1149 Ms. Vowels continued with direct examination and moved the Court reconsider his ruling in

regard to Mr. Stone. Mr. Kovic stated his objection and presented argument thereof.

1152 Court overruled the objection and stated he will allow the testimony of a co-conspirator.

1153 Ms. Vowels continued with direct examination of the witness.

1158 Cross examination of the witness by Mr. Monson.

1204 Cross examination of the witness by Mr. Kovic.

1205 Mr. Monson further questioned the witness on cross examination.

1206 Ms. Vowels had no redirect examination for the witness.

1206 There being no objection by counsel, Court excused the witness.

1207 Court recessed at 12:07 p.m.

101 Court reconvened at 1:01 p.m., all being present in Court as before.

101 Robert Bogden was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Vowels.

146 Cross examination of the witness by Mr. Barker.

210 Cross examination of the witness by Mr. Kovic.

212 Ms. Vowels conducted redirect examination of the witness.

215 Mr. Barker conducted re-cross examination of the witness.

218 Mr. Kovic had no re-cross examination for the witness.

218 Ms. Vowels had no further questions for the witness.

218 Court excused the witness without objection by counsel.

218 Carole Bogden was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

226 Mr. Kovic made a statement regarding immunity for the witness. Court advised the witness that anything she says may incriminate herself.

227 Mr. Thompson stated that as Prosecutor of Latah County he has no intention of taking any action against Ms. Bogden and granted Ms. Bogden immunity. Upon inquiry from the Court, the Federal Prosecutor, Rudy Vershoors, present in the courtroom stated that he did not have the

authority to grant Ms. Bogden immunity. Mr. Thompson stated that a schedule 4 controlled substance is a misdemeanor and that the statute of limitations on a misdemeanor charge would be past.

229 Ms. Vowels continued with direct examination of the witness.

234 Cross examination of the witness by Mr. Barker.

245 Cross examination of the witness by Mr. Kovis.

246 Ms. Vowels had no redirect examination for the witness.

246 There being no objection by counsel, Court excused the witness.

246 Daren Wagner was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

251 State's exhibits #63A, #63B, #63C, and #63D were offered and admitted into evidence without objection by counsel.

252 Ms. Vowels continued with direct examination of the witness.

255 Cross examination of the witness by Mr. Barker.

259 Mr. Kovis had no cross examination for the witness.

300 Ms. Vowels had no redirect examination for the witness.

300 There being no objection by counsel, Court excused the witness.

300 Court recessed at 3:00 p.m.

319 Court reconvened at 3:19 p.m., with Court, counsel, and the defendants being present in the courtroom.

319 Nathan Donner was called, sworn, and testified on behalf of the State, with Ms. Evans conducting direct examination.

352 Cross examination of the witness by Mr. Barker.

404 Cross examination of the witness by Mr. Kovis.

407 Ms. Evans had no redirect examination of the witness.

407 There being no objection by counsel, Court excused the witness.



407 Brian Spence was called, sworn, and testified on behalf of the State, with Mr. Evans conducting direct examination.

416 State's exhibit #65 was offered and admitted into evidence without objection by counsel. Ms. Evans continued with direct examination of the witness.

418 Cross examination of the witness by Mr. Barker.

420 Mr. Kovic had no cross examination of the witness.

420 Redirect examination of the witness by Ms. Evans.

421 Mr. Barker had no re-cross examination of the witness.

421 There being no objection by counsel, Court excused the witness.

421 Gene Dethman was called, sworn, and testified on behalf of the State, with Mr. Thompson conducting direct examination.

427 Cross examination of the witness by Mr. Barker.

431 Cross examination of the witness by Mr. Kovic.

436 Mr. Thompson had no redirect examination for the witness.

436 There being no objection by counsel, Court excused the witness.

437 James Dale Fry, Jr. was called, sworn, and testified on behalf of the State, with direct examination being conducted by Ms. Evans.

443 State's exhibit #64 was offered and admitted into evidence without objection by counsel.

444 Cross examination of the witness by Mr. Barker.

446 Mr. Barker requested permission to question the witness outside the scope of the direct examination. There being no objection by Ms. Evans, Court allowed Mr. Barker to question the witness outside the scope of direct examination.

449 Mr. Barker requested that Mr. Monson be allowed to continue to question the witness on cross examination. Ms. Evans made a statement to the Court. Court so allowed.

454 Cross examination of the witness by Mr. Kovic.

455 Redirect examination of the witness by Ms. Evans.

459 Re-cross examination of the witness by Mr. Monson.

508 Mr. Kovis had no re-cross examination of the witness.  
509 Redirect examination of the witness by Ms. Evans.  
510 Mr. Monson further questioned the witness.  
512 Mr. Kovis had no further questions for the witness.  
513 Mr. Monson further questioned the witness.  
513 There being no objection by counsel, Court excused the witness.  
514 Court presented remarks.  
519 Court recessed at 5:19 P.M.

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

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Title of Action	State vs Charles Capone and David Stone	Judge: John C. Judge
Type of Hearing	Preliminary Hearing-DAY 3	Clerk: M. Coleman
Attorneys for Plf.	William Thompson, Jr., Michelle Evans and Mia Vowels	Recording: Z:03/2013-8-1
Attorney for Def.	Defendant Charles Capone present with counsel, D. Ray Barker, Court appointed counsel, and Mark Monson, Court appointed co-counsel	Case No. CR-13-01358 and CR-13-01359
Others Present	Defendant David Stone present with counsel, Charles Kovis, Public Defender and Amanda Montalvo	Date August 1, 2013

Time 8:00 A.M.

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BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

This being the time set for the continuation of the preliminary hearing, Court noted the presence of counsel and the defendants.

801 Kent Zachow was called, sworn, and testified on behalf of the State, with Ms. Evans conducting direct examination.

808 Cross examination of the witness by Mr. Barker.

809 Mr. Kovis had no cross examination for the witness.

810 Ms. Evans had no redirect examination for the witness.

810 Court excused the witness without objection by counsel.

811 Joshua Voss was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

819 Cross examination of the witness by Mr. Barker.

000264

830 Cross examination of the witness by Mr. Kovic.

830 Ms. Vowels had no redirect examination for the witness.

830 There being no objection by counsel, Court excused the witness.

831 Tim Besst was called, sworn, and testified on behalf of the State, with Ms. Evans conducting direct examination.

844 Cross examination of the witness by Mr. Barker. Colloquy was had between Court and Mr. Barker.

854 Mr. Barker continued with cross examination of the witness.

855 Cross examination of the witness by Mr. Kovic.

858 Redirect examination by Ms. Evans.

901 Upon inquiry from the Court, neither Mr. Barker nor Mr. Kovic had any re-cross examination for the witness.

902 The witness stepped down.

902 Kevin Birge was called, sworn, and testified on behalf of the State, with Ms. Evans conducting direct examination.

912 Cross examination of the witness by Mr. Barker.

916 Mr. Kovic had no cross examination for the witness.

916 Ms. Evans had no redirect examination for the witness.

916 Court excused the witness without objection by counsel.

916 Ms. Evans presented a legal memorandum to counsel and the Court that was prepared by an intern in their office.

917 Brent Glass was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

936 Cross examination of the witness by Mr. Monson.

1006 Cross examination of the witness by Mr. Kovic.

1007 Redirect examination of the witness by Ms. Vowels.

1009 Re-cross examination of the witness by Mr. Monson.

1011 Mr. Kovis had no re-cross examination for the witness.

1011 Ms. Vowels had no further questions for the witness.

1011 Court excused the witness without objection by counsel.

1011 Court recessed at 10:11 A.M.

1031 Court reconvened at 10:31 A.M., with Court, counsel and the defendants being present in the courtroom.

1032 Court noted that he read the legal memorandum during the break but did not have a chance to read the case law.

1032 John Houser was called, sworn, and testified on behalf of the State, with Ms. Evans conducting direct examination.

1036 Mr. Monson stated his objection to the line of questioning and asserted Mr. Capone's religious privilege under I.R.E. 505. Ms. Evans made a statement to the Court stating that she was not questioning Mr. Houser regarding any religious privilege at this time. Ms. Evans continued to question the witness under direct examination.

1043 Mr. Monson questioned the witness in aid of an objection and stated his objection.

1044 Ms. Evans presented argument in opposition to Mr. Monson's objection. Court presented remarks and questioned Ms. Evans. Court recessed to review the case law.

1047 Court recessed at 10:47 A.M.

1105 Court reconvened at 11:05 A.M., with Court, counsel and the defendants being present in the courtroom.

1106 John Houser resumed the witness stand, previously being sworn.

1106 Mr. Monson questioned the witness in aid of an objection.

1108 Ms. Evans questioned the witness in opposition to Mr. Capone asserting his religious privilege.

1109 Ms. Evans presented argument in opposition to the religious privilege being asserted.

1112 Mr. Monson presented argument in support of his motion to assert Mr. Capone's religious privilege.

1114 Ms. Evans presented further argument in opposition.

1115 In response to inquiry from the Court, Mr. Kovic stated that he had no argument to present.

1116 Court stated that he has read the case law on the issue of religious privilege and presented remarks. Court sustained the assertion of the religious privilege between Mr. Houser and Mr. Capone at the Qudoba restaurant.

1123 Ms. Evans presented an offer of proof.

1124 Court stated his ruling stands. Ms. Evans had no further direct examination for the witness.

1124 Cross examination of the witness by Mr. Monson.

1125 Mr. Kovic had no cross examination for the witness.

1125 Redirect examination by Ms. Evans.

1126 Mr. Monson and Mr. Kovic had no re-cross examination for the witness.

1126 Court excused the witness, without objection by counsel.

1127 Ryan Edwards was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

1129 Court requested the media not print or use the social security number or date of birth of Rachael Anderson.

1134 Cross examination of the witness by Mr. Monson.

1135 Mr. Monson requested the Court direct the witness to answer his question. Court questioned the witness. Mr. Thompson made a statement to the Court and presented argument in support of the witnesses' refusal to answer his question. Court questioned Mr. Thompson. Court questioned Rudy Berchoors, Federal Prosecutor, who was seated in the back of the courtroom. Mr. Monson moved the Court issue a subpoena for the witness to cover the line of questioning. Mr. Thompson presented argument. Court further questioned Mr. Thompson. Mr. Monson presented further argument. Court ruled that Mr. Monson can question the witness only within the scope of direct examination and can issue a subpoena for the witness if he wishes to. Mr. Monson continued with cross examination.

1144 Mr. Kovis had no cross examination for the witness.

1144 Ms. Vowels had no redirect examination for the witness.

1144 There being no objection by counsel, Court excused the witness.

1145 Bruce Fager was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

1147 State's exhibits #66A and #66B were offered.

1148 Mr. Monson questioned the witness in aide of an objection. Mr. Monson had no objection. Mr. Kovis stated he had no objection to the admission of State's exhibits #66A and #66B.

1149 Court ordered State's exhibits #66A and #66B admitted into evidence without objection by counsel.

1149 Cross examination of the witness by Mr. Monson.

1158 In response to inquiry from the Court, Mr. Kovis stated that he had no cross examination for the witness.

1158 Redirect examination of the witness by Ms. Vowels.

1159 Re-cross examination of the witness by Mr. Monson.

1200 Ms. Vowels had no further questions for the witness.

1201 There being no objection by counsel, Court excused the witness.

1202 Court recessed at 12:02 p.m.

119 Court reconvened at 1:19 p.m., with Court, counsel and the defendants being present in the courtroom.

119 Brian Birdsell was called, sworn, and testified on behalf of the State, with Ms. Vowels conducting direct examination.

124 State's exhibits #67A and #67B were offered.

124 Mr. Monson questioned the witness in aide of an objection. Mr. Monson stated that he had no objection to the admission of State's exhibits #67A and #67B. Court ordered State's exhibits #67A and #67B admitted into evidence without objection by counsel.

128 State's exhibit #68 was offered.

128 Mr. Monson questioned the witness in aid of an objection. Mr. Monson had no objection to the admission of State's exhibit #68. Mr. Kovis had no objection to the admission of State's exhibit #68.

129 Court ordered State's exhibit #68 admitted into evidence without objection by counsel.

129 Ms. Vowels continued with direct examination of the witness.

131 State's exhibits #69A, and #69B were offered. Mr. Monson stated his objection.

132 Mr. Kovis joined in Mr. Monson's objection to the admission of State's exhibits #69A and #69B.

133 Ms. Vowels presented argument in support of admission of State's exhibits #69A and #69B. Mr. Monson presented further argument. Ms. Vowels offered State's exhibits #69A and #69B under Rule 5.1. Court questioned Ms. Vowels. Mr. Monson presented argument. Mr. Kovis presented argument. Court questioned Ms. Vowels.

139 Court ruled the affidavits are foundational for the admission and authentication and found the type of hearsay is admissible under Rule 5.1.

141 Mr. Monson presented further argument and moved the exhibits be admitted on a limited basis. Court questioned Mr. Monson. Court overruled the hearsay objection. Court ordered State's exhibits #69A and #69B admitted into evidence under Rule 5.1. Court overruled admitting State's exhibits #69A and #69B on a limited basis.

144 Ms. Vowels continued with direct examination of the witness.

145 State's exhibit #70 was offered.

147 Mr. Kovis questioned the Court and stated his objection to the admission of State's exhibit #70.

147 Ms. Vowels presented argument. Court questioned Ms. Vowels. Ms. Vowels stated she could offer State's exhibit #70 as illustrative.

150 State's exhibit #70 was admitted into evidence and played in open Court.

158 Mr. Monson stated his objection to the content of the messages on slide #3. Mr. Kovis presented argument. Ms. Vowels presented argument. Colloquy was had between Court and counsel. Court ordered slides #1 and #2 of State's exhibit #70 admitted into evidence without objection. Court ordered slide #3 of State's exhibit #70 admitted into evidence under Rule 803(3) over objection. Mr. Monson presented further argument.

207 State's exhibit #70 continued to be played in open court. Court noted that if there is not an



objection to an exhibit then it will be considered admitted into evidence without objection. Slides 5-58 of State's exhibit #70 were admitted into evidence without objection, with slides #38, #46, and #47 being corrected as to time or date.

312 Court recessed at 3:12 p.m.

329 Court reconvened at 3:29 p.m., with Court, counsel, and the defendants being present in the courtroom.

330 Brian Birdsell resumed the witness stand, previously being sworn.

330 Cross examination of the witness by Mr. Kovich.

335 Cross examination of the witness by Mr. Monson.

339 Ms. Vowels had no redirect examination of the witness.

340 There being no objection, Court excused the witness.

340 State's exhibits #71A-#71B were offered under Rule 5.1. Court ordered State's exhibits #71A and #71B admitted into evidence without objection by Mr. Monson or Mr. Kovich.

341 State rested.

341 In response to inquiry from the Court, neither Mr. Monson nor Mr. Kovich had any evidence to present.

341 Mr. Thompson presented closing argument.

417 Mr. Monson presented closing argument.

420 Mr. Kovich presented closing argument.

422 Court presented remarks and reviewed the testimony presented. Court found probable cause exists that Charles Capone and David Stone committed the crimes as charged in the amended criminal complaint articulating the findings into the record.

443 Court found probable cause exists that Charles Capone and David Stone committed the crime of principle to murder in the first degree and conspiracy to commit murder as charged in Counts 1 and 2 of the amended criminal complaints. Court found probable cause exists that each defendant committed the crime of fail to notify law enforcement or the coroner of a death and conspiracy to fail to notify law enforcement or the coroner of a death as charged in Counts 3 and 4 of the amended criminal complaints in each case. Court ordered Charles Capone and David Stone bound over to District Court on the same charges as pled in the amended criminal complaints. Court ordered each defendant appear in District Court for arraignment on August 7, 2013 at 11:00 A.M.

453 Mr. Kovis moved the Court reduce bond to \$100,000.00 for David Stone. Court denied the motion to reduce bond, ordering the bond remain at \$250,000.00.

Mr. Barker moved that a transcript of the preliminary hearing be prepared. Court so ordered.

The defendants were remanded back into the custody of the Latah County Sheriff.

455 Court recessed at 4:55 p.m.

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

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Title of Action	State vs Charles Capone and David Stone	Judge: John C. Judge
Type of Hearing	Preliminary Hearing	Clerk: M.Coleman
Attorneys for Plf.	William Thompson, Jr., Michelle Evans and Mia Vowels	Recording: Z:03/2013-7-30
Attorney for Def.	Defendant Charles Capone present with counsel, D. Ray Barker, Court appointed counsel, and Mark Monson, Court appointed co-counsel	Case No. CR-13-01358 and CR-13-1359
Others Present	Defendant David Stone present with counsel, Charles Kovis, Public Defender and Amanda Montalvo	Date July 30, 2013 through August 1, 2013

Time 8:34 A.M.

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BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

**WITNESSES**

**FOR THE STATE:**

Z:03/2013-7-30

**JULY 30, 2013**

842 Dennis Plunkett  
908 William Wilcox  
932 Amber Griswold  
1017 Danny Lee Combs  
1046 and 1132 Chris Porter  
1140 Daniel Sean Hally

000272

236 Dan Bruce  
303 Scot Gleason  
414 Alisa Stone  
444 Seth L. Richmond  
459 Mike Mooney

**JULY 31, 2013**

Z:03/2013-7-31

831 Mike Mooney  
1013 Ronda Bowser  
1112 Scott Gallina  
1127 Jennifer Norberg  
101 Robert Bogden  
218 Carole Bogden  
246 Daren Wagner  
319 Nathan Donner  
407 Brian Spence  
421 Gene Dethman  
437 James Dale Fry, Jr.

**AUGUST 1, 2013**

Z:03/2013-8-1

801 Kent Zachow  
811 Joshua Voss  
831 Tim Besst  
902 Kevin Birge

000273

917 Brent Glass

1032 John Houser

1127 Ryan Edwards

1145 Bruce Fager

119 Brian Birdsell

**FOR THE DEFENDANTS**

None

## EXHIBIT LIST

State v. Charles Anthony Capone, CR-2013-01358

St. v. David Christopher Stone, CR-2013-01359

NO.	EXHIBIT DESCRIPTION	IDENTIFIED BY	OFFERED	ADMITTED
1	Photograph - Rachael Anderson and her sons		X	7-30-13 X
2	Cell Phone Screen Shot		X	7-30-13 X
3	Recording of Tim Besst's interview with Christopher Porter (disclosed as "Audio Video for Discovery\Christopher Porter - 21\WS-10007)	<i>never offered &amp; kept by P. 1000</i>		
4	Transcript of Tim Besst's interview with Christopher Porter	<i>never offered &amp; kept by P. 1000</i>		
5	Print out of Charles Capone's bank statement		X	7-30-13 X
6	Photograph of Yukon on the street - front		X	7-30-13 X
7	Photograph of Yukon on the street- back		X	7-30-13 X
8	Photograph of inside Yukon from the street showing the purse		X	7-30-13 X
9	David Stone written statement (2 pgs)		X	7-30-13 X
10A	Affidavit of Skylar Schluter (2 pgs) - Mingles video for State v. Capone		X	7-30-13 Rejected
10B	Affidavit of Skylar Schluter (2 pgs) - Mingles video for State v. Stone		X	7-30-13 Rejected
11	Prudential life insurance policy on Alisa (consists of 13 pgs)		X	7-30-13 X
12	Photo of Stone's pistol		X	7-30-13 X
13	Photo of Stone's pistol		X	7-30-13 X
14	Invoice from O'Reilly Auto Parts for 11:37 a.m. on 4-16-10		X	7-30-13 X
15	Invoice from O'Reilly Auto Parts for 6:52 p.m. on 4-16-10		X	7-30-13 X

16	Photo of Yukon From Shop - front view		X	7-30-13 X
17	Photo of Yukon From Shop - back view with doors open		X	7-30-13 X
18	Photo of Yukon From Shop - rear passenger side with door open		X	7-30-13 X
19	Photo of Yukon From Shop - front passenger side with door open		X	7-30-13 X
20	Photo of Yukon -close up of front passenger seat		X	7-30-13 X
21	Photo of Purse found in Yukon		X	7-30-13 X
22	Photo of Note found in purse		X	7-30-13 X
23	Photo of Note found in purse		X	7-30-13 X
24	Photo of I.D's and cards found in purse		X	7-30-13 X
25	Photo - Close up of Rachael Anderson's driver's license		X	7-30-13 X
26	Photo - Close up of a copy of Charles Capone driver's license		X	7-30-13 X
27	Wells Fargo ATM Transaction Record		X	7-30-13 X
28	Lewiston McDonalds receipt		X	7-30-13 X
29	Paper with blood on it found in Yukon		X	7-30-13 X
30	Photo of Office Depot print out found in Yukon		X	7-30-13 X
31	Photo of Office Depot "Take One" paper found in Yukon		X	7-30-13 X
32	Photo of Palouse Multiple Services (PMS) with Rachael Anderson's car		X	7-30-13 X
33	Photo of PMS from inside looking at the door		X	7-31-13 X
34	Photo of inside of PMS		X	7-31-13 X
35	Photo of inside of PMS showing 2 vehicles		X	7-31-13 X
36	Photo of inside of PMS showing the loft		X	7-31-13 X

37	Photo of inside of PMS		X	7-31-13 X
38	Photo of inside of PMS		X	7-31-13 X
39	Photo of inside of PMS		X	7-31-13 X
40	Photo of inside of PMS - showing red tool box with prescription on top		X	7-31-13 X
41	Photo of Close up of prescription		X	7-31-13 X
42	Photo of Close up of paperwork on wall		X	7-31-13 X
43	Photo of PMS job invoice for Rachael Anderson's car		X	7-31-13 X
44	Close up of tarp in PMS loft with Tim Besst		X	7-31-13 X
45	Close up of tarp in PMS loft		X	7-31-13 X
46	Photo of Paperwork found in office of PMS		X	7-31-13 X
47	Photo of Small Claims Paperwork found in office of PMS		X	7-31-13 X
48	Photo of Petition for dissolution of marriage found in office of PMS		X	7-31-13 X
49	Photo of Box of gloves found in Capone's pickup		X	7-31-13 X
50	Photo of receipts found in Capone's pickup		X	7-31-13 X
51	Spence Hardware Receipt for tarp		X	7-31-13 X
52	Spence Hardware Receipt for payment on account		X	7-31-13 X
53	Photo of female being measured by Yukon		X	7-31-13 X
54	Photo of female inside Yukon		X	7-31-13 X
55	Photo of female's feet towards the petals inside Yukon		X	7-31-13 X
56	Lab Reports: 6-15-10		X	7-31-13 X
57	Lab Reports: 12-15-10		X	7-31-13 X



58	ISP Evidence Submission Form: 5/10/10		X	7-3-13 X
59	ISP Evidence Submission Form: 7/26/10		X	7-3-13 X
60	ISP Evidence Submission Form: 8/9/10		X	7-3-13 X
61A	Divorce Documents found in Yukon with letter from Scott Gallina dated January 8, 2010 (consists of 10 pgs)		X	7-30-13 X
61B	Divorce Documents found in Yukon with letter from Scott Gallina dated January 14, 2010 (consists of 3 pgs)		X	7-30 X
62	Pill Bottle		X	7-3-13 X
63A	Carole Bogden's prescription record from Rosauers Pharmacy		X	7-3-13 X
63B	Carole Bogden's prescription print out documentation from Rosauers Pharmacy		X	7-3-13 X
63C	Carole Bogden's prescription print out with pick up date documentation from Rosauers Pharmacy		X	7-3-13 X
63D	Carole Bogden's signature for prescription		X	7-3-13 X
64	Third Street Market Place Receipt (Grolsch Beer) 4/16/10		X	7-3-13 X
65	Spence Hardware tarp purchase receipt (signed)		X	7-3-13 X
66A	Cell Phone Records Certification for David Stone's cell phone		X	8-1-13 X
66B	Disc containing the cell phone records of David Stone that are attached to the certification in Exhibit 66A (disclosed as PA # 13-435 & 13-582)		X	8-1-13 X
67A	Cell Phone Records Certifications for Charles Capone and Rachael Anderson's cell phone (consists of 6 pgs)		X	8-1-13 X
67B	Disc containing cell phone records of Charles Capone and Rachael Anderson that are attached to the certification in Exhibit 67A (disclosed as PA # 13-594)		X	8-1-13 X
68	Phone Certification for Palouse Multiple Services Landline (consists of 6 pgs)		X	8-1-13 X

69A	Affidavit of Eric Kjorness State v. Charles Capone (attachment disclosed as 13-323\All Rachael Anderson Files\Phone Information\Charles Iphone\UFED Apple iPhone 2G 3G 3Gs 012022004217998 2010_04_20 (001)		X	8-1-13 X
69B	Affidavit of Eric Kjorness State v. David Stone (attachment disclosed as 13-323\All Rachael Anderson Files\Phone Information\Charles Iphone\UFED Apple iPhone 2G 3G 3Gs 012022004217998 2010_04_20 (001)		X	8-1-13 X
70	Power Point Presentation on Disc (Courtesy print out of 58 slides will be provided)		X	8-1-13 X
71A	Affidavit of Cathy Mabbutt State v. Charles Capone		X	8-1-13 X
71B	Affidavit of Cathy Mabbutt State v. David Stone		X	8-1-13 X
7c	<i>slide 1 - no obj.</i>		X	8-1-13 X
	<i>slide 2 - no obj.</i>		X	8-1-13 X
	<i>slide 3 - no obj.</i>		X	8-1-13
	<i>slide 4 - no obj.</i>		X	8-1-13
	<i>slide 5 - no obj.</i>		X	8-1-13
	<i>slide 6 - no obj.</i>		X	8-1-13
	<i>slide 7 - no obj.</i>		X	8-1-13
	<i>slide 8 - no obj.</i>		X	8-1-13
	<i>slide 9 - no obj.</i>		X	8-1-13
	<i>slide 10 - no obj.</i>		X	8-1-13
	<i>slide 11 - no obj.</i>		X	8-1-13
	<i>slide 12 - no obj.</i>		X	8-1-13

*slide 13 - no obj.*  
*slide 14 - no obj.*  
*slide 15 - no obj.*  
*slide 16 - no obj.*  
*slide 17 - no obj.*  
*slide 18 - no obj.*

8-1-13  
X  
8-1-13  
X  
8-1-13  
X  
8-1-13  
X  
8-1-13  
X

CONTINUATION OF THE INDIVIDUAL SLIDES OF STATE'S EXHIBIT #70

Slide 19—Admitted-no objection

Slide 20—Admitted-no objection

Slide 21—Admitted-no objection

Slide 22—Admitted-no objection

Slide 23—Admitted-no objection

Slide 24—Admitted-no objection

Slide 25—Admitted-no objection

Slide 26—Admitted-no objection

Slide 27—Admitted-no objection

Slide 28—Admitted-no objection

Slide 29—Admitted-no objection

Slide 30—Admitted-no objection

Slide 31—Admitted-no objection

Slide 32—Admitted-no objection

Slide 33—Admitted-no objection

Slide 34—Admitted-no objection

Slide 35—Admitted-no objection

Slide 36—Admitted-no objection

Slide 37—Admitted-no objection

Slide 38—Time of day was corrected to 6:10 p.m. Admitted-no objection.

Slide 39—Admitted—no objection

Slide 40—Admitted—no objection

Slide 41—Admitted-no objection

Slide 42—Admitted-no objection

Slide 43—Admitted-no objection.

Slide 44—Admitted-no objection

Slide 45—Admitted-no objection

Slide 46—The date was corrected to 4-17-10—Admitted –no objection

Slide 47—The date was corrected to 4-17-10—Admitted-no objection

Slide 48—Admitted-no objection

Side 49—Admitted-no objection

Slide 50—Admitted-no objection

Slide 51—Admitted-no objection

Slide 52—Admitted-no objection

Slide 53—Admitted-no objection

Slide 54—Admitted-no objection

Slide 55—Admitted-no objection

Slide 56—Admitted-no objection

Slide 57—Admitted-no objection

Slide 58—Admitted-no objection

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

CASE NO. CR-13-135  
2013 AUG -2 PM 2:46

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 vs )  
 )  
 CHARLES ANTHONY CAPONE, )  
 )  
 Defendant, )  
 )  
 \_\_\_\_\_ )

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY [Signature] DEPUTY  
Case NO. CR-13-01358

ORDER BINDING OVER  
DEFENDANT AND  
SCHEDULING ARRAIGNMENT

A preliminary hearing in the above entitled matter having been held on the charges of Principal to Murder in the First Degree in violation of Idaho Code 18-204, 18-4001, 18-4003(a), a felony, and Conspiracy to Commit Murder in the First Degree in violation of Idaho Code 18-4001, 18-4003(a), 18-1701, a felony, and Failure to Notify Coroner or Law Enforcement of Death in violation of Idaho Code 19-4301A(1)(3), a felony, and Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death in violation of Idaho Code 19-4301A(1)(3), 18-1701, a felony, and the Court having ordered the defendant bound over to answer to the same in the District Court;


ORDER BINDING OVER DEFENDANT  
AND SCHEDULING ARRAIGNMENT

ARRAIGNMENT is scheduled for the 7<sup>th</sup> day of August, 2013 at 11:00 A.M.

Dated this 2<sup>nd</sup> day of August, 2013.

PURSUANT TO COURT ORDER

John C. Judge  
Magistrate Judge

By:   
Deputy Clerk

BOND: None

COPIES HAND DELIVERED TO:  Pros. Attorney: William Thompson, Jr.  
 Defendant's Attorney: D. Ray Barker-Court  
Appointed Counsel

ORDER BINDING OVER DEFENDANT  
AND SCHEDULING ARRAIGNMENT

000283

CASE NO. CR13-1358

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

2013 AUG -2 PM 2:16  
DISTRICT COURT  
LATAH COUNTY  
BY [Signature] DEPUTY

STATE OF IDAHO, )  
)  
)  
Plaintiff, )  
vs )  
)  
)  
CHARLES ANTHONY CAPONE, )  
)  
Defendant, )  
\_\_\_\_\_ )

CASE NO. CR-13-01358

NOTICE OF ASSIGNMENT  
OF JUDGE

NOTICE IS HEREBY GIVEN that the above entitled action has been placed upon the calendar of the Honorable John R. Stegner for all motions, hearings and trial.

DATED this 2<sup>nd</sup> day of August, 2013.

Susan R. Petersen, Clerk

By [Signature]

COPIES HAND DELIVERED TO:  Prosecutor: William Thompson, Jr.  
 Defendants Atty: D. Ray Barker-Court  
Appointed Counsel

NOTICE OF ASSIGNMENT OF JUDGE

000284

CASE NO. CR 2013-1358

2013 AUG -5 AM 10:36

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY *Am* DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0565  
(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  
MOTION FOR DISQUALIFICATION  
OF JUDGE WITHOUT CAUSE

COMES NOW, the State of Idaho, by and through William W. Thompson, Jr.,  
Latah County Prosecuting Attorney, and hereby respectfully moves pursuant to Idaho  
Criminal Rule 25(a)(1), for the disqualification, without cause, of the Honorable John R.  
Stegner, District Judge assigned to preside over this case.

DATED this 5<sup>th</sup> day of August, 2013.

*[Signature]*  
\_\_\_\_\_  
William W. Thompson, Jr.  
Prosecuting Attorney

ORIGINAL  
000285



CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing MOTION FOR DISQUALIFICATION OF JUDGE WITHOUT CAUSE was

mailed, United States mail, postage prepaid

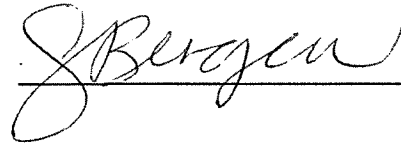
hand delivered

sent by facsimile, original by mail

to the following:

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

Dated this 5th day of August, 2013.

  
\_\_\_\_\_

CASE NO CR 2013-1358

2013 AUG -5 AM 10:36

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY Am DEPUTY

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,	)	
	)	Case No. CR-2013-01358
V.	)	
	)	
CHARLES ANTHONY CAPONE,	)	CRIMINAL INFORMATION
Defendant.	)	
_____	)	

Pursuant to Idaho Criminal Rule 7, the Prosecuting Attorney of Latah County,  
Idaho, alleges by this information that:

CHARLES ANTHONY CAPONE  
DOB: [REDACTED]  
SSN: [REDACTED]  
(ALIASES: Attached)

has perpetrated crimes against the State of Idaho, PRINCIPAL TO MURDER IN THE FIRST DEGREE, Idaho Code 18-204, 18-4001, 18-4003(a); CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a), 18-1701; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, Felonies in FOUR (4) COUNTS, committed as follows:

COUNT I  
Principal to Murder in the First Degree  
I.C. 18-204, 18-4001, 18-4003(a)

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

COUNT II  
Conspiracy to Commit Murder in the First Degree  
I.C. 18-4001, 18-4003(a), 18-1701

That the Defendant, CHARLES ANTHONY CAPONE, during the months of January through April, 2010, in the County of Latah, State of Idaho, did knowingly and unlawfully combine or conspire with David Christopher Stone to commit the crime of Murder in the First Degree, Idaho Code 18-4001, 18-4003(a);

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

1. Charles Capone and David Stone surveilled, stalked and followed Rachael Anderson;
2. Charles Capone exchanged text messages and telephone communications with Rachael Anderson for the purpose of luring her to Capone's business in Latah County, Idaho;
3. Charles Capone gave an ultimatum to Rachael Anderson for her to return to him and not pursue divorce;
4. David Stone sought and received instructions on the operation of a backhoe;
5. Charles Capone stole a prescription drug known as Ambien;

6. David Stone went to Charles Capone's business on April 16, 2010;
7. Charles Capone and/or David Stone put Ambien into Rachael Anderson's beer for the purpose of drugging her;
8. Charles Capone and/or David Stone killed and murdered Rachael Anderson.

COUNT III

Failure to Notify Coroner or Law Enforcement of Death

I.C. 19-4301A(1)(3)

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

COUNT IV

Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death

I.C. 19-4301A(1)(3), 18-1701

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

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

1. David Stone sought and received instructions on the operation of a backhoe;
2. David Stone went to Charles Capone's business on April 16, 2010;

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

## PART II

EXTENDED SENTENCE FOR PERSISTENT VIOLATOR; Idaho Code 19-2514, AND FURTHER, that the said Defendant, CHARLES ANTHONY CAPONE, has been previously convicted of the commission of a Felony offense at least two times, to-wit:

- (1) On or about the 18th day of May, 1987, the defendant was convicted of Attempted Armed Robbery, a Felony, in Navaho County, Arizona, Superior Court case number 9293;

(2) On or about the 18th day of May, 1987, the defendant was convicted of Theft, a Felony, in Navaho County, Arizona, Superior Court case number 9293;

(3) On or about the 27th day of October, 1997, the defendant was convicted of Bank Larceny, a Felony, in case no. 1:97CR00064-001 in the United States District Court for the District of Idaho;

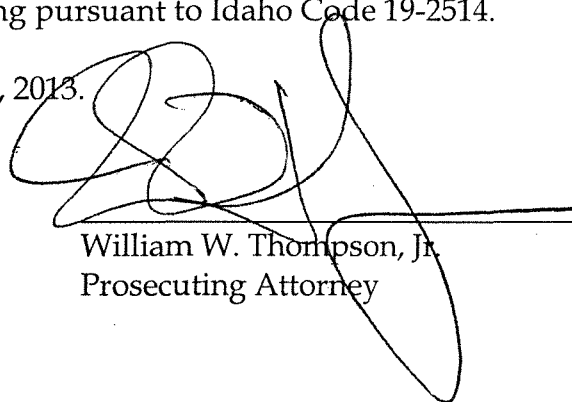
(4) On or about the 18th day of February, 1998, the defendant was convicted of Aggravated Assault, a Felony, in Latah County, Idaho, case no. CR-97-01687;

(5) On or about the 18th day of February, 1998, the defendant was convicted of Burglary, a Felony, in Latah County Idaho, case no. CR-97-01687;

(6) On or about the 27th day of September, 2010, the defendant was convicted of Felon in Possession of Firearm, Unlawful Possession of a Weapon, a Felony, in case no. 2:10CR00119-001-N-EJL in the United States District Court for the District of Idaho.

and that by virtue of these prior convictions and the convictions for the crimes charged in the Criminal Complaint in Latah County Case number CR-2013-01538, the Defendant is therefore subject to sentencing pursuant to Idaho Code 19-2514.

DATED this 5<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
William W. Thompson, Jr.  
Prosecuting Attorney

ADDITIONAL IDENTIFYING INFORMATION:

ALIASES:

Capone, Charles  
Capone, Chuck A.  
Capone, Charles A.  
Capone, Chuck Anthony  
Capone, Charles Anthony

SSN's:

420-25-4290  
462-25-4290  
562-25-4290

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Criminal Information  
was

mailed, United States mail, postage prepaid

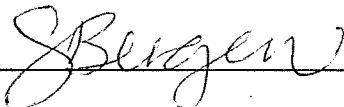
hand delivered

sent by facsimile, original by mail

to the following:

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

DATED this 5th day of August, 2013.

  
\_\_\_\_\_



CASE NO. CR 2013-1358

2013 AUG -6 PM 3:48

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY Am DEPUTY

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

STATE OF IDAHO,	)	
Plaintiff,	)	
	)	Case No. CR-2013-01358
V.	)	
	)	ORDER FOR DISQUALIFICATION
CHARLES ANTHONY CAPONE,	)	OF JUDGE WITHOUT CAUSE
Defendant.	)	
_____	)	

BASED UPON the motion of the State pursuant to I.C.R. 25(a)(1), the undersigned is disqualified without cause.

SO ORDERED this 6<sup>th</sup> day of August, 2013.

John R. Stegner  
John R. Stegner  
DISTRICT JUDGE

ORIGINAL  
000294

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing ORDER FOR DISQUALIFICATION OF JUDGE WITHOUT CAUSE were delivered to the following as indicated:

D. Ray Barker & Mark Monson  
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

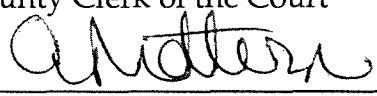
U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

The Honorable John R. Stegner  
Administrative Judge  
Latah County Courthouse  
Moscow, ID 83843

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

on this 6 day of August, 2013.

SUSAN PETERSEN  
Latah County Clerk of the Court

By:   
Deputy

CASE NO. CR 2013-1358

August 7 2013 3:10 PM

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY [Signature] DEPUTY

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

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

Case No. **CR-2013-1358**  
**ORDER ASSIGNING JUDGE**

It is **ORDERED** that Judge Michael Griffin, whose chambers are located in Grangeville, Idaho, is assigned to preside over all further proceedings in the above-entitled matter.

DATED this 7<sup>th</sup> day of August 2013.

[Signature]  
John R. Stegner  
Administrative District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete  
and correct copy of the foregoing ORDER  
ASSIGNING JUDGE was transmitted by facsimile to:

Hon. Michael Griffin  
District Judge  
(208) 983-2376

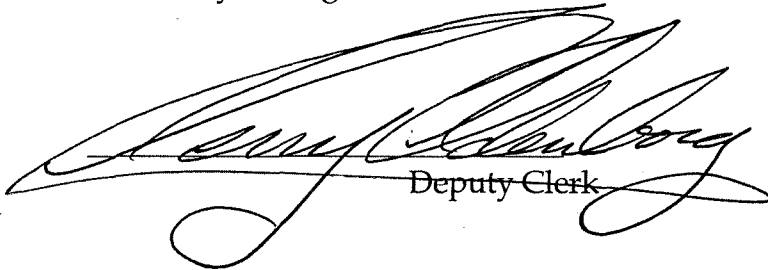
and transmitted by PDF email to:

D. Ray Barker  
Attorney for Defendant

Mark Monson  
Attorney for Defendant

William W. Thompson, Jr.  
Prosecuting Attorney

on this 7<sup>th</sup> day of August 2013.



Deputy Clerk

CASE NO. CR-13-1358

2013 AUG -9 AM 9:47

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY MB DEPUTY

1  
2  
3 MARK T. MONSON, P.A.  
4 MOSMAN LAW OFFICES  
5 803 S. Jefferson, Suite 4  
6 P.O. Box 8456  
7 Moscow, ID 83843  
8 (208) 882-0588  
9 (208) 882-0589 FAX  
10 Idaho State Bar No. 6165  
11 Washington State Bar No. 30497

12 Attorneys for Defendant

13  
14 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
15 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

16 STATE OF IDAHO

17 Plaintiff,

18 v.

19 CHARLES ANTHONY CAPONE

20 Defendant.

Case No. CR-2013-1358

21 EX PARTE MOTION FOR ADDITIONAL  
22 FUNDS REGARDING INVESTIGATOR

23 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and  
24 hereby moves the court for an order authorizing additional funds for investigation costs in the above-  
25 referenced matter. The court has previously approved investigative costs of \$15,000.00. An additional  
amount of \$7,500.00 is hereby requested. Counsel has retained Chuck Schoonover, dba Action Agency,  
as investigator in the above-entitled case. Previously, Counsel retained Mark Gibbs, who incurred costs  
prior to the State requesting that he step down. Subsequently, Mr. Gibbs stepped down and Counsel  
retained Chuck Schoonover as investigator. Mr. Schoonover was hired shortly before the preliminary

EX PARTE MOTION FOR ADDITIONAL  
FUNDS REGARDING INVESTIGATOR

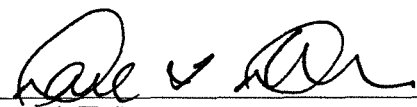
Page 1 of 2



MOSMAN  
LAW OFFICES  
000298

1 hearing was held in this case and has incurred investigative costs of approximately \$10,000.00 in  
2 reviewing the discovery to date (approx. 3,700 pages), meeting with Counsel on multiple occasions,  
3 attending the preliminary hearing, and in conducting several interviews with Mr. Capone.

4 DATED this 9 day of August, 2009.

5  
6   
7 \_\_\_\_\_  
8 Mark T. Monson  
9 Attorney for Defendant  
10  
11  
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

Michael J. Griffin  
District Judge

Keith Evans  
Court Reporter  
Recording No. Z:02/2013-8-20  
Time: 9:26 A.M.

Date: August 20, 2013

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

Case No. CR-13-01358

APPEARANCES:

William Thompson, Jr.,  
Prosecutor, and Mia Vowels,  
Deputy Prosecutor

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

---

Subject of Proceedings: ARRAIGNMENT

This being the time set for an arraignment in this case, Court inquired of the defendant whether he has read the criminal information filed against him to which the defendant stated that he has read the criminal information and has reviewed the document with his attorneys.

Court read the charging portion of Count 1 of the criminal information charging the defendant with principal to murder in the first degree and the maximum penalty the charge carries of at least ten (10) years and up to life in the state penitentiary, up to a \$50,000.00 fine, and a possible civil penalty of \$5,000.00.

In response to inquiry from the Court, the defendant stated that his name is correctly listed on the criminal information.

Court read the charging portion of Count 2 of the criminal information charging the defendant with conspiracy to commit murder in the first degree and the maximum penalty the charge carries of at least ten (10) years and up to life in the state penitentiary, up to a \$50,000.00 fine, and a possible \$5,000.00 civil penalty.

Maureen Coleman  
Deputy Clerk  
Court Minutes 1

000300

Court read the charging portion of Count 3 of the criminal information charging the defendant with fail to notify the coroner or law enforcement of a death and the maximum penalty of ten (10) years in the state penitentiary and up to a \$50,000.00 fine.

Court read the charging portion of Count 4 of conspiracy to commit failure to notify the coroner or law enforcement of a death and the maximum penalty the charge carries upon conviction of up to ten (10) years in the state penitentiary and up to a \$50,000.00 fine.

Court read Part II of the criminal information charging the defendant with being a persistent violator which carries a penalty of at least five (5) years and up to life in the state penitentiary.

Court informed the defendant of his rights. Court informed the defendant of the rights he would be waiving should he enter a plea of guilty. Upon inquiry from the Court, the defendant entered pleas of not guilty to each charge. Court directed the clerk to record the not guilty pleas for each count including the persistent violator enhancement.

Mr. Thompson informed the Court that he intends to file a motion to join this case with State vs David Stone and presented argument under Idaho Criminal Rule 25(a)(3). Mr. Barker moved the Court for additional time to be able to respond to this matter. Court stated that he does not believe that Rule 25(a)(3) applies in this matter as the State did not file one case with Mr. Capone and Mr. Stone being charged as co-defendants.

Court and counsel reviewed possible jury trial dates. Mr. Barker moved the Court schedule the jury trial beyond a December 2013 setting. Court scheduled the jury trial for December 9, 2013 to commence at 9:00 A.M. and directed counsel to appear at 8:30 a.m. on December 9, 2013 to meet in chambers. Court stated that the jury trial is anticipated to take three to four weeks to try. Court stated that he will hear a motion to continue if the need arises.

Court questioned Mr. Barker regarding the driving time and mileage of the investigator on the affidavit for legal services. Mr. Barker stated he would check into the matter and get back to the Court.

Mr. Thompson made an inquiry of the Court regarding a scheduling order. Court stated he will set deadlines for motions at a later date and after the motion to join has been heard.

Court recessed at 9:45 A.M.

APPROVED BY:



MICHAEL J. GRIFFIN  
DISTRICT JUDGE





CERTIFICATE OF SERVICE

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

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

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

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

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

on this 30 day of August, 2013.

SUSAN PETERSON  
Latah County Clerk of the Court

By: Sue Anderson  
Deputy Clerk

CR 2013-1358  
CASE NO \_\_\_\_\_

2013 AUG 20 PM 4:27

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY \_\_\_\_\_ DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843  
(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. )  
\_\_\_\_\_)  
STATE OF IDAHO, )  
Plaintiff, )  
V. )  
DAVID CHRISTOPHER STONE, )  
Defendant. )  
\_\_\_\_\_)

Case No. CR-2013-01358

Case No. CR-2013-01359

MOTION FOR JOINDER

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves for orders pursuant to Idaho Criminal Rules 8(a), 8(b) and 13, joining and consolidating these cases for the reason that the offenses charged, and underlying evidence and substantive conduct, are identical and each of the four counts

ORIGINAL

000304

alleged in each case involves both defendants. In short, the offenses charged "are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan" (see I.C.R. 8(a)) and the defendants "are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting" the offenses charged (see I.C.R. 8(b)).

Additionally, the evidence and witnesses in both cases are identical. Accordingly, it is in the interest of justice and judicial economy to have the cases tried together. An order of consolidation for trial will save witness and jury time, judicial resources and the expense of separate trials requiring the repetition of identical evidence.

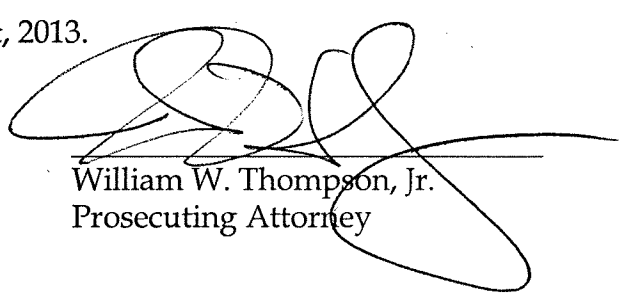
In support of this motion, the State respectfully refers the Court to the Criminal Informations on file herein, the probable cause affidavits filed with the initial Criminal Complaints, and the fact that preliminary hearings in both cases were conducted jointly based on identical evidence and resulting in a unified determination by the presiding Magistrate to bind over both cases for trial. To the extent necessary for the record, the State asks that the Courts take judicial notice of the court files in each of these cases, including the original probable cause affidavits and the official court minutes of the preliminary hearings.

The State further respectfully requests an expedited hearing and decision on this motion based on the fact that speedy trial commenced to run on August 5, 2013, the date of the filing of the Criminal Informations herein; a tentative December 9, trial date has

been set by Judge Griffin in CR-2013-01358 with the understanding that the actual date depends on the decision on this motion to join; and there are numerous pre-trial motions to be filed in each case which would have to be unnecessarily duplicated without an order of joinder, all within a short timeframe.

Wherefore, the State respectfully prays that these cases be consolidated for trial.

DATED this 20 day of August, 2013.



William W. Thompson, Jr.  
Prosecuting Attorney

**CERTIFICATE OF DELIVERY**

I hereby certify that a true and correct copy of the foregoing MOTION FOR JOINDER was 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

Charles E. Kovic  
Attorney at Law  
Courthouse Mail  
Moscow, ID 83843

U.S. Mail  
 Overnight mail  
 Fax  
 Hand Delivery  
 E-mail

Dated this 20th day of August, 2013.

Kate Mecham

CASE NO. CR 2013-1358

2013 SEP -4 PM 12:45

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY *Qum* DEPUTY

MARK T. MONSON, P.A.  
MOSMAN LAW OFFICES  
803 S. Jefferson, Suite 4  
P.O. Box 8456  
Moscow, ID 83843  
(208) 882-0588  
(208) 882-0589 FAX  
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

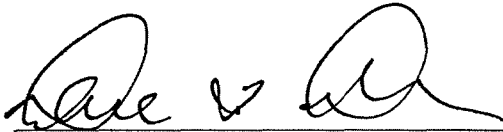
**EX PARTE MOTION FOR ADDITIONAL  
FUNDS REGARDING INVESTIGATOR**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order authorizing additional funds for investigation costs in the above-referenced matter. The court has previously approved investigative costs of \$22,500.00. An additional amount of \$7,500.00 is hereby requested. Counsel has retained Chuck Schoonover, dba Action Agency, as investigator in the above-entitled case. Ms. Schoonover has expended the funds previously approved by meeting with Counsel on multiple occasions, attending the preliminary hearing, conducting several interviews with Mr. Capone, and organizing discovery.

EX PARTE MOTION FOR ADDITIONAL  
FUNDS REGARDING INVESTIGATOR  
Page 1 of 2



1 DATED this 4 day of September, 2013

2  
3 

4 Mark T. Monson  
5 Attorney for Defendant



CASE NO. CR2013-1358

2013 SEP -6 PM 1:42

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY CM DEPUTY

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

RESPONSE TO "EX PARTE  
MOTION FOR ADDITIONAL  
FUNDS REGARDING INVESTIGATOR"

COMES NOW the State of Idaho, by and the Latah County Prosecuting Attorney,  
and respectfully submits this response to the defendant's September 4, 2013, "Ex Parte  
Motion for Additional Funds Regarding Investigator:"

The State does not have any per se objection to the request for authorization for an  
additional \$7,500.00. However, as the State mentioned to defense counsel telephonically,  
there is a question as to whether it is appropriate for Latah County to be paying a private  
investigator's hourly rate for what appears to be an administrative/secretarial task of

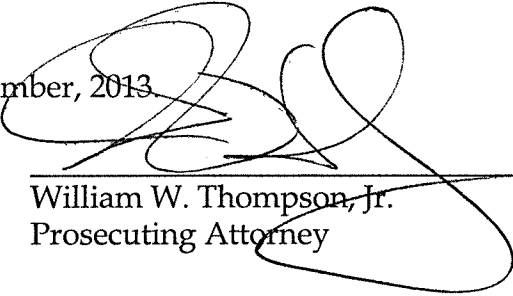
ORIGINAL

000310

"organizing discovery." The State acknowledges defense counsel's representation that the investigator is creating a database of materials, and submits to the Court the question of whether "organizing discovery" in the form of creating a database is a proper expenditure of public funds to be done by an investigator when the offices of both defense counsel have secretaries/legal assistants on staff.

With the above, the State respectfully submits the issue to the Court for consideration and waives the necessity of further hearing on this particular motion so that a decision can be expedited.

DATED this 6 day of September, 2013



---

William W. Thompson, Jr.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing RESPONSE TO "EX PARTE MOTION FOR ADDITIONAL FUNDS REGARDING INVESTIGATOR was 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

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

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Dated this 6th day of September, 2013.

Kate Meckam

D. RAY BARKER  
Attorney at Law  
204 East First Street  
P.O. Box 9408  
Moscow, Idaho 83843-0118  
(208) 882-6749  
Idaho State Bar No. 1380

CR 2013-1358  
CASE NO \_\_\_\_\_

2013 SEP 10 PM 4:19

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY [Signature] DEPUTY

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

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

Case No. CR-2013-0001358

**AMENDED EX PARTE MOTION FOR  
ADDITIONAL FUNDS REGARDING  
INVESTIGATOR**

COMES NOW the defendant, Charles Anthony Capone, by and through his appointed counsel, and hereby moves the court for an order authorizing additional funds for investigative costs of \$22,500.00. An additional amount of \$7,500.00 is hereby requested. Counsel has retained Chuck Schoonover, dba Action Agency, as investigator in the above-entitled case. Mr. Schoonover has expended the funds previously approved by meeting with Counsel on multiple occasions, attending the preliminary hearing, conducting several interviews with Mr. Capone, and organizing discovery.

Chuck Schoonover was retained as investigator partially because D. Ray Barker, counsel for the Defendant, has previously worked with Mr. Schoonover in cases involving significant

**AMENDED EX PARTE MOTION FOR  
ADDITIONAL FUNDS REGARDING INVESTIGATOR - 1**

000313

amounts of discovery materials and is fully aware of Mr. Schoonover's experience and abilities in handling such cases. Mr. Schoonover worked with Mr. Barker in both state and federal criminal cases including a first degree murder case in Latah County and a high profile federal drug case in Coeur d'Alene. Mr. Schoonover also worked in the most recent Mark Lankford retrial conducted in Shoshone County.

The State in its Response to Ex Parte Motion for Additional Funds Regarding Investigator questions the expenditure of public funds for organizing discovery. The State expends public funds in every aspect of this case including its organizing of discovery. The State has at its disposal a staff of five lawyers and at least five staff persons as well as the Latah County Sheriff's Office and several other law enforcement agencies which have worked on this case.


The appointed counsel have neither the staff nor the experience to organize the discovery materials and create a usable data base to facilitate efficient access to the discovery materials. Counsel for the Defendant has attached hereto a copy of a letter from Mr. Schoonover in which he has outlined the extent of the discovery received to date as well as the locating and interviewing of witnesses that will be necessary as the case evolves.

Mr. Schoonover is charging his hourly rate of \$70.00 but is charging only \$30.00 per hour for two trained contractors who are assisting him in the work he is performing. It is more efficient to have him performing these services than it would be for the appointed counsel to attempt to do these things.

A hearing on the underlying motion has been set for September 23, 2013, at 1:00 P.M. It is here by respectfully requested that the court rule on this motion at an earlier date so as to avoid

interruption of approximately two weeks in the work that Mr. Schoonover is currently performing.

DATED this 10 th day of September, 2013.

  
\_\_\_\_\_  
D. Ray Barker  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of September, 2013, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Latah County Prosecuting Attorney

Attn: William W. Thompson, Jr.

P.O. Box 8068

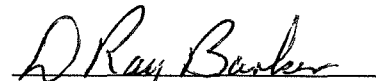
Moscow ID 83843

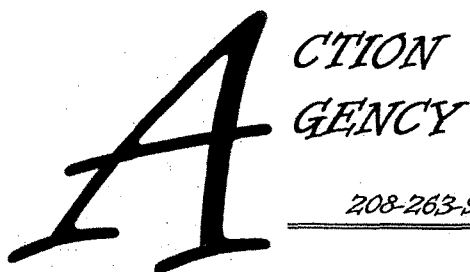
First-class mail

Hand-delivered

Facsimile

By:

  
D. Ray Barker



*P. O. Box 704 Sandpoint, Idaho 83864-0704*  
*208-263-9586 Fax 208-263-7032 e-mail [action@idaho.net](mailto:action@idaho.net)*

---

September 6, 2013

D. Ray Barker  
204 E. First Avenue  
Moscow, Idaho 83843

## Re State v. Capone

Dear Ray:

Following your request for a proposal for consideration of our defense of Charles Capone, I would like to submit my initial review of the evidence we have received. In reviewing the data received in discovery, we have received the following from the State to date:

- Approximately 3800 pages of paper documents
- Approximately 120,000 lines of cell phone calls and text messages sent and received as a result of at least 13 individual search warrants specific to several cellular telephones
- Cell phone tower data for north Idaho and western Washington
- Approximately 8500 lines of GPS locations and data from the Moscow Police Department on suspect vehicles from their GPS trackers installed following court orders
- Approximately 30 hours of recorded interviews of witnesses and suspects
- Approximately 1700 photographs
- Approximately 12 video recordings of unknown length
- Data from at least one personal computer
- Data from at least eight cell phones

The above discovery has been generated in law enforcement's investigation of the disappearance of Rachael Anderson from approximately April 16, 2010 to date and totals approximately 130 gigabytes of electronic data. Law enforcement has informed us that they formed a Rachael Anderson Task Force to investigate this matter. We have identified eleven different law enforcement agencies and over 38 individual officers from those eleven agencies to this point who have had an active part in this investigation. As we found at the preliminary hearing there may well be several more "undocumented" law enforcement officers involved. Their undocumented activities may or may not include exculpatory information for Mr. Capone.

000317



To date, I have expended over 135 hours becoming familiar with the generalities of this case, the discovery, attendance at a three day preliminary hearing and have begun extrapolating data so it will be useable for our defense of Mr. Capone.

As you have requested, I will detail the discovery, beginning with the paper reports and documents received. In detailing the discovery, we have discussed my use of several database reporting systems for your use in preparation for trial. Once the paper reports are detailed, we can identify potential witnesses which should be interviewed and the topics of the interviews.

There is very little conventional physical evidence in this case. After detailing the discovery, it appears that review and preparation of the cell phone data in an understandable fashion is one of the most efficient methods of being able to confirm and or deny the truthfulness of the witness testimony at the preliminary hearing.

This case is a purely circumstantial, in that no deceased body has been found and no physical evidence is linking Mr. Capone to the disappearance of Rachael Anderson. That being said, the devil is in the detail of this case. As we are beginning to find, some of the smallest details contained in this case may be very helpful to the defense theories and Mr. Capone's best interest. In our initial review of the discovery obtained by law enforcement, it appears law enforcement's investigation of this matter has very little overall organization. It appears that law enforcement has overlooked several sources of information and records that may very well be exculpatory to Mr. Capone's best interests.

Mr. Capone, our client, has been very helpful in explaining specific individuals involvements and facts which may very well be able to be corroborated in his defense.

I have not yet viewed the cell phone data in enough detail to make an estimate as to the most efficient method of preparing that data. There appears to be approximately 120,000 lines of specific cell phone data in the discovery. The general format in which the data has been provided us appears to be in a spread sheet, comma separated format and pdfs. I have experience in combining and evaluating the cell phone data.

The discovery we have received in this matter has little organization for future recall of specific information. With this volume of data, I have at your direction, organized and become familiar with the general contents. In the discovery I have reviewed to date and the preliminary hearing testimony I overheard, many witnesses make reference to telephone contacts, numbers of telephone contacts on specific dates and times, which, most of which at this time appear to be uncorroborated. By sorting and combining the cell phone call and text messaging data I believe we may very well be able to confirm or deny the accuracy of the witness statements and our client's representations. Many of our client's representations appear to be corroborated by the details contained in the discovery we have received.

I have experience in cases of this size as evidenced in my resume. Due to the huge volume of data that has been provided, I can see this will be a very time consuming process. I would estimate somewhere between seven and fourteen days to prepare and complete specific exhibits relating to the specific telephone calls that have been identified to date.

000318

I am unable to make an accurate estimate of the time that this will take due to the voluminous discovery received to date. I would suggest petitioning the court for funding in blocks of \$7500.00 with the understanding that we will report back to the court with our general progress and request for additional funding as you direct. I would estimate that to review and detail the paper discovery will take approximately 2 to 3 months. At this point we would be able to begin our defense investigation of locating and interviewing the defense witness we will develop by that time. I am a sole practitioner and have no employees in my business. I charge \$70.00 per hour for my services. I have associations with trained contractors for data input and exhibit preparation. I charge their services at \$30.00 per hour for data input and assistance with exhibit preparation.

We have found several minute details in the discovery that have allowed us to begin to develop a defense theory in this case. It is my opinion the examination of those details is necessary for the defense of Mr. Capone.

Cordially,



Charles A. Schoonover  
Owner  
Action Agency

000319

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

**- COURT MINUTES -**

Jeff M. Brudie  
District Judge

Sheryl Engler  
Court Reporter  
Recording No. Z:03/2013-9-12  
Time: 4:04 P.M.

Date: September 12, 2013

STATE OF IDAHO, )  
)  
Plaintiff, )  
vs )  
)  
DAVID CHRISTOPHER STONE, )  
)  
)  
)  
Defendant. )  
)  
)

Case No. CR-13-01359  
  
APPEARANCES:  
  
William Thompson, Jr. Prosecuting  
Attorney, and Michelle Evans, Deputy  
Prosecutor, Appearing on Behalf of the  
State  
  
Defendant present with counsel,  
Charles Kovis, Public Defender

---

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

Case No. CR-13-01358  
  
APPEARANCES:  
  
William Thompson, Jr. Prosecuting  
Attorney, and Michelle Evans, Deputy  
Prosecutor, Appearing on Behalf of the  
State  
  
Defendant present with counsel,  
D. Ray Barker, Court Appointed  
Counsel

---

Subject of Proceedings: Arraignment in State vs David Stone and Motion for Joinder  
In State vs David Stone and State vs Charles Capone

This being the time set for conducting an arraignment in State vs David Stone, Court noted the presence of counsel and the defendant.

Court informed the defendant of the charges of Principal to Murder in the First Degree under Idaho Code 18-204, 18-4001, 18-4003(a), Conspiracy to Commit Murder in the First Degree under Idaho Code 18-4001, 18-4003(a), 18-1701, Failure to Notify the Coroner or Law Enforcement of a Death under Idaho Code 19-4301A(1)(3), and Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of a Death under Idaho Code 19-4301A(1)(3), 18-1701, filed against him in the criminal information filed in this case. In response to inquiry from the Court, Mr. Kovis waived reading of the criminal information and moved the Court schedule a jury trial in this matter. In response to inquiry from the Court, the defendant entered a plea of not guilty to each charge.

Court stated that he intends to schedule the jury trial at a later time as the State has filed a motion for joinder filed in this case as well as in Latah County case CR13-01358, State vs Charles Anthony Capone. Court noted that Judge Griffin has been disqualified in State vs David Christopher Stone so this Court will be hearing the State's motion for joinder in both cases.

Court proceeded with hearing the State's motion for joinder in State vs David Christopher Stone, CR13-1359 and State vs Charles Anthony Capone, CR13-1358.

D. Ray Barker, representing defendant, Charles Capone, came forward and was seated at the defense table with Mr. Kovis. Mr. Thompson presented argument in support of the State's motion for joinder. Court stated that he has not had the opportunity to read the transcript of the preliminary hearing in these cases. Court questioned Mr. Thompson.

Mr. Kovis presented argument in opposition to the State's motion for joinder on behalf of defendant David Stone.

Mr. Barker presented argument in opposition to the State's motion for joinder on behalf of defendant Charles Capone.

Mr. Thompson presented further argument.

Court took the State's motion for joinder under advisement, stating that he will prepare a written ruling. Court stated that he will rule as soon as possible since Mr. Capone is currently scheduled for jury trial in December, 2013 before Judge Griffin. Court will contact counsel by telephone after making his ruling in order to schedule a scheduling conference.

The defendants, Charles Capone and David Stone were remanded back into the custody of the Latah County Sheriff pending posting of bond or earlier court appearance.

Court recessed at 4:16 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read 'JMB', is written over the printed name.

JEFF M. BRUDIE  
DISTRICT JUDGE

CASE NO. CR2013-1358

2013 SEP 19 PM 1:38

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY [Signature] DEPUTY

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

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

CASE NO. CR13-01358  
ORDER DENYING MOTION  
FOR JOINDER

STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DAVID CHRISTOPHER STONE, )  
 )  
 Defendant. )

CASE NO. CR13-01359  
ORDER DENYING MOTION  
FOR JOINDER

This matter is before the Court on the State's Motion for Joinder. The Court heard oral arguments on the Motion on September 12, 2013. Plaintiff State of Idaho was represented by Latah County Prosecuting Attorney William Thompson. Defendant Charles Anthony Capone was represented by attorney Ray Barker. Defendant David Stone was represented by attorney Charles E. Kovis. The Court, having read the Motion and Information filed against each of the

Defendants, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

A motion for joinder of defendants for the purpose of trial is subject to Idaho Criminal Rules 8 and 13. The decision to grant or deny a motion for joinder falls within the discretionary authority of the Court. Of utmost importance in deciding whether joinder of trials is proper, when as here two defendants are charged with the same crimes based on the same events and facts, is the risk of unfair prejudice to one or both defendants. Based on the record before the Court in the two instant matters, the Court finds the risk of unfair prejudice to one or both defendants to be greater than the judicial economy benefit that would be derived from joinder of the cases for trial.

Therefore, the Court hereby DENIES the States Motion for Joinder.

Dated this 19 day of September 2013.



JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER DENYING MOTION FOR JOINDER was:

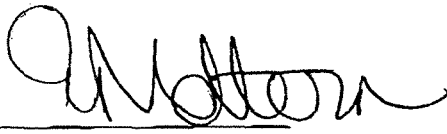
Hand delivered via court basket, this 19 day of September 2013, to:

William Thompson  
Prosecuting Attorney

Charles Kovis  
Public Defender

Ray Barker  
Public Defender

*- by FAX / Mark Monson by FAX*

By:   
Deputy Clerk



CASE NO. CR 2013-1358

2013 SEP 19 PM 3:27

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY QM DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR.  
PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
(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

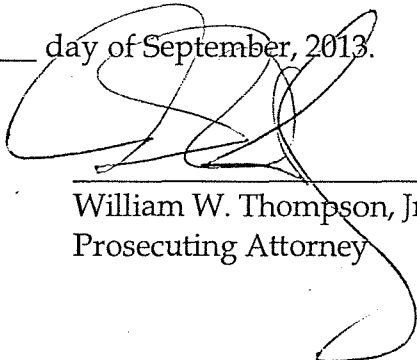
STATE OF IDAHO,	)	
Plaintiff,	)	Case No. CR-2013-01358
	)	
V.	)	MOTION FOR SCHEDULING
	)	ORDER
CHARLES ANTHONY CAPONE,	)	
Defendant.	)	
_____	)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves the Court for the issuance of a scheduling order setting dates for pre-trial motions and such other pre-trial matters as the Court deems appropriate. This motion is based on the fact the Honorable Jeff Brudie has denied the State's Motion for Joinder of the instant case with State of Idaho v. David Christopher

ORIGINAL  
000326

Stone, Latah County Case No. CR-2013-01359, and with the pending December 9 trial date herein, the parties will need to proceed expeditiously to complete pre-trial practice.

Respectfully submitted this 19 day of September, 2013.



---

William W. Thompson, Jr.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the Notice of Intent Not to Seek the Death Penalty 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 882-7604  
 Hand Delivery  
 E-mail

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

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

Dated this 19th day of September, 2013.

Mate Mechem

CASE NO. CR 2013-1

2013 SEP 23 AM 10:29

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY AM DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE  
MICHELLE M. EVANS  
DEPUTY PROSECUTING ATTORNEY  
Latah County Courthouse  
P.O. Box 8068  
Moscow, Idaho 83843-0568  
(208) 882-8580 Ext. 3316  
ISB No. 4795

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

STATE OF IDAHO,	)	
Plaintiff,	)	Case No. CR-2013-0001358
	)	
V.	)	MOTION FOR RELEASE OF EVIDENCE
	)	
CHARLES ANTHONY CAPONE,	)	
Defendant.	)	
_____	)	

COMES NOW the State of Idaho, by and through Michelle M. Evans, Deputy Prosecuting Attorney, and represents as follows:

1. The above named Defendant, CHARLES ANTHONY CAPONE is charged with the crimes of PRINCIPAL TO MURDER IN THE FIRST DEGREE, Idaho Code 18-204, 18-4001, 18-4003(a); CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a), 18-1701; FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3); and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, Felonies;

ORIGINAL 000329

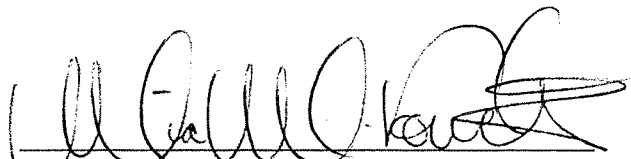
2. A preliminary hearing was held in the above entitled case on July 30 - August 1, 2013, wherein the State admitted the following into evidence: "State's Exhibit 62 - Pill bottle and contents";

3. The State requests that the State's Exhibit listed in paragraph #2 above be released to Idaho State Police Investigations, for the purpose of having the pill bottle further analyzed for evidence;

4. The State has discussed this matter with defense counsel, D. Ray Barker and he has no objection to this motion;

Accordingly, the State MOVES THE COURT for an order releasing the above listed evidence to the Idaho State Police Investigations for further analysis.

DATED this 23 day of September, 2013

  
Michelle M. Evans  
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

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

Judge Michael J. Griffin  
District Court Judge  
Idaho County Courthouse  
320 W Main  
Grangeville, ID 83530  
Fax: 208-476-8910

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, ID 83843  
e-mail: D.RayBarker@turbonet.com

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery  
 e-mail

Dated this 23<sup>rd</sup> day of September, 2013.

S. Bergen

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

**- COURT MINUTES -**

Michael J. Griffin  
District Judge

No Court Reporter  
Recording No. Z:01/2013-9-23  
Time: 1:05 P.M.

Date: September 23, 2013

STATE OF IDAHO, )

Plaintiff, )

vs )

CHARLES ANTHONY CAPONE, )

Defendant. )

Case No. CR-13-01358

**APPEARANCES:**

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

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

---

**Subject of Proceedings:** Defendant's motion to increase funds for the investigator

This being the time set for conducting a hearing on the defendant's motion to increase funds for the investigator, the clerk noted the presence of counsel and the defendant present in the courtroom. Court was participating by telephone.

Court questioned Mr. Barker in regard to the reason for the request for further funds for the investigator. Court questioned Mr. Thompson. Mr. Thompson stated that he had no further argument other than what was put in their written response. Court further questioned Mr. Barker. Court granted the defendant's motion to increase funds for the investigator and will sign the order and will fax it to the clerk's office in Moscow for filing.

Mr. Thompson stated that he has filed a request for a scheduling order, stating that the State will have a number of pretrial motions including motions in limine and other motions which should be filed within two to three weeks. In response to inquiry from the Court, Mr. Barker stated that he anticipates filing pretrial motions but will not be able to file the pretrial motions within the next two to three weeks. In response to inquiry from the Court, Mr. Thompson stated that he does not

Maureen Coleman  
Deputy Clerk  
Court Minutes 1

000332

contemplate having any expert witnesses. Mr. Barker informed the Court that they may be calling expert witnesses, stating that he could discover his expert witnesses within two to three weeks. Court ordered all pretrial motions be filed by October 15, 2013. Mr. Barker stated that he did not believe that October 15, 2013 would be adequate time to file the pretrial motions. Mr. Barker further stated that he does not believe that they can be ready for trial by December 9, 2013. Court presented remarks and stated that counsel needed to try their best to be ready for trial by December 9, 2013. Court ordered that Mr. Barker disclose his expert witnesses by October 15, 2013 and further ordered that all pretrial motions be filed by October 20, 2013 and then the Court will find a date to hear the pretrial motions.

Mr. Thompson stated that the State has filed a motion to release one of the preliminary hearing exhibits, specifically the pill bottle, for the purpose of sending it to the laboratory for further testing. There being no objection by Mr. Barker, Court granted the motion to release the pill bottle.

Court recessed at 1:14 p.m.

APPROVED BY:



MICHAEL J. GRIFFIN  
DISTRICT JUDGE



CASE NO. CR 2013-1358

2013 SEP 23 PM 3:48

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY AM DEPUTY

MARK T. MONSON, P.A.  
MOSMAN LAW OFFICES  
803 S. Jefferson, Suite 4  
P.O. Box 8456  
Moscow, ID 83843  
(208) 882-0588  
(208) 882-0589 FAX  
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

Case No. CR-2013-1358

Plaintiff,

ORDER AUTHORIZING FUNDS REGARDING  
INVESTIGATOR

v.

CHARLES ANTHONY CAPONE

Defendant.

THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator* dated September 4, 2013, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$7,500 for investigative costs is hereby authorized. Investigative costs in the amount of \$22,500.00 were previously approved. Such costs shall not exceed \$30,00.00 in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 23rd day of September 2013.

MD JCF  
JUDGE

ORDER AUTHORIZING FUNDS REGARDING INVESTIGATOR  
Page 1 of 2



MOSMAN  
LAW OFFICES

000334

CERTIFICATE OF SERVICE

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

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

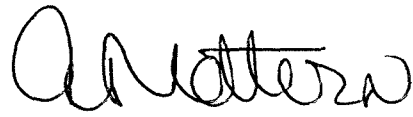
Via Facsimile: (208) 882-0589  
 U.S. Mail  
 Hand Delivery

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

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

on this 24 day of September, 2013.

SUSAN PETERSON  
Latah County Clerk of the Court

By:   
Deputy Clerk

CASE NO CR 2013-1358

2013 SEP 26 AM 9:50

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY Jim DEPUTY

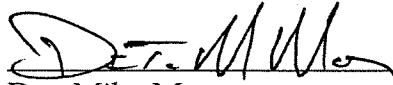
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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

Case No. CR-2013-0001358

RECEIPT OF EVIDENCE

I, Det. Mike Mooney, have received "State's Exhibit 62 - Pill Bottle and contents"  
that was previously held as evidence in above referenced case, this 26 day of  
SEPTEMBER, 2013.

  
\_\_\_\_\_  
Det. Mike Mooney

CASE NO CR-13-1358

2013 SEP 27 PM 4:00

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY RC DEPUTY

1  
2 MARK T. MONSON, P.A.  
3 MOSMAN LAW OFFICES  
4 803 S. Jefferson, Suite 4  
5 P.O. Box 8456  
6 Moscow, ID 83843  
7 (208) 882-0588  
8 (208) 882-0589 FAX  
9 Idaho State Bar No. 6165  
10 Washington State Bar No. 30497

11 Attorneys for Defendant

12  
13 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
14 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

15 STATE OF IDAHO

16 Plaintiff,

17 v.

18 CHARLES CAPONE

19 Defendant.

Case No. CR-2013-1358

**MOTION TO FILE DEFENSE REQUESTS FOR  
FUNDING UNDER SEAL**

20 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel,  
21 and hereby moves the court for authorization to file defense requests for funding for expert  
22 witnesses under seal. The basis of this motion is based on Idaho Court Administrative Rule 32(i)(5)  
23 which provides for the sealing of records where, among other things, "it is necessary to temporarily  
24 seal or redact the documents or materials to preserve the right to a fair trial."

25 The undersigned represents to the court that on September 27, 2013, at approximately 10:20  
a.m. he spoke with William Thompson, Latah County Prosecuting Attorney, regarding this motion,

MOTION TO FILE DEFENSE REQUESTS  
FOR FUNDING UNDER SEAL

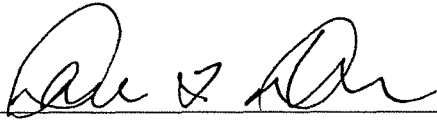
Page 1 of 2



MOSMAN  
LAW OFFICES  
000337

1 and Mr. Thompson represented that (1) the State has no objection to the defense presenting  
2 requests for funding for expert witnesses under seal, (2) the State waives a hearing in this matter,  
3 and (3) the state trusts that the Court will determine if the state needs to be advised in any detail of  
4 the defense requests pursuant to this motion.

5 DATED: September 27, 2013

6 

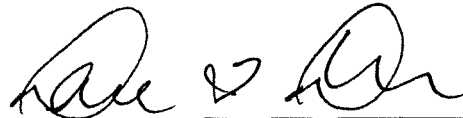
7 Mark T. Monson  
8 Co-Counsel for Defendant

9 CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY that a true and correct copy of the foregoing document was served by  
11  hand delivery; [ ] facsimile; [ ] first class mail, postage prepaid on:

12 Latah County Prosecuting Attorney  
13 PO Box 8068  
14 Moscow, ID 83843

15 on this 27 day of September, 2013

16 

17 For the firm

CASE NO. CR2013-1358

2013 SEP 30 AM 10:48

CLERK DISTRICT COURT  
LATAH COUNTY  
BY CAW 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-2013-0001358  
ORDER FOR RELEASE OF EVIDENCE

THE COURT, having considered the motion to release evidence in Latah County Case No. CR-2013-0001358, State of Idaho v. Charles Anthony Capone, HEREBY ORDERS that the State's Exhibit listed in paragraph #2 of said motion be released to the Idaho State Police Investigations for the purpose of further analysis.

SO ORDERED this <sup>30<sup>th</sup></sup> 23rd day of September, 2013.

Michael J. Griffin  
Michael J. Griffin  
DISTRICT JUDGE

ORIGINAL

000339

CERTIFICATE OF DELIVERY

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

D. Ray Barker  
Attorney at Law  
P.O. Box 9408  
Moscow, ID 83843  
e-mail: D.RayBarker@turbonet.com

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery  
 e-mail

Idaho State Police Investigations  
Attn: Det. Mike Mooney  
2700 North and South Hwy  
Lewiston, ID 83501

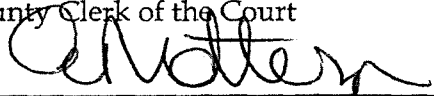
U.S. Mail  
 Overnight Mail  
 Fax: 208-799-3355  
 Hand Delivery

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

U.S. Mail  
 Overnight Mail  
 Fax  
 Hand Delivery

Dated this 20 day of September, 2013.

SUSAN PETERSEN  
Latah County Clerk of the Court

By:   
Deputy Clerk

CASE NO. CR2013-1358

2013 SEP 30 AM 10:48

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY am DEPUTY

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

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

CASE NO. CR13-01358  
ORDER SETTING JURY TRIAL  
AND SCHEDULING PROCEEDINGS

The above-entitled case is hereby scheduled as follows:

JURY Trial shall commence on Monday, December 9, 2013 at the hour of 9:00 a.m. at the Latah County Courthouse, Moscow, Idaho;

Defense is to disclose their expert witnesses by October 15, 2013;

All pre-trial motions shall be filed on or before October 21 2013.

A hearing for all pre-trial motions shall be heard on the 8<sup>th</sup> day of November, 2013 at 9:30 a.m. at the Latah County Courthouse, Moscow, Idaho.

Dated this 30<sup>th</sup> day of September, 2013.

[Signature]  
MICHAEL J. GRIFFIN, DISTRICT JUDGE

ORDER SETTING JURY TRIAL AND  
SCHEDULING PROCEEDINGS 1



CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING JURY TRIAL AND SCHEDULING PROCEEDINGS was hand delivered to:

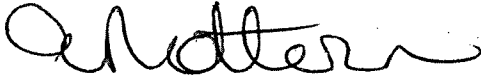
William Thompson, Jr.  
Latah County Courthouse  
Moscow, ID 83843

And mailed to:

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

SUSAN PETERSEN, Clerk

By



Deputy

ORDER SETTING JURY TRIAL AND  
SCHEDULING PROCEEDINGS

2

000342

CR 2013-1358  
CASE NO \_\_\_\_\_

2013 OCT -2 AM 11:56

CLERK OF DISTRICT COURT  
LATAH COUNTY

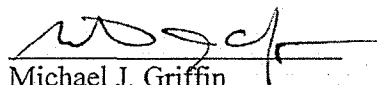
BY Da DEPUTY

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

STATE OF IDAHO,	)	CASE NO. CR 2013-1358
	)	
Plaintiff,	)	ORDER DENYING MOTION
	)	TO SEAL FUNDING REQUEST
vs.	)	
	)	
CHARLES CAPONE,	)	
	)	
Defendant.	)	

The defendant's motion to seal funding requests for expert witnesses is denied.

Dated this 2nd day of October, 2013.

  
Michael J. Griffin  
District Judge

CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 2 day of October, 2013, to:

Latah County Prosecuting Attorney

hand  
 U.S. Mail  
 Facsimile

D. Ray Barker  
P.O. Box 9408  
Moscow, ID 83843  
Idaho County Sheriff

U.S. Mail hand &  
 Facsimile 882-7604

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

U. S. Mail  
 Facsimile 882-0589

Lee Anderson  
Deputy Clerk

CASE NO CR 2013-1358

2013 OCT -2 PM 3:37

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY Qum DEPUTY

1  
2 MARK T. MONSON, P.A.  
3 MOSMAN LAW OFFICES  
4 803 S. Jefferson, Suite 4  
5 P.O. Box 8456  
6 Moscow, ID 83843  
7 (208) 882-0588  
8 (208) 882-0589 FAX  
9 Idaho State Bar No. 6165  
10 Washington State Bar No. 30497

11 Attorneys for Defendant

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14  
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25  
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF LATAH

11 STATE OF IDAHO

12 Plaintiff,

13 v.

14 CHARLES A. CAPONE

15 Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR  
AUTHORIZATION TO RETAIN SERVICES  
OF DNA EXPERT**

17 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel,  
18 and hereby moves the court for authorization to retain the services of DNA Diagnostics Center, an  
19 expert in DNA analysis, to review records and discovery materials, and to assist with the DNA  
20 aspects of this case at the expense of Latah County. This motion is based on the Affidavit of Mark T.  
21 Monson, attached hereto. Undersigned counsel represents that he contacted prosecuting attorney  
22 William Thompson on 10/2/13 and discussed that request for experts would be filed ex parte.

23 DATED: October 2, 2013

Mark T. Monson  
Mark T. Monson  
Co-Counsel for Defendant



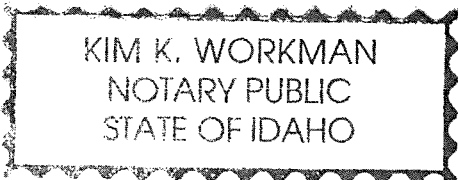
1 STATE OF IDAHO )  
2 ) §  
3 County of Latah )


4 Mark T. Monson, being first duly sworn, upon oath states:

- 5 1. I am one of the attorneys appointed by the court to represent Charles A. Capone.  
6 2. In representing Mr. Capone, it has been necessary to retain the services of an expert in the  
7 field of DNA detection and identification. The state has presented evidence in the  
8 preliminary hearing that blood was detected on a paper in the vehicle Rachel Anderson was  
9 last seen driving, in addition to other substances. The state has also conducted DNA testing  
10 in this case, and absent a defense DNA expert, there is no way to test the validity of that  
11 testing.  
12 3. It is necessary for an expert to review all relevant discovery materials and conduct whatever  
13 tests may be deemed necessary in order to assist counsel in representing Mr. Capone. Failure  
14 to retain the assistance of such an expert would result in inadequate representation of Mr.  
15 Capone.  
16 4. I have contacted DNA Diagnostics Center, regarding obtaining assistance in this case. I have  
17 used DNA Diagnostics Center in a previous felony case, and am aware of their qualifications  
18 and was please with work produced. Attached is a copy of a rate schedule for DNA  
19 Diagnostics Center.

20   
21 MARK T. MONSON

22 SIGNED AND SWORN TO before me this 2 day of October 2013

23   
24 KIM K. WORKMAN  
25 NOTARY PUBLIC  
STATE OF IDAHO

26   
27 Notary Public for Idaho  
28 Residing in Bovill, Idaho  
29 My commission expires: 8/7/18



September 30, 2013  
Case No.:  
Re: Charles Capone

Mark Munson  
Defense Attorney  
Mosman Law Offices  
803 S Jefferson St, #4  
Moscow ID 83843

Dear Mr. Munson, :

Thank you for giving us an opportunity to provide forensic DNA testing/consultation services for you. Depending on the services your case requires, fees may vary. Below is a fee schedule on which we will base the charges for your specific case. We would like to have your signature at the bottom to indicate your acceptance of these terms and provide the payer's information before we proceed with your case further. Please fax the completed form with your signature to 1-800-310-9746 as soon as possible.

**STR Casework/STR Analysis (up to 13 STR Core Loci - per sample)**

Evidence or Reference sample-per sample ..... \$ 1195 ea.  
Reference Sample Collection Fee ..... \$ 50-100 est.  
Shipping Fees (via courier, In/Out) ..... \$ 30 each way

**Additional DNA Services:**

Case Consultation/Review (5 hours @ \$295/hour) ..... \$ 1,475  
*Most cases require a minimum of 5 hours, 10hrs. average for a thorough review of the case file materials to determine if results are supported by underlying data and if further DNA analysis is indicated.*

**Expert Services: (if needed)**

Expert Testimony ..... \$1,800/day + expenses\*  
Phone Testimony or Deposition..... \$ 295/hour  
*\*Expenses may include, but are not limited to: airfare/mileage, lodging, meals, parking, etc.*

**Notes:**

Standard turn-around-time is 4 weeks from our receipt of all samples, a copy of the report of previous DNA testing, copy of a court order approving funds payable to DDC, and this Commitment Letter, completed and signed.

By signing below, I am giving DNA Diagnostics Center my written consent to provide DNA testing/consultation services as requested and to bill the person I designate as follows. In addition, I understand that I will be responsible for any collection costs and/or attorney fees associated with the third party collection of the balance due.

Please send invoice to (payer's name in print): \_\_\_\_\_

Payer's address: \_\_\_\_\_

City/State/ZipCode: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

CASE NO. CR2013-1358

2013 OCT -2 PM 3:38

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY *Qum* DEPUTY

MARK T. MONSON, P.A.  
MOSMAN LAW OFFICES  
803 S. Jefferson, Suite 4  
P.O. Box 8456  
Moscow, ID 83843  
(208) 882-0588  
(208) 882-0589 FAX  
Idaho State Bar No. 6165  
Washington State Bar No. 30497

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES A. CAPONE

Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR AUTHORIZATION  
TO RETAIN SERVICES OF  
PHARMACEUTICAL EXPERT**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for authorization to retain the services of Robert M. Julien, MD, Ph.D., a medical doctor, to review records and discovery materials, and to assist with the medical and pharmacological aspects of this case at the expense of Latah County. This motion is based on the Affidavit of Mark T. Monson, attached hereto. Undersigned counsel represents that he contacted prosecuting attorney William Thompson on 10/2/13 and discussed that request for experts would be filed ex parte.

DATED: October 2, 2013

*Mark T. Monson*  
Mark T. Monson  
Co-Counsel for Defendant



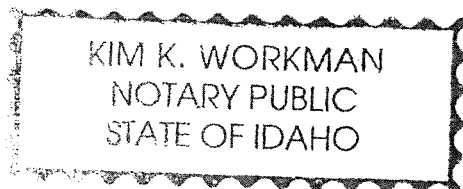
1 STATE OF IDAHO )  
2 ) §  
3 County of Latah )


4 Mark T. Monson, being first duly sworn, upon oath states:

- 5 1. I am one of the attorneys appointed by the court to represent Charles A. Capone.  
6  
7 2. In representing Mr. Capone, it has been necessary to retain the services of an expert in the  
8 field of pharmacology and medicine. The state has alleged that Mr. Capone incapacitated the  
9 alleged victim in this case by administering a sleeping aid (commonly known as Ambien) into  
10 the beer the alleged victim was drinking.  
11  
12 3. It is necessary for an expert to review all relevant discovery materials and conduct whatever  
13 tests may be deemed necessary in order to assist counsel in representing Mr. Capone. Failure  
14 to retain the assistance of such an expert would result in inadequate representation of Mr.  
15 Capone.  
16  
17 4. I have contacted Robert M. Julien, MD, Ph.D., regarding obtaining his assistance in this case,  
18 and he has agreed to assist the defense. Attached a copy of Dr. Julien's Curriculum Vitae. Dr.  
19 Julien's fee schedule is \$150 per hour for indigent defense work plus expenses.

20  
21  
22  
23  
24  
25  
  
MARK T. MONSON

SIGNED AND SWORN TO before me this 2 day of October 2013



  
Notary Public for Idaho  
Residing in Bovill, Idaho  
My commission expires: 8/7/18



ROBERT M. JULIEN, M.D., Ph.D.

Education:

University of Washington, School of Pharmacy (1965-1970)  
B.S. (Pharmacy), 1965  
University of Washington, School of Medicine (1966-1970)  
M.S. (Pharmacology), 1968, Ph.D. (Pharmacology), 1970  
University of California at Irvine, College of Medicine (1974-1977)  
M.D., 1977

Professional experience:

Assistant Professor, Department of Medical  
Pharmacology and Therapeutics, California College  
Of Medicine, Univ. California, Irvine (1970-1974).  
Assistant Clinical Professor, Department of Medical  
Pharmacology and Therapeutics, California College of  
Medicine, Univ. of California, Irvine (1974-1977).  
Intern, Good Samaritan Hospital and Medical Center,  
Portland, Oregon (1977-1978).  
Resident, Department of Anesthesiology, Oregon Health  
Sciences University (1978-1980).  
Associate Professor, Departments of Anesthesiology and  
Pharmacology, Oregon Health Sciences University  
(1980-1983).  
Staff Anesthesiologist, St. Vincent Hospital and Medical  
Center, Portland, Oregon (1983-2006).  
Medical Director of Nurse Anesthesia (1987-1996).  
Chairman, Library Committee (1987-1989)  
Member, Quality Assurance Coordinating Council (1988-  
1992), Pharmacy & Therapeutics Committee (1990-  
1992), Medical Education Committee (1990-1994),  
Director of Oregon Health Sciences Univ. Emergency Medicine  
residents and Providence St. Vincent Internal Medicine  
residents on Anesthesia Rotations (1994-2006).  
President, Oregon Guild of Catholic Physicians, 1989-1990  
Board of Directors & Consulting Pharmacologist, The Samaritan  
Center, Portland, 1995-2000.  
Delegate: OMA Legislative Conf. (Washington Cty Med Soc), 1997-2001  
Adjunct Professor: Lewis & Clark College Graduate School, 1997

Memberships:

American Society for Pharmacology and Experimental Therapeutics  
American Society of Anesthesiologists  
International Anesthesia Research Society  
Western Pharmacology Society  
Oregon Medical Association

Oregon Society of Anesthesiologists

Listings: Who's Who in the West; Who's Who in America; Who's Who in Medicine and Healthcare; International Health Professionals of the Year, 2005; Guide to America's Top Physicians, 2004-5; International Who's Who of Professionals; Madison's Who's Who Among Executives and Professionals

BOOKS

1 Julien, R.M.

A Primer of Drug Action, W.H. Freeman & Company, New York.  
1st edition, 1975; 2nd edition, 1978; 3rd edition, 1981;  
4th edition, 1985; 5th edition, 1988; 6th edition, 1991;  
7th edition, 1995; 8th edition, 1998; 9th edition, 2001;  
10th edition, 2005; 11<sup>th</sup> edition, 2008 (with C. Advokat and J. Comaty)  
12<sup>th</sup> edition, 2011 (with C. Advokat and J. Comaty)  
Published in German, 1997. Published in Italian, 1997.

2. Advokat, C., Comaty, J. and Julien, R.M.

Julien's Primer of Drug Action, 40<sup>th</sup> Anniversary Edition, in preparation. Worth Publishers: New York

3. Julien, R.M.

Understanding Anesthesia: An Introduction for Students of the Health Sciences, Addison-Wesley Publishing Co., Palo Alto, Ca. 1984; Butterworth: Boston, 1985; reprinted, 1988

4. Julien, R.M.

Drugs and the Body  
W.H. Freeman & Company, New York, 1988

REVIEWS

1. Julien, R.M.

Drugs and Behavior. In: Psychology 73-74 Encyclopedia.  
Dushkin Publishing Group Guilford, Conn., pp 73-77, 1973.

2. Julien, R.M.

Experimental Epilepsy: Cerebro-Cerebellar Interactions and Antiepileptic Drugs  
In: "The Cerebellum, Epilepsy and Behavior"  
I.S. Cooper, M. Riklan, and R.S. Snider, editors. Plenum Press, New York, pp 97-117, 1974.

3. Julien, R.M. and Hollister, R.P.  
Carbamazepine: Mechanism of Action  
In: "Complex Partial Seizures and Their Treatment". (Advances in Neurology, Vol. 11), J.K. Penry and D.D. Daly, editors.  
Raven Press, New York, pp 263-276, 1975.
4. Laxer, K.D., Julien, R.M. and Dow, R.S.  
Phenytoin: Relationship Between Cerebellar Function and Epileptic Discharges  
In: "Antiepileptic Drugs: Mechanisms of Action". (Advances in Neurology, Vol. 27), G.H. Glaser, J.K. Penry and D.M. Woodbury, editors. Raven Press, New York, pp 415-427, 1980.
5. Julien, R.M.  
Carbamazepine: Mechanism of Action  
In: "Antiepileptic Drugs", second edition. D.M. Woodbury, J.K. Penry and C.E. Pippenger, editors. Raven Press, New York pp 543-547, 1982.
6. Julien, R.M.  
Book Review: Adverse Reactions to Anesthetic Drugs.  
Anesthesia and Analgesia 61: 550, 1982.
7. Julien, R.M.  
Antiepileptic Agents  
In: "Drug Interactions in Anesthesia", second edition.  
Editors: N. Ty Smith, R. Miller and A. Corbascio.  
Lea & Febiger: Philadelphia, 1986, pp. 245-260.
8. Julien, R.M.  
General Anesthetic Agents  
In: "The Nurse, Pharmacology, and Drug Therapy"  
M. Schlafer and E.N. Marieb, eds.  
Addison-Wesley, Redwood City, Ca. 1989, pp. 314-331.
9. Julien, R.M.  
Are You Abusing (Over-the-Counter) Drugs?  
In: "1990 Medical and Health Annual", E. Bernstein, ed.  
Encyclopedia Britannica, Chicago, 1989, pp. 431-434.
10. Julien, R.M.  
"Treatment of Alcohol Craving", Zyban for Smoking Cessation",  
"What is the Meaning of a Positive Marijuana Urinalysis?",  
ACCBO-AADACO NEWS, 1997-1998.

11. Julien, R.M. "Psychiatry of Drugs and Behavior"  
In: "International Encyclopedia of the Social and Behavioral Sciences",  
N. J. Smelser and P. B. Baltes, Editors-in-chief.  
Oxford: Elsevier, 2001.
12. Julien, R.M.  
"Dementing Drugs"  
In: The Oregon Defense Attorney, volume 24, No. 7, 2003, 11-13.
13. Julien, R. M.  
"Psychostimulants"  
The Oregon Defense Attorney, 24, No. 8, 2003, 6-8.
14. Julien, RM  
"Depression as an Organic Disease,"  
The Oregon Defense Attorney, 24, no. 9, 2003: 6-8.
15. Julien, RM  
"Club Drugs, Date-Rape Drugs, and Psychedelics"  
The Oregon Defense Attorney, 24, No. 10, 2003: 8-10.
16. Julien, RM  
"Drugs in Psychiatry"  
In: *Encyclopedia Americana*, Scholastic Library Publishing, 2006
17. Julien, RM  
"Antianxiety Medications"  
In: The Corsini Encyclopedia of Psychology, 4th Edition  
I.B. Weiner and W. E. Craighead (Editors), John Wiley, publisher,  
Vol. 1, pp. 119-121.
18. Julien, R.M.  
"Treatment of Anxiety Across the Age Span"  
In: Anxiety Disorders: A Concise Guide and Casebook for  
Psychopharmacology and Psychotherapy Integration. S.M. Stahl and B.A.  
Moore (Editors). Routledge/Taylor & Francis: Psychopharmacology and  
Psychotherapy in Clinical Practice Treatment Series, B.A. Moore,  
series editor. In Press

MANUSCRIPTS

1. Julien, R.M. and Halpern, L.M.  
The Effect of diphenylhydantoin on Post-Tetanic Excitability  
in Isolated Rabbit Vagus.  
Proc. West. Pharmacology Soc. 11: 43-45, 1968.

2. Julien, R.M. and Halpern, L.M.  
An Approach to Drug Abuse Education.  
Washington-Alaska Pharmacist 10: 13-16, 1968.  
Reprinted with permission in multiple journals.
3. Julien, R.M. and Halpern, L.M.  
Stabilization of Excitable Membrane by Chronic Administration of  
Diphenylhydantoin.  
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4. Julien, R.M. and Halpern, L.M.  
Diphenylhydantoin-induced Increases in Cerebellar Purkinje Cell  
Discharge and its Relationship to Control of Seizure Activity in  
Experimental Epilepsy. Proc. West. Pharmacol. Soc. 13: 156-159, 1970.
5. Julien, R.M. and Halpern, L.M.  
Diphenylhydantoin: Evidence for a Cerebellar Action.  
Life Sciences 10: 575-582, 1971.
6. Julien, R.M., Kavan, E.M. and Elliott, H.W.  
Effects of Volatile Anesthetic Agents on EEG Activity Recorded in  
Limbic and Sensory Systems.  
J. Canad. Anaesth. Soc. 19: 263-269, 1972.
7. Julien, R.M.  
Anticonvulsant Action of Diphenylhydantoin in Mice with Genetic  
Cerebellar Degeneration.  
J. Pharmacol. exp. Therap. 180: 239-243, 1972.
8. Halpern, L.M. and Julien, R.M.  
Augmentation of Cerebellar Purkinje Cell Discharge Rate after  
Diphenylhydantoin.  
Epilepsia 13: 377-385, 1972.
9. Julien, R.M. and Halpern, L.M.  
Effects of Diphenylhydantoin and other Antiepileptic Drugs on  
Epileptiform Activity and Purkinje Cell Discharge Rates.  
Epilepsia 13: 387-400, 1972.
10. Julien, R.M.  
Cerebellar Involvement in the Antiepileptic Action of Diazepam  
Neuropharmacology 11: 683-691, 1972.
11. Julien, R.M., Macri, J.R. and Kunis, D.M.  
Effect of Regional Lidocaine Infusion on Penicillin-induced  
Epileptiform Discharge: Correlation of Anticonvulsant Effect with  
Blood Levels.

- Proc. West. Pharmacol. Soc. 15: 170-172, 1972.
12. Kavan, E.M. and Julien, R.M.  
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Proc. West. Pharmacol. Soc. 15: 166-169, 1972.
  13. Kavan, E.M., Julien, R.M. and Lucero, J.J.  
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  14. Julien, R.M. and Kavan, E.M.  
Electrographic Studies of a New Volatile Anesthetic Agent: Enflurane (Ethrane).  
J. Pharmacol. exp. Therap. 183: 393-403, 1972.
  15. Julien, R.M.  
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Electroenceph. Clin. Neurophysiol. 34: 639-645, 1973.
  16. Kavan, E.M., Julien, R.M. and Elliott, H.W.  
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J. Canad. Anaesth. Soc. 20: 528-538, 1973.
  17. Julien, R.M.  
Effect of Carbamazepine on Experimental Epilepsy in the Cat.  
Proc. West. Pharmacol. Soc. 16:126-128,1973.
  18. Kavan, E.M. and Julien, R.M.  
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Proc. West Pharmacol. Soc. 16:78-81, 1973.
  19. Julien, R.M.  
Photographic and Darkroom Techniques in Neurophysiology.  
The Carrier 1: No. 3: 1-6, 1973.
  20. Julien, R.M. and Laxer, K.D.  
Cerebellar Responses to Penicillin-induced Cerebral Cortical Epileptiform Discharges.  
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  21. Demetrescu, M. and Julien, R.M.

Local Anesthetics and Experimental Epilepsy.  
Epilepsia 15: 235-248, 1974.

22. Kavan, E.M. and Julien, R.M.  
Central Nervous System Effects of Isoflurane: A New Inhalation  
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J. Canad. Anaesth. Soc. 21: 390-402, 1974.
23. Kavan, E.M., Julien, R.M. and Lucero, J.J.  
Persistent Electro-encephalographic Alterations Following  
Administration of some Volatile Anaesthetics.  
Brit. J. Anaesth. 46: 714-721, 1974.
24. Julien, R.M. and Kavan, E.M.  
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Neuropharmacology 13: 677-681, 1974.
25. Julien, R.M., Fowler, G.W. and Danielson, M.G.  
The Effects of Antiepileptic Drugs on Estrogen-induced  
Electrographic Spikewave Discharge.  
J. Pharmacol. exp. Therap. 193: 647-656, 1975.
26. Hollister, R.P. and Julien, R.M.  
Studies on the Mode of the Antiepileptic Action of Carbamazepine.  
Proc. West. Pharmacol. Soc. 17: 103-106, 1974.
27. Fowler, G.W. and Julien, R.M.  
A New Laboratory Model for the Evaluation of Antiepileptic Drugs.  
Proc. West. Pharmacol. Soc. 17: 107-109, 1974.
28. Julien, R.M. and Demetrescu, M.  
Local Anesthetics: Central Effect Following Application to Wound  
Margins in Experiental Animals.  
T.I.T. Journal of Life Sciences 4: 27-30, 1974.
29. Julien, R.M. and Kavan, E.M.  
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Neuropharmacology 14: 53-59, 1975.
30. Mishler, J.M., Jackson, C.A., Nicora, R.W. and Julien, R.M.  
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Amer. J. Hosp. Pharm. 32: 489-491, 1975.
31. Fairhurst, A.S., Julien, R.M. and Whittaker, M.L.  
Effects of Ionophores A23187 and X537A on Brain Calcium,

Catecholamines and Excitability.  
Life Sciences 17: 1433-1444, 1975.

32. Lange, S.C., Julien, R.M. and Fowler, G.W.  
Biphasic Effects of Imipramine in Experimental Models of Epilepsy.  
Epilepsia 17: 183-196, 1976.
33. Lange, S.C., Fowler, G.W. and Julien, R.M.  
The Antiepileptic and Pro-convulsant Effects of Imipramine in  
Experimental Models of Epilepsy.  
Proc. West. Pharmacol. Soc. 19: 198-203, 1976.
34. Julien, R.M. and Fowler, G.W.  
Effectiveness of N,N'-dimethoxy-methyl-phenobarbital  
(Eterobarbital) on Febrile Seizures.  
Proceedings of the Western Pharmacology Society 20: 73-77, 1977.
35. Julien, R.M. and Fowler, G.W.  
A Comparative Study on the Efficacy of Newer Antiepileptic Drugs  
on Experimentally-induced Febrile Convulsions.  
Neuropharmacology 16: 719-724, 1977.
36. Purdy, R.E., Julien, R.M., Fairhurst, A.S. and Hutchison, M.D.  
Effect of Carbamazepine (Tegretol) on the In-Vitro Uptake and  
Release of Norepinephrine in Adrenergic Nerves of Rabbit Aorta  
and in Whole Brain Synaptosomes. Epilepsia 18: 251-257, 1977.
37. Lange, S.C. and Julien, R.M.  
Reevaluation of Estrogen-induced Cortical and Thalamic Paroxysmal  
EEG Activity in the Cat.  
Electroenceph. clin. Neurophysiol. 44: 94-103, 1978.
38. Bracis, R., Siebers, K. and Julien, R.M.  
Meningitis Caused by Strain IIj Following a Dog Bite.  
West. J. Medicine 131-138, 1979.
39. Hirshman, C. Krieger, W., Littlejohn, G., Lee, R. and Julien, R.M.  
Ketamine-Aminophylline Induced Decrease in Seizure Threshold.  
Anesthesiology 54: 464-467, 1982.
40. Julien, R.M.  
Potentially Fatal Machine Fault.  
Anesthesiology 58: 584-585, 1983.
41. Julien, R.M.  
Techniques in Anesthesia: Supplimentation in Regional Anesthesia.



E.I. DuPont De Nemours and Co., Wilmington, Delaware, 1984.

42. Julien, R.M.  
Nalbuphine Antagonism of Opiate-Induced Respiratory Depression.  
*Anesthesiology Review*, 12, No.6, Nov-Dec, 1985, pp 29-32.
43. Pollard, J.  
Clinical Evaluation of Intravenous vs Inhalation Anesthesia in  
the Ambulatory Surgical Unit: A Multicenter Study.  
(Participant in clinical study).  
*Current Therapeutic Research* 36, October, 1984.
44. Nitka, A.C., O'Riordan, E.F. and Julien, R.M.  
A New Technique of Scavenging Exhaled Nitrous Oxide.  
*Anesthesiology*, 63: 00-00, Oct. 1986.
45. Anderson, D. and Julien, R.M.  
Techniques in Dental Anesthesia  
DuPont Pharmaceuticals, Inc., 1986.
46. Julien, R.M.  
Techniques in Anesthesia: Intraoperative Analgesia. Numorphan  
as an Intraoperative Analgesic.  
DuPont Pharmaceuticals, Inc., 1986.
47. Julien, R.M.  
The Privilege of Walking a Few Steps with Patients.  
*Amer. Soc. Anesthesiologists Newsletter* 59 12:38, 1996
48. Julien, R, M.  
What is the Meaning of a Positive Marijuana Urinalysis?" Reprinted in  
the Oregon Defense Attorney Newsletter and the New Hampshire  
Association of Criminal Defense Attorney Newsletter, 1998.
49. Julien, R. M.  
A Renewed Call to Action. *Journal of Clinical Psychology*, 67: 1-4, 2011
50. Julien, R. M. and K. DiCecco,  
To Intend or Not to Intend: Sedatives, Behavior, Amnesia and Intent.  
*Journal of Clinical Nurse Consultants*, 21(4): 10-15, 2010.

ABSTRACTS

1. Julien, R.M. and Halpern, L.M.  
Cerebellar Action of Diphenylhydantoin on Penicillin-induced  
Cerebral Cortical Epileptic Foci.  
Federation Proceedings 29: 384, 1970.
2. Julien, R.M.  
Cerebellar and Antiepileptic Effects of Diazepam.  
The Pharmacologist 13: 205, 1971
3. Kavan, E.M., Julien, R.M. and Elliott, H.W.  
Differential Effects of Anesthetic Agents on Limbic  
and Sensory Systems.  
Proc. 10th Congress of the Scand. Soc. of Anaesth., Lund, 1971.
4. Kavan, E.M., Julien, R.M. and Elliott, H.W.  
Immediate and Long Term Effects of Volatile Anesthetic Agents  
on the Central Nervous System.  
1971 Meeting of the Amer. Soc. of Anes., pp 99-100, 1971.
5. Julien, R.M.  
Convulsant and Anticonvulsant Effects of Lidocaine in  
Epileptic Cats.  
Fifth Int. Cong. on Pharmacol.; Abst. of Sci. Papers, p.117, 1972.
6. Demetrescu, M. and Julien, R.M.  
Does Local Anesthesia Alter Results in Acute Preparations?  
Tenth Aniv. Meeting, UCLA Brain Research Institute, July, 1972.
7. Kavan, E.M. and Julien, R.M.  
Effects of Certain Intravenous Anesthetic Agents on EEG Activity  
Recorded in Limbic and Sensory Systems.  
1972 Annual Meeting of the Canadian Anesthetists Society
8. Kavan, E.M. and Julien, R.M.  
Effects of Anesthetic Agents on EEG Activity Recorded in  
Limbic and Sensory Systems.  
Electroenceph. Clin. Neurophysiol. 36: 212, 1974
9. Fowler, G.W. and Julien, R.M.  
Comparative Study of Estrogen-induced Seizures.  
Clinical Research 22: 213A, 1974
10. Fowler, G.W. and Julien, R.M.  
Imipramine in Experimental Petit Mal Epilepsy.  
Neurology (Minneap.) 24: 369, 1974

11. Julien, R.M., Lange, S.C. and Fowler, G.W.  
Evidence for a Cortical Estrogenic Involvement in Experimental  
Petit Mal Epilepsy.  
Society for Neuroscience, 1974
12. Fairhurst, A.S. and Julien, R.M.  
Effects of Calcium Inophores X537A and A23187  
on Various Brain Preparations.  
Sixth Int. Congress on Pharmacology, 1975
13. Barden, H.W., Julien, R.M. and Kavan, E.M.  
Anesthetic-induced Alterations in Cortical Afterdischarge  
in the Cat.  
The Pharmacologist 17: 178, 1975.
14. Hutchison, M.T., Purdy, R.E. and Julien R.M.  
The Contribution of Neuronal Uptake to the Antiepileptic Action  
of Carbamazepine (Tegretol).  
The Pharmacologist 17: 178, 1975.
15. Barden, H.W., Kavan, E.M. and Julien, R.M.  
Effects of Enflurane (Ethrane) on Electrically-induced Cortical  
Afterdischarge in the Cat.  
Federation Proceedings 35: 729, 1976.
16. Fowler, G.W. and Julien, R.M.  
Effectiveness of Newer Anticonvulsants in Febrile Convulsions.  
Child Neurology Society, 1976.
17. Julien R.M.  
Effects of Nalbuphine on Normal and Oxymorphone-depressed  
Ventilatory Responses to Carbon Dioxide Challenge.  
Anesthesiology 57: A 320, 1982.
18. Hirshman, C.A., Littlejohn, G., Lee, R. and Julien, R.M.  
Concurrent Use of Ketamine and Aminophylline Decreases  
Seizure Thresholds.  
Anesthesiology 57: A 362, 1982.
19. Nitka, A.C., O'Riordan, E.F. and Julien, R.M.  
A New Technique for Scavenging Exhaled Nitrous Oxide.  
Anesthesiology, 63 (3A), A190, 1985.

INVITED PRESENTATIONS

1. Oregon Association of Nurse Anesthetists, Fall symposium.  
Portland, Or., November 9-11, 1979.
2. International Anesthesia Research Society, 54th Congress.  
Reno, Nevada, invited discussant, March 13, 1980.
3. "A Nevada Educational Symposium" for nurse anesthetists.  
Las Vegas, Nevada, October 27, 1980.
4. Northwest Anesthesia Seminars (for CRNAs)  
Reno, Nevada, March 7-9, 1980.
5. Oregon Association of Nurse Anesthetists, Spring symposium.  
Eugene, Or., May 2-3, 1981.
6. Consultant, DuPont-Endo Laboratories  
Washington D.C., December 1-4, 1980.
7. UOHSC, Pharmacology Course for Medical Students.  
Lectures in Anesthesia, 1980.
8. Consultant, Prior Learning Experience Program  
Marylhurst College, Lake Oswego, Or., 1981-82.
9. Drugs and Behavior: Summer Session Course,  
Lewis and Clark College, Portland, Or., 1981.
10. UOHSC, School of Dentistry, Anesthesia Lectures, 1980-81.
11. UOHSC, Critical Care Nurses, Continuing education, Nov. 1980.
12. UOHSC, Division of Surgical Nursing, Inservice and tutorial  
education, 1979-1982.
13. "Drugs and Alcohol", Law Day Conference, Portland State  
University, May, 1981.
14. "Psychopharmacology and the Psychologist"  
A symposium for the Oregon Psychological Association.  
Lewis and Clark College, April 1981.
15. "Synthetic Opiates and their Function"  
Colorado Society of Anesthesiologists, Dillon, Co., July, 1981.
16. Montana Association of Nurse Anesthetists, Annual Seminar

Helena, Montana, September, 1981.

17. "Protecting the Brain"  
Providence Hospital Grand Rounds, Portland, Or., 1982.
18. "Opiates: Past, present and future".  
Lane County Pharmaceutical Association, Eugene, Oregon, Jan. 1982.
19. "Epilepsy and Anesthesia"  
Oregon Society of Anesthesiologists, Portland, Feb., 1982.
20. "Sequential Analgesia"  
Martin Luther King Medical Center, Grand Rounds.  
Los Angeles, Ca. Feb. 1982.
21. "Anesthesia in Dentistry"  
Ten day course for dentists, Maui, Sept. 1981.
22. "Sequential Analgesia"  
Letterman General Hospital, San Francisco, March 1982.
23. Selected topics in physiology and pharmacology.  
Oregon Association of Nurse Anesthetists Annual Meeting.  
Ashland, Oregon, May 1982.
24. "Anesthesia for the Epileptic" and "Current topics on the  
control of pain".  
Sacred Heart Hospital and Lane County Surgical Society, May 1982.
25. "Update on the control of intraoperative and postoperative pain"  
Tuality Community Hospital, Hillsborough Or., June 1982.
26. "Narcotics in Anesthesia" and "Anesthesia and Epilepsy"  
California Association of Nurse Anesthetists,  
Palm Springs, May 1983.
27. "New drugs in anesthesia"  
Northwest Recovery Room Nurses Association, May, 1983.
- 28 "Outpatient Anesthesia"  
Dept. of Anesthesia, Bess Kaiser Medical Center, Sept. 1983.
29. "Narcotic agonists and antagonists" and "Anesthetic considerations  
for the epileptic patient", clinical dialogues and grand rounds,  
Dept. of Anesthesiology, Univ. of Southern California  
Los Angeles, Jan. 1984.

30. "Perioperative fluid management"  
Vascular nursing, 1984 update, Portland, Feb. 1984.
31. "New drugs in anesthesia"  
Oregon Recovery Room Nurses Assoc., Portland, March 1984.
32. "Update on agonist-antagonist analgesics"  
West Virginia Association of Nurse Anesthetists.  
Greenbrier, West Virginia, March 1984.
33. "Agonist-antagonist analgesics in Anesthesia"  
Illinois Association of Nurse Anesthetists.  
Champagne, Il., May, 1984.
34. "Workshop on Drugs of Abuse"  
Reed College, Portland, Or., August 1984, 1985.
35. Visiting Professor, Department of Anesthesia,  
Maricopa County Medical Center, Pheonix, Arizona  
Jan 8-9, 1985.
36. "Psychopharmacology for Psychologists"  
Summer quarter course, Lewis & Clark College, Portland, 1985.
37. "Current Experiences with Sufentanyl"  
Portland, Or. Oct., 1985.
38. "Pharmacology of Cocaine"  
Symposium on Treatment of Cocaine Addiction,  
St. Vincent Hospital & Medical Center, Portland, Nov. 1985.
39. "The Pharmacology and Techniques of Conscious Sedation"  
50th Anniversary Symposium of the Oregon Society of  
Nurse Anesthetists, Beaverton, Or., Nov. 1985.
40. "New Drugs in Anesthesia"  
Northwest Recovery Room Nurses Association, Portland, Jan. 1986.
41. "Outpatient Anesthesia"  
Ground Rounds, Department of Surgery, St. Vincent Hospital,  
Portland, Jan, 1986.
42. "Update on Pharmacology for Anesthesia"  
Northwest Anesthesia Seminars, Las Vegas, March, 1986.

43. "Visiting Professor"  
Oshner School of Medicine, New Orleans, La., May, 1986.
44. "Drugs and Behavior", Psychology 555, Dept of Graduate  
Psychology, Lewis and Clark College, Portland, Fall  
Semester, 1986.
45. "Pain Management of the Surgical Patient", Challenges of  
Surgical Nursing-1987, St. Vincent Hospital, June, 1987.
46. "Placement and Uses of Epidural Catheters", Fall Symposium  
of National Intravenous Therapists Association,  
Portland, October, 1987.
47. "Epidural Control of Pain: Acute and Chronic", Orthopedic  
Nursing Update '87, Portland, October, 1987.
48. "Pharmacology of Midazolam (Versed)", Medical Grand Rounds,  
St. Vincent Hospital, March, 1988
49. "Expert Witness, Midazolam (Versed)", U.S. Congressional  
Subcommittee on Health Affairs, Washington DC, May, 1988
50. "Drugs and Behavior", Dept. of Graduate Psychology, Lewis and  
Clark College, Portland, Summer Semester, 1988
51. "Fentanyl in Obstetrics" and "Bleeding Abnormalities in the  
Laboring Patient-Anesthetic Considerations".  
CRNA Inservices, St. Vincent Hospital, Portland, December 1988
52. "Versed: An Update". Medical Grand Rounds, St. Elizabeth Hospital  
Yakima, Washington, January 1989
53. "Chronic Therapy for Cancer Pain". Oncology nursing education,  
St. Vincent Hospital, Portland, February 1989
54. "Intraspinal Opiates in a Community Hospital". Medical Staff  
lectures, McMinnville General Hospital, McMinnville, Or.
55. "Drugs for Anesthesia". Santiam Valley Surgical Nurses  
Assoc. McMinnville, Or., Sept., 1989
56. "Anesthetic Agents in the Office Setting". NW Region of the  
Amer. Soc. Plastic & Recon. Surgical Nurses, Sept. 1989
57. "Beta Blockers" and "MAO Inhibitors and Adrenergic Stimulants".

Oregon Assoc. of Nurse Anesthetists, Portland, Nov. 1989

58. "Evolving Concepts of Spinal Analgesic Mechanisms" and "Pharmacology of Labor Analgesia". Symposium on Obstetric Anesthesia (also Symposium Organizer). St. Vincent Hospital, Portland, Feb. 10, 1990.
59. "Physiology & Pharmacology of Spinal Analgesia"; "Techniques in Management of Labor Analgesia"; "Hypotensive Anesthesia". Tri-State Nurse Anesthesia Symposium, Spokane, Wn., Sept. 1990.
60. "Brachial Plexus Blocks in Anesthesia"; "Current Concepts in Management of Labor Epidurals". Fall Symposium, Oregon Society of Nurse Anesthesia, Portland, Dec. 1, 1990
61. "New Concepts in Understanding Spinal Cord Pain Mechanisms and Challenges of Treatment". Cutting edge technology and challenges of acute care nursing. St. Vincent Hospital, June 10-11, 1991.
62. "Malignant Hyperthermia: Diagnosis and Treatment", St. Vincent Hospital & Medical Center, Portland, Dec. 5, 1991.
62. Visiting Professor of Anesthesia, Jeon-Buc National University Hospital & Chon Nam University Hospital, South Korea, December 11-12, 1991.
63. "Update on the Control of Intra-Operative and postoperative Pain", guest lecture, Korean Pain Research Association, Seoul, South Korea, December 14, 1991.
64. "Pharmacology of Psychoactive Drugs: A Symposium for Mental Health Professionals", Pacific Gateway Hospital, December, 1993
65. "Pharmacology of Toredol" Inservices for labor\delivery nurses, St. Vincent Hospital, May, 1994.
66. "Anandamide", Annual Kona Village Seminar, November 1994.
67. "Newer Antidepressants", Pacific Gateway Hospital, November, 1994.
68. "Antiepileptic Drugs for Non-epileptic Uses", Pacific Gateway Hospital, December, 1994.
69. "The Pharmacological Treatment of Mood Disorders", Pacific University, Psychological Service Center, School of Professional Psychology, January, 1995.



70. "New Concepts in the Treatment of Schizophrenia", Pacific Gateway Hospital, January, 1995.
71. "New Concepts of the Marijuana Receptor", Pacific Gateway Hospital, May, 1995.
72. "Understanding Depression", A Workshop for Clergy & Church Staff. The Sammaritan Counseling Center, Oct., 1995.
73. "Update on Schizophrenia", Kona Village Seminar, November, 1995.
74. "The Pharmacology of Psychoactive Drugs", Day-long seminar for Clinical Psychologists, Counselors, and Social Workers. Sponsored by Pacific Gateway Hospital, Portland, January 24, 1996.
75. "Jazz Fest, 1996", 5 lectures at national CRNA seminar, New Orleans, April, 1996.
76. "Pharmacology of Drugs of Abuse", Day-long seminar for Clinical Psychologists, Counselors, and Social Workers. Sponsored by Pacific Gateway Hospital, Portland, July 11, 1996.
77. Psychopharmacology course for graduate student in addiction pathways program, Graduate School, Lewis & Clark College, Portland, Fall semester, 1996.
78. "Pharmacology of Psychotherapeutic Agents", Lewis & Clark College, Div. of Professional Davelopment, Sept. 21, 1996.
79. "Pharmacology of Drugs of Abuse", Lewis & Clark College, Div. of Professional Davelopment, Novenber, 1996.
80. "Pharmacology of Psychotherapeutic Agents", Columbia Mental Health, Tacoma, WA. November 20, 1996.
81. "Pharmacology of Drugs of Abuse", Columbia Mental Health, Tacoma, WA. December 9, 1996.
82. "Pharmacology of Behavioral Stimulants, Antidepressants, and Anti-Manic Drugs", Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Bend, and Portland Oregon, March-April, 1997.
83. "Economics of Psychopharmacology", Presented to the Home Office Life Underwriters Association, Palm Desert, May 19, 1997.

84. "Psychopharmacology 565", Lewis & Clark College, Fall semester, 1997.
85. "Pharmacology of Sedative-Hypnotics, Anti-Psychotic Drugs and Marijuana" Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Salem, and Portland Oregon, October, 1997.
86. "An Update on Psychotropic Medication". 1997 Pacific Northwest Pastoral Counselors' Conference, Samaritan Counseling Center, Portland, October 16-17, 1997.
87. "Pharmacology of Psychotherapeutic Drugs". Sponsored by Multnomah County Dept. of Community & Family Services, Portland, November, 1997
88. "Neurobiology and Neuropharmacology of Addictive Drugs", Lewis & Clark College, Professional Development & Research, Portland, Jan-Feb, 1998.
89. "Opioid Analgesics and Pediatric Psychopharmacology". Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Salem, and Portland Oregon, March-April, 1998; presented to Comprehensive Mental Health, Tacoma, WA, May 1998.
90. "Psychopharmacology of Adult ADHD," Presented to the Eugene Area Psychiatric Nurse Practitioners, May, 1998.
91. "Principles of Psychopharmacology", Internat. Assoc. of Chiefs of Police DRE, Drugs, Alcohol and Impaired Driving Conference, Portland, June, 1998.
92. "Psychopharmacology Update - 1998". Presented at the Oregon Nursing Association, Nurse Practitioners Conference, Eugene, Oct. 1998.
93. "Adult ADHD", Kona Village Seminar, November, 1998
94. "Psychopharmacology Update, Anabolic Steroids, Substance Abuse Update, CNS Reward Mechanisms, Nicotine, Psychedelic Drugs," Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Salem, and Portland Oregon, October-November, 1998.
95. "Drug-Induced Behavioral Impairment". Presented to Drug Recognition Evaluation instructors; Oregon State Police, Salem, Feb. 1999.

96. "Pharmacology of Opioid Narcotics", Portland State University, Counseling & Psychological Services, February 1999.
97. "Update on Child & Adolescent Psychopharmacology", Portland Public Schools, Psychological Services Division, February, 1999.
98. "Introduction to Psychopharmacology, Pharmacokinetics, Pharmacodynamics, Pharmacology of Cocaine and Amphetamines." Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Salem, and Portland Oregon, April-May, 1999.
99. "Drug-Induced Behavioral Impairment". Presented to Drug Recognition Evaluation instructors; Washington State Police, Seattle, May. 1999.
100. "Drugs and Receptors". Presented at St. Mary's Academy, Portland, May, 1999.
101. "Antidepressants, Anti-Manic Drugs, Herbals Used in Psychiatry," Presented by Northwest Psychopharmacology Seminars, Eugene, Medford, Pendleton, Salem, and Portland Oregon, October-November, 1999.
102. "Side Effects and Limitations of Selective Serotonin Reuptake Inhibitors", Eating Disorders Workgroup, Portland, Nov. 1999.
103. "Anesthetic Considerations in the Elderly," Providence St. Vincent Hospital, Continuing Nurses Education, May, 2000.
104. "Herbal Medications in the Surgical Milieu," Providence St. Vincent Hospital, Continuing Nurses Education, October, 2000.
105. "A Comprehensive Two Day Course in Psychotherapeutic Drugs and Drugs of Abuse." Presented by Northwest Psychopharmacology Seminars, Eugene, Salem, and Portland Oregon, and Sacramento and San Francisco, California, October-November, 2000.
106. "An Update of Psychotherapeutics: Understanding Evolving Therapies", Presented by Northwest Psychopharmacology Seminars, Eugene, Salem, and Portland Oregon, April, 2001.
107. "The Meaning of the Numbers," American Society of Anesthesia Technologists and Technicians, Portland, Oregon, April 28, 2001.
108. "Perioperative Implications of Herbal Medications," Association of Surgical Technologists Oregon State Assembly, Portland, Oregon, April 21, 2001.

109. "Pharmacological Treatment of Psychological disorders" and "Pharmacology of Drugs of Abuse"  
Presented by Northwest Psychopharmacology Seminars, Eugene, Salem and Portland Oregon, Fall, 2001
110. "Psychopharmacology for Physical Therapists: Understanding the Role of Drugs in patient Treatment"  
Presented at the 2001 Fall Conference of the Oregon Physical Therapy Association, October 13, 2001
111. "Effects of Psychoactive Drugs on Psychomotor Functioning." Inservice day workshop for the Washing State Patrol, December, 2001.
112. "Psychoactive Herbal Medications," Primary Care Physician's Assistants, Oregon Health Sciences University, Portland, February 7, 2002.
113. "Psychopharmacology for Child and Adolescent Behavioral Disorders," Portland and Beaverton School District Mental and Psychological Health Workers, March 5, 2002.
114. "Drugs of Abuse Update," 6th Annual DUII Multi-Disciplinary Training Conference, Oregon State Police, Beaverton, April 6, 2002.
115. 2-day Northwest Psychopharmacology Workshops, Pasco, Spokane, and Bellevue Washington, April 2002.
116. "Herbal Medications and Surgery", Assoc. of Operating Room Technicians and Nurses, Portland, June 2002.
117. "Dementing Drugs", Continuing Legal Education Seminar, Oregon State Bar Assoc., Portland, Sept., 2002.
118. 2-day Psychopharmacology Workshops, "Pharmacology of Psychotherapeutic Drugs" and "Pharmacology of Drugs of Abuse", Eugene, Salem, Portland, Oregon, October, 2002.
119. "New Psychotropic Drugs for 2003", Kona Village Seminar, Hawaii, November, 2002.
120. "Child and Adolescent Psychopharmacology 2003," The Gately Academy, Portland, March 2003
121. "Analgesic Properties of Psychotropic Drugs," 1-day workshop for Orion Healthcare Center, Vancouver BC, April 2003.

122. "Psychopharmacology Update, 2003" Northwest Psychopharmacology Seminars, April-May 2003, Everett, Olympia, Kirkland, Vancouver, Washington
123. "Uppers and Downers: Legal Implications", Presented to the Oregon Criminal Defense Lawyers Association, Newport, OR, May 3, 2003
124. "Psychotherapeutic Drugs" and "Pharmacology of Drugs of Abuse," Oregon workshops for Northwest Psychopharmacology Seminars, Oco. 2003
125. "Opioid Update," Plennay lecture to the annual convrntyion of the American Society of Forensic Toxicologists, Portland, October, 2003
126. "Opioid Update," Kona Village Seminar, Kona, November 2003
127. "Pharmacology of Benzodiazepines", Oregon Association of Naturopathic Physicians, October 2003,
128. "Sedative-Hypnotics and Anxiolytics," Weekend workshop (11 hours) Alliant University, program in Advanced Psychopharmacology for Clinical Psychologists, October 2003
129. "Quivering Muscles and Green Tongues: Physical Manifestations of Controlled Substances when the Intoxicant Isn't Alcohol." Oregon Criminal Defense Lawyers Assoc. DUII Seminar, Eugene, OR, March, 2004
130. "Recognizing Drug Use." Oregon Assoc. Licensed Investigators, Spring Seminar, Portland, March 2004
131. Psychopharmacology In-service Training (12 hours). Wyoming Psychological Association, Fall Conference, Jackson Hole, Wyoming, October, 2004
132. In-service Psychopharmacology Training, Vocational Rehabilitation of Oregon, October, 2004
133. Psychopharmacology for Professional Psychologists, Argosy University, Honolulu, HI, December 2004.
134. Psychotherapeutics Day-long Workshop. Oregon Psychological Association, Portland, April 2005.

135. "Major Drugs of Choice" and "Youth Addiction & Its Impact". Lectures presented at the annual meeting of the Oregon Defense Lawyers Association, Newport OR, April 2005.
136. "Child & Adolescent Psychopharmacology," Annual Meeting of the New York Psychological Association, New York, May 2005.
137. Psychotherapeutics Day-long Workshop. Vermont Psychological Association, Burlington VT, May 2005.
138. "The Evolution of Antidepressant Medications, Their Pharmacology, and Variety of Clinical Uses," Sixteenth Annual Psychopharmacology Breakfast Symposium for the Pennsylvania Psychological Association, Harrisburg PA, June, 2005.
139. "Psychopharmacology Update-2005" and "Substance Abuse and Treatment", Fall, 2005 seminar series for Oregon psychologists and mental health workers, multiple locations, 2005.
140. "Dentistry and Psychopharmacology - Thinking Outside the Box," One-day workshop for the Oregon Dental Society of Anesthesiology. Portland, December, 2005
141. "An Intense Primer on Psychoactive Drug Effects on Mind and Body," Indiana Public Defender Council, Indianapolis, Indiana, December 2005
142. "Psychopharmacology Update-2006" and "Substance Abuse and Treatment", Fall, 2006 seminar series for Oregon psychologists and mental health workers, Portland, 2006.
143. Psychopharmacology Update: Indications, Uses, and Responses," Sponsored by Cross Country Education, Nashville, TN. Presented in Columbus Ohio, Dayton Ohio, and Indianapolis, Indiana, June 2006.
144. Pharmacological Treatment of Anxiety Disorders: Update 2006, Sponsored by the Oregon Society of Psychologists, June 2006
145. Psychopharmacology Update: Indications, Uses, and Responses," Sponsored by Cross Country Education, Nashville, TN. Presented in Shreveport LA, Tyler TX and Dallas, TX, July 2006. Also presented in Mobile AL, Jackson MS, and Baton Rouge LA, September 2006; Presented in Fresno CA, Oakland CA, and Reno Nevada, October 2006; presented in Sacramento, Santa Rosa and San Francisco, November 2006; presented in Kansas City, Columbia, and St. Louis MO, November 2006;

presented in Colorado Springs, Denver and Salt Lake City, December 2006

146. Psychopharmacology In-service Training (14 hours). Louisiana Association of Medical Psychologists, Fall Symposium, Baton Rouge LA, September, 2006
147. Use, limitations, and choices among antidepressants, Pastoral Conference on clinical, social, and theological implications of depression and mental illness, Keynote Speaker, Tigard, OR, September 2006
148. Psychopharmacology Update (2007): "What You Must Know About the Medicines Your Clients are Taking," Sponsored by Cross Country Education, Nashville, TN. 2007 presentations: Davenport IA, Madison WI, Milwaukee WI, Shamburg IL, Bloomington IL, Chicago IL, Albuquerque NM, Phoenix AZ, Las Vegas NV, San Diego CA, Ontario, CA, Pasadena, CA, Sherman Oaks CA, Torrance, CA, Irvine, CA, Traverse City MI, Saginaw, MI, Detroit MI, Grand Rapids MI, East Lansing, MI, Buffalo, NY, Rochester NY, Syracuse NY, Burlington VT, Albany NY, White Plains NY; Austin TX, San Antonio TX, Houston TX, Springfield MO, Tulsa OK, Oklahoma City OK, Fairfax VA, Frederick VA, Baltimore MD, Harrisburg PA, Allentown PA, Philadelphia, PA
149. Psychopharmacology In-service Training (11 hours). Pathway House Training Center, Clovis, NM, May 3-4, 2007
150. Psychopharmacology In-service Training (14 hours). North Dakota Psychological Association, Fargo, ND, May 10-11, 2007
151. "Psychopharmacology Update-2007" and "Pharmacology of Drugs Used to Treat Chronic Pain", Fall, 2007 seminar series for Oregon psychologists and mental health workers, Portland, Beaverton, Salem, October, 2007.
152. Psychopharmacology Update (2008): "What You Must Know About the Medicines Your Clients are Taking," Sponsored by Cross Country Education, Nashville, TN. 2008 presentations: Long Island, Queens, and Manhattan NY; Paramus, Edison, and Atlantic City, NJ; Portland ME; Manchester NH; Boston and Worcester MA; Providence RI; Hartford CT; Raleigh, NC; Richmond VA; Virginia Beach VA; Roanoke VA; Winston-Salem NC; Charlotte, NC; Pensacola FL; Jacksonville FL; Tallahassee FL; Melbourne FL; West Palm Beach FL; Miami FL; Ft. Meyers FL; Tampa FL; Orlando FL; Nashville TN; Knoxville TN; Asheville NC.

153. Pharmacology of Chronic Pain. Oregon Chapter, American Association of Legal Nurse Consultants. Portland, March 2008.
154. "Antidepressants, Mood Stabilizers & Atypical Antipsychotics." Tewksbury Hospital, Tewksbury MA, March 2008
155. Half-day workshops: (1) "Antidepressants & Atypical Antipsychotics" (2) Child & Adolescent Psychopharmacology". Louisiana Psychological Association, 60<sup>th</sup> Annual Meeting, Lafayette LA, April 2008
156. "Pharmacology of Chronic Pain". Northwest Psychopharmacology Seminars, Portland & Salem Oregon, April 2008; October 2008.
157. "Management of Acute & Chronic Pain". Grand Rounds and nursing-in-services. Medical Center of Southeast Oklahoma, Durant OK, June 2008.
158. "Pharmacology of Chronic Pain" and "Child & Adolescent Psychopharmacology". Northwest Psychopharmacology Seminars, Portland & Salem Oregon, October-November 2008.
159. Psychopharmacology Update (2009): "What You Must Know About the Medicines Your Clients are Taking," Sponsored by Cross Country Education, Nashville, TN. Presentations: Cleveland, OH; Canton, OH; Pittsburgh, PA; Omaha, NE, Des Moines, IA; Cedar Rapids, IA; Ft. Smith, AK; Little Rock, AK; Memphis, TN, Duluth, MN; St Cloud, MN; Minneapolis, MN; Portland, OR, Spokane, WA., Seattle, WA; Colorado Springs, CO; Denver, CO; Salt Lake City, UT; Shreveport LA; Dallas, TX; Waco, TX; Fresno, CA; San Jose, CA.; San Francisco, CA; Oakland, CA; Sacramento, CA; Reno, NV
160. "To Intend or Not to Intend: Pharmacology of Sedative Drugs, Amnesia, and Specific Intent." Presented at the 2009 annual meeting of the American Association of Legal Nurse Consultants, Phoenix, AZ, April 2009.
161. "Child & Adolescent Psychopharmacology: Prenatal through High School" Sponsored by Cross Country Education, Nashville, TN. Presentations: Augusta, GA, Atlanta, GA; Birmingham, AL; Columbus, OH; Cincinnati, OH; Indianapolis, IN
162. "Marijuana: Impairment, Blood and Urine Concentrations", Presented at the Fall Conference of the Oregon Criminal Defense Lawyers Association, Portland, OR, Sept. 2009.



163. "Mental Health Drugs Update: Focus on Cognitive Impairments", Presented at the Oregon State Hospital Continuing Education Series, September 2009.
164. "Psychopharmacology Update - 2009." Northwest Psychopharmacology Seminars, Portland & Salem Oregon, October, 2009.
165. "Sedative-Hypnotic Drugs and Intentionality". Presented at the Kona Village Medical Seminar, November 2009.
166. "Child & Adolescent Psychopharmacology: Prenatal through High School" 2010 presentations: Sponsored by Cross Country Education, Nashville, TN. Presentations: Harrisburg, PA, Scranton, PA, Philadelphia, PA; Alexandria, VA; Frederick, MD; Baltimore, MD; Fargo, ND; St. Cloud MN; Duluth MN; Minneapolis MN; Harlingen TX; San Antonio TX; Austin, TX; Shreveport, LA; Dallas TX; Waco TX
167. Psychopharmacology Update (2010): "What You Must Know About the Medicines Your Clients are Taking," Sponsored by Cross Country Education, Nashville, TN. Presentations: San Diego, CA; Anaheim, CA; Long Beach CA; Sherman Oaks CA; San Bernardino CA; Las Vegas, NV; Jackson, MS; New Orleans, LA; Mobile. AL
168. "Child & Adolescent Psychopharmacology: Prenatal through High School" Sponsored by Northwest Psychopharmacology Seminars, Portland, April 2010; October 2010.
169. "Child & Adolescent Psychopharmacology: Prenatal through High School" Sponsored by Comprehensive Youth Services, Fresno, CA, August 13, 2010.
170. "Psychotherapeutic Drugs: Past, Present & Future." Sponsored by Northwest Psychopharmacology Seminars, Portland, October, 2010.
171. "Pharmacology of Drugs of Abuse." Sponsored by Northwest Psychopharmacology Seminars, Portland, October, 2010.
172. Alcohol, Sedatives, Amnesia, and Intent. Department of Pharmaceutical Sciences, University of British Columbia, Vancouver B.C., Canada. Presented November 1, 2010.
173. "Understanding Drugs of Abuse in Legal Defense" Sponsored by Northwest Psychopharmacology Seminars, Portland and Seattle, October, 2011.

174. "Psychopharmacology Update" and "Understanding Drugs of Abuse".  
Sponsored by the Vermont Psychological Association, Montpelier, VT,  
September 23-24, 2011.
175. "Cognitive Effects of Psychoactive Drugs: The Good, the Bad, and the Ugly"  
Sponsored by Central Oregon Community College, Bend, OR Nov. 2011.
176. "Treatment of Anxiety and Depression Across the Lifespan"  
Sponsored by the Oregon Association of Naturopathic Physicians,  
Portland, November, 2011.
177. "Pharmacological Treatments for Chronic Pain," Vermont Psychological  
Association, May 2012.
178. "Pharmacology of Drugs of Abuse." AdCare Educational Institute,  
Worcester, MA, May 2012.
179. Webinar: "Pharmacology of Antidepressant Drugs." Sponsored by Cross  
Country Education, Nashville, TN. 2012.
180. Webinar: "Treatment of Depression in Children & Adolescents."  
Sponsored by Cross Country Education, Nashville, TN. 2012.
181. Webinar: "Treatment of Bipolar Disorder." Sponsored by Cross Country  
Education, Nashville, TN. 2012.
182. Webinar: "Atypical Antipsychotics." Sponsored by Cross Country  
Education, Nashville, TN. 2012.
183. "Pharmacological Management of Chronic Pain." Sponsored by Northwest  
Psychopharmacology Seminars, Portland, October, 2012.
184. "Major Psychotherapeutic Drugs." Sponsored by Northwest  
Psychopharmacology Seminars, Portland, October, 2012
185. "Child & Adolescent Psychopharmacology". Presented for the Kern  
County Mental Health Agency, Bakersfield, CA, November, 2012.

CASE NO. CR 2013-1358

2013 OCT -2 PM 3:38

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY AM DEPUTY

MARK T. MONSON, P.A.  
MOSMAN LAW OFFICES  
803 S. Jefferson, Suite 4  
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Moscow, ID 83843  
(208) 882-0588  
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Idaho State Bar No. 6165  
Washington State Bar No. 30497

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES A. CAPONE


Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR  
AUTHORIZATION TO RETAIN SERVICES  
OF BLOOD DETECTION EXPERT**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for authorization to retain the services of Bradley A. Perron, an expert in bloodstain pattern analysis and blood detection, to review records and discovery materials, and to assist with the blood detection aspects of this case at the expense of Latah County. This motion is based on the Affidavit of Mark T. Monson, attached hereto. Undersigned counsel represents that he contacted prosecuting attorney William Thompson on 10/2/13 and discussed that request for experts would be filed ex parte.

DATED: October 2, 2013

  
Mark T. Monson  
Co-Counsel for Defendant



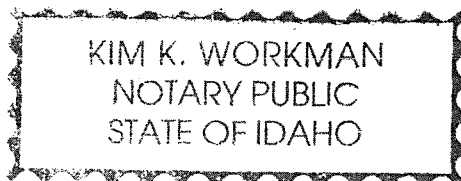
1 STATE OF IDAHO )  
2 ) §  
3 County of Latah )


4 Mark T. Monson, being first duly sworn, upon oath states:

- 5 1. I am one of the attorneys appointed by the court to represent Charles A. Capone.  
6  
7 2. In representing Mr. Capone, it has been necessary to retain the services of an expert in the  
8 field of blood detection. The state has presented evidence in the preliminary hearing that  
9 blood was detected on a paper in the vehicle Rachel Anderson was last seen driving. The  
10 state has also conducted tests to determine whether blood was detected in said vehicle.  
11  
12 3. It is necessary for an expert to review all relevant discovery materials and conduct whatever  
13 tests may be deemed necessary in order to assist counsel in representing Mr. Capone. Failure  
14 to retain the assistance of such an expert would result in inadequate representation of Mr.  
15 Capone.  
16  
17 4. I have contacted Bradley A. Perron, regarding obtaining his assistance in this case, and he has  
18 agreed to assist the defense. Attached a copy of Bradley A. Perron's Curriculum Vitae. Also  
19 attached is a rate schedule for Bradley A. Perron.

20   
21 MARK T. MONSON

22 SIGNED AND SWORN TO before me this 2 day of September 2013



24   
25 Notary Public for Idaho  
Residing in Bovill, Idaho  
My commission expires: 8/7/18

# **CRIMTECH** *Criminal Forensic Technology*

## *Consulting*

416 SE Balboa Street, Suite 2, Stuart, FL 34994

Tel: 772-288-1485

Email: BradPerron@comcast.net

Bradley A. Perron: Member: International Association For Identification, No: 14102

Member: Florida Division International Association For Identification, No: 3136

## **CURRICULUM VITAE**

### **BRADLEY A. PERRON**

**EXPERT - BLOODSTAIN PATTERN ANALYSIS/BLOOD DETECTION  
LICENSED PRIVATE INVESTIGATOR**

#### **PROFESSIONAL EXPERIENCE:**

1991 To **Expert/Forensic Investigator/Consultant**  
Present

##### **CRIMTECH**

Specializing in examining and researching biological evidence; blood spatter analysis, blood detection, anatomical and physiological evidence and trace evidence.

1994 To **Court Qualified as an "EXPERT"** in the Discipline of  
Present Bloodstain Pattern Analysis and Blood Detection  
Private and Court Appointed Expert.

2000 To **Adjunct Faculty Instructor**  
2005

Indian River State College, Fort Pierce, FL  
Instructor at Indian River Academy  
Provide college credit/degree program instruction for courses in Injury and Death Investigations (including topics of blood detection and blood spatter analysis).

1995 To **Assistant Instructor**  
Present

Public Defenders Office, 19th Judicial Circuit, State of Florida. Providing training and instruction of Forensic applications to Investigator Interns with the Public Defender's Office.

2008 To **Assistant Instructor/Investigations Coordinator**  
2012

State of Florida Criminal Conflict and Regional Counsel For the 4<sup>th</sup> District. Providing training and instruction of Forensic applications to Investigator Interns in the 15th, 17th, and 19th Judicial Circuits.

## **QUALIFICATIONS:**

- \* Licensed with the State of Florida as a Private Investigator, License #C 9400058.
- \* Teaching Certificate for Criminal Justice @ Technical Specialty Level.  
Met requirements and qualifications for Indian River State College, the State of Florida, and the Southern Association of Colleges and Schools. Certificate Number: 05469 Exp 2010
- \* Earned designation as Florida Certified Investigator.
- \* Earned designation as a Board Certified Criminal Defense Investigator from the Criminal Defense Investigation Training Council.
- \* Earned designation as a Board Certified Forensic Science Investigator from the Criminal Defense Investigation Training Council.
- \* Experience comprises investigation of felony criminal defense cases, including over 100 homicides and 100 sexual batteries.
- \* Specializing in Forensic Investigation - Examination of Physical Evidence, Biological Evidence, and Bloodstain Evidence.
- \* Analysis and examination of crime scene investigations completed by law enforcement.
- \* Experience in developing and constructing crime scene diagrams and courtroom exhibits.
- \* Member of **MENSA**

## **COLLEGE EDUCATION:**

**Bachelor of Science Degree** - Major in Marine Biology;  
Minor in Mathematics; Roger Williams College, Bristol, Rhode Island, degree awarded May, 1986.

Special Achievement: Lifetime member of Alpha Chi National Honor Society.

## **SPECIALIZED TRAINING/FORENSIC SCIENCE:**

Certificate of Completion - Significance of Bloodstain Evidence Course / Examination, Documentation, and Interpretation of Bloodstain Evidence; Criminal Justice Institute, St. Petersburg Junior College, Florida. 40 hours of study, certificate awarded March, 1992.

Certificate of Completion - Light Energy For Law Enforcement Course / Forensic Identification and Detection Techniques; Criminal Justice Institute, St. Petersburg Junior College, Florida. 16 hours of study, certificate awarded June, 1992.

Certificate of Completion - Detecting Blood at the Crime Scene Course / Examination, Detection, and Analysis of Bloodstain Evidence; Criminal Justice Institute, St. Petersburg Junior College, Florida. 24 hours of study, certificate awarded May, 1993.

Certificate of Completion - Intoxilyzer 5000 Basic Operator Course / Training course approved by the Florida Department of Law Enforcement to become a certified Intoxilyzer 5000 Technician in the State of Florida and qualify to conduct breath tests for the determination of breath alcohol levels; Criminal Justice Institute, St. Petersburg Junior College, Florida. 40 hours of study, certificate awarded May, 1995.

Certificate of Completion - Investigating Hi Tech Crimes Course / Investigation of child pornography, software piracy, technology thefts, and various computer crimes. Public Safety Institute, Rollins College, Winter Park, Florida. 20 hours of study, certificate awarded June, 1995.

Certificate of Completion - Practical Bloodstain Pattern Recognition Seminar / Examination, Documentation, and Interpretation of Bloodstain Evidence; James and Associates Forensic Consultants, Inc., Stuart H. James instructor, Palm Beach Gardens, Florida. 8.00 hours of study, certificate awarded August, 2000.

Certificate of Completion - Examination of Bloodstained Clothing Workshop / Examination, Documentation, and Interpretation of Bloodstain Evidence on Clothing; International Association for Identification Educational Conference, Miami, Florida. 4.00 hours of study, Certificate awarded July, 2001.

Certificate of Completion - Bloodstain Pattern Reconstruction Workshop / Reconstruction techniques; International Association for Identification Educational Conference, Miami, Florida. 2.00 hours of study, certificate awarded July, 2001.

Certificate of Completion - Swipes, Wipes and Other Transfer Impressions Workshop / Examination, Identification, and Interpretation of Transfer Pattern Bloodstain Evidence; International Association for Identification Educational Conference, Miami, Florida. 2.00 hours of study,

certificate awarded July, 2001.

Certificate of Completion - Mapping Techniques for Documenting Bloodstain Evidence Workshop; International Association for Identification Educational Conference, Miami, Florida. 2.00 hours of study, certificate awarded July, 2001.

Documentation and Chemical Processing of Footwear and Bloodstain Patterns Workshop; Florida Division of the International Association for Identification Educational Training Conference, Fort Lauderdale, Florida. 4.00 hours of study, Attended October 24, 2007.

The Use of Gun Blue for Development of Latent Prints Workshop; Florida Division of the International Association for Identification Educational Training Conference, Fort Lauderdale, Florida. 2.00 hours of study, Attended October 25, 2007.

Certificate of Training – Luminol vs Bluestar Forensic Latent Bloodstain Reagent Workshop; Florida Division of the International Association for Identification Educational Training Conference, Fort Lauderdale, Florida. 2.00 hours of study, Attended October 25, 2007.

Certificate of Training – Basic Latent Prints Criminal Defense Investigation Training Council  
Instructor: Paul R. Laska  
Stuart, Florida. 8.00 hours of study,  
Attended July 15, 2011.

Certificate of Training – Computer Forensics & Data Recovery Criminal Defense Investigation Training Council  
Instructor: Anthony Pullano  
Stuart, Florida. 8.00 hours of study,  
Attended August 12, 2011.

Certificate of Training – General Crime Scene Criminal Defense Investigation Training Council  
Instructor: Paul R. Laska  
Stuart, Florida. 8.00 hours of study,  
Attended October 14, 2011.

Certificate of Training – Forensic Photography Criminal Defense Investigation Training Council  
Instructor: Robert Wyman  
Stuart, Florida. 8.00 hours of study,



Attended November 18, 2011.  
Certificate of Training – Forensic Firearms Examination  
Criminal Defense Investigation Training Council  
Instructor: Paul R. Laska  
Stuart, Florida. 8.00 hours of study,  
Attended December 16, 2011.

#### **PROFESSIONAL ASSOCIATIONS:**

Associate Member - International Association for Identification  
Member No: 14102, Primary Discipline of Expertise:  
Bloodstain Pattern Analysis.

Associate Member – Florida Division International Association for Identification  
Member No: 3136, Primary Discipline of Expertise:  
Bloodstain Pattern Analysis.

Member- National Defender Investigator Association  
Member Number: SE06282A

#### **PUBLICATIONS/PAPERS/SEMINARS:**

**Seminar Instructor** - *Forensic Applications for the Private Investigator*  
Training investigators and other members of the legal community  
forensic applications. The training includes bloodstain pattern  
analysis, blood detection, trace evidence, and expert utilization. These  
seminars have been required and utilized by various government and  
private organizations across the United States.

**Seminar Instructor** - *Uncovering Reasonable Doubt - The Seminar*  
Training investigators and other members of the legal community  
the Component Method of Investigation. The training includes  
crime scene inspection, analysis and documentation. This seminar  
has been required and utilized by various government and private  
organizations across the United States.

Authored DNA FINGERPRINTING ON THE TREASURE COAST,  
Focusing on DNA fingerprinting technology's history, controversial  
analysis and interpretation of results, as well as the structure and function  
of DNA in the human body, The Confidential Informant Crime Magazine, Fall 1994.  
The P.I.A.F. Annual Seminar Notebook, Reprinted, October, 1995.

Authored BLOODSTAIN PATTERN ANALYST'S ROLE IN VIOLENT CRIME  
INVESTIGATIONS, Highlighting the terminology, types and  
classifications of bloodstains, including a guide with  
numerous exemplars and samples of various bloodstains.  
The P.I.A.F. Annual Seminar Notebook, October, 1995.

Guest Speaker, Presented "FORENSIC TECHNOLOGY FOR THE  
PRIVATE INVESTIGATOR" at the 6th Annual Educational  
Seminar and Exhibition, Private Investigators Association of

Florida; Orlando, Florida, October 1995.

Guest Speaker, Presented "CRIMINAL FORENSICS" at the Southeast Regional Investigators Conference, Georgia Association of Professional Private Investigators; Atlanta, Georgia, October 2004

Guest Speaker, Presented "FORENSIC APPLICATIONS FOR INVESTIGATORS" at the Annual Conference of the Florida Association of Licensed Investigators; St Pete Beach, Florida, October 2005

Guest Speaker, Presented "FORENSIC APPLICATIONS in SEXUAL BATTERY CASES" at the Annual Conference of the Florida Association of Licensed Investigators; Daytona Beach, Florida, May 2007

Guest Speaker, Presented "EYE WITNESS TESTIMONY" at the Annual Conference of the Florida Association of Licensed Investigators; Orlando, Florida, May 2008

Guest Speaker, Presented "BLOOD SPATTER ANALYSIS / BLOOD DETECTION" at the Annual Conference of the Arizona Public Defender Association Tempe, Arizona, June 2012

Guest Speaker, Presented "HANDS ON BLOOD SPATTER ANALYSIS / BLOOD DETECTION" at the Annual Conference of the Arizona Public Defender Association Tempe, Arizona, June 2013

**AWARDS:**

**2005 - John M. Russi AWARD OF EXCELLENCE for Distinguished Service in the Arena of Educational Advancement**  
Presented by the Florida Board of Certified Investigators

**CRIMTECH** Criminal Forensic Technology  
Consulting

416 SE Balboa Street, Suite 2, Stuart, FL 34994  
Email: BradPerron@comcast.net

Tel: 772-288-1485

Bradley A. Perron: Member: International Association For Identification, No: 14102  
Member: Florida Division International Association For Identification, No: 3136

**RATE SCHEDULE**

**BRADLEY A. PERRON**

**EXPERT - BLOODSTAIN PATTERN ANALYSIS/BLOOD DETECTION**

**RETAINER**

A minimum, non-refundable fee is charged on all cases where inquiries and/or evaluations are made and no further activity is commenced **\$1200.00**

**HOURLY RATE**

Evidence and scene examination, analysis, and reports **\$ 150.00**

**DEPOSITIONS / COURT APPEARANCES**

Minimum Fee 4 Hours (Retainer required prior to testimony) **\$ 700.00**

Followed by Hourly Rate of: **\$ 175.00**

**STAND-BY for Court Appearance**

Per Half Day (Retainer required) **\$ 700.00**

**TRAVEL FEES**

Portal to Portal at Hourly Rate (Retainer Required)

Driving times and distances are determined using Google Maps.

Pre-paid, round trip airline tickets required and a minimum retainer of

**\$1200.00** for long distance, and/or out of state travel. Hotel pre-paid required for overnight stays at approved/quality rated accommodations.

**CASE EXPENSES**

Reasonable expenses are charges to the client in addition to service fees. Typical expenses include film and developing, data and image CDs, DVDs, postage, tolls, mileage (\$0.50/mile) meal per diem (distance, overnight travel), copy fees and courtroom exhibits.

**RUSH FEE: WORK REQUIRED ON AN IMMEDIATE BASIS = \$500.00**

000384

CASE NO. CR 2013-1358

2013 OCT -3 PM 12: 06

CLERK OF DISTRICT COURT  
LATAH COUNTY  
BY GM DEPUTY

1  
2 MARK T. MONSON, P.A.  
3 MOSMAN LAW OFFICES  
4 803 S. Jefferson, Suite 4  
5 P.O. Box 8456  
6 Moscow, ID 83843  
7 (208) 882-0588  
8 (208) 882-0589 FAX  
9 Idaho State Bar No. 6165  
10 Washington State Bar No. 30497

11 Attorneys for Defendant

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

14 STATE OF IDAHO

Case No. CR-2013-1358

15 Plaintiff,

**EX PARTE MOTION FOR AUTHORIZATION  
TO RETAIN SERVICES OF SCENT DOG  
EXPERT**

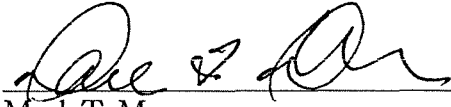
16 v.

17 CHARLES A. CAPONE

18 Defendant.

19 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel,  
20 and hereby moves the court for authorization to retain the services of Steven D. Nicely, a scent dog  
21 expert, to review records and discovery materials, and to assist with the medical and pharmacological  
22 aspects of this case at the expense of Latah County. This motion is based on the Affidavit of Mark T.  
23 Monson, attached hereto. Undersigned counsel represents that he contacted prosecuting attorney  
24 William Thompson on 10/2/13 and discussed that request for experts would be filed ex parte.

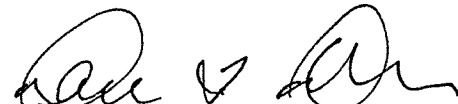
25 DATED: October 2, 2013

  
Mark T. Monson  
Co-Counsel for Defendant

1 STATE OF IDAHO )  
2 ) §  
3 County of Latah )

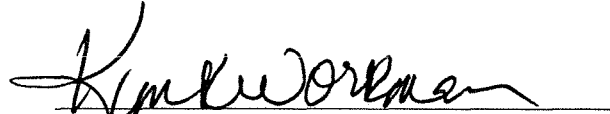
4 Mark T. Monson, being first duly sworn, upon oath states:

- 5 1. I am one of the attorneys appointed by the court to represent Charles A. Capone.  
6  
7 2. In representing Mr. Capone, it has been necessary to retain the services of an expert in the  
8 field of scent dogs. The state has alleged that a police cadaver dog identified the scent of  
9 human decomposition in a vehicle Rachel Anderson had been driving.  
10  
11 3. It is necessary for an expert to review all relevant discovery materials and conduct whatever  
12 tests may be deemed necessary in order to assist counsel in representing Mr. Capone. Failure  
13 to retain the assistance of such an expert would result in inadequate representation of Mr.  
14 Capone.  
15  
16 4. I have contacted Steven D. Nicely regarding obtaining his assistance in this case, and he has  
17 agreed to assist the defense. Attached a copy of Steven D. Nicely's DV. Mr. Nicely's fee  
18 schedule is attached. Because this is an indigent defense case, his maximum fee would be  
19 \$5,000 plus expenses.

20   
21 MARK T. MONSON

22 SIGNED AND SWORN TO before me this 3 day of October 2013

23 KIM K. WORKMAN  
24 NOTARY PUBLIC  
25 STATE OF IDAHO

  
Notary Public for Idaho  
Residing in Bovill, Idaho  
My commission expires: 8/7/18



## Curriculum Vitae of Steven D. Nicely

279 Antelope Plains  
Buda, Texas  
78610

Office: 512-312-4058  
Cell: 210-710-8854

### Current Occupation Starting June 2006

1. Providing consultation in matters relating to the training and handling of police service dogs.
2. Providing behavior modification and general training for pet dog owners.

### Police K9 Training and Officer Instructor

1. Personally trained approximately 750 dogs for police service, and supervised the training of at least an additional 250.
2. August 1989 to June 2006 worked for Global Training Academy, Somerset Texas except for one year of returning to law enforcement (June 1991-July 1992), and March 1993 to January, 1994.
3. January 1994 to October 2005 worked as trainer, instructor, and evaluator of police service dogs, handler, supervisors, and trainers at Global Training Academy.
4. October 2005, to June 2006 worked for Global as an explosive detector dog trainer on a contract with the American Embassy in Baghdad, Iraq.

### Trained dogs for the purpose of:

1. Patrol which included:
  - a. Criminal Apprehension
  - b. Tracking
  - c. Trailing
  - d. Tactical Building Search
  - e. Open area Human Search
  - f. Evidence Search Training for Patrol K9s not trained in Drug and Explosive Detection
2. Detection
  - a. Drugs
  - b. Explosives
  - c. Accelerant
  - d. Land Mines

**Provided Instruction for:**

1. All aspects of patrol dogs
2. Detection in the area of
  - a. Drugs
  - b. Explosives
  - c. Accelerants
3. Classroom Instruction in
  - a. Principles of Conditioning
  - b. Record Keeping
  - c. Health and Maintenance of Service Dogs
  - d. Maintenance training concepts
  - e. Search and Seizure concepts as it related to detector dogs
  - f. Searching procedures using a service dog.

**Prepared and Wrote Lesson Plans, Manuals, and Test for Courses of Instruction to meet requirement for Texas Commission on Law Enforcement Officer Standards and Education**

1. Patrol
2. Drug Detection
3. Explosive Detection
4. Accelerant Detection
5. Tracking and Trailing

**Tested and Purchased Dogs for Police Service**

1. Numerous trips to the Netherlands and Czech-Republic to purchase dogs for police service training.

**Law Enforcement Experience**

1. Military Police United States Marine Corps
2. Deputy Sheriff Bexar County, Texas
3. Police officer for cities of:
  - a. Leon Valley,
  - b. Terrell Hills,
  - c. New Braunfels TX.
4. Reserve Deputy Constable, Constables Office Pct. 4 Bexar County, served as consultant and trainer for the narcotics detector dog division.

**Education**

1. Graduate W.T. Thomas High School, Cumberland City TN. 1970.

2. Associate of Arts Degree (Psychology) Austin Community College.
3. Currently, senior at Texas State University to earn B.A.A.S. (Bachelors of Applied Arts and Science with foundation in Experimental Psychology). Internship away from degree.

### **Obtained Licenses and Certifications in General Law Enforcement**

1. Advanced License as a Texas Police Officer
2. Police Instructor License State of Texas.

### **Police Dog Schools and Seminars Attended**

1. **INTERNATIONAL WORKING DOG BREEDERS ASSOCIATION: "Senses of the dog in service of man"** Ieper Belgium, May 2009
2. **INTERNATIONAL WORKING DOG BREEDERS ASSOCIATION**, Kelly City Base, San Antonio, Texas, November, 2007
3. **NATIONAL MILITARY WORKING DOG CONFERENCE**, Lackland AFB, TX. 1993
4. **USPCA TRIAL AND SEMINAR**, Region 10, LongviewTX. 1992
5. **CANINE SCENT DETECTION SEMINAR**, Dallas Texas, 1981

### **Seminars and Courses Where Police K9 Certifications Were Obtained**

1. **TACTICAL PATROL K-9 TRAINING**, Round Rock Police Department, Round Rock Texas, 1992.
2. **UNITED STATES POLICE K-9 NATIONAL TRAINERS SEMINAR**, Region 10 USPCA, Baton Rouge, La. 1991
3. **USPCA REG. 10 TRIAL AND SEMINAR**, Region 10, Baton Rouge, La. 1986
4. **USPCA NATIONAL TRIAL AND SEMINAR**, Detroit Mich. 1985
5. **PATROL DOG SUPERVISOR COURSE** , Kedana AFB, Oki. Japan, 1977.
6. **MARIJUANA/HEROIN DETECTOR DOG**, Lackland AFB, San Antonio TX. 1975.
7. **PATROL DOG HANDLER COURSE**, Lackland AFB, San Antonio TX. 1974

### **General Police Schools**

1. **SWAT-BASIC**, San Antonio College Law Enforcement Training Academy, 1996.



2. **POLICE INSTRUCTOR COURSE**, Alamo Area Law Enforcement Academy, San Antonio TX, 1993.
3. **ADVANCED USE OF FORCE**, Alamo Area Law Enforcement Academy, San Antonio TX, 1993. **ADVANCED ARREST**,
4. **SEARCH & SEIZURE**, Alamo Area Law Enforcement Academy, San Antonio TX, 1993.
5. **CHILD ABUSE**, Constable Pct. 4, Bexar County, Texas 1991.
6. **CONSTITUTIONAL LAW, ARREST, SEARCH AND, SEIZURE** , Shavano Park Police Department, San Antonio TX. 1986
7. **DOPPLER RADAR OPERATION**, Leon Valley Police Department, San Antonio TX. 1983
8. **TEXAS BASIC LAW ENFORCEMENT ACADEMY**, Alamo Area Law Enforcement Academy, San Antonio TX, 1980.
9. **BASIC JAILER TRAINING**, Bexar County Sheriff's Department, San Antonio TX. 1980
10. **BURGLARY INVESTIGATION**, Alamo Area Law Enforcement Academy, San Antonio TX, 1980.
11. **PENAL CODE AND REPORT WRITING**, Alamo Area Law Enforcement Academy, San Antonio TX, 1980.
12. **BASIC COMMISSIONED SECURITY OFFICER COURSE**, Alamo Area Law Enforcement Academy, San Antonio TX, 1979.
13. **OFFICERS SURVIVAL COURSE**, Yuma PD, YUMA AZ. 1978
14. **OFFICERS SURVIVAL**, San Diego County SO, San Diego Ca. 1975
15. **MILITARY POLICE SCHOOL**, United States Army, Fort Gordon, Ga. 1972

## **Awards**

### **Police K9**

1. **3<sup>rd</sup> Place over all, 1<sup>st</sup> in agility, 3<sup>rd</sup> Criminal Apprehension**, 1984 Midland TX. USPCA TRAILS, K-9 REBEL
2. **2<sup>nd</sup> Place Texas Police Olympics 1984**, Houston TX., K-9 REBEL
3. **Sportsmanship Award**, USPCA NATIONAL TRIALS, 1985 K-9 REBEL
4. **4<sup>th</sup> all around, 3<sup>rd</sup> place in agility, 1<sup>st</sup> place Criminal Apprehension**, 1986 Baton Rouge La. USPCA TRIALS, K-9 BO
5. **K-9 Apprehension of the 3<sup>rd</sup> Quarter**, United States Police Canine Association, Region 10, 1986.
6. **Several letters of Commendations**, for work with police K-9

### **Police Service Awards Non- Police K9**

1. **Four (4) times Police Officer of the Month, Leon Valley Police Department.**
2. **City Employee of the Quarter (Oct. 83), Leon Valley Police Department.**

### **Behavioral Science & Forensic Expert Seminars and Conferences**

1. **Expert Reports by Forensic Expert Witness Association: Dallas, Texas. August 2011.**
2. **International Association of Behavioral Analysis, San Antonio, Texas. May 29-31, 2010.**
3. **Behavior Analysis Ethics, Louisiana Association for Behavior Analysis & McNeese State University, June 12, 2009**
4. **TEXAS ASSOCIATION FOR BEHAVIOR ANALYSIS, March 7-8, 2008, Dallas, Tx.**

### **Speaker and Instructor Other than at Global Training Academy (Bolded Represents Law Enforcement Attendance)**

1. **Does the Drug Detector Dog's Training Reduce Unnecessary Risks and Waste of Limited Time and Resources, Montgomery County Criminal Defense Association, May, 2013.**
2. **Travis County Search and Rescue (Search and Rescue and Human Remains Handlers. Handlers both Law Enforcement and Non-Law Enforcement). Principles of Conditioning, and Record-Keeping. Travis County, Texas, February 2012.**
3. **Police Detector Dogs: Need for Improvement, Arizona Defense Attorney's Association. Chandler Az. January 2012.**
4. **Police Detector Dogs: Need for Improvement, Tucson Federal Public Defender. October 2011.**
5. **Identifying the Well-Trained Dog, Missouri Association of Criminal Defense Lawyers (Fall Conference) October 2009, Maryland Heights, Mo.**
6. **Improving the Detector Dog: Record Keeping and Certification, International Working Dog Breeders Association, Ieper Belgium, May 2009.**
7. **Record-Keeping and Analysis for Detector Dogs, Jim Wells County Sheriff's Office, Alice Texas, April 1-2, 2009**
8. Dallas Criminal Defense Lawyers Association, October 2008.
9. National Defense Investigators Association, Regional Seminar, Austin Texas, September 2008
10. Federal Public Defenders, Iowa. April, 2008
11. National Defense Investigators Association, Region Seminar, Scottsdale Az, September 2007

12. Brown Bag CLE, Federal Public Defenders, Salt Lake City, Utah, August 2007
13. Behavior Modification and Behavioral Analysis Principles, South Texas State University, March 2007
14. **Central Mississippi K9 Seminar, December 1999**
15. **Lincoln County Sheriff Department Annual K-9 Seminar, February, 1999**
16. Record Keeping For the Detector Dog, National Association of Defense Investigators, San Antonio, Texas. March 5, 1997
17. Record Keeping for the Detector Dog, Arizona Public Defenders Association, Bisbee Az. June 1997
18. **Advanced Narcotic Detection and Documentation Pulaski County Sheriff's Department, Winimac In. (May 1995)**
19. **"A TRAINER'S POINT OF VIEW" DRUG DOGS AND THE COURTS, DONNA ANA COUNTY BAR ASSOCIATION, CRIMINAL LAW SEMINAR (SEPTEMBER, 1995)**
20. Texas Criminal Defense Attorney's Association, Longview, TX. (Nov. 1994)
21. Coastal Bend Criminal Defense Attorney's Association, Corpus Christi, (Oct. 1994)
22. "Establishing the Reliability of the Narcotic Detector Dog," San Antonio Bar Association (Jan. 1994)

### **Published Writings**

1. **Recordkeeping and Certification Requirements for Detector dogs:** *Journal of Veterinary Behavior: Clinical Applications and Research*, Volume 4, Issue 6, Pages 246-247 (November 2009)
2. **RECORD KEEPING FOR DRUG DETECTOR DOGS, EAGLE'S EYE**, From the National Defender Investigator Association, Volume 14, August 2008
3. **THE DOG SHOULD SEARCH VEHICLE INTERIORS FIRST, EAGLE'S EYE**, From the National Defender Investigator Association, Volume 14, August 2008
4. **Establishing the Reliability of the Narcotic Detector Dog "A trainer's Point of View"**, *VOICE* for the Defense, February 1995 issue.
5. **Drug Dogs & Fact and Myth**, The Texas Prosecutor, volume 25, number 4, September, 1995.

### **Court Testimonies**

1. US District Court for the Western District of Texas, (Prosecution) March, 1993
2. US District Court for the Western District of Texas, (Defense.) August, 1993
3. Superior Court, Shonomish County, Everett Washington.(Defense) June, 1994

4. US District Court for the Eastern District of Texas(Defense) July, 1994
5. Marion Municipal Court, County of Marion, Indiana. (Defense) Jan. 1995
6. Prince George's County Circuit Court, Maryland. (Defense) May 1995
7. Prince George's County Circuit Court, Maryland. (Defense) July, 1995
8. 291st. State District Court, Dallas TX. (Defense) August, 1995
9. 155th District Court, Austin County, TX. (Defense Capital Murder) Jan. 1996
10. Superior Court, Spokane County, Washington. (Defense) Feb.. 1996
11. United States District Court for the Northern District of Ohio. (Defense) May 1996
12. United States District Court for the State of Maryland, (Plaintiff) July, 1996.
13. United States District Court Memphis TN, (Defense) November, 1996.
14. Hamilton County Superior Court 1, Noblesville, In. (Defense) April, 1997
15. United States District Court, Ft. Laruadale Fl. (Defense) April, 1997
16. United States District Court, For the District of Arizona, (Defense) July, 1997
17. State Court, Lincoln Nebraska, (Defense) August, 1997
18. United States District Court, San Antonio Texas, August 1998, (Plaintiff)
19. State District Court, Junction Texas, September 1998, (Plaintiff )
20. United States District Court North District of New York, Albany New York, April 2007,
21. The District of Utah Central Division, Salt Lake City, Utah, August 2007 (Defense Weapon)
22. District Court, Boise Id, August 2007 (Defense Weapon)
23. State of Texas 240<sup>th</sup> District Court, September 2007 (Defense Murder) Scent id dog
24. United States District Court, Omaha Neb, November 2007 (Defense Narcotics)
25. Seventh Judicial Court State of Utah, December, 2007 (Defense Narcotics)
26. United States District Court, Macon Ga., Feb. 2008 (Defense Narcotics)
27. United States District Court, Dayton Ohio, Feb. 2008 (Defense Narcotics)
28. 268th District Court of Texas, Feb. 2008 (Defense Agg. Robbery) Scent id dog
29. District Court of Texas, April 2008 (Defense Agg. Robbery) Scent id dog
30. Pennington County Criminal Court, South Dakota, June 2008 (Defense Narcotics)
31. United States District Court (Northern District of Ohio) July, 2008 (Defense Narcotics) -  
Telecom Appearance
32. Superior Court of the State of Arizona, Yavapai County. (Defense Narcotics) August  
2008.
33. State Court, Lincoln Nebraska, (Defense) Oct., 2008
34. United States Distinct Court Norfolk Va. (Defense) November, 2008

35. Middle District of Tennessee, Federal Court (Defense) November, 2008
36. Jefferson County Drug Impact Court #4, Beaumont Texas, January 2009. In May 2009 while traveling in Belgium to speak at a working dog seminar my computer was stolen and the information for this case was lost.
37. United States District Court Northern District of Texas (Dallas) Feb. 2009 (Defense Laundering)
38. United States District Court, Omaha, Neb, March 2009, (Defense Narcotics)
39. United States District Court, Philadelphia Pa, April 2009 (Plaintiff, Excessive Force)
40. The District of Utah Central Division, Salt Lake City, Utah, May 2009 (Defense Weapon)
41. US District Court, Casper, Wy (Defense Narcotics) July 2009
42. Statesville, N.C. (Defense Narcotics) August, 2009
43. Omaha Nebraska (Defense Narcotics) September, 2009

### **Last Four Years of Court Testimonies**

44. Iowa vs. Stocker NO#FECR016978, Cerro Gordo County, Iowa (Defense Narcotics October 2009 –phone testimony)
45. South Dakota vs. Clayton Walker, Brookings County, South Dakota (Defense Narcotics January 2010 –phone testimony)
46. US V. Crystal Herren, No#09-CR-216 B (Cheyenne Wy)( Defense Narcotics, Jan. 2010)
47. People of the State of California vs. Joseph Ruiz, Jose Elias and Eric Perez (Defense Los Angeles County, Pasadena Ca) Murder scent id dog (Jan. 2010)
48. People of the State of California vs Johnny Bruiter (Defense Los Angeles County, Pasadena Ca) Murder scent id dog (Jan. 2010)
49. US v. W. Ohoro CR. NO.:2:09cr183-MHT, United States District Court for Middle District of Alabama Northern Division. (Defense-Narcotics) March, 2010
50. United States vs. Oliveres-Rodriguez: CR09-4048-DEO, Southern District of Iowa. (Defense- Narcotics, March 2010)
51. United States vs. Luis Beltran-Palafox : Case 5:09-cr-40022-JAR (Defense-Narcotics, March, 2010)
52. Utah vs. Brian Sweeney: Case No. 091500267, 3<sup>rd</sup> Judicial District Court (Defense Narcotics, March 2010)
53. Arizona vs Carl Antonio Harris No.S1400CR200900474, Superior Court of Yuma County. (Defense-Narcotics, April 2010)
54. Texas vs. Suprena Vandver-Frank and Daniel Elliott Howard Case # 10,242, 411<sup>th</sup> Judicial District, San Jacinto County (Defense-Narcotics, May 2010)
55. Wisconsin v. Steven Armus, Case # 09-CF-342, Kenosha County, (Defense Narcotics) June, 2010.
56. Nebraska vs. James A. Nelson, Case No.# CR 08-35. District Court of Cheyenne County. (Defense Narcotics) June, 2010.
57. United States vs. Nance, 3:09 cr 163, District Court Knoxville Tennessee, (Defense Armed-Robbery )July 2010

58. Nebraska v. Christensen DCT-CR10-135 (Lancaster County Nebraska) September, 2010.(Defense Narcotics)
59. Shannon R. Todd v. South Carolina Ca.No. 2010-CP-37-01001 (Defense Narcotic, September 2010)
60. US v. Poghosyan, U.S. District Court Wichita, Ks. Case # 10-10060-01 EFM (October, 2010) (Defense Counterfeiting)
61. US v. Alberto Gutierrez-Ruiz, U.S. District Court of Utah, Central Division. Case No. 2:10-CR-137 (Defense Narcotics October 2010)
62. United States vs. Andres Carbajal Western District of Arkansas Cause No. 4:10CR40005 (Defense Narcotics November 2010)
63. Wyoming vs. Bryan Ellis Phelps Case:# 30-528 (Defense Narcotics November 2010)
64. US vs. Gladstone McDowell, Case # 201330-01-JWL (Defense Narcotics November 2010)
65. Nebraska v. McFadden (Defense Narcotics April, 2011)
66. Az v. Michael Solis No: S1400CR200900619 (Defense Narcotics May, 2011)
67. US v. Evello Cervantes-Conde N0 CR 09-829-TUC-RCC(JM) (Defense Narcotic May, 2011)
68. US v \$1033000: US District Court, Toledo Ohio (Defense Asset Forfeiture, September 2011)
69. Illinois v. Collin M. Steele: No. 10 CF 321, Circuit Court of the Fourteenth Judicial Circuit Henry County, Illinois. (Defense Narcotics, October, 2011).
70. Wisconsin v. Michael Burroughs: Case No. 10 CF 39, Wisconsin Circuit Court, Crawford County. (Defense-Murder, October 2011).
71. U.S. v. Zhendong Wei: CR-11-661, US District Court, Los Angeles California (Defense Narcotics, November 2011).
72. Arizona v. Patricia M. Falkenburry: Case No. P1300 CR2009-01255, Superior Court of Arizona for Yavapai County (Defense Narcotics, January 2012)
73. Arizona v. Rickardo Coote: CR2010-158497-001, Superior Court of Arizona for Maricopa County (Defense Narcotics, January 2012).
74. U.S. V. Jamie Rangel-Ceja: CR-10-2115-RMP, US District Court for the Eastern District of Washington (Defense Narcotics, January 2012)
75. U.S. V. Pierre: United States District Court Eastern District of Texas Sherman Division (Defense Narcotics, April 2012)
76. Iowa v. Brett Ian Fox: No. FECR092329, Iowa District Court in and for Johnson County (Defense Narcotics, April 2012).
77. U.S. v. Kim Hollrah: US District Court of Davenport Iowa (Defense Narcotics, June 2012)

78. Illinois v. Mark Peterson: Case 10 F 298, Circuit Court of the 14<sup>th</sup> Judicial Circuit, Henry County, Illinois. (Defense Narcotics, June 2012)
79. Illinois v. Anthony V. Occhipinti: 10 CF 1207, Circuit Court of the 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois (Defense Narcotics, June 2012)
80. U.S. v. Marissa R. Miller: US District Court Southern District of Texas, Laredo (Defense Narcotics, July 2012).
81. Arizona v. Zaid Wakil: CR 2001-00530, Superior Court of Arizona for Coconino County (Defense Narcotics, July 2012)
82. United States v. Larry Bentley, Jr. Case No. 10-10108 US District Court, Peoria Illinois (Defense Narcotics, September 2012)
83. Kevin D. Miller & Jamila D. Miller v. City of Plymouth et al. No 2:09-CV-205 US District Court Northern Indiana (Plaintiff: 4<sup>th</sup> Amendment, November 2012)
84. Louisiana v. Jose Castellar-Lugo: No.: 104567 Div."B", 18<sup>th</sup> District Court Parish of West Baton Rouge (Narcotics-Defense, December 2012)
85. Kansas v. Gregory Bergen Solmon: No. 12-CR-09, District Court of Geary County, Kansas Division 3 (Narcotics-Defense, December 2012).
86. US v. Harry Berry: No. 11-271, US District Court Eastern District of Louisiana (Narcotics-Defense, March, 2013).
87. Ohio v. Arceli Cruz and Maridantia Almeida, Case No. 12CR011022, 12CR011021, Preble County, Ohio (Narcotics-Defense, May 2013)
88. Washington St. v. Javier Espinoza, Cause No. 12-1-01852-1, Pierce County, Washington (Narcotics-Defense, May 2013).
89. US v. Jeffery Allen Lindsay, Case No. 13-CR-032-001, US District Court Austin Tx, (Defense-Narcotics, June 2013)
90. US v. Cesar Alexis-Gonzales, Case No. 3:12-CR-00048-JEG-TJS, US District Court Southern District of Iowa (Defense-Narcotics, July, 2013)
91. US v. Darren Hill Case # 1:12 CR 93, US District Court for the Western District of North Carolina, Asheville Division, August 2013.

## Depositions

1. Use of Force 2 times (Plaintiff)
2. Dog Bite non-police 2 times (Plaintiff)
3. Asset Forfeiture (Plaintiff)
4. State of Nebraska vs. Passerini (August 2008) (Narcotics Defense)
5. State of Florida vs. Bolden (October 2009) (Narcotics Defense)
6. Nebraska vs. James Nelson Case#: E2008-3633-12923

7. Nebraska v. Christensen DCT-CR10-135 (Lancaster County Nebraska) September, 2010.
8. [REDACTED] a minor, by his mother and guardian, Tara Tuchel, vs. City of Hudson; St. Croix County; St. Croix County Sheriff's Department, Joshua Stenseth, individually and in his official capacity as an officer of the St. Croix County Sheriff's Department, and Daniel C. Christenson US District Court Western District of Wisconsin (Excessive Force) August 2011.
9. Kevin Miller v. City of Plymouth, Indiana. (Plaintiff, October 2011).

### **Teams Evaluated Dog Determined to be Reliable**

1. United States vs. Dave Triska (Narcotics) (Defense) (District of Kansas)(2008) Handler's testimony convincing after he provided operant definitions for elements of records. (Kansas State K9 Team)
2. Ohio vs. Andrew Trick (Narcotics)(2008)(Defense) Records revealed 94% of dog's responses resulted in actual seizure of drug contraband. (Dayton Ohio, K9 Team)
3. United States vs. Jose Gomez (2008)(Connecticut Federal Court)(Defense) Retained to review only DVD of dog. On the first pass dog exhibited orienting response, followed odor, and responded without obvious handler involvement. Advised defense dog's behavior was consistent with odor detection and correct response. However, it is still possible for a dog to exhibit the same behaviors when it has detected a non-drug contraband odor. Without records to analyze the dog's responses, accuracy cannot be established. Defense had not requested records and based on time declined to challenge the team's performance. (Massachusetts K9 Team)

### **Teams Evaluated K9 Evidence not Introduced by Government**

1. State of Texas vs. Donald Schexnayder, Jr. (Kaufman County, Texas) Provided Defense report on dog performance. Case dismissed January 2009
2. United States vs. Roberts (Weapon)(2008) Northern District of Iowa
3. Wyoming vs. Ira Tucker (Narcotics)(2008) 4th Judicial District Sheridan County
4. Arizona vs. London (Narcotics)(2008)Phoenix Az.
5. United States vs. Woznak (Money Laundering)(2008)(Nebraska) Retained and reviewed records, criminal charges dismissed, defendant relinquished seized money to government.
6. California v. Salvador & Rosas (Murder)(2007) Accelerant dog used for purposes of detecting accelerates. Provided report to defense relating to team's performance. After submitting the report was advised prosecution was not going to introduce dog into evidence.(Los Angeles Police Department K9 Team)
7. Iowa vs. Sanders (Narcotics)(2007) After being court appointed charges were dismissed.



8. California v. Scott J. Barker Case No. SA074933, (Murder). Report submitted August 21, 2012. Approximately one week after submitting the report relating to the dog's performance was advised the dog's performance was not going to be used as evidence.

### **Professional Associations**

1. Association for Behavior Analysis International
2. Forensic Expert Witness Association



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## Services

RETAINER (NON-REFUNDABLE)	\$3000.00
OUT OF COURT SERVICES	\$175.00 PER HOUR
COURT SERVICES AND DEPOSITIONS	\$300.00 PER HOUR
TRAVEL TIME	\$75.00 PER HOUR

Payments come directly from the law offices.

Travel and lodging expenses are the responsibility of the retaining law firm.

All payments for services will be paid before leaving for court. An invoice will be provided before court appearance. All services that exceeded the retainer and estimated additional will be paid before court appearance.

Vehicle travel will be charged at the national mileage rates.

Court appointments or other government offices such as Public Defenders or Prosecutor Offices the retainer will be waived. Court Order or contract will be sufficient.

000399

E-MAILED OCT 15 2013

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

- COURT MINUTES -

Michael J. Griffin participating by telephone  
District Judge

Keith Evans  
Court Reporter  
Recording No. Z:03/2013-10-9  
Time: 9:05 A.M.

Date: October 9, 2013

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

Case No. CR-13-01358

APPEARANCES:

William Thompson, Jr., Prosecutor, Michelle  
Evans, and Mia Vowels, Deputy Prosecutors

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

Subject of Proceedings: EX-PARTE MOTION HEARING

This being the time set for conducting a motion hearing in this case, the clerk noted the presence of counsel and the defendant being present in the courtroom.

Court took up the defendant's ex-parte motion requesting the Court to authorize the defense to retain the services of a DNA expert. Court questioned Mr. Thompson whether the State anticipates using DNA evidence at the jury trial to which Mr. Thompson stated that they do intend to use DNA evidence at trial. Court further questioned Mr. Thompson. Mr. Thompson stated that there is still evidence pending at the lab and have not received the report yet. Mr. Thompson made a statement to the Court. In response to inquiry from the Court, Mr. Monson stated that a price sheet is attached to the motion to retain services of a DNA expert. Court authorized the services of a DNA expert with a limit of \$5,000.00 for testing and consultation. Court will review the need for additional funds if the DNA expert is going to testify at the jury trial.

Court took up the defendant's ex-parte motion for authorization to retain services of a blood detection expert. Court questioned Mr. Thompson and Mr. Monson. Court granted the defendant's ex-parte motion to retain services of a blood detection expert with a limit of \$2,500.00 for the purpose of checking the State's evidence.

Maureen Coleman  
Deputy Clerk  
Court Minutes 1

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Court took up the defendant's ex-parte motion for authorization to retain the services of a pharmaceutical expert. Court questioned Mr. Thompson. Court questioned Mr. Monson. Court granted the defendant's ex-parte motion to retain services of a pharmaceutical expert with a limit of up to \$1,000.00 for consultation.

Court took up the defendant's ex-parte motion for authorization to retain services of a scent dog expert. Court questioned Mr. Thompson. Court questioned Mr. Monson. Court granted the defendant's ex-parte motion to review the dog's certification and videos of the dog detecting. In response to inquiry from the Court, Mr. Monson stated the expert's maximum fee would be \$5,000.00 and the consulting fee is \$175.00 per hour with no retainer fee. Court authorized funds up to \$2,000.00 to begin with and will review the need for further funds if requested at a later time.

Mr. Monson stated that the defense filed an ex-parte motion yesterday requesting authorization to retain the services of a computer forensic expert. Court stated that he has not seen the motion yet. Mr. Monson articulated the reasons for the filing of the ex-parte motion. Mr. Barker presented argument in support of the motion, stating that the experts' fee is \$195.00 per hour. Court questioned Mr. Thompson. Mr. Thompson stated his concerns in retaining a computer forensic expert for analyzing a cell phone. Mr. Barker presented argument, stating that the expert will be reviewing computers as well as cell phone towers. Court further questioned Mr. Thompson. Court further questioned Mr. Barker. Court granted the defendant's ex-parte motion authorizing \$2,000.00 at this time.

Mr. Monson made an inquiry of the Court. Mr. Monson stated he will be contacting Mr. Thompson for the request for any further funding. Court stated that he prefers to have a hearing when an ex-parte motion is filed.

Court noted that a motion in limine has been filed but the Court has not yet had the opportunity to review it.

Mr. Thompson informed the Court that counsel would like to bring up a couple of issues with the Court that could appear to be conflicts of interest. Mr. Barker agreed. Mr. Thompson informed the Court some of the information recovered was a business planner that was filled out by Rachael Anderson and Charles Capone and mentioned that Mr. Monson is their attorney. A second issue is that an e-mail was received that Mr. Capone had some sort of altercation with a client of Mr. Barker's while incarcerated. Mr. Thompson stated that there was no basis for the allegation. Mr. Thompson stated the third issue of reserving evidentiary issues at trial. Mr. Monson articulated the extent of the involvement that he had with Rachael Anderson in dealing with Mr. Capone's business. Mr. Barker addressed the issue regarding a client of his that claimed that he had been assaulted in the jail by Mr. Capone. Mr. Barker stated that he had reviewed the video from the jail and stated that there was no altercation.

Mr. Thompson informed the Court that the State will be filing several motions in limine. Mr. Thompson made a statement to the Court, informing the Court that there is still outstanding evidence at the lab and stated his concerns about the trial date in December. Mr. Thompson moved the Court continue the jury trial until mid-spring 2014. Mr. Barker agreed with Mr. Thompson and

presented argument in support of continuing the jury trial. Court explained to Mr. Capone his right to a speedy jury trial. The defendant waived his right to a speedy jury trial. Court directed the clerk to record the defendant's waiver of right to a speedy jury trial. Court vacated the jury trial scheduled for December 9, 2013, stating that he is not setting another jury trial date at this time. Court stated that he will discuss a new jury trial date at the hearing on November 8, 2013. Court stated that the pretrial motion deadlines will also be discussed on November 8, 2013.

Mr. Thompson made an inquiry of the Court. Court questioned Mr. Capone whether he feels there is a conflict of interest with Mr. Barker and Mr. Monson remaining as counsel on the case. Mr. Capone stated that he is very happy with the representation of both Mr. Barker and Mr. Monson and does not feel that there are any conflicts of interest.

Mr. Monson made a clarification that the pretrial motion hearing is scheduled for November 8, 2013 and not November 9, 2013. Court so agreed.

Court recessed at 9:44 A.M.

APPROVED BY:



MICHAEL J. GRIFFIN  
DISTRICT JUDGE