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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. ~~43112~~

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43124

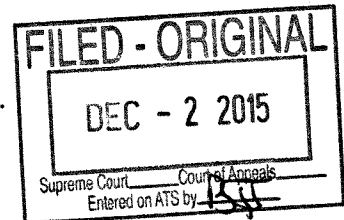


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CASE NO CR 2013-1358

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CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

12 STATE OF IDAHO

13 Plaintiff,

14 v.

15 CHARLES A. CAPONE



16 Defendant.

Case No. CR-2013-1358

**EX PARTE MOTION FOR AUTHORIZATION
TO RETAIN SERVICES OF COMPUTER
FORENSIC 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 Marcus Lawson, a computer
19 forensic expert, to review records and discovery materials, and to assist with the examination of
20 digital information of this case at the expense of Latah County. This motion is based on the Affidavit
21 of Mark T. Monson, attached hereto. Undersigned counsel represents that he contacted prosecuting
22 attorney William Thompson on 10/2/13 and discussed that request for experts would be filed ex
23 parte.

DATED: October 7, 2013

24  
25 Mark T. Monson
Co-Counsel for Defendant



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

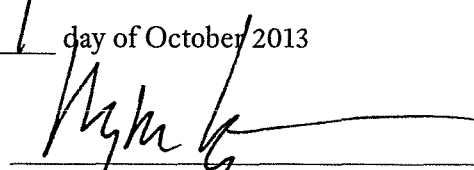
4 Mark T. Monson, being first duly sworn, upon oath states:

- 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 computer forensics. Evidence in this case is contained on hard drives and cell phones.
9 The State presented extensive evidence regarding cell phone data at the preliminary hearing
10 conducted in this matter.
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 4. Co-Counsel Ray Barker contacted Marcus Lawson, JD regarding obtaining his assistance in
16 this case, and he has agreed to assist the defense. Attached a copy of Marcus Lawson's CV.
17 Mr. Lawson's fee schedule is attached.

18 
19 _____
20 MARK T. MONSON

21 SIGNED AND SWORN TO before me this 7 day of October 2013

22 Wynn Mosman
23 Notary Public
24 State of Idaho

25 

Notary Public for Idaho
Residing in Moscow, Idaho
My commission expires: 4-19-17





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**Curriculum Vitae
Marcus Lawson J.D.**

ACADEMIC TRAINING

Pepperdine University School of Law: Juris Doctor, 1983

Portland State University: Bachelors of Science: Administration of Justice, 1980

Portland State University: Adjunct Professor: Administration of Justice, 1988/89

POST ACADEMIC TRAINING

Special Agent Basic Training: Federal Law Enforcement Training Center: Glynco, GA
U.S. Secret Service Special Agent Academy: Beltsville, MD
Drug Enforcement Administration Special Agent Academy: Quantico, VA
U.S. Customs Service Special Agent Academy: Marana, AZ
Clandestine Lab School: Drug Enforcement Administration: San Diego, CA
Special Agent Undercover School: Federal Law Enforcement Training Center: Glynco, GA
Internet Crime & Computer Forensics School: National Consortium for Justice Information and Statistics: Sacramento, CA
Computer Forensics Training Courses (modules 1 through 4): Key Computer Services, Inc.
Computer Futures Inc/Mindleaders Inc.
Sun Microsystems Inc. SunLearningCenter
Knowledge Solutions LLC
T3i Inc.
Intense School, CCE Boot Camp: Applied Computer Forensics/FTK Tool Kit
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PROFESSIONAL EXPERIENCE

President, Global CompuSearch LLC (Spokane WA, Portland OR, Sacramento CA, Palm Springs CA offices)

Provides forensics investigations, consulting and training on legal issues related to digital evidence in the areas of family law, business litigation, criminal issues and employment matters. Clients include the United States Army, Navy, Air Force, Marine Corps, Coast Guard, Federal and State Public Defender Offices throughout the United States and private attorneys throughout the United States. Drafts affidavits and declarations in support of client motions for access to digital evidence. Testifies on behalf of client motions for access to digital evidence.

Responsible for the overall supervision and forensic findings of examiners employed by the company. Offers expert testimony in areas of expertise in state, military and federal court.

Maintains an updated knowledge of Internet applications, Internet technologies and forensic tools in support of client needs. Maintains an updated knowledge of case and statutory law relevant to client needs. Provides training to family law, criminal and other attorney groups in the areas of digital evidence and digital forensics.

Senior Special Agent, Department of Homeland Security, Astoria OR and Spokane WA Resident Agents Office

Investigated and performed undercover in cases of fraud, narcotics, weapons violations, terrorism and child pornography. Specialization in the investigation of child exploitation cases for 11 years. Coordinated investigations with the Royal Canadian Mounted Police, Scotland Yard, German Polizei, Naval Investigative Service, Army Criminal Intelligence Division, Federal Bureau of Investigations and state and local police agencies. Recognized state, federal and international expert witness in the following areas: Internet undercover techniques, Internet child exploitation investigations, Internet investigations, computer evidence in child pornography cases, pedophiles and pedophile behavior. Received and provided training on issues related to Internet crime, child pornography and child sexual abuse. Coordinated training seminars training state and local law enforcement personnel. Assisted in the creation of the (now) Department of Homeland Security Cyber Smuggling Center in planning. Testified before the Oregon legislature on issues pertaining to the drafting of child pornography legislation. Represented U.S. Customs child pornography investigative efforts in numerous print media and television interviews including NBC Nightly News, MSNBC, The Montel Williams Show and BBC Television.

Special Agent, Drug Enforcement Administration, Los Angeles CA Field Office

Conducted and coordinated criminal investigations resulting in arrests and prosecutions for violations of federal narcotics laws. Acted as an undercover agent and acted as case agent in cases where others acted as undercover agents in high level narcotics transactions. Wrote affidavits for search and arrest warrants and testified as both case agent and witness in federal prosecutions for narcotics violations.

Special Agent, United States Secret Service, Los Angeles CA Field Office

Provided Executive Protection to the President and Vice President of the United States and their families as well as visiting foreign heads of state. Coordinated as case agent criminal cases in the area of counterfeit negotiable instruments, credit cards and identifications. Wrote affidavits for search and arrest warrants and testified as both case agent and witness in federal prosecutions.

PROFESSIONAL PRESENTATIONS:

Magistrate Judges Conference, Boise ID - May 2013
District Judges Conference, Boise ID - January 2013
Federation of State Medical Boards Conference, New Orleans LA - October 2012
Federal Public Defenders CJA Panel Conference, San Diego CA - May 2012
Eastern District of California CJA Panel Training, Sacramento CA - October 2011
Annual Connecticut Judicial Conference, West Haven CT - June 2011
Idaho Association Criminal Defenders Lawyers, Sun Valley ID - March 2011

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Defense Counsel of the Marine Corps Conference, Miramar AFB CA - February 2011
WSSDA Annual Conference, Seattle WA - October 2010
Washington Society of CPA's, Spokane WA - October 2010
Air Force Judge Advocate General School, Maxwell AFB AL - October 2010
Federal Public Defender District of Oregon, Eugene OR - April 2010
Federal Public Defender District of Oregon, Medford OR - April 2010
Federal Public Defender District of Oregon, Portland OR - February 2010
Federal Public Defender District of Oregon, Portland OR - February 2009
Washington School District Personnel Conference, Spokane WA - June 2009
Oregon Chapter of the American Academy of Matrimonial Lawyers, Portland OR - April 2009
Washington Association of Legal Investigators (WALI) Spokane Chapter - 2007, 2008, 2009
Naval Justice School, Newport, RI. - May 2008 & 2009
Spokane Bar Association - January 2008 & 2009
OCDLA - Oregon Criminal Defense Lawyers Association - 2008 & 2009
Conference of The American Institute of Certified Public Accountants & American Academy of Matrimonial Lawyers, Las Vegas NV - May 2008
WestLaw CLE Seminars - May 2007- 2010
Association of Certified Fraud Examiners - November 2006
National Association of Legal Professionals - October 2006
South Bay Bar Association - September 2006
Idaho Criminal Defenders Association Sun Valley ID - March 2006
Department of the Air Force, AFLSA, Circuit/Area Defense Counsel, San Antonio, TX - 2004, 2005, 2006.
Criminal Defense Attorneys of Michigan - 2004
Missouri State Public Defender System, Lake Ozark, MO - 2002
National Child Abuse Defense & Resource Center Conference, New Orleans, LA - October 2002

**Curriculum Vitae
Josiah P. Roloff, EnCE, CCE**

ACADEMIC TRAINING

Whitworth University: Bachelor of Arts: Program management, 2007-Present

Spokane Community College: Associates in Applied Science: Network Engineering, 2004

International Society of Forensic Computer Examiners: Certified Computer Examiner #1403 (CCE), 2011

Guidance Software: EnCase Certified Examiner (EnCE), 2007

Oregon State University: Professional Certificate in Computer Forensics, 2003

PRE/POST ACADEMIC TRAINING

Computer and Enterprise Investigations Conference, 2013

Computer and Enterprise Investigations Conference, 2010
Computer and Enterprise Investigations Conference, 2008
Mobile Forensics World Conference, 2008
Global CompuSearch, LLC: Understanding Undercover Investigations & Internet Chatting, 2008
Computer and Enterprise Investigations Conference, 2007
Intense School, CCE Boot Camp: Applied Computer Forensics
T3i Inc.: Information Forensics
New Technologies Inc (NTI): Computer Forensics and Computer Security Risk Management
Global CompuSearch, LLC: Computer Forensics Training
Bank of America, Merchant Services: Technical, eStores, PCN, Sr. Representative Training

PROFESSIONAL EXPERIENCE

Vice President and Director of Forensics Operations Global CompuSearch LLC, (Spokane, WA, Portland OR, Sacramento CA, Palm Springs CA offices)

Provides consulting, forensics and investigative support on legal issues related to digital devices and the Internet. Provides investigative and consulting services with a special emphasis on cellular phones/mobile devices and network intrusions. Drafts affidavits and declarations in support of client motions for access to digital evidence. Provides case re-creation using case specific Operating Systems and Internet applications as used by clients with specialized knowledge in Linux and Unix servers and systems. Offers expert testimony in state, federal and military courts including the creation of exhibits in support of conclusions drawn. Maintains an updated working knowledge of Internet applications, new Internet technologies and forensic tools in support of clients' future needs with a special emphasis on cellular phones/mobile devices, network intrusions and server security breaches. Provides digital forensics and investigative services to clients for use in civil litigation with special emphasis on business litigation. Provides review and consulting on forensic reports and testimony given by law enforcement/private forensic examiners in criminal cases. Provides data recovery services for clients in cases of severe data corruption, virus introduction and system crashes.

Senior Technical Representative, Bank of America, Merchant Services, Spokane, WA

Assisted associates with escalated troubleshooting of hardware, communications, and software problems. Assisted government agencies with troubleshooting of hardware, communications, and software issues. Worked within eStores department troubleshooting web based scripting languages and connecting them to Bank of America's payment gateway.

System Administrator, BlueZebra Inc, Spokane, WA

Technical support of network, hardware, and software related problems. Trained clients in areas related to network systems, hardware issues, and software usage.

PROFESSIONAL PRESENTATIONS:

Office of Special Investigations, Fairchild AFB, WA - May 2013
Oregon State Bar, Tigard, OR - April 2013
District Judges Conference, Boise ID - January 2013
Hart Wagner, LLC, Portland OR - October 2012

Judge Advocate General's School, Maxwell AFB AL - September 2012
Judge Advocate General's School, Maxwell AFB AL - January 2012
Eastern District of California CJA Panel Training, Sacramento CA - October 2011
Judge Advocate General's School, Maxwell AFB AL - September 2011
Idaho Association of Criminal Defense Lawyers (IACDL), Sun Valley ID - March 2011
Judge Advocate General's School, Maxwell AFB AL - January 2011
Washington State School Directors' Association Conference, Spokane WA - November 2010
Washington Society of CPAs, Spokane WA - October 2010
Judge Advocate General's School, Maxwell AFB AL - September 2010
Washington Association of Legal Investigators, Spokane WA - April 2010
Spokane Bar Association, Spokane WA - December 2009
Spokane County Defenders, Spokane WA - December 2009
Spokane Community College - Evidence Class, Spokane WA - December 2008
Spokane County Bar Association, Spokane WA - September 2008
Washington Association of Legal Investigators, Spokane WA - December 2007
Association of Certified Fraud Examiners, Spokane WA - January 2007
South Bay Bar Association, Costa Mesa CA - November 2006
NALS of Washington, Association for Legal Professionals, Spokane WA - August 2006
Air Force JAG Officers/Legal Personnel Conference, San Antonio TX - April 2006
Idaho Defense Bar Association, Sun Valley ID - March 2006

Curriculum Vitae
Jesse Shelley

ACADEMIC TRAINING

ITT Technical Institute: Associate of Applied Science: Information Technology, 2007

ITT Technical Institute: Information Systems Security: Bachelors of Science, 2009

PROFESSIONAL EXPERIENCE

Director of Information Security, Global CompuSearch, LLC, Spokane, WA

Complex server acquisitions with expertise in Windows and Linux environments.

Acquisition of Windows, Macintosh and Linux based digital devices using devices by Logicube, Raptor Forensics, FTK Imager, EnCase Forensic, Voom Technologies and GNU Core Utilities. Coding and programming of acquired data in support of digital company forensic examiners forensics needs.

Reverse engineering (cracking) of Windows, Linux and Macintosh authentication systems. Reverse engineering various proprietary authentication systems and password ciphers with custom scripting.

Cellular phone and GPS device acquisition, analysis and data extraction using the most current mobile forensics suites (Cellebrite UFED) and custom Python parsers. Consult on mobile device forensics with GCS digital forensic examiners

Develops data extraction and data parsing software and techniques using Python for proprietary and open source data storage methods and applications.

Project Coordinator: Penetration Testing Services. Develops and implements industry standard protocols for vulnerability testing of small business network systems with particular emphasis on financial management services, medical clinics, accounting firms and law offices. Develops and monitors practices and policies which reduce risk of unauthorized access to information systems.

Project Coordinator: Post Intrusion Response Team (PIRT). Develops and implements industry standard protocols for post intrusion response for intrusion incidents occurring among small businesses. Coordinates and conducts investigations to their natural conclusions.

Senior Forensic Technician, Global CompuSearch, LLC, Spokane, WA

Maintained GCS digital forensics lab environment with up to date technology, tools and training. Developed and employed reverse engineering and data extraction techniques. Continued support of GCS forensic examiners using EnCase Forensic, FTK and custom scripting. Data parsing large data sets with special expertise in SQL. Performed acquisitions of Windows, Macintosh and Linux based digital devices. Windows and Linux server acquisitions and accompanying data mining for mid-size eDiscovery projects. Cellular phone and GPS device acquisition, analysis and data extraction.

Curriculum Vitae Brandon Jelinek, MCP

ACADEMIC TRAINING

Whitworth University: Bachelor of Arts, 1994

PROFESSIONAL SOFTWARE DEVELOPMENT

GUI Design – Basic

Programming Translation – Basic to Machine Language

Basic Database Design – Access 2.0 – Intel 286

Basic Programming – Visual Basic

Membership Database – Access 2.0

Class/Curriculum Database – Access 95

Client Database/Employee Tracking – Access 97

Client/Billing Database – Access 97

Membership/Donations – Access 97, 2000

Committees/Leadership Database – Access 97, 2000, 2003, 2008

Web Site Design/Programming – HTML, PHP, ASP.Net 1.1, 2.0, 3.0, Visual Basic, MSSQL, Sharepoint 2.0, 2003, SOAP, DotNetNuke, PHP Nuke, Flash Macromedia

Database Synchronization Software – Sharepoint 2003, SOAP, ASP.Net 2.0, Access 2003, 2007

Committees/Leadership Database – ASP.Net 1.1, 2.0, Visual Basic, MSSQL Module

Development

DotNetNuke, ASP.Net 2.0, Visual Basic, C#, SQL

Professional Witness – SQL Server, H.I.T.S. Database

SQL Consultant, SQL Server large database discovery

User/Domain Creation - PowerScripts, Exchange 2007, Server 2008, Active Directory

CONSULTATION/PROJECT SUPPORT DETAILS

Consultation services focus on Client/Membership information databases, Intranet and Extranet Database driven web development, and Small Business Client/Server network engineering.

Client/Membership databases created are a mix of Microsoft Access, SQL Server, ASP.Net and Visual Basic. Using all four technologies built local UI's with secured web access to data. Custom writes modules for the access database to increase the functionality of Microsoft Access. Uses SQL server for security and stability to control tables.

Internet and Extranet Database applications written use open source project DotNetNuke (DNN) currently written with ASP 4.0. Modules written for this project are used by client web sites. Consultations in the DotNetNuke environment deal with programming issues and module needs. Writes a plethora of programs from simple news modules to secured client databases within the DNN environment. Develops Intranet solutions using Microsoft SharePoint and SQL server. From the SharePoint environment, design and development of data integration and custom form programming. Consults small businesses on implementation of client/server networks. Devise cost-effective systems that provide security, backups and remote access.

PROFESSIONAL EXPERIENCE

Database&Software Analyst, Global CompuSearch LLC, Spokane WA

Corporate Data Database Collection/Prep and Embezzlement Discovery/data prep for forensic accountants using:

- Microsoft SQL Server
- Microsoft Access
- Oracle
- MySQL
- Other proprietary databases

Systems Data Collation from Business Computer Networks:

Reconstruct small to large server networks to evaluate systems used

Analyze the Flow of data on the network for discovery

- o Relational Databases (SQL, Oracle, etc)
- o Exchange Server Data Store
- o Web Systems (ASP, PHP)
- o Tracking of Custom Programming (C++, C#, VB, Scripting Languages)

Review Security of System

Find Back Doors and Hidden Malicious Software

Recover Lost/Deleted Data from Backups and Collate with Current Data

Reviews Software for Function, Security, Data:

- Review software for potential deposit of false data
- Review software for security leaks that would allow misuse or false validation
- Locate data that has been deleted by users or administrators on networked systems
- Review for hidden data, breaks in incremental order, timestamps and logs not evident to end users
- Locate and review log files indicating when software was used and by whom
- Review Suspect stolen and copied code, compare against standard training and proprietary code
- Review technologies for misuse potentially infringing on civil liberties
- Track client and employee communication through network systems to show cause and effect of claims and solutions

Owner, Jelpro

Consults and assists technology based legal companies with SQL discovery, software evaluation, and network reconstruction. Engineers and administrates four physical servers and eight virtual servers used for web and e-mail hosting. Programs and designs web sites using the DotNetNuke system. Utilizes Mail Enable and Microsoft Server for e-mail solutions. Implements Symantec SMTP filtering software for e-mail filtering. Maintains 60+ web sites. Troubleshoots and repairs software programming issues as a result of open source solution errors. Oversees web/e-mail solutions for the Synod of Alaska Northwest which consists of six governing bodies and 100+ churches. Develops and implements SharePoint solutions for small and medium sized businesses.

Communications IT Director, Presbytery of the Inland Northwest

Installed and maintained local LAN with 8 workstations and Microsoft Server. Kept abreast of new technologies and advised church of equipment needs. Wrote and provided troubleshooting of MS Access databases used to track church programs/membership. Conducted computer training classes for staff. Programed Web site modules in ASP2.0 and Visual Basic. Compiled needs assessment lists. Use of ghosting systems and remote desktop to provide quick and accurate support.

Network Engineer, Southside Christian Church

Installed and maintained the local LAN with 32 workstations and Microsoft Server. Kept abreast of new technologies and advised church of equipment needs. Wrote and provided troubleshooting of MS Access databases used to track church programs/membership. Conducted computer training classes for staff. Programed Web site modules in ASP2.0 and Visual Basic. Compiled needs assessment lists. Use of ghosting systems and remote desktop to provide quick and accurate support.

Network Administrator/Technologies Advisor, Whitworth Community Presbyterian Church

Installed and maintained the local LAN with 16 workstations and NT Server. Kept abreast of new technologies and advised church of equipment needs. Developed SharePoint site for project management. Wrote and provided troubleshooting of MS Access databases used to track church programs/membership. Conducted computer training classes for staff. Compiled needs assessment lists. Use of ghosting systems and remote desktop to provide quick and accurate support.

Associate Pastor, New Horizons Community Church

Primary responsibility was the strategic management and development of the Youth Program. In addition: Setup and maintained Windows 95 based network. Counseled other churches on networking options and software implementations. Instructed staff members and volunteers in computer use. Designed flyers, brochures and other publications using Corel Draw 6. Used video editors to splice and apply visual effects for instructional videos.

Curriculum Vitae Joshua L. Michel

ACADEMIC TRAINING

Eastern Washington University: Computer Science & Economics 2005 – Present
Northwest University: Philosophy & Religion 1998-1999
Montana State University: Architecture & Graphic Design 1994-1995

PRE/POST EDUCATIONAL TRAINING

Computer and Enterprise Investigations Conference, 2013
Global CompuSearch, LLC: Digital Forensic Examiner, 2013 –Present.
J.Michel Photography: Small business management, Event planning and coordination, Advanced DSLR techniques, Digital video/image analysis and manipulation, Data management and archiving, 2008-Present.
Merchant e-Solutions: Sr. Technical Representative, e-Commerce, Product Development, Account Setup, Quality Control and Risk Management, 2005-2013.
Bank of America, Merchant Services: Credit Card Terminal and PC technical support, eStores, PCN, Sr. Representative, 1999-2005.

PRE/POST EDUCATIONAL TRAINING DETAILS

Raw Data Carving, Examining Volume Shadow Copies, Correlating Forensic Results from Multiple Operating Systems, New Forensic Highlights of Windows 8, Protected File Analysis In Practice Using EnCase With Password, Social Media and Cloud Computing Artifacts on Smart Phones and Tablets, SSD Forensics, Vehicle System Forensics, Memory Forensics.

Understanding Digital Forensics, Understanding EnScript, Advanced Tips and Tricks for Encase Forensics, Automating the Forensic Process with Advanced Pre-processing, Understanding the value of link files in digital forensics, EnCe Preparation, CCE Preparation, Forensic Tracking of USB Devices. Global Compusearch, LLC
Advanced troubleshooting techniques for credit card terminals, software, servers and e-commerce. Software installation, training and follow-up for small business clients, Research and analyze processor competitors to offer best product solutions. Development and test modules for e-commerce, Merchant account creation, maintenance and support. Creating and maintaining quality control practices for merchant account setup. Merchant e-Solutions
Understanding BAMS. Workflow process. Credit card network design and workflow. Advanced troubleshooting techniques. Plastic Card Network (PCN) and agencies involved. Process of PCN network flow. Estores payment processing workflow. Variables and advanced troubleshooting techniques. Bank of America, Merchant Services

Professional Experience

Merchant e-Solutions

Provide escalated technical support for PC software, e-commerce and credit card terminals. Analyze new applications for credit card services and build appropriate file for all processing types including: terminal, payment gateway, web login, and PC software. Coordinate with sales and banking representatives to offer best solution for clients. Create audit processes to ensure account setups are error free. Create audit process manual for training purposes. Product development and beta testing web based credit card processing. Compare and contrast products and services to offer best solutions and exceed industry standards.

Owner/Operator, J.Michel Photography

Understanding light in digital photography. Understanding the importance of pre-visualization in event photography. Advanced DSLR techniques and procedures. High Dynamic Range photography techniques. Digital image analysis processing and manipulation using Adobe Creative Suite 6, Adobe Lightroom 4, Canon Digital Photo Professional. Post processing analysis and workflow. Understanding digital file formats (TIFF, JPG, GIF, CR2, DNG, etc.). Understanding Portraiture and the art of photographing people. RAW image processing and conversions. EXIF data tracking and restriction procedures. Understanding the creative process in photography. Photographic services including; weddings, corporate events, birthdays, graduations, high school seniors, professional modeling, infants and pets.

Sr. Technical Representative, Bank of America, Merchant Services, Spokane WA

Assisted associates with escalated troubleshooting of hardware, communications, and software problems. Assisted government agencies with troubleshooting of hardware, communications, and software issues. Worked within the eStores department, troubleshooting an assortment of web based scripting languages in order to connect them to Bank of America's payment gateway.

Presentations/Speaking Rolls:

May 15, 2013

Association/Group: Office of Special Investigations, Fairchild AFB Lecture topic: Mobile Forensics and Celebrite Acquisitions

Curriculum Vitae James A. Goldman

ACADEMIC TRAINING

Spokane Falls Community College: Associate of Applied Science: Information Technology, 2013

University of Washington: Bachelor of Arts: Psychology, 2007

PROFESSIONAL EXPERIENCE

Forensic Technician, Global CompuSearch, LLC, Spokane, WA

Responsible for performing digital forensics and mobile device media analysis. Analyze various digital media using a wide range of computer forensic tools and software. Recover damaged and erased digital media to collect relevant evidence and information. Maintain an updated working knowledge of digital technology and applicable digital forensic tools.

Experience in Computer Forensics and Data Recovery:

- Acquire and safeguard computer information in both a lab environment and from onsite information seizure. Acquisition of Microsoft, Macintosh and Linux digital devices using technologies by FTK Imager, EnCase Forensic, Voom Technologies and Logicube.
- Recover data from damaged and erased computer hard drives in to attempt to collect evidence and information. Perform data recovery, including both file, email, and SMS (text) on various electronic media.
- Search for evidence of reformatting, dates of reformatting, and technologies utilized to erase or duplicate data from digital media.
- Acquire and analyze various mobile phone and GPS devices. Analyses and data extraction using mobile forensics software and hardware by Cellebrite and UFED Physical Analyzer.

EDUCATIONAL TRAINING DETAILS

Spokane Falls Community College: Associate of Applied Science: Information Technology, 2013

Computer Forensics - IS234

Learn to present a secure digital environment and study methods for gathering and analyzing computer-related evidence. Investigative procedures for the analysis of computer evidence in criminal and civil cases; procedures for the preservation and acquisition of computer media for investigative examination; proper procedures for the storage and handling of electronic media; data recovery techniques and issues with various computer forensics tools, including EnCase and FTK.

Network Security II - IS245

Development of network systems defense and countermeasures. Learn the steps utilized to respond to techniques used to compromise networks. Network security, firewall implementation and intrusion detection, virtual private networks, and encryption.

Computer Ethics & Law - IS132

Applying law to cyberspace in areas such as intellectual property, privacy, computer crime, and the bounds of jurisdiction.

UNIX/Linux - CS121

UNIX/Linux operating system administration. Software installation, using Linux applications, security and servers. Apache administration with PHP and MySQL implementation.

Programming for IT - CS223

Principles of programming and scripting, and presenting unique visual and object-oriented features. Programming assignments include procedural techniques and event-driven processing.

Network Management - IS262

Technical management of computer networks including servers and workstations. Install, manage and maintain a network. Microsoft and Linux being the primary software used. Telecommunications processes, principles, protocols and media discussed in depth.

PRESENTATIONS/SPEAKING ROLES

May 15, 2013

Association/Group: Office of Special Investigations, Fairchild AFB Lecture topic: Mobile Forensics and Celebrite Acquisitions

REFERENCES

Ms. Pamela Mackey, Esq.
Haddon, Morgan & Foreman, P.C.
Denver, CO
(303) 831-7364
prmackey@hmflaw.com

Mr. Reese Norris, Esq.
Butler, Norris & Gold
Hartford, CT
(860) 236-6951
norris@bnlglaw.com

Mr. John Ekberg, Esq.
Schoonmaker, George & Colin, P.C.
Greenwich, CT
(203) 862-5023
jekberg@sgcfamlaw.com

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Assistant Federal Public Defender for the
Eastern District of California
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Lexi_negin@fd.org

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Berkan/Mendez
San Juan, PR USA
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Worcester, MA
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gspoffard@lzes.com

Mr. Jerome Flynn, Esq.
Federal Public Defender for the
Northern District of Indiana
Hammond, IN
(219) 937-8020
Jerry_Flynn@fd.org

Mr. Robert Boyce or
Ms. Laura Schaefer
Boyce & Schaefer
San Diego, CA
(619) 232-3320
reboyce@pacbell.net

Mr. Whitney Boise, Esq. or
Ms. Celia Howes, Esq.
Hoever Boise & Olsen, P.C.
(503) 228-0497
wboise@hoevet-boise.com

Ms. Susan Russell, Esq.
Office of the Federal Public Defender
District of Oregon
(503) 326-2789
Susan_russell@fd.org

Mr. Stephen Houze, Esq.
Law Office of Stephen A. Houze, Esq.
Portland, OR
(503) 299-6426
Stephen@shouze.com

Mr. Kevin McCoy, Esq.
Assistant Federal Public Defender for the
District of Alaska
Anchorage, AK
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Kevin_McCoy@fd.org



GLOBAL COMPUSEARCH, LLC
E-Discovery & Digital Forensics

509.443.9293
225 W. Main Street, STE 100
Spokane, WA 99201
info@gcsforensics.com

Palm Springs, CA 760.459.2122 | Sacramento, CA 916.760.7362 | Portland, OR 503.542.7448

Consulting/Computer Forensics:

Federal, CJA:

\$195.00 per hour for case review with written analysis

\$2,000.00 per day for hearings, pre-trial consulting, trials + expenses

Mobile Media Forensics (Cell Phones, Pocket PCs, GPS, etc):

Federal, CJA:

\$195.00 per hour for case review with written analysis

\$2,000.00 per day for hearings, pre-trial consulting, trials + expenses

Various Expenses:

Engagement fees vary to apply toward hours worked (non-government) FY2013
Government Based Per Diem Rates – hotel, meals and airfares vary based on
reasonably best available rates. Rental car for all required travel, at the average rate
for your area. Data storage fees may apply 2% monthly (24% annum) will be
assessed on accounts past due. Engagement fee does not apply to Federal, State,
Military, or CJA cases.

000418

CASE NO. CR 2013-1358

2013 OCT -9 AM 10:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Cam 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,

ORDER AUTHORIZING RETENTION OF
DNA EXPERT

16 v.

17 CHARLES A. CAPONE

18 Defendant.

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

22 IT IS HEREBY ORDERED that the defense is authorized to retain the services of DNA
23 Diagnostics Center, to assist the defense in representing the defendant in this proceeding at the
24 expense of Latah County in accordance with the fee schedule referenced in the affidavit of counsel
25 attached to the defendant's motion (not to exceed \$5,000.00 without prior court approval)

DATED: October 9, 2013

Michael J. Griffin
Judge Michael J. Griffin
District Judge

ORDER AUTHORIZING RETENTION
OF DNA EXPERT
Page 1 of 2



MOSMAN
LAW OFFICES

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Authorizing Retention of DNA Expert was served on the following individuals by the method indicated:

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

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

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

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

on this 9 day of October, 2013.

SUSAN PETERSON
Tatah County Clerk of the Court

By: *Susan Peterson*
Deputy Clerk



CASE NO. CR 2013-135

2013 OCT -9 AM 10:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *CM* 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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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

ORDER AUTHORIZING RETENTION OF
PHARMACEUTICAL EXPERT

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

IT IS HEREBY ORDERED that the defense is authorized to retain the services of Robert M.
Julien, MD, Ph.D., to assist the defense in representing the defendant in this proceeding at the
expense of Latah County in accordance with the fee schedule referenced in the affidavit of counsel
attached to the defendant's motion. (not to exceed \$1,000.00 without prior court approval)

DATED: October 9, 2013

Michael J. Griffin
Judge Michael J. Griffin
District Judge

ORDER AUTHORIZING RETENTION
OF PHARMACEUTICAL EXPERT
Page 1 of 2



MOSMAN
LAW OFFICES

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Authorizing Retention of Pharmaceutical Expert was served on the following individuals by the method indicated:

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

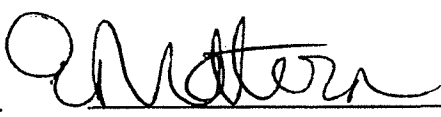
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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 9 day of October, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



2013 OCT -9 AM 10:29 1011/047

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Um 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

15 Plaintiff,

16 v.

17 CHARLES A. CAPONE

18 Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING RETENTION OF
BLOOD DETECTION EXPERT

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

22 IT IS HEREBY ORDERED that the defense is authorized to retain the services of Bradley A.
23 Perron, to assist the defense in representing the defendant in this proceeding at the expense of Latah
24 County in accordance with the fee schedule referenced in the affidavit of counsel attached to the
25 defendant's motion. (*not to exceed \$2,500⁰⁰ without prior court approval*)

DATED: October 9, 2013

Michael J. Griffin
Judge Michael J. Griffin
District Judge

ORDER AUTHORIZING RETENTION
OF BLOOD DETECTION EXPERT
Page 1 of 2



MOSMAN
LAW OFFICES

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Authorizing Retention of Blood Detection Expert** was served on the following individuals by the method indicated:

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

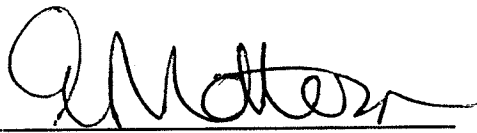
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 9 day of October, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



CASE NO CR2013-1358

2013 OCT -9 AM 10: 29

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *CM* 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

15 Plaintiff,

16 v.

17 CHARLES A. CAPONE

18 Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING RETENTION OF
SCENT DOG EXPERT

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

22 IT IS HEREBY ORDERED that the defense is authorized to retain the services of Steven
23 Nice, to assist the defense in representing the defendant in this proceeding at the expense of Latah
24 County in accordance with the fee schedule referenced in the affidavit of counsel attached to the
25 defendant's motion. (not to exceed \$2,000 without prior court approval).

DATED: October 9, 2013

[Signature]
Judge Michael J. Griffin
District Judge

ORDER AUTHORIZING RETENTION
OF SCENT DOG EXPERT
Page 1 of 2



MOSMAN
LAW OFFICES

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Authorizing Retention of Scent Dog Expert** was served on the following individuals by the method indicated:

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

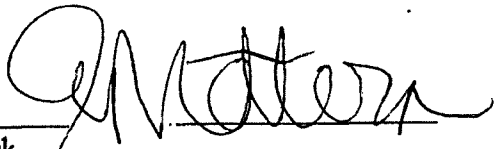
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 9 day of October, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



CASE NO CR 2013-1358

2013 OCT -9 AM 10: 29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Am 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

15 Plaintiff,

16 v.

17 CHARLES A. CAPONE

18 Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING RETENTION OF
COMPUTER FORENSIC EXPERT

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

22 IT IS HEREBY ORDERED that the defense is authorized to retain the services of Marcus
23 Lawson, to assist the defense in representing the defendant in this proceeding at the expense of
24 Latah County in accordance with the fee schedule referenced in the affidavit of counsel attached to
25 the defendant's motion. *(not to exceed 2000.00 without prior court approval)*

DATED: October 9th, 2013

[Signature]
Judge Michael J. Griffin
District Judge

ORDER AUTHORIZING RETENTION
OF COMPUTER FORENSIC EXPERT
Page 1 of 2



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Authorizing Retention of Computer Forensic Expert was served on the following individuals by the method indicated:

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

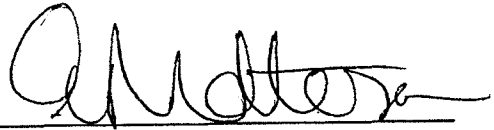
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 9 day of October, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



CASE NO CR 2013-1358

2013 OCT 22 PM 12:02

CLERK OF DISTRICT COURT
LATAH COUNTY

BY CEM DEPUTY

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

Attorneys for Defendant

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

12 STATE OF IDAHO

13 Plaintiff,

14 v.

15 CHARLES ANTHONY CAPONE

16 Defendant.

Case No. CR-2013-1358

**MOTION FOR ADDITIONAL FUNDS
REGARDING INVESTIGATOR**

17 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and
18 hereby moves the court for an order authorizing additional funds for investigation costs in the above-
19 referenced matter. The court has previously approved investigative costs in this matter. An additional
20 amount of \$7,500.00 is hereby requested. Counsel has retained Chuck Schoonover, dba Action Agency,
21 as investigator in the above-entitled case. Ms. Schoonover has expended the funds previously approved
22 by meeting with Counsel on multiple occasions, meeting with the defendant, locating and interviewing
23

24 MOTION FOR ADDITIONAL
25 FUNDS REGARDING INVESTIGATOR
Page 1 of 2



MOSMAN
LAW OFFICES
000429

1 potential witnesses, traveling to Lewiston, Idaho to review and document evidence in police custody, and
2 consulting with court-appointed counsel regarding this case and will continue to do so.

3 Undersigned represents to the court that on October 21, 2013 he spoke with prosecutor Bill
4 Thompson regarding this motion. Mr. Thompson represented that the state trusts in this Court's
5 discretion whether or not to approve the Defendant's request.

6 DATED this 21 day of October, 2013

7
8 

9
10 Mark T. Monson
Attorney for Defendant

11 CERTIFICATE OF SERVICE

12 I hereby certify that on the 22nd day of October, 2013 I caused a true and correct copy of the
13 foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.

14
15 

16 For the Firm



Court directed comments to counsel stating that they are not to contact any prospective jurors except through questions asked on the questionnaire. Court informed counsel that they are not allowed to ask how any juror is going to vote during opening statements or any time during the trial and not ask them to promise anything. Court stated that they can only inquire as to the relevant facts of the trial. Court stated he intends to use the ~~Strike~~^{Strike} method in selecting the jury. Court will use two alternate jurors so the State and defense will get two extra peremptory challenges.

Court took up the defendant's motion for an additional \$7,500.00 funds for the investigator. Mr. Monson presented argument in support of the defendant's motion for an additional \$7,500.00 funds for the investigator. Mr. Monson stated that the defendant's motion does not include cell phone data. Court questioned Mr. Monson. Mr. Thompson had no response or argument to the defendant's motion for additional funding. Court authorized the additional funding for the investigator and signed the order presented.

Mr. Thompson made an inquiry of the Court regarding a scheduling order. Mr. Thompson stated that the State intends to file a number of pretrial motions. Mr. Monson stated that the defense will also have pretrial motions to file. Court ordered all pretrial motions be filed by February 7, 2014 and scheduled the hearing for the pretrial motions to be held on February 28, 2014 at 9:00 A.M. The clerk will prepare the scheduling order.

Court recessed at 9:49 A.M.

APPROVED BY:



MICHAEL J. GRIFFIN
DISTRICT JUDGE

CASE NO. CR 2013-1358

2013 NOV -8 AM 9:57

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

10 Attorneys for Defendant

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

13 STATE OF IDAHO

Case No. CR-2013-1358

14 Plaintiff,

**ORDER AUTHORIZING FUNDS REGARDING
INVESTIGATOR**

15 v.

16 CHARLES ANTHONY CAPONE

17 Defendant.

18 THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator*
19 dated October 21, 2013, and good cause appearing therefore,

20 IT IS HEREBY ORDERED that an additional \$7,500 for investigative costs is hereby
21 authorized. Investigative costs in the amount of \$30,000.00 were previously approved. Such costs shall
22 not exceed \$37,500.00 in total until and unless the defendant obtains authorization for additional
23 investigative costs.

24 DATED this 24 ^{November} day of ~~October~~ 2013.

25 [Signature]
JUDGE



CERTIFICATE OF SERVICE

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

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

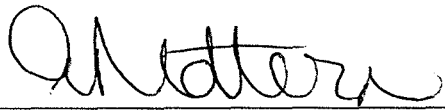
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 8 day of November, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk

cc: Auditor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF ^{CASE NO} ~~CR-13-1358~~

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH ^{2013 NOV 8 AM 10:37}

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

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

Case No. CR-13-01358

ORDER SCHEDULING
CASE FOR TRIAL

IT IS HEREBY ORDERED that the above-entitled case be set for Jury trial before the Honorable Michael J. Griffin, District Judge, at the Latah County Courthouse in Moscow, Idaho, on March 31, 2014 at 8:30 A.M., Pacific Time.

IT IS FURTHER ORDERED that a final pre-trial conference shall be held at the Latah County Courthouse in Moscow, Idaho on February 28, 2014 at 9:00 A.M., Pacific Time.

IT IS FURTHER ORDERED that the parties and counsel comply with the following:

1. Counsel shall provide any requested jury instructions and a separate list of all witnesses to the court reporter by March 24, 2014.
2. Counsel shall prepare a list of exhibits to be offered at trial and submit that list to the clerk before March 24, 2014.
3. Counsel are to file pretrial motions by February 7, 2014.

Dated this 8th day of November, 2013.

[Signature]
Michael J. Griffin
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true and correct copy of the ORDER SCHEDULING CASE FOR TRIAL was hand delivered to:

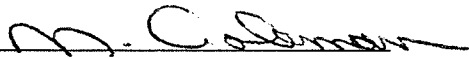
William Thompson, Jr.
Prosecuting Attorney
Latah County Courthouse
Moscow, ID 83843

And mailed to:

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

Mark Monson
Attorney at Law
P.O. Box 8456
Moscow, ID 83843

on this 8th day of November, 2013.


Deputy Clerk

CASE NO. CR2013-1358

2013 DEC 10 AM 10:02

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CM 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 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 ANTHONY CAPONE

19 Defendant.

Case No. CR-2013-1358

**MOTION FOR ADDITIONAL FUNDS
REGARDING INVESTIGATOR**

20 COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and
21 hereby moves the court for an order authorizing additional funds for investigation costs in the above-
22 referenced matter. The court has previously approved investigative costs in this matter. An additional
23 amount of \$10,000.00 is hereby requested. Counsel has retained Chuck Schoonover, dba Action
24 Agency, as investigator in the above-entitled case. Mr. Schoonover has expended the funds previously
25 approved by meeting with Counsel on multiple occasions, meeting with the defendant, locating and
interviewing potential trial witnesses, traveling to Lewiston, Idaho on multiple occasions to review and

MOTION FOR ADDITIONAL
FUNDS REGARDING INVESTIGATOR

Page 1 of 2

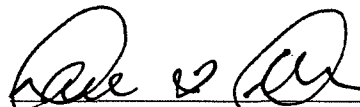


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1 document evidence in police custody and locate additional witnesses, and consulting with court-
2 appointed counsel regarding this case. It is anticipated that Mr. Schoonover will continue to perform
3 these functions. In addition, Mr. Schoonover is organizing voluminous amounts of cell phone data that
4 has taken the state a significant amount of time to compile. The defense has been provided files
5 containing hundreds of thousands of lines of raw data. Mr. Schoonover is also assisting in extrapolating
6 data from specific reports provided by the state in discovery in anticipation of preparing specific trial
7 exhibits.

8 Undersigned represents that he spoke with Bill Thompson, attorney for Plaintiff, on December 6,
9 2013 and Mr. Thompson represented that the state trusts the Court's discretion in making a decision
10 whether or not to grant additional funds.

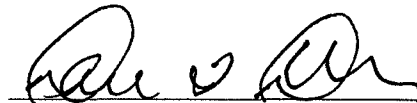
11 DATED this 10 day of December, 2013

12
13
14 

15 Mark T. Monson
16 Attorney for Defendant

17 CERTIFICATE OF SERVICE

18 I hereby certify that on December 10, 2013 I caused a true and correct copy of the foregoing
19 motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.

20
21 

22 For the Firm

CASE NO CR 2013-1358

2013 DEC 12 AM 8:45

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] 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.)	
	)	MOTION FOR LEAVE TO AMEND
CHARLES ANTHONY CAPONE,	)	CRIMINAL INFORMATION
Defendant.)	
_____)	

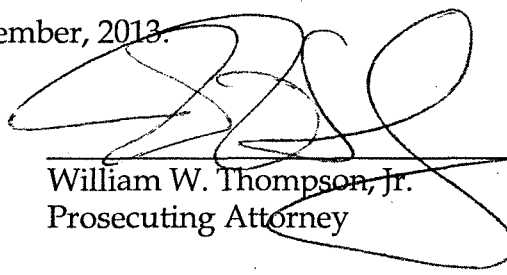
COMES NOW the State of Idaho, by and through William W. Thompson, Jr., Latah County Prosecuting Attorney, and pursuant to Idaho Criminal Rule 7(e), respectfully moves this Court for leave to amend the Criminal Information filed in the above-entitled case based upon new information recently made available to the State which includes an agreement of the co-defendant, David Stone, to testify truthfully at trial herein. The State respectfully refers the Court to the I.C.R. 11 Plea Agreement in State of Idaho v. David Christopher Stone, Latah County Case Number CR-2013-01359 (attached as Exhibit A) in

ORIGINAL
000439

that regard.

The Amended Criminal Information, lodged herewith, charges no different or additional offense.

DATED this 11th day of December, 2013.



A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

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

mailed, United States mail, postage prepaid

hand delivered

sent by facsimile, original by mail

e-mailed, d.raybarker@turbonet.com, mark@mosmanlaw.com

to the following:

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

Dated this 12th day of December, 2013.

Kate Mecham

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-2013-01359
V.)	
	)	RULE 11 PLEA AGREEMENT
DAVID CHRISTOPHER STONE,)	
Defendant.)	
_____)	

COME NOW THE STATE OF IDAHO, by and through its attorney, William W. Thompson, Jr., Prosecuting Attorney, Defendant DAVID CHRISTOPHER STONE, and his attorney, Brandie J. Rouse, and pursuant to Rule 11(f)(1)(C), Idaho Criminal Rules, submit the following Plea Agreement to the Court for its acceptance or rejection:

1. That the Defendant shall enter a guilty plea to the charge of Failure to Notify Law Enforcement or Coroner of Death, Idaho Code 19-4301A(1)(3), a felony, as stated in Count III of the Criminal Information filed herein. The State will dismiss Counts I, II and IV without prejudice;

2. That the State and the Defendant agree that the appropriate disposition of this matter is as follows: The Court shall enter a Judgment of Conviction with a maximum indeterminate period of confinement to not exceed seven (7) years. The parties each reserve the right to argue for such sentence within such seven (7) year period as they deem appropriate including, without limitation, the defense reserves the right to seek probation or retained jurisdiction.
3. The defendant shall cooperate fully and truthfully in the investigation and prosecution of any and all persons involved in the death of Rachael Anderson and the subsequent cover up of her death including, without limitation, testifying at any State or Federal proceedings. The parties further agree and acknowledge that the State is relying on the represented truthfulness of the substance of Mr. Stone's statements during interviews with investigators on November 12 and 20, 2013.
4. The parties further agree that sentencing shall be scheduled to follow trial in State of Idaho v. Charles Anthony Capone, Latah County Case CR-2013-01358.
5. The parties acknowledge further that the United States Attorney's Office for the Eastern District of Washington, through Assistant United States Attorney Rudy Verschoor, has agreed to not pursue perjury charges against Mr. Stone for his past testimony to the federal Grand Jury so long as the defendant fully complies with the terms of this plea agreement.
6. In the event that the defendant breaches any of the terms of this agreement, the State reserves the right to re-instate any or all of the dismissed charges and pursue any additional charges that it may deem appropriate; and the United States is released from its agreement to not pursue perjury charges and may pursue any additional charges as it deems appropriate. Additionally, in the event of a breach of this agreement, the defendant shall nonetheless not be entitled to withdraw his guilty plea to Count III.
7. That any other terms of sentencing, if not otherwise specifically addressed herein, are not the subject of this agreement, and both parties are free to make what recommendations they believe to be appropriate. Additionally, this agreement is binding only as to the initial sentencing in this case and in

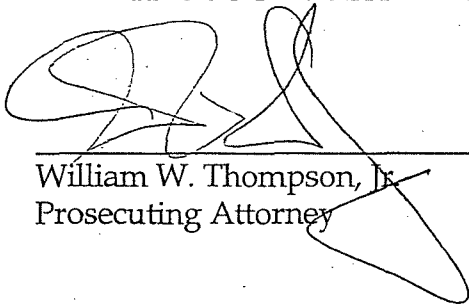
no way limits the State or the Court in regard to any subsequent proceedings including reviews of retained jurisdiction, and prosecution and disposition of probation violations.

8. Defendant understands (a) the nature of the charge to which he agrees to plead guilty and acknowledges that he is not being coerced into entering his plea of guilty; (b) the consequences of pleading guilty, including the maximum penalties that may be imposed and any mandatory minimum penalties; and that (c) by pleading guilty he waives his rights to a jury trial, to confront accusers, and to refrain from incriminating himself including, without limitation, the right to refuse to fully participate in any evaluations or assessments requested by the Court or the pre sentence investigator. Defendant further acknowledges that he is satisfied with his legal representation, has reviewed with his attorney all possible defenses, and by his plea of guilty voluntarily waives those defenses.
9. Defendant also understands that he has a right to appeal the judgment and sentence of the Court herein, and the right to seek a modification or reduction of sentence under Idaho Criminal Rule 35, and hereby freely and voluntarily waives such appeal and I.C.R. 35 rights.
10. This agreement is entered into pursuant to I.C.R. 11(f)(1)(C); Defendant understands if the Court does not accept the disposition described in paragraph 2 that the Defendant shall be afforded the opportunity to withdraw the plea of guilty except as provided below.
11. This plea agreement is based upon the facts and circumstances as they exist at the date of the signing of this agreement. The Defendant acknowledges, covenants and agrees that during the period of time between the date of this agreement and the date of sentencing, he will not violate any law nor fail to comply with any conditions of his release on bond or other conditions ordered by the Court, and shall cooperate fully with any presentence investigation ordered herein and/or evaluations or assessments. Should the Defendant in any way breach these agreements and covenants, the State is released from any obligations hereunder regarding an appropriate sentencing disposition, the Court may sentence the Defendant up to the maximum authorized by law and the defendant shall not be afforded the opportunity to withdraw his plea of guilty. The Defendant expressly agrees

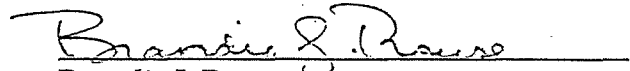
that the burden of proof for determining whether the Defendant has breached any of said agreements or covenants shall be a preponderance of the evidence only.

12. This is the entire agreement and understanding between the parties.

IT IS SO STIPULATED this 4th day of December, 2013.



William W. Thompson, Jr.
Prosecuting Attorney



Brandie J. Rouse
Counsel for Defendant



David Christopher Stone
Defendant

Dec. 10. 2013 10:19AM

Mosman Law Offices

CASE NO ^{No. 2023} CR 2013-1358

2013 DEC 12 PM 1:39

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AM DEPUTY

1 MARK T. MONSON, P.A.
2 MOSMAN LAW OFFICES
3 803 S. Jefferson, Suite 4
4 P.O. Box 8456
5 Moscow, ID 83843
6 (208) 882-0588
7 (208) 882-0589 FAX
8 Idaho State Bar No. 6165
9 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 December 10, 2013, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional ^{\$3,500.00} ~~\$4,500~~ for investigative costs is hereby
authorized. Investigative costs in the amount of \$37,500.00 were previously approved. Such costs shall
not exceed ^{\$41,000.00} ~~\$45,000.00~~ in total until and unless the defendant obtains authorization for additional
investigative costs.

DATED this 12th day of December 2013.

[Signature]
JUDGE



Dec. 10. 2013 10:20AM

Mosman Law Offices

No. 2023 P. 2

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CERTIFICATE OF SERVICE

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

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

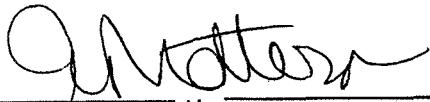
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 12 day of December, 2013.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



Court inquired if counsel thought the amendment would lessen the days for the trial, to which Mr. Thompson felt it would. Mr. Barker disagrees. Court will leave the trial time set for three weeks.

Court recessed at 3:42 p.m.

APPROVED BY:



MICHAEL J. GRIFFIN
DISTRICT JUDGE

CASE NO. CR-13-1358

2013 DEC 20 PM 3:47

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] 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.)	
	)	AMENDED CRIMINAL
CHARLES ANTHONY CAPONE,	)	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, MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, Felonies in THREE (3) COUNTS, committed as follows:

ORIGINAL
000450

COUNT I
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, deliberately, with premeditation and with malice aforethought, unlawfully kill and murder Rachael Anderson, a human being..

COUNT II
Principal to Failure to Notify Coroner or Law Enforcement of Death
I.C. 18-204, 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 III
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. Charles Capone killed and murdered Rachael Anderson;

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

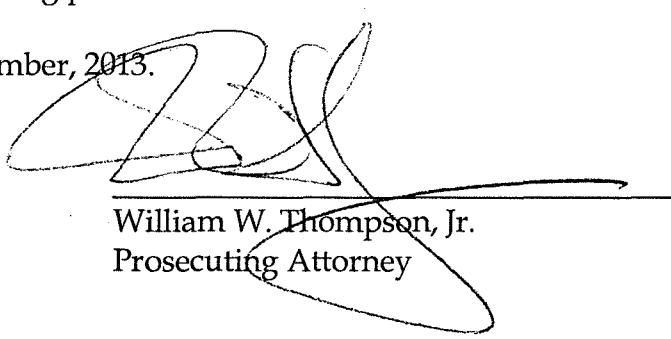
(4) On or about the 18th day of February, 1998, the defendant was convicted of Aggravated Assault, a Felony, in Latah County, Idaho, case no. CR-97-01687;

(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 11 day of December, 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 Amended Criminal Information was

mailed, United States mail, postage prepaid

hand delivered

sent by facsimile, original by mail

e-mailed, d.raybarker@turbonet.com, mark@mosmanlaw.com

to the following:

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

DATED this 12th day of December, 2013.

Yate Mechem

CASE NO. CR 2013-135

2013 DEC 26 AM 10:03

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
(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.)	
	)	NOTICE OF I.R.E. 404(b) EVIDENCE
CHARLES ANTHONY CAPONE,)	
Defendant.)	
_____)	

TO: CHARLES ANTHONY CAPONE, Defendant
and his counsel; D. Ray Barker and Mark Monson.

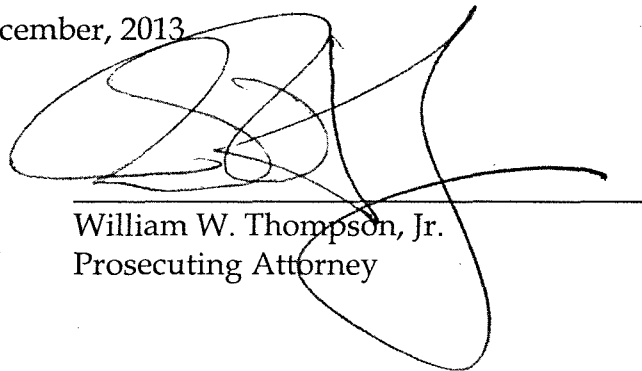
NOTICE IS HEREBY GIVEN that, to the extent the following constitutes evidence included under Idaho Rule of Evidence 404(b), the State of Idaho intends to present evidence of Charles Capone's prior felony convictions, Charles Capone's May 6, 2010, arrest on the Federal gun charge; and the fact that Charles Capone was incarcerated in various correctional facilities subsequent to his May 6, 2010, arrest; prior acts of domestic

ORIGINAL 0456

violence against Rachael Anderson by Charles Capone including, without limitation, attempted strangulation; Charles Capone stalking and harassing Rachael Anderson in person, by third parties, by telephone, cell phone text message and other electronic communications (directly, anonymously and by the use of fictitious means such as "spoofing"); Charles Capone engaging in or causing vandalism to Rachael Anderson's property; and Charles Capone voicing threats to and about Rachael Anderson.

The State respectfully submits that to the extent any of the above constitute "404(b) evidence," they are nonetheless admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, as such relate to the charged offenses of First Degree Murder and the subsequent cover-up and conspiracy to cover-up the murder.

DATED this 24th day of December, 2013



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the forgoing NOTICE OF I.R.E.

404(b) EVIDENCE were served on the following in the manner indicated below:

D. Ray Barker
Attorney at Law
P.O. Box 9408
Moscow, ID 83483
d.raybarker@turbonet.com
mark@mosmanlaw.com

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

The Honorable Michael J. Griffin
Idaho County District Court
320 W. Main St.
Grangeville, ID 83530

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Dated this 26th day of December, 2013.

Kate Mecham

CASE NO. CR 2013-1358

2014 JAN 17 AM 10:56

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

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ADDITIONAL FUNDS
REGARDING INVESTIGATOR**

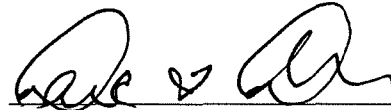
COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order authorizing additional funds for investigation costs in the above-referenced matter. The court has previously approved investigative costs in this matter. Additional funds of \$5,000 are 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, meeting with the defendant, locating and interviewing potential trial witnesses, traveling to Lewiston, Idaho on multiple occasions to review and document



1 evidence in police custody and locate additional witnesses, and consulting with court-appointed counsel
2 regarding this case. It is anticipated that Mr. Schoonover will continue to perform these functions. In
3 addition, Mr. Schoonover is organizing voluminous amounts of cell phone data that has taken the state a
4 significant amount of time to compile. The defense has been provided files containing hundreds of
5 thousands of lines of raw data. Mr. Schoonover is also assisting in extrapolating data from specific
6 reports provided by the state in discovery in anticipation of preparing specific trial exhibits.

7 Undersigned represents that he spoke with Bill Thompson, attorney for Plaintiff, on January 15,
8 2014 and Mr. Thompson represented that the state trusts the Court's discretion in making a decision
9 whether or not to grant additional funds.

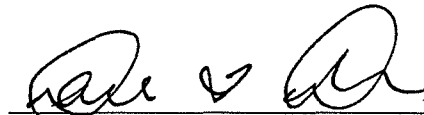
10 DATED this 17 day of January, 2014

11
12
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14 Mark T. Monson
15 Attorney for Defendant

16 CERTIFICATE OF SERVICE

17 I hereby certify that on January 17, 2014 I caused a true and correct copy of the foregoing motion
18 to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.

19 

20 For the Firm



CASE NO. CR 2013-1358

2014 JAN 21 AM 10:57

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *AM* DEPUTY

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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

ORDER AUTHORIZING FUNDS REGARDING
INVESTIGATOR

THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator* dated January 17, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$ 2,500.00 for investigative costs is hereby authorized. Investigative costs in the amount of \$41,000.00 were previously approved. Such costs shall not exceed \$ 43,500.00 in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 21st day of January 2014.

[Signature]
JUDGE

ORDER AUTHORIZING FUNDS REGARDING INVESTIGATOR
Page 1 of 2



MOSMAN
LAW OFFICES

CERTIFICATE OF SERVICE

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

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

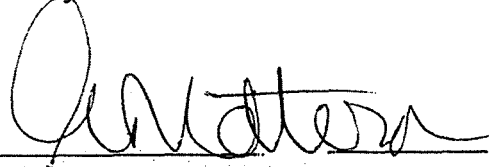
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 21 day of January, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk



CR 2013-1358
CASE NO.

2014 JAN 21 PM 6:03

CLERK OF DISTRICT COURT
BY: *am*

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

**MOTION FOR AUTHORIZATION TO
RETAIN SERVICES OF FORENSIC
PATHOLOGIST**

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 Dr. Todd Grey, MD, an expert in forensic pathology, to review records and discovery materials, and to assist with the forensic aspects of this case at the expense of Latah County. This motion is based on the Affidavit of Mark T. Monson, attached hereto.

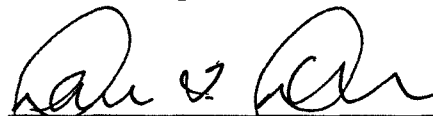
DATED: January 14, 2014

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

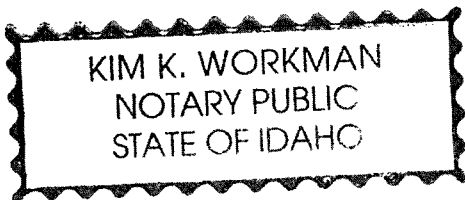
1 STATE OF IDAHO)
2 County of Latah) §

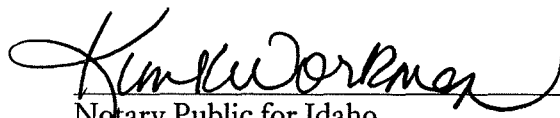
3 Mark T. Monson, being first duly sworn, upon oath states:

- 4 1. I am one of the attorneys appointed by the court to represent Charles A. Capone.
- 5 2. In representing Mr. Capone, it has been necessary to retain the services of an expert in
- 6 the field of forensic pathology. The state has disclosed evidence of death by strangulation.
- 7 It is necessary to consult with a forensic pathologist regarding the alleged manner of
- 8 death and the type of evidence expected in such a death.
- 9 3. It is necessary for an expert to review all relevant discovery materials and conduct
- 10 whatever tests may be deemed necessary in order to assist counsel in representing Mr.
- 11 Capone. Failure to retain the assistance of such an expert would result in inadequate
- 12 representation of Mr. Capone.
- 13 4. I have contacted Dr. Todd Grey, MD, regarding obtaining assistance in this case. Dr. Grey
- 14 is the Chief Medical Examiner for the State of Utah Medical Examiner's Office located in
- 15 Salt Lake City, Utah. Dr. Grey's rate schedule is \$400 per hour. Attached is a copy of Dr.
- 16 Grey's CV.

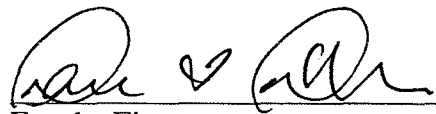
17 
18 MARK T. MONSON

19 SUBSCRIBED AND SWORN TO before me this 21 day of January 2014



20 
21 Notary Public for Idaho
22 Residing in Bovill, Idaho
23 My commission expires: 8/7/18

24 I hereby certify that on January 21, 2014 I caused a true and correct copy of the foregoing motion
25 to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.


For the Firm

Todd Cameron Grey, M.D.

Address:

Work: Medical Examiner's Office
State of Utah
48 N. Mario Capecchi Drive
Salt Lake City, UT. 84113
(801)-584-8410
Fax: (801)-584-8435

Home: 652 N. Little Tree Circle
Salt Lake City, UT. 84108

Pre-medical Education:

- Yale University - B.A. 1976 Anthropology

Medical Education:

- Dartmouth Medical School - M.D. June, 1980

Hospital Training:

- Intern Anatomic Pathology - U.C.S.D. 1980-1981
- Resident Anatomic Pathology - U.C.S.D. 1981-1982

Past Employment:

- Staff Anatomic Pathologist
Rehoboth McKinley Christian Hospital 1982-1985
- Designated Pathologist
Office of the Medical Investigator
McKinley County, New Mexico 1983-1985
- Associate Medical Examiner
Dade County M.E.'s Office 1985-1986
- Clinical Assistant Professor
University of Miami School of Medicine 1985-1986
- Assistant Medical Examiner and Deputy Director
Office of the Medical Examiner, State of Utah 1986-1988
- Clinical Assistant Professor
Dept. of Pathology, University of Utah School of Medicine 1986-1992

Current Employment:

- Chief Medical Examiner
Office of the Medical Examiner - State of Utah

- Adjunct Associate Professor of Pathology
University of Utah School of Medicine

Updated January 21, 2014

000465

Certification:

- National Board of Medical Examiners, Diplomate, August 1, 1981 #238440
- Board Certified, Anatomic and Forensic Pathology, June 20, 1986

Licensure:

- State of Utah No. 86-17491-1205
- Previously licensed in California and New Mexico

Honors and Awards:

- B.A. cum laude with Honors in the major
- M.D. Dean's Honor Roll
- A.O.A. Honor Society

Professional Society Memberships:

- National Association of Medical Examiners
- American Academy of Forensic Sciences

Committees and Consultantships:

- Sudden Infant Death Syndrome Advisory Committee
Utah Department of Health, 1986 to 2005
- Vital Statistics Task Force-Death Certificate Revision Committee
Utah Department of Health, August-December 1987
- Department Improvement Committee
Utah Department of Health, April-August 1988
- Architect Selection Board for Medical Examiner Facility
Division of Facility and Construction Management, State of Utah, April-May 1988
- Information Technology Task Force
Assigned to review Dept. of Health data processing systems and make recommendations for improvement, July to December 1992
- Child Fatality Review Committee
Multi-Agency Board to review deaths of children in Utah, November 1991 to present
- Infant and Fetal Death Technical Review Committee
Utah Department of Health, Division of Family Health Services, August 1992 to September 1995
- Residency Committee
Department of Pathology, University of Utah School of Medicine, June 1990 to Sept. 2012
Health Data Statute Review Committee
Tasked to rewrite various statues concerning the collection and use of data by the state health department, August-September 1995
- Suicide Prevention Task Force
Legislatively mandated committee tasked with providing recommendations on ways to reduce the number of suicides that occur in Utah. July - November 1999
- Intermountain Tissue Center Scientific Advisory Board

- Provides advice and expertise on issues related to tissue harvesting. October 2000 to 2006
- Electronic Death Registration Advisory Committee
Provide advice and expertise for the development of a web based electronic death registration system November 2004 to August 2006
- National Violent Death Registration System Advisory Committee
Provide advice and expertise in the process of data collection and analysis of violent deaths in Utah, July 2005 to present

Presentations:

- Grey, T.C. "Kearns Mid-Air Collision-The Role of the Medical Examiner in Aircraft Disasters" Aircraft Disaster Seminar, Jackson Hole, WY., October 1987
- Grey, T.C. "Preserving the Scene" and "Mechanisms of Injury"
Eighth Annual Life Flight Conference, SLC, UT., March 1989
- Penny, J.A., Grey, T.C., and Sweeney, E.S. "Cause of Death: Venomous Snake Bite, Manner of Death: Homicide" Presented by Grey, T.C. at the 40th Annual Meeting of American Academy of Forensic Sciences, Philadelphia, Pa., February 1988
- Grey, T.C. and Schnittker, S.I. "A Fowl Deed at the Aviary"
National Association of Medical Examiners 1989 Annual Meeting, Sanibel Island, Fl., October 1989
- Grey, T.C. "Equivocal Deaths: 'What's the Manner With You?'"
5th Annual National Conference on Serial Murders, Unidentified Bodies and Missing Persons, Nashville, Tn., March 1993
- Grey, T.C. "Mechanisms of Injury and Their Medicolegal Significance"
1993 Clinical Care Conference: Transport and Care of the Critically Injured, Snowbird, Ut., May 1993
- Grey, T.C. "Highway Accident Deaths: The Role of the Medical Examiner and a Plea to Change Utah Law"
Northwest Association of Forensic Sciences-Fall Meeting, SLC, UT., October 1996
- Grey, T.C., "Sudden Infant Death Syndrome"
Family Practice Grand Rounds, Salt Lake Regional Medical Center, SLC, Ut., June 1997
Pediatric Grand Rounds, Primary Children's Medical Center, SLC, Ut., September 1997
- Grey, T.C. "The Pediatric Autopsy: Role of the Medical Examiner"

Panel Discussion-Pediatric Grand Rounds, Primary Children's Medical Center,
SLC, UT., October 1997

- Grey, T.C. "Forensic Issues for First Responders", "Gunshot Wounds", "Sharp Force Injuries" and "Blunt Force Injuries"
26th Annual Intermountain E.M.S Conference, SLC, UT., November 14 - 15, 2002
- Grey, T.C. "CSI Utah - The Investigation and Interpretation of Equivocal Deaths"
Intermountain Critical Care Conference. Salt Lake City, UT. October 28, 2005
- Grey, T.C. "Forensic Pathology" Idaho Council on Domestic Violence and Victim Assistance. Boise ID, June 7, 2006

Publications:

- Sweeney, E.S. and Grey, T.C. "Letter to the Editor-SIDS" New England Journal of Medicine Vol. 315, No. 26, Dec. 25, 1986.
- Grey, T.C. and Sweeney, E.S. "Physicians and the Death Penalty (letter)" West. J. Med. 1987, July 147:207.
- Sweeney, E.S. and Grey, T.C. "Cause of Death-Proper Completion of the Death Certificate (letter)" JAMA Vol. 258, No. 22, Dec. 11, 1987
- Grey, T., Mittleman, R., and Wetli, C.: "Aortoesophageal Fistulae and Sudden Death: A Report of Two Cases and Literature Review" Am. J. of Forensic Medicine and Pathology Vol. 9, No. 1, March 1988 pp 19-22.
- Andrews, J.M., Sweeney, E.S., and Grey, T.C. "Help, I'm Freezing to Death" ASCP Forensic Pathology Check Sample. F.P. 90-5 (Accepted April 8, 1988).
- Grey, T.C. and Sweeney, E.S. "Patient Controlled Analgesia (letter)" JAMA Vol. 259, No. 15, April 15, 1988.
- Andrews, J.M., Sweeney, E.S., Grey, T.C. and Wetzell, T. "The Biohazard Potential of Cyanide Poisoning During Postmortem Examination" J. of Forensic Sciences Vol. 34, No. 5, September 1989 pp 1280-1284.
- Grey, T.C. "Defibrillator Injury Suggesting Bite Mark" Am. J. of Forensic Medicine and Pathology Vol. 10, No. 2, June 1989 pp 144-145.
- Grey, T.C. "Book Review; Salamander: The Story of the Mormon Forgery Murders, (Stiltoe and Roberts)" J. of Forensic Sciences Vol. 34, No. 4, July 1989 pp 1044.
- Grey, T.C. "The Incredible Bouncing Bullet: Projectile Exit Through the Entrance

Updated January 21, 2014

000468

Wound" J. of Forensic Sciences Vol. 38, No. 5, September 1993, pp 1222.

- Grey, T.C. "Shaken Baby Syndrome: Medical Controversies and Their Role in Establishing "Reasonable Doubt" Child abuse Prevention Council Newsletter, May 1998.
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Seminars and other training activities:

- "Determination of the Cause and Manner of Death" Presented July 1988 at Utah Peace Officers Association Annual Conference, Wendover, Nevada.
- "Injuries due to Gunfire, Sharp and Blunt Forces" Eight hour presentation to Wyoming Coroner's Basic Certification Course. Wyoming Law Enforcement Academy, Douglas, Wyoming, February 26, 1991, March 23, 1993 and June 17, 1996
- "Death Investigation" Eight hour course for law enforcement professionals on investigative techniques and pathologic findings.
Cedar City, Utah, April 5, 1991.
St. George, Utah, April 10, 1992.
Vernal, Utah, June 5, 1992.
- "Pathological Techniques for Discovering Non-Accidental Causes of Death in Children". Prosecution Council Training Seminar on Child Sexual Abuse and Child Fatalities, Snowbird, Utah, June 18, 1991.
- "Shaken Baby Syndrome-The Role of the Medical Examiner". Child Abuse Prevention Council of Ogden, Weber State University, Ogden, Utah, August 6, 1992.
- "Mechanism, Cause and Manner of Death: The Proper Completion of the Death Certificate" Pediatric Grand Rounds, University of Utah Medical Center, Salt Lake City, Utah, February 22, 1993.
- "S.I.D.S. and The Office of the Medical Examiner" Utah Department of Health Symposium on S.I.D.S. for Public Health Nurses, Salt Lake City, Utah, March 30, 1993.
- "Patterns of Injury: Investigative Challenges" Federal Bureau of Investigation-

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College of American Pathologists Course "Medicolegal Investigation of Death & Injury in Child Abuse and S.I.D.S." Salt Lake City, Utah. August 14, 1995.

- "Fire Related Deaths" Salt Lake City Fire Department, September 12, 1995. Also presented to Idaho Chapter, International Arson Investigators, November 7, 1996.
- "Forensic Medicine: The Vital Link in Organ/Tissue Donation" Intermountain Organ Recovery Systems Educational Symposium, Salt Lake City, Utah, May 6, 1997.
- "What Your Pathologist Can and Can't Do For You"
Utah Prosecution Council Prosecutor Training Course. Layton, UT. September 18, 2003
- "Prosecutors and the Office of the Medical Examiner" Utah Prosecution Council Homicide Conference. St. George, UT. November , 2008.
- "Police Shootings in Utah" Second Annual Forensic Sciences Seminar, Office of the Medical Examiner. Salt Lake City, UT. September 2010

Other Activities:

- Initial design development and participation in oversight of design and construction of a new 18,000 sq. ft. facility for the Office of the Medical Examiner, State of Utah, 1989-1991.
- Development, purchase and implementation of Macintosh® based computer system for the Office of the Medical Examiner, State of Utah, 1989-1991.
- Completion of Series I and II of Certified Public Manager's Course. University of Utah and Utah Department of Human Resource Management. November 1995.
- Development, purchase and implementation of MS Windows® based computer system for the Office of the Medical Examiner, State of Utah, 1996-1997.
- Development of web based Medical Examiner database and case management program, State of Utah, 2009 to 2010

CASE NO. CR 2013-1358

2014 JAN 22 PM 3: 37

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.	)	OBJECTION TO "MOTION
	)	FOR AUTHORIZATION TO
CHARLES ANTHONY CAPONE,	)	RETAIN SERVICES OF
Defendant.	)	FORENSIC PATHOLOGIST"
_____)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully objects to the defendant's "Motion for Authorization to Retain Services of Forensic Pathologist" filed herein on January 21, 2014. In support, the State respectfully represents to the Court that to the State's knowledge, at this point there is nothing in this case for a forensic pathologist to examine or offer opinions - e.g. there are no human remains, there has been no forensic pathology examination or opinion rendered on behalf of the State that the defense would need to assess or respond to and,

OBJECTION TO "MOTION FOR
AUTHORIZATION TO RETAIN SERVICES
OF FORENSIC PATHOLOGIST:" Page -1-

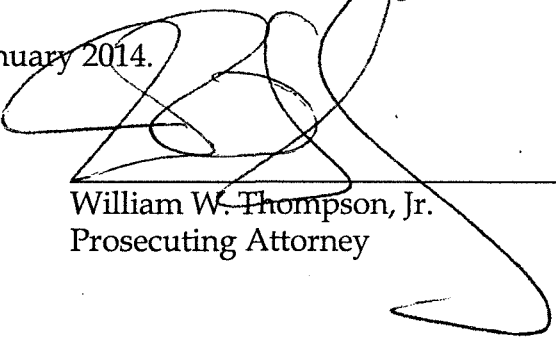
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in sum, there is no articulable reason for involving the services of a forensic pathology expert.

To the extent that the defense can identify a reason for forensic pathology examination and/or opinion, the State is prepared to seek out such services at a more reasonable expense than the \$400 per hour proposed by the defense - again, assuming that it can be demonstrated that such services are necessary.

WHEREFORE, the State respectfully prays that the Court deny the defendant's "Motion for Authorization to Retain Services of Forensic Pathologist."

DATED this 22 day of January 2014.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing OBJECTION TO "MOTION FOR AUTHORIZATION TO RETAIN SERVICES OF FORENSIC PATHOLOGITST" 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 - d.raybarker@turbonet.com

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

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

Dated this 22nd day of January, 2014.

Kate Mecham

CASE NO. CR2013-1358

2014 FEB -7 PM 1:17

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
William W. Thompson, Jr., ISB No. 2613
Prosecuting Attorney
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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

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2013-01358
V.)	
	)	STATE'S MOTIONS IN LIMINE
CHARLES ANTHONY CAPONE,)	
Defendant.)	
_____)	

COMES NOW the State of Idaho by and through Latah County Prosecuting Attorney and moves this Court in limine for the following orders:

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1) Order allowing the immediate family to be present during the entire trial proceeding.

The State is requesting an order pursuant to Idaho Constitution Art. I, § 22(4) and Idaho Code 19-5306(1)(b) and (3) allowing Amber Griswold and Ashley Colbert, daughters of the deceased Rachael Anderson, to be present during the entire trial regardless of when they are scheduled to testify. The Idaho Constitution Art. I, § 22(4) states "A crime victim, as defined by statute, has the following rights: (4) To be present at all criminal justice proceedings." I.C. 19-5306(1)(b) state's "(1) Each victim of a criminal or juvenile offense shall be: (b) Permitted to be present at all criminal justice proceedings...". The statute extends this right "equally to the immediate families of homicide victims." I.C. 19-5306(3).

Amber Griswold and Ashley Colbert are considered victims by statute and therefore should be allowed to be present during the entire trial regardless of when they testify.

2) Order allowing the State to admit certain telephone records without presenting live testimony from a records keeper from individual phone companies.

This request is made pursuant to IRE 902(11) and is made in the interests of promoting a more efficient presentation of the evidence to the jury.

At trial, the State intends to present as evidence phone records from approximately three different cell phone carriers relating to numerous phone numbers including numbers belonging to the victim, the defendant Charles Capone, the co-defendant David Stone, witness Nathan Donner, and others. All of the underlying records have been previously disclosed to the defense, and any supplemental records will be provided as well.

As demonstrated by the summary of telephone records testified to and forming the basis for exhibits at the preliminary hearing (See Exhibit 1, attached, which is a print out of preliminary hearing Exhibit 70), these phone records are relevant to establishing time frames for certain actions taken by the victim, defendant Charles Capone, David Stone, Nathan Donner and others, as well as the geographic locations of these and other individuals and/or their cell phones. Although the scope of this evidence will be broader at trial than the preliminary hearing, the relevance is the same.

In terms of legal authority for the State's proposed admission, I.R.E. 902(11) provides that:

Extrinsic evidence of authenticity, as a condition precedent to admissibility is not required with respect to . . . a record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof . . . certifies (i) was made, at or near the time of the occurrence of the matters set forth, by . . . a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authenticating under this subsection unless the proponent makes the intention to offer it known to the adverse

party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.

In terms of the criteria of I.R.E. 902(11), the telephone records that the State intends to present are records kept in the course of regularly conducted activity as a regular practice of the referenced phone companies, were made at or near the time of the actual phone activity and do not lack trustworthiness. Additionally, the records were largely provided to defendant in discovery prior to the July, 2013, preliminary hearing, and have been regularly supplemented since; therefore the defendant has had sufficient advance opportunity to review the records. As such, when presented with a qualifying certification, the records should be deemed admissible without any requirement that a witness appear to testify about the authenticity of the records. See also, D. Craig Lewis, Idaho Trial Handbook (IDTRHB), 2nd Ed., 2013-14 Supplement §21.3, p. 59.

The purpose of the State's motion is to save court time and to more efficiently present evidence to the jury during trial. Additionally, the records have all been provided by out-of-state representatives of the various phone companies, meaning if live witnesses are required, money would have to be expended to bring out-of-state witnesses to Idaho to certify the records.

Finally, the State needs to know in advance whether these records will be allowed into evidence based on appropriate authenticity certificates in order to make appropriate and necessary arrangements for witnesses to travel and testify at the trial.

For these reasons, the State requests that when qualifying certifications are provided, this Court allow admission of the referenced cell phone records pursuant to I.R.E. 902(11).

3) Order allowing the State to present and admit summaries and timelines as evidence.

The State respectfully moves this Court for an order permitting the State to present to the jury and admit as evidence various timelines and chronologies/summaries of the evidence to be presented through witness testimony and business records, particularly summaries of telephone company record data. This request is made pursuant to IRE 1006 and IRE 611(a) and is based on the complexity and volume of evidence that is to be presented in the State's case.

A significant portion of the evidence in this case stems from analysis of various telephone records, including cell phone records with geographic location data. Exhibit 1 attached hereto (and admitted on a disc at the preliminary hearing as State's Exhibit 70) demonstrates the general nature of the evidence and its relevance.

I.R.E. 1006, which substantially matches the F.R.E. 1006, allows the "contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court" to be "presented in the form of a chart, summary, or calculation." I.R.E. 611(a), which substantially matches F.R.E. 611(a), grants the trial court reasonable

control over the presentation of evidence so that the court can insure that the parties will make an effective and efficient presentation of evidence and so that the court can avoid "needless consumption of time." These rules are of particular importance in complex cases such as the present case that involve large numbers of witnesses and a significant amount of physical and testimonial evidence.

In a number of cases from the federal courts, trial judges have permitted the government to produce, present, and admit into evidence, timelines and chronologies summarizing evidence presented for the purpose of assisting the trier of fact in understanding the evidence. One case of particular note is *United States v. Williams*, 952 F.2d 1504 (6th Cir. 1991). As explained in that decision:

The district court admitted into evidence three charts summarizing the events that occurred on August 22, August 31, and September 8, 1988. The charts consisted of a compilation of information obtained from telephone records, limousine records, surveillances, and tape recordings of the conversations between defendant and [another person]. In essence, the charts were a chronology of the significant events that occurred on each of those days.

Id. at 1519 (emphasis added). The trial court found that the chronologies presented "were 'classic visual aids' and admitted them to aid the jury in its analysis of the proof in the case." *Id.* The defendant/appellant objected to the introduction of the government-created charts into evidence, but the district court's decision was ultimately upheld by the Sixth Circuit on the grounds that "[t]he admission of summary charts is a matter within the discretion of the district court" and there exists "an established tradition" of the

admission of summary charts as evidence under F.R.E. 1006. *Id.* See also *United States v. Winn*, 948 F.2d 145 (5th Cir. 1991); *U.S. v. Moses*, 337 Fed. Appx. 443 (6th Cir. 2009); D. Craig Lewis, *Idaho Trial Handbook*, 2d Ed., §21:6 pp. 402-403.

Defendant Charles Capone will not be prejudiced by the admission of the proposed exhibits. All of the information that will be contained on the timelines/chronologies will be information that has previously been testified to by competent witnesses. The sole effect of the admission of the exhibits will be to assist the jury in understanding the complex and significant evidence that will be provided during the State's case-in-chief. Additionally, any potential prejudice that may arise from the admission of timeline or other summary charts can be dispelled by means of a jury instruction to the effect that any timelines, while admitted as exhibits, are not evidence and that if they do not correctly reflect the evidence as the individual jurors remember it then the jury should disregard them. See *Winn*, 948 F.2d at 152, 159. Based on these factors, the Defendant will not be prejudiced by admission of the proposed items.

Alternatively, in the event the Court chooses to not allow said timelines and chronologies to be admitted into evidence, the State requests permission to use them as demonstrative exhibits during the presentation of witness testimony, opening statement and closing argument.

4) Order prohibiting defense from mentioning or introducing evidence of Robert Bogden's criminal history.

The State is requesting an order prohibiting defense from mentioning or introducing evidence of Robert Bogden's criminal history pursuant to IRE 609 and IRE 401.

Idaho Rule of Evidence 609(a) and (b) provide as follows:

(a) General rule. For the purpose of attacking the credibility of a witness, evidence of the fact that the witness has been convicted of a felony and the nature of the felony shall be admitted if elicited from the witness or established by public record, but only if the court determines in a hearing outside the presence of the jury that the fact of the prior conviction or the nature of the prior conviction, or both, are relevant to the credibility of the witness and that the probative value of admitting this evidence outweighs its prejudicial effect to the party offering the witness. If the evidence of the fact of a prior felony conviction, but not the nature of the conviction, is admitted for the purpose of impeachment of a party to the action or proceeding, the party shall have the option to present evidence of the nature of the conviction, but evidence of the circumstances of the conviction shall not be admissible.

(b) Time limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

At the preliminary hearing, in response to defense cross-examination, Mr. Bogden testified that he had no felony convictions but did have a misdemeanor conviction in Utah in 1989. See PH Tr., Day 2 of 3, Pg. 685 line 15 - Pg. 686 line 4. Any mention of any such record Mr. Bogden may have had would be inadmissible evidence pursuant to IRE 609 and would be irrelevant pursuant to IRE 401.

5) Order prohibiting defense from mentioning or introducing evidence of Joshua Voss' criminal history that falls outside the scope of IRE 609 and the other times he's been incarcerated due to misdemeanor offenses or probation violations.

The State is requesting an order prohibiting defense from mentioning or introducing evidence of Joshua Voss' criminal history that falls outside the scope of IRE 609.

In response to defense cross-examination, Mr. Voss testified at the preliminary hearing that he has a Burglary conviction from 2010. Mr. Voss also testified that he's been incarcerated for a petit theft and for probation violations. See PH Tr., Day 3 of 3, Pg. 886, line 11 - Pg. 888, line 19. The fact Mr. Voss has a prior burglary conviction from 2010 is not relevant to his credibility and not admissible. Furthermore, misdemeanor petit theft and probation violations would not be appropriate evidence pursuant to IRE 609 and would be irrelevant pursuant to IRE 401.

6) Order prohibiting defense from mentioning or introducing evidence of Brent Glass' criminal history that falls outside of IRE 609.

The State is requesting the Court issue an order prohibiting the defense from mentioning or introducing evidence of Brent Glass' criminal history that falls outside of the parameters of IRE 609. Brent Glass has 5 prior felony convictions out of Washington: 1) Burglary in the First Degree in 2006; 2) Burglary 1 in 2002; 3) Possession of Stolen Property 1 in 1995; 4) Possession of a Controlled Substance-Meth in 1995; and 5) Possession of a Controlled Substance with Intent to Deliver in 1991.

The State submits that none of these convictions are relevant to credibility, and all but the 2006 First Degree Burglary conviction are more than ten (10) years old. Consequently, evidence of these convictions is not admissible.

7) Order prohibiting defense from mentioning or introducing evidence of the possible use of alcohol and/or controlled substances by the victim or any witnesses without proper foundation being shown outside the presence of the jury.

The State is requesting an order prohibiting defense from mentioning or introducing evidence of either Rachael Anderson's or any other witness's possible use of drugs and/or alcohol without making a proper foundation and showing of relevance of such evidence outside the presence of the jury. During the preliminary hearing in this matter, defense counsel inquired of Amber Griswold (Rachael Anderson's

daughter) and Bill Wilcox (Rachael Anderson's ex-husband) about their own historic use and that of Rachael Anderson. *See* PH Tr., Day 1 of 3, pp. 58-60 and 107-108. The State submits that such evidence is not relevant, and consequently is not admissible. Further, the State requests that any questioning of witnesses by defense counsel in an attempt to establish relevancy be first done outside the presence of the jury. Such motion is made pursuant to IRE 401, 402, 404 and 608.

8) Order prohibiting defense from mentioning, arguing or introducing evidence of any motivations of the Asotin Co. Prosecuting Attorney and Law Enforcement regarding Charles Capone.

At the preliminary hearing, defendant inquired of Capt. Dan Hally of the Asotin County Sheriff's Office as to the timing of filing charges against Mr. Capone in Asotin County, what information was provided in discovery in that case, the motivations for Asotin County filing charges against Mr. Capone, etc. *See* PH Tr., Day 1 of 3, pp. 227 - 234.

The State submits that any motivation harbored by Ben Nichols, Asotin County, Washington Prosecuting Attorney and/or other law enforcement agents, as to issues such as filing charges against Charles Capone, the timing of filing such charges, or the disposition of such charges by his office, is not relevant to the case at bar. Further, even if such evidence were deemed relevant, the probative value of such evidence would be

substantially outweighed by the danger of unfair prejudice, would be confusing to the jury, and an undue waste of time. Accordingly, such evidence is inadmissible per IRE 401, 402 and 403.

9) Order prohibiting defense from mentioning, arguing or introducing evidence of any federal Grand Jury investigation.

The State submits that evidence of any on-going federal Grand Jury investigation regarding Charles Capone and his actions toward Rachael Anderson, evidence that no indictment has yet issued, or evidence of any statements as to the timing of such indictment are not relevant to the case at bar. Further, even if such evidence were deemed relevant, the probative value of such evidence would be substantially outweighed by the danger of unfair prejudice, would be confusing to the jury, and an undue waste of time. Accordingly, such evidence is inadmissible per IRE 401, 402 and 403.

10) Order prohibiting defense from mentioning, arguing or introducing evidence of any polygraph examination that Charles Capone may have undergone.

The State has been advised that Mr. Capone may have recently undergone polygraph examination, presumably in relation to the events of this case.

The State submits that as a general rule, results of a polygraph examination are

inadmissible without a stipulation of both parties. The physiological and psychological bases for the polygraph examination have not been sufficiently established to assure the validity or reliability of test results. State v. Fain, 116 Idaho 82, 86-87, 774 P.2d 252, 256-57 (1989). Further, polygraph evidence is of questionable reliability and would usurp the jury's function to assess the credibility of witnesses: "In general, expert testimony which does nothing but vouch for the credibility of another witness encroaches upon the jury's vital and exclusive function to make credibility determinations, and therefore does not 'assist the trier of fact' as required by Rule 702." State v. Perry, 139 Idaho 520, 525, 81 P.3d 1230, 1235 (2003). *See also*, IDTRHB §23:7.

Accordingly, the State requests an order prohibiting defense from mentioning, arguing, or introducing evidence of any polygraph examination that Charles Capone may have undergone.

11) Order prohibiting the Defendant from attempting to elicit testimony from A.T.F. Agent Lance Hart and F.B.I. Agent Ryan Edwards which is outside their scope of authority as determined under federal regulations governing testimony by Department of Justice personnel. This motion is made pursuant to 5 U.S.C.A. § 301 and 28 C.F.R §§ 16.21-16.26.

In order to examine a federal employee with regards to testimony or material from a federal investigation, federal regulations require that counsel seeking such testimony

request approval through the United States Department of Justice (DOJ). 28 C.F.R. § 16.22.

Where approval has not been sought and granted, federal regulation requires that:

[N]o employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official . . .

Id. Where the DOJ denies the request for such testimony, the appropriate means "for challenging the . . . decision is through the Administrative Procedure Act in federal court." *In Re Elko Cnty. Grand jury*, 109 F.3d 554, 557 (9th Cir. 1997).

The basis for this DOJ regulation is found in 5 U.S.C. § 301, generally referred to as the "housekeeping statute," which provides that:

The head of an Executive Department ... may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

5 U.S.C. § 301. Pursuant to this statute, the DOJ has promulgated its own internal regulations governing the disclosure of information by its employees in legal proceedings in 28 C.F.R. §§ 16.21 - 16.26. Specifically, 28 C.F.R. § 16.22 establishes the "[g]eneral prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party." 28 C.F.R. § 16.22.

In examining the validity of the DOJ's regulatory promulgation, the United States

Supreme Court found the Department of Justice regulations governing the disclosure of information in a legal proceeding to be a valid exercise of its authority in light of 5 U.S.C. § 301. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In its decision, the Supreme Court affirmed the validity of such internal regulations in upholding "a predecessor to 28 C.F.R. § 16.22(a)." *Smith v. Cromer*, 159 F.3d 875, 878 (4th Cir.1998). Specifically, the Court held that a subordinate federal employee could not be held in contempt for refusing to comply with a court order "in reliance on a validly promulgated regulation to the contrary." *Swett v. Schenk*, 792 F.2d 1447, 1451 (9th Cir. 1986) (citing *Touhy*, 340 U.S. at 469). The Ninth Circuit has also held that the DOJ's regulation that subordinate employees cannot disclose information in a court proceeding without approval of the proper DOJ official is valid because it "clearly falls within the terms of the first sentence of" the housekeeping statute - 5 U.S.C. § 301. *In re Boeh*, 25 F.3d 761, 763-64 (9th Cir.1994). Furthermore, the Ninth Circuit Court added that "any doubt as to the validity of the regulation's requirement of prior approval is foreclosed ... by the Supreme Court's decision in" *Touhy. Id.*

In the instant case, Agents Hart and Edwards are both anticipated State's witnesses. Attached as Exhibits 2 and 3 are copies of their respective testimony authorization letters.

Only Special Agent Edwards testified at the preliminary hearing. On cross examination, counsel for the defense attempted to inquire into areas beyond the scope

of the authorized testimony (see PH transcript Day 3, p. 1040-1046). When the State objected based on the federal privilege, the defense sought to have the Court issue process (a subpoena) in an attempt to circumvent the privilege. As the transcript indicates, following a fairly protracted discussion, the preliminary hearing Magistrate sustained the State's objections and upheld the federal privilege and limitations on the scope of authorized testimony.

Given the above, in order to avoid a repeat in front of a jury at trial, the State respectfully requests orders in limine prohibiting the defense from in anyway attempting to exceed the scope of authorized testimony or authority for Special Agents Edwards and Hart (as outlined in the attached letters of authority.)

Oral argument is hereby requested.

DATED this 7th day of February, 2014.

WILLIAM W. THOMPSON, JR.
Latah County Prosecuting Attorney

by Michelle M. Evans
Michelle M. Evans
Senior Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing STATE'S MOTIONS IN LIMINE was 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 type="checkbox"/> Hand Delivery
	<input checked="" type="checkbox"/> E-mail - <u>d.raybarker@turbonet.com</u>

The Honorable Michael J. Griffin	<input type="checkbox"/> U.S. Mail
District Judge	<input type="checkbox"/> Overnight Mail
320 W. Main Street	<input checked="" type="checkbox"/> Fax - 208-983-2376
Grangeville, ID 83530	<input type="checkbox"/> Hand Delivery

Dated this 7th day of February, 2014.

Kate Mecham

Text Messages from Charles Capone's iPhone to Rachael Anderson's Phone

GMT to PST

GMT	PST (GMT-8)	PST (GMT-7)
00:00 (Sunlight)	16:00 (Night)	17:00 (Night)
01:00 (Night)	17:00 (Night)	18:00 (Night)
02:00 (Night)	18:00 (Night)	19:00 (Night)
03:00 (Night)	19:00 (Night)	20:00 (Night)
04:00 (Night)	20:00 (Night)	21:00 (Night)
05:00 (Night)	21:00 (Night)	22:00 (Night)
06:00 (Night)	22:00 (Night)	23:00 (Night)
07:00 (Night)	23:00 (Night)	00:00 (Sunlight)
08:00 (Night)	00:00 (Sunlight)	01:00 (Night)
09:00 (Night)	01:00 (Night)	02:00 (Night)
10:00 (Night)	02:00 (Night)	03:00 (Night)
11:00 (Night)	03:00 (Night)	04:00 (Night)
12:00 (Night)	04:00 (Night)	05:00 (Night)
13:00 (Night)	05:00 (Night)	06:00 (Night)
14:00 (Night)	06:00 (Night)	07:00 (Night)
15:00 (Night)	07:00 (Night)	08:00 (Night)
16:00 (Night)	08:00 (Night)	09:00 (Night)
17:00 (Night)	09:00 (Night)	10:00 (Night)
18:00 (Night)	10:00 (Night)	11:00 (Night)
19:00 (Night)	11:00 (Night)	12:00 (Night)
20:00 (Night)	12:00 (Night)	13:00 (Night)
21:00 (Night)	13:00 (Night)	14:00 (Night)
22:00 (Night)	14:00 (Night)	15:00 (Night)
23:00 (Night)	15:00 (Night)	16:00 (Night)

86 1587923214 Rachael 03/15/10 02:31:52 (GMT) Read Inbox Phone Incoming My tires have puncture holes in them the same night that you had stoney stalk me and you watched for me the next day. I'm not a fucking moron!

3/15/10 at 7:31 p.m.

72 1529782314 Rachael 03/15/10 02:48:37 (GMT) Set Set Phone Outgoing I listened to your messages I know for a fact all stoney did was wait to see if someone in a white ford dropped you off. Per your loving neighbors

3/15/10 at 7:48 p.m.

I listened to your messages I know for a fact all stoney did was wait to see if someone in a white ford dropped you off. Per your loving neighbors

104 1529782314 Rachael 04/15/10 05:53:15 (GMT) Set Set Phone Outgoing You either need to take my truck or your car unfinished but I need to get the Yukon back so I can rebuild the front end and get it back to bert and carol

04/15/10 at 5:53 p.m.

You either need to take my truck or your car unfinished but I need to get the Yukon back so I can rebuild the front end and get it back to bert and carol.

146 1529782314 Rachael 04/15/10 10:18:00 (GMT) Set Set Phone Outgoing

4/15/10 at 10:18 p.m.

You either need to take my truck or your car unfinished but I need to get the Yukon back so I can rebuild the front end and get it back to bert and carol.

You have been saying mean things to me for a way long time and you wonder why things are the way they are. Are you going to call me? Are you on the computer? Hey!

Text Messages from Charles Capone to Rachael Anderson AFTER she is last seen/heard from

1271	+15097803014	Rachael	04/17/10 04:59:11 (GMT)	Sent	Sent	Phone	Outgoing	I'm sorry Rachael I did the best I could to get it done
1271	+15097803014	Rachael	04/17/10 05:08:23 (GMT)	Sent	Sent	Phone	Outgoing	Hello?
1271	+15097803014	Rachael	04/17/10 05:16:10 (GMT)	Sent	Sent	Phone	Outgoing	I finished it. You can have it tomorrow. Call me please !!!
1271	+15097803014	Rachael	04/17/10 08:01:27 (GMT)	Sent	Sent	Phone	Outgoing	Hey! I know that you are impatient but I did it as fast I could. Can you get up here today? Or I will meet you halfway?

4/16/10 at 9:59 p.m. I'm sorry Rachael I did the best I could to get it done

4/16/10 at 10:08 p.m. Hello ?

4/16/10 at 10:15 p.m. I finished it! You can have it tomorrow. Call me please !!!

4/17/10 at 8:01 a.m. Hey! I know that you are impatient but I did it as fast I could. Can you get up here today? Or I will meet you halfway?

1282	+15097803014	Rachael	04/17/10 16:00:29 (GMT)	Sent	Sent	Phone	Outgoing	I'm at the shop all day. call me and we can swap rigs
1281	+15097803014	Rachael	04/17/10 16:37:37 (GMT)	Sent	Sent	Phone	Outgoing	It's after lunch you gonna call? Are you still mad about not getting the car or computer? Please call me back.
1281	+15097803014	Rachael	04/18/10 08:43:06 (GMT)	Sent	Sent	Phone	Outgoing	hello. Hello hello
1281	+15097803014	Rachael	04/18/10 09:42:42 (GMT)	Sent	Sent	Phone	Outgoing	This isn't fun anymore. Please stop ignoring me.

4/17/10 at 9:00 a.m. I'm at the shop all day. call me and we can swap rigs

4/17/10 at 1:37 p.m. It's after lunch, you gonna call? Are you still mad about not getting the car or computer? Please call me back.

4/17/10 at 5:43 p.m. hello. Hello hello.

4/17/10 at 5:43 p.m. This isn't fun anymore. Please stop ignoring me.

1291	+15097803014	Rachael	04/18/10 01:32:25 (GMT)	Sent	Sent	Phone	Outgoing	Hey your mailbox on home and cell is full? What's the deal? Why are you being so standoffish today?
1291	+15097803014	Rachael	04/18/10 05:54:00 (GMT)	Sent	Sent	Phone	Outgoing	Are you going to church? Are you going to call?
1291	+15097803014	Rachael	04/18/10 08:54:55 (GMT)	Sent	Sent	Phone	Outgoing	Rachael what's wrong? We need to trade vehicles back. Stop ignoring me please.

4/17/10 at 6:30 p.m. Hey your mailbox on home and cell is full? What's the deal? Why are you being so standoffish today?

4/18/10 at 8:54 a.m. Are you going to church? Are you going to call?

4/18/10 at 1:01 p.m. Rachael what's wrong? We need to trade vehicles back. Stop ignoring me please.

1300	+15097803014	Rachael	04/18/10 02:22:27 (GMT)	Sent	Sent	Phone	Outgoing	Ok. Enough is enough you need to call me. I'm not doing the silent treatment.
1314	+15097803014	Rachael	04/19/10 03:31:16 (GMT)	Sent	Sent	Phone	Outgoing	hello. All weekend you gave ignored me. Stop. After work today I really need to get the Yukon back. Berts leaving for japan and I think he has people coming in from out of town and they will need the extra rig.
1316	+15097803014	Rachael	04/19/10 08:32:36 (GMT)	Sent	Sent	Phone	Outgoing	Ok this isn't funny anymore. Everybody is freaking out you need to call someone now

4/18/10 at 7:22 p.m. Ok. Enough is enough you need to call me. I'm not liking the silent treatment.


4/19/10 at 6:31 a.m. Hello. All weekend you gave ignored me. Stop. After work today I really need to get the Yukon back. Berts leaving for japan and I think he has people coming in from out of town and they will need the extra rig.

4/19/10 at 1:52 p.m. Ok this isn't funny anymore. Everybody is freaking out you need to call someone now


Phone Numbers

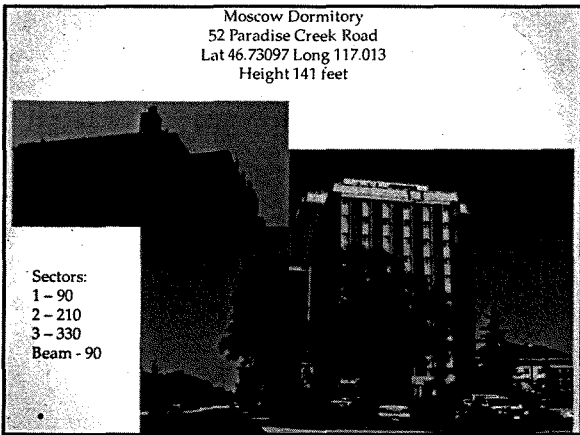
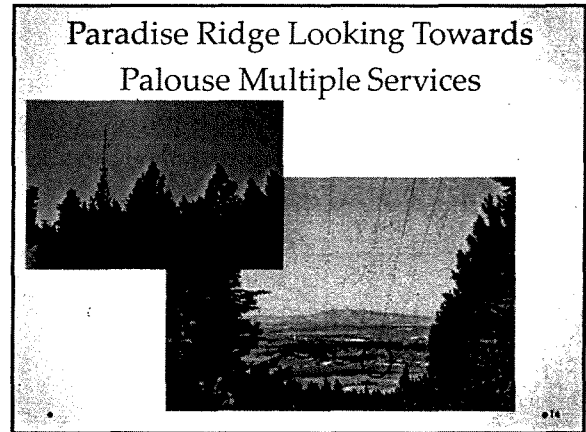
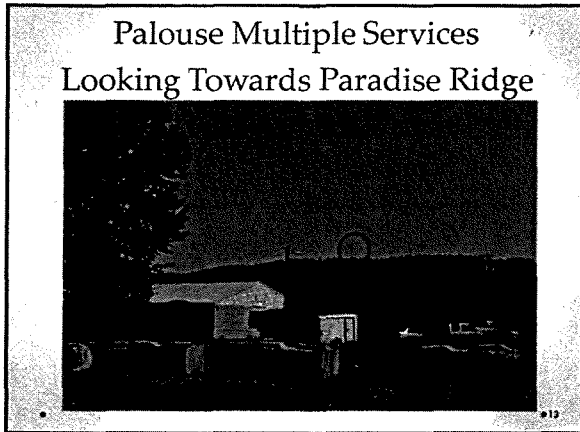
Rachael Anderson - cell	509-780-3014
Charles Capone -cell	208-301-4976
David Stone - cell	208-301-3352
Alisa Stone	208-596-8242
Palouse Multiple Services	208-883-3019
	208-883-3139
Dennis Plunkett	208-413-2710

Paradise Ridge
1011 Paradise Ridge Road
Lat -46.68108 Long -116.97228
Height 282 feet

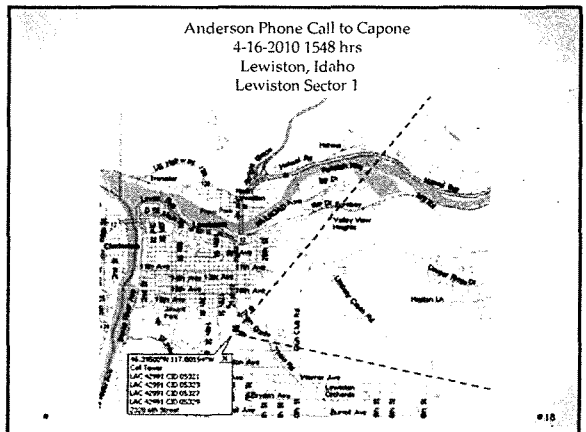
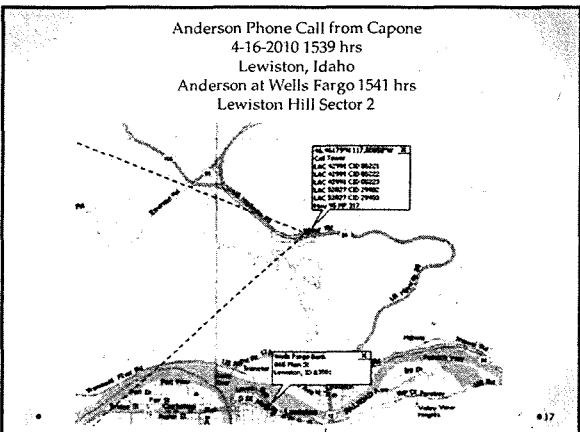


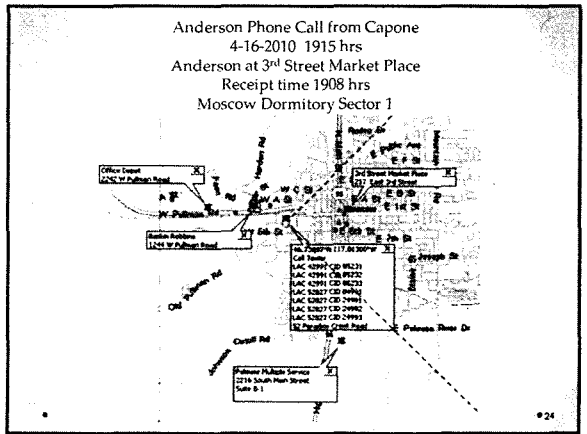
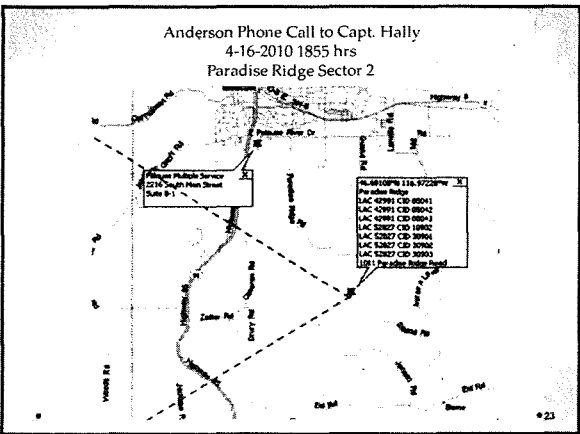
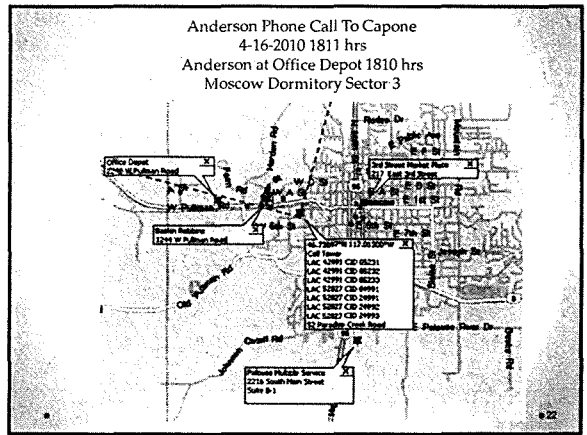
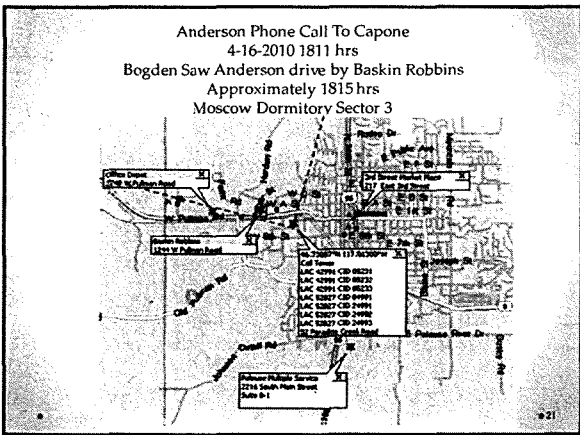
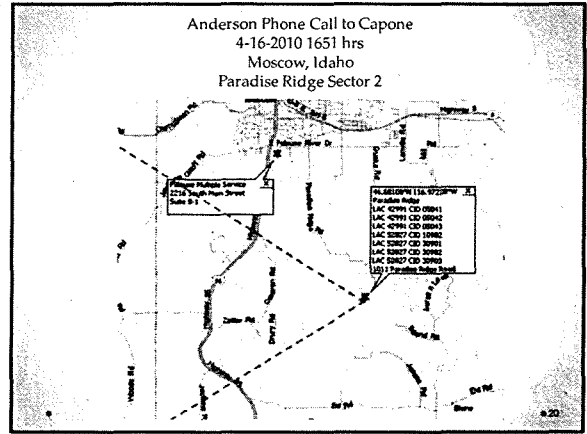
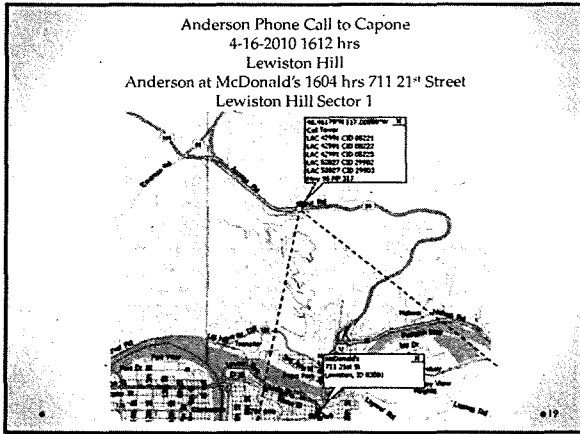
Sectors:
1 - 200
2 - 270
3 - 340
Beam - 65

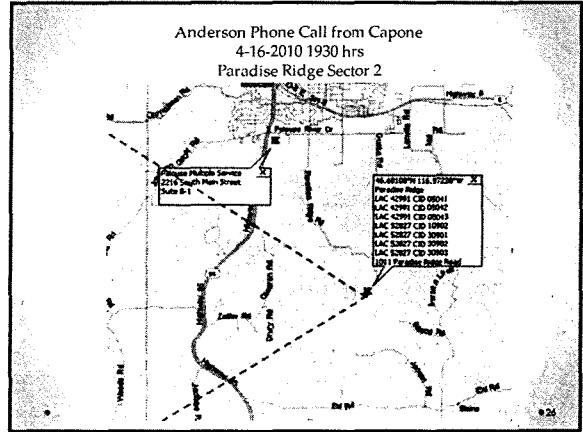
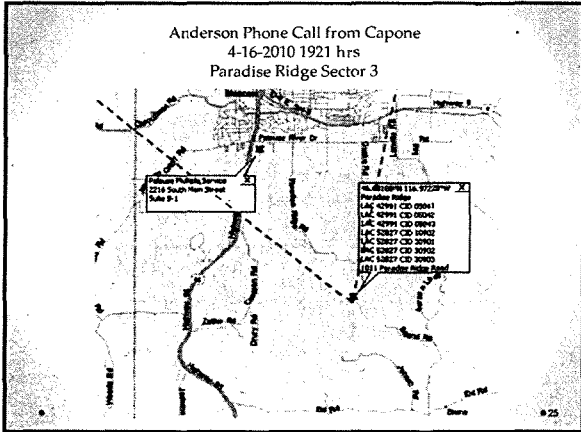




Rachael Anderson
Phone Data
From AT&T Records
Obtained From
Search Warrant
by Brian Birdsell
Received July 2010

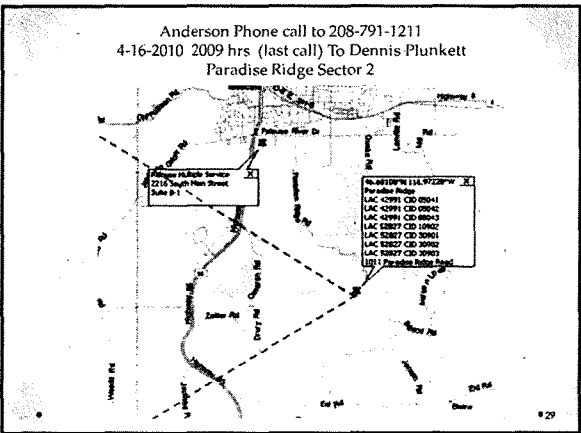
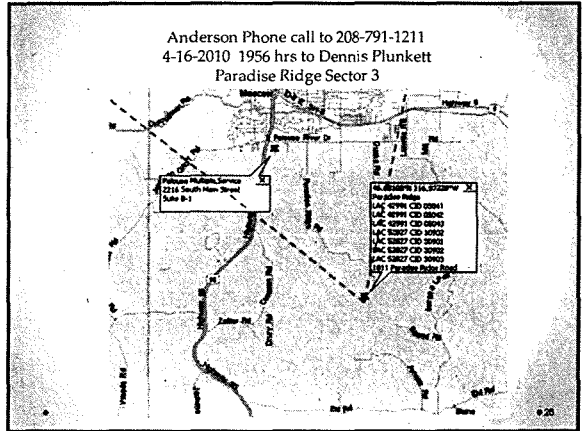






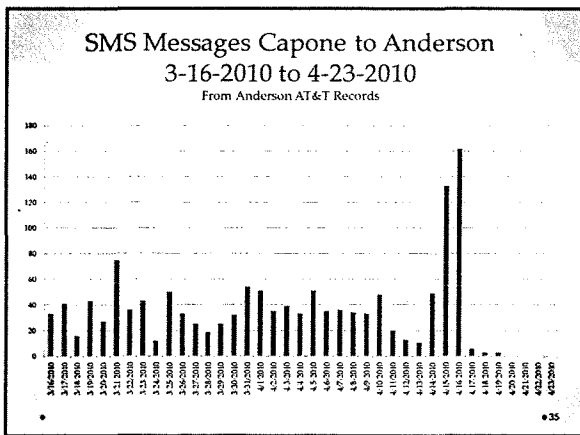
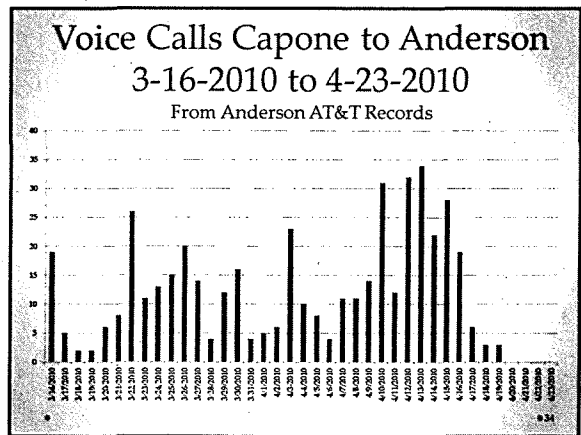
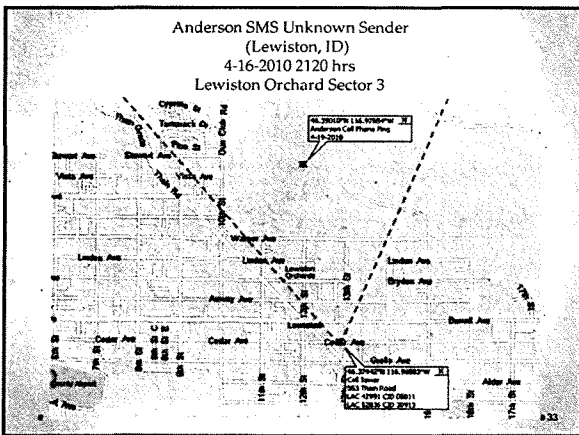
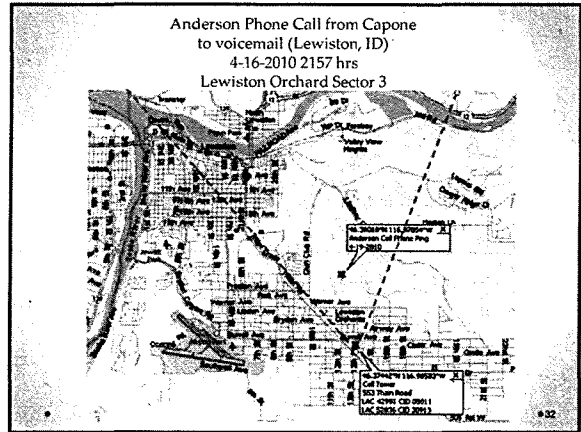
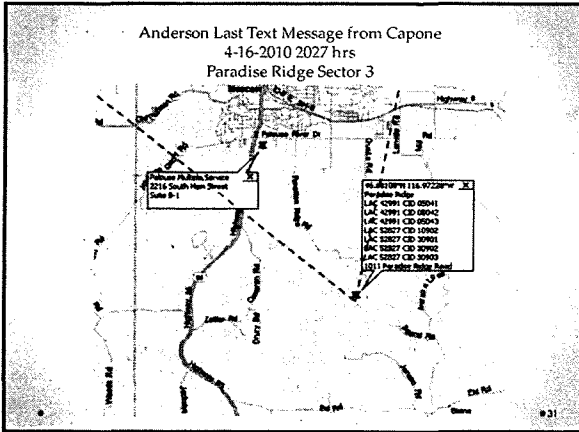
Anderson Phone
No Service – Voice
2009 hrs to 2157 hrs

8/16/2010 1921	46-8828076	116-9722874	46-43991	CD 09041	46-43991	CD 09042	46-43991	CD 09043	46-43991	CD 09044	46-43991	CD 09045	46-43991	CD 09046	46-43991	CD 09047	46-43991	CD 09048	46-43991	CD 09049	46-43991	CD 09050	46-43991	CD 09051	46-43991	CD 09052	46-43991	CD 09053	46-43991	CD 09054	46-43991	CD 09055	46-43991	CD 09056	46-43991	CD 09057	46-43991	CD 09058	46-43991	CD 09059	46-43991	CD 09060	46-43991	CD 09061	46-43991	CD 09062	46-43991	CD 09063	46-43991	CD 09064	46-43991	CD 09065	46-43991	CD 09066	46-43991	CD 09067	46-43991	CD 09068	46-43991	CD 09069	46-43991	CD 09070	46-43991	CD 09071	46-43991	CD 09072	46-43991	CD 09073	46-43991	CD 09074	46-43991	CD 09075	46-43991	CD 09076	46-43991	CD 09077	46-43991	CD 09078	46-43991	CD 09079	46-43991	CD 09080	46-43991	CD 09081	46-43991	CD 09082	46-43991	CD 09083	46-43991	CD 09084	46-43991	CD 09085	46-43991	CD 09086	46-43991	CD 09087	46-43991	CD 09088	46-43991	CD 09089	46-43991	CD 09090	46-43991	CD 09091	46-43991	CD 09092	46-43991	CD 09093	46-43991	CD 09094	46-43991	CD 09095	46-43991	CD 09096	46-43991	CD 09097	46-43991	CD 09098	46-43991	CD 09099	46-43991	CD 09100
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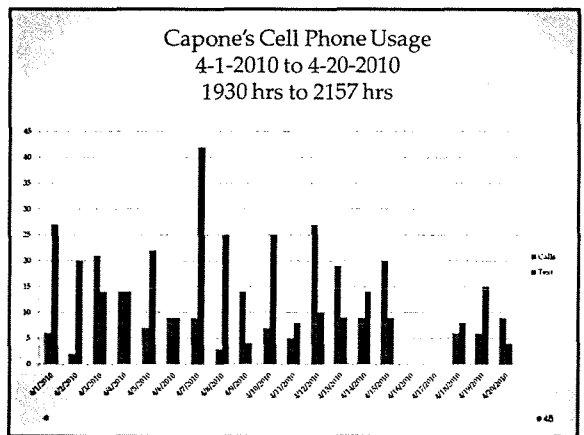
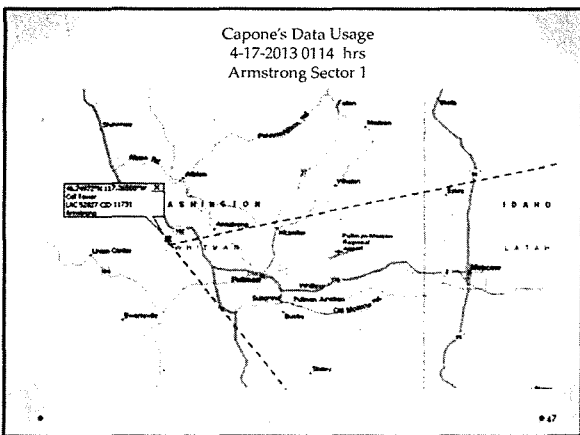
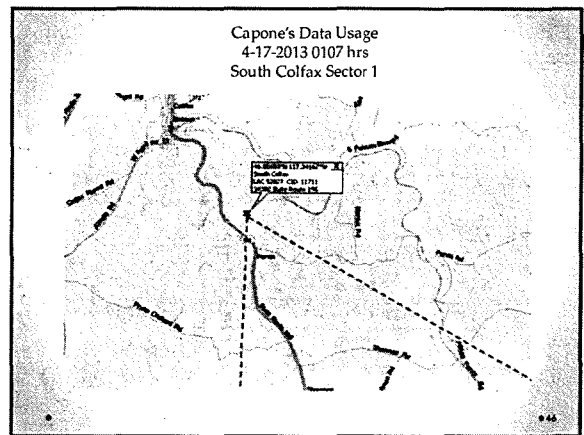
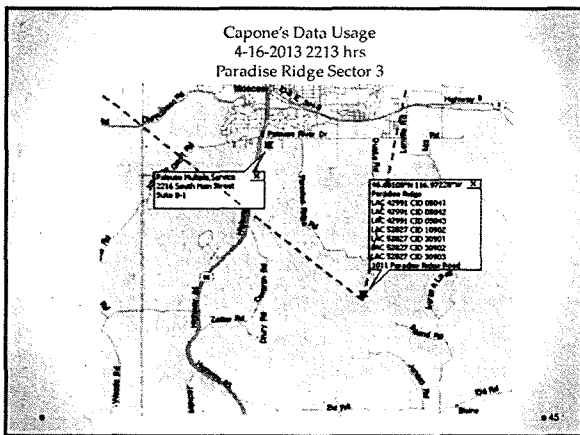
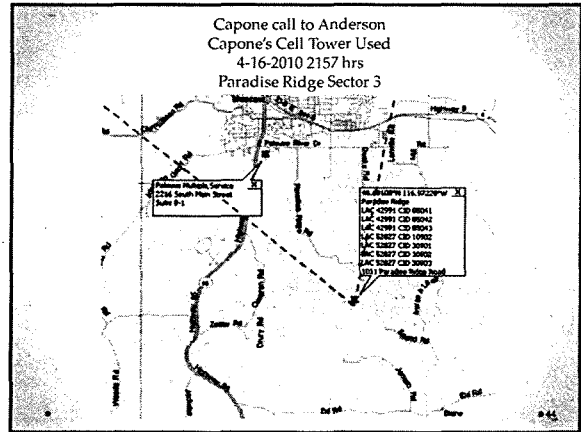
Anderson Phone
No Service – SMS
2027 hrs to 2120 hrs

2152 04/16/10 08:27:34	1208305676	1507762034	0	3.1041E-14	0	{528272093}-116-9722874-46-8828076
2163 04/16/10 08:29:34		1507762034	0	3.1041E-14	0	
2164 04/16/10 08:30:34		1507762034	0	3.1041E-14	0	
2165 04/16/10 08:31:34		1507762034	0	3.1041E-14	0	
2166 04/16/10 08:32:34		1507762034	0	3.1041E-14	0	
2167 04/16/10 08:33:34		1507762034	0	3.1041E-14	0	
2168 04/16/10 08:34:34		1507762034	0	3.1041E-14	0	
2169 04/16/10 08:35:34	5	1507762034	0	3.1041E-14	0	{528272093}-116-9722874-46-8828076



Charles Capone
Phone Data
From AT&T Records
Obtained From
Search Warrant
by Brian Birdsell
Received July 2010

Capone's Cell Phone
 No Voice Activity
 on 4-16-2010
 Between
 1930 hrs and 2157 hrs
 (Equals 2 hrs and 27 min)



Palouse Multiple Service
Phone Data
from Search Warrant
Verizon Landline
and previous AT&T data
by Brian Birdsell
Received July 1, 2010

Calls Voice
From Stone to Shop

From Verizon Land Line records		
4-16-2010 1658 hrs	21 seconds	208-883-3019
4-16-2010 1701 hrs	63 seconds	208-883-3019
4-16-2010 1739 hrs	03 seconds	208-883-3019

From Stone AT&T records		
4-16-2010 1658 hrs	22 seconds	208-883-3019
4-16-2010 1701 hrs	1 min 04 sec	208-883-3019
4-16-2010 1739 hrs	4 seconds	208-883-3019

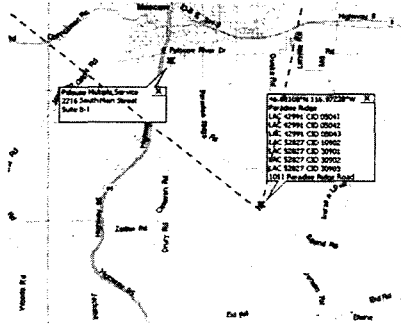
Calls Voice
From Shop to Stone

From Verizon Landline Records		
4-16-2010 1708 hrs	120 seconds	208-883-3139

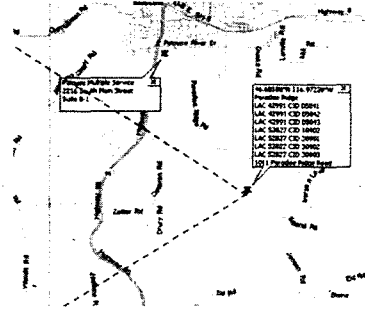
From Stone AT&T Records		
4-16-2010 1708 hrs	1 min 14 sec	208-883-3139

David Stone
Phone Data
From AT&T Records
Obtained From
Search Warrant
by Moscow Police
Received May 2010

During The Calls to and from Palouse Multiple Services
between 1658 hrs and 1739 hrs Stone's Cell Phone used
Paradise Ridge Sector 3
Stone's AT&T Records



Phone Calls between
Capone and Stone
Stone's AT&T Records
1629 hrs, 1631 hrs, 1739 hrs, and 1744 hrs
Paradise Ridge Sector 2



915 Second Ave, Rm 790
Seattle, Washington 98174

September 16, 2013

208020:PWM
SEA-13-212309

VIA ELECTRONIC MAIL

William W Thompson, Jr
Latah County Prosecuting Attorney
Latah County Courthouse
522 S Adams
Moscow, Idaho 83843

In re: Authorization of ATF Senior Special Agent Lance Hart to testify in *State of Idaho v Charles A. Capone*, No. 2013-01358 (2d Jud. Dist. Aug. 5, 2013) and *State of Idaho v David C Stone*, No. 2013-01359 (2d Jud. Dist. Aug. 5, 2013)

Dear Mr. Thompson:

This is in reference to your request for ATF Senior Special Agent (SSA) Lance Hart to testify in the above-captioned criminal proceedings. You have also requested that ATF clarify the scope of SSA Hart's authorization. Pursuant to 28 C.F.R. § 16.21, et seq., ATF authorizes SSA Hart to testify regarding the following matters:

1. SSA Hart's participation in investigative interviews of the defendants in the above-captioned cases;
2. The May 6, 2010 arrest of Charles A. Capone on the federal charge of being a felon in possession of a firearm;
3. Statements Capone made to investigators on May 6, 2010, concerning his knowledge of the location of Rachael Anderson's body, and his offer to disclose that information in exchange for being released from custody; and
4. A May 6, 2010 discussion between Capone's attorney, Mark Monson, SSA Hart, and Assistant United States Attorney Mike Mitchell, concerning Capone's in-custody statements and how to protect against the inadvertent monitoring of privileged communications between Capone and Monson.

EXHIBIT ²
000504

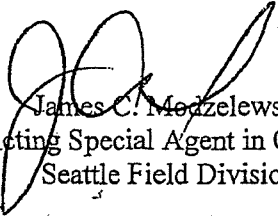
William W. Thompson, Jr
Latah County Prosecuting Attorney

SSA Hart's authorization to testify is subject to the following restrictions:

1. SSA Hart cannot provide testimony that discloses the name of a confidential source or informant;
2. SSA Hart cannot provide testimony covered by 26 U.S.C. § 6103 (NFA/tax information), 26 U.S.C. § 7213 (NFA/tax information), 12 U.S.C. § 3412 (financial records), 18 U.S.C. § 1905 (trade secrets or confidential information obtained in the course of employment), or restricted information set forth in 28 C.F.R. § 16.26(b) (e.g., privileged or classified information; confidential sources; investigative techniques; trade secrets); and
3. SSA Hart cannot provide testimony or information regarding any grand jury material or information prohibited from disclosure by Federal Rule of Criminal Procedure 6(e).

Further, this authorization is limited to the testimony requested. No further testimony by SSA Hart or any other ATF personnel is authorized by ATF at this time. If you have questions about the scope of SSA Hart's authorization, please contact ATF attorney Peter Mickelson at (509) 323-7244

Sincerely,



James C. Modzelewski
Acting Special Agent in Charge
Seattle Field Division

000505



FBI FACSIMILE COVER SHEET

PRECEDENCE

- Immediate
- Priority
- Routine

CLASSIFICATION

- Top Secret
- Secret
- Confidential
- Sensitive
- Unclassified

Time Transmitted: _____

Sender's Initials: AXP

Number of Pages: 3

(including cover sheet)

To: Latah County Prosecuting Attorney Office Date: 1-29-14
Name of Office

Facsimile Number: (208) 883-2290

Attn: Mr. William W. Thompson Jr.
Name Room Telephone

From: FBI
Name of Office

Subject: Letter of Authorization to Testify

Special Handling Instructions: _____

Originator's Name: PLS Bannister Telephone: 801-579-6819

Originator's Facsimile Number: 801-579-6899

Approved: AXP

Brief Description of Communication Faxed: _____

WARNING

Information attached to the cover sheet is U.S. Government Property. If you are not the intended recipient of this information, disclosure, reproduction, distribution, or use of this information is prohibited (18.U.S.C. § 641). Please notify the originator or the local FBI Office immediately to arrange for proper disposition.

EXHIBIT 000506³



U.S. Department of Justice
Federal Bureau of Investigation

Office of the Chief Division Counsel

In Reply, Please Refer to

File No.

PO Box 3235

Salt Lake City, Utah 84110

197A-SU-A-59542-A

September 25, 2013

Special Agent Ryan R. Edwards
FBI - Seattle Division
11103rd Ave.
Seattle, WA 98101

RE: Letter of Authorization to Testify
Case No. CR- 2013-01358
State of Idaho v. Charles Anthony Capone

Dear SA Edwards:

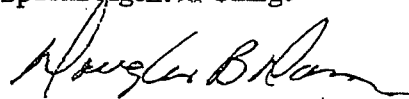
You were subpoenaed by the State of Idaho to testify in the above-captioned matter on July 30, 2013, at 8:30 a.m. On June 18, 2013, the prosecution provided a scope and relevancy statement that stated that the prosecution would seek to elicit testimony from you about your training and experience, participation in the investigation of the disappearance of Rachel Anderson. Specifically, the prosecution wishes to question you regarding the results of your query of multiple databases seeking indicia that Ms. Anderson is still alive. The trial has now been set for December 9, 2013.

Pursuant to approval authority of the United States Attorney for the District of Idaho, this letter-which is issued under Touhy regulations for the Department of Justice in 28C.F.R. §§ 16.21 to 16.29 (2011) - serves as formal limited authorization for you to testify about the above referenced topics to the extent you have personal knowledge. Also, you are not authorized to testify beyond this formal limited authorization or to disclose any information relating to or based upon material contained in the files of the Department of Justice that is confidential, protected, privileged- such as attorney/client, deliberative process, attorney work product, or sensitive investigative or law enforcement techniques- or that would violate a federal statute or rule of procedure. If you are asked any questions that exceed the scope of this authorization, you must politely refuse to answer the question and inform the Court that doing so would violate your obligations under the Touhy regulations 28 C.F.R. § 16.28. Please do not hesitate to contact me if you have any questions.

000507

Sincerely,

Mary F. Rook
Special Agent in Charge



By: Douglas B. Davis
Chief Division Counsel

CR 2013-1358
CASE NO. _____

2014 FEB -7 PM 2:18

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

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

MARK T. MONSON
Attorney at Law
803 S. Jefferson, Ste. 4
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Moscow, Idaho 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

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-2013-01358
Plaintiff,)	
	)	MOTION IN LIMINE AND ARGUMENT
V.	)	IN RESPONSE TO STATE'S NOTICE
	)	OF I.R.E. EVIDENCE
CHARLES ANTHONY CAPONE,)	
Defendant.)	
_____)	

COMES NOW THE DEFENDANT, Charles Anthony Capone, by and through his attorneys of record, D. Ray Barker and Mark T. Monson, and moves the court for an order prohibiting the State from presenting evidence of the nature hereafter described.

The State filed a Notice of I.R.E. 404(b) Evidence on December 26, 2013, giving notice of its intent "to present evidence of Charles Capone's prior felony convictions, Charles Capone's May 6, 2010, arrest on the Federal gun charge; and the fact that Charles Capone was

**MOTION IN LIMINE AND ARGUMENT
IN RESPONSE TO STATE'S NOTICE
OF I.R.E. EVIDENCE**

incarcerated in various correctional facilities subsequent to his May 6, 2010 arrest; prior acts of domestic violence against Rachael Anderson by Charles Capone including, without limitation, attempted strangulation; Charles Capone stalking and harassing Rachel Anderson in person, by third parties, by telephone, cell phone text message and other electronic communications (directly, anonymously and by the use of fictitious means such as “spoofing”); Charles Capone engaging in or causing vandalism to Rachel Anderson’s property; and Charles Capone voicing threats to and about Rachael Anderson.”

The defense objects to the admission of any and all evidence of the nature described in the above-quoted notice. The defense objects on the basis of hearsay, relevance and on the basis of Rule 404(b), I.R.E.

Mr. Capone’s arrest on May 6, 2010, on the Federal gun charge and incarceration as a result of that prosecution is not relevant to this case. The gun charge was based on Mr. Capone possessing a firearm totally unrelated to Rachael Anderson. The firearm was a handgun which one of Mr. Capone’s customers in his auto repair business left with him as a payment on a vehicle the customer intended to buy from Mr. Capone. The customer later decided not to purchase the vehicle and Mr. Capone decided to purchase the weapon from the customer rather than return it. The weapon and the Federal prosecution and resulting incarceration had nothing to do with Rachael Anderson.

As to the allegations of prior acts of domestic violence against Rachel Anderson including attempted strangulation, Mr. Capone was charged with second degree assault-domestic violence in Asotin County, Washington based on allegations she made several days after the alleged event. That case never went to trial and the charges were dismissed. Any evidence of that event would be hearsay unless Rachael Anderson were called to testify.


**MOTION IN LIMINE AND ARGUMENT
IN RESPONSE TO STATE’S NOTICE
OF I.R.E. EVIDENCE**

As to allegations of stalking , harassing, and vandalism such evidence is not admissible pursuant to Rule 404(b) I.R.E. That rule provides that evidence of other crimes or wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. Under the rule such evidence is not admissible unless it comes within one or more of the exceptions listed in the second sentence of the rule. The evidence suggested by the State does not fit within any of the exceptions. It is not relevant. It does not tend to make the existence of any fact that is of consequence more or less probable. Evidence of stalking, harassing or vandalism does not tend to prove anything as to motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. Such evidence is inadmissible pursuant to Rule 404(b) I.R.E.

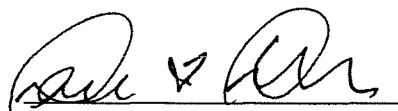
Such evidence is also not admissible pursuant to Rule 403 I.R.E. which provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. If the court were to determine that evidence of stalking, harassing and vandalism is relevant to some issue of consequence the unfair prejudicial effect of such evidence would outweigh any probative value that it may provide.

The notice provided by the State also mentions evidence of threats to and about Rachael Anderson. Any threats to or about Rachael Anderson would be hearsay. Counsel for the defense is not aware of any evidence of threats being made by Mr. Capone against Rachael Anderson.

DATED this 5 day of February, 2014.



D. Ray Barker
Attorney for Defendant



Mark T. Monson
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of February, 2014, a true and correct copy of the foregoing documents was served, by first class mail, postage prepaid, and addressed to, or by personally delivering to or leaving with a person in charge of the office of or serving by facsimile:

Latah County Prosecutor's Office
Latah County Courthouse
Moscow, ID 83843

- First-class mail
- Hand-delivered
- Facsimile

By:



~~D. Ray Barker~~ / Mark T. Mansola

CR 2013-1358
CASE NO

2014 FEB -7 PM 2:18

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: *[Signature]* 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,

MOTION TO SUPPRESS

v.

CHARLES A. CAPONE

Defendant.

COMES NOW the defendant, by and through his undersigned attorney of record, and moves to suppress and/or moves in limine that the court prohibit the Plaintiff, State of Idaho, its witnesses and legal counsel from introducing or producing evidence, or making any comment during trial, with respect to the following matters:

To suppress all oral statements of the Defendant obtained by the State incident to the Police, Federal Agents, and Deputies interrogating the Defendant. The grounds for this Motion are:

- 1. The evidence was obtained in violation of the United States Constitution;



1 2. The evidence was obtained in violation of Idaho Constitution.


2 3. The State violated the Defendant's right to counsel during custodial interrogation in
3 violation of the United States Constitution.


4 4. The State violated the Defendant's due process rights in violation of the United States
5 Constitution.

6 This Motion is based upon the *Memorandum in Support of Motion to Suppress* filed herewith
7 and upon the testimony to be elicited at the hearing.

8 Oral argument is requested.

9 DATED: February 5, 2014

10 
11 _____
12 D. Ray Barker
13 Co-Counsel for Defendant

14 
15 _____
16 Mark T. Monson
17 Co-Counsel for Defendant

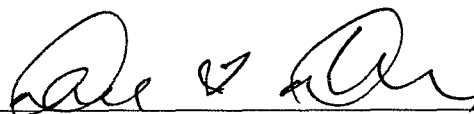
18 **Certificate of Service**

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

21 William Thompson
22 Latah County Prosecuting Attorney
23 PO Box 8068
24 Moscow, ID 83843

25 [] Via Facsimile: (208) 882-0589
[] U.S. Mail
[X] Hand Delivery

on this 7 day of February 2014.

By:  _____

CR 2013-1358
CASE NO.

2014 FEB -7 PM 2:19

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: *[Signature]* DEPUTY

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

Attorneys for Defendant

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

12 STATE OF IDAHO

Case No. CR-2013-1358

13 Plaintiff,

**MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

14 v.

15 CHARLES A. CAPONE

16 Defendant.

17 COMES NOW the defendant, by and through his undersigned attorney of record, and
18 submits the following memorandum in support of the Defendant's *Motion to Suppress*.

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1 2. Whether Charles Capone's statements to the police on May 6, 2010 should be
2 suppressed because his due process rights were violated when the police knowingly and
3 deliberately failed to preserve his alleged incriminating statement.

4 **STATEMENT OF FACTS**

5 This motion asks the Court to suppress any statements made to the police during Mr.
6 Capone's custodial interrogation based on (1) failure of the police to immediately terminate
7 interrogation upon request of counsel, and (2) failure to make counsel physically available to Mr.
8 Capone after he clearly invoked his right to counsel at the commencement of the interrogations.
9 The facts surrounding the interrogation of Charles Capone on May 6, 2010, are not in dispute.

10 On April 19, 2010, Rachel Anderson was reported missing. Shortly thereafter, the police
11 were contacted and an investigation began into Rachel Anderson's disappearance. Charles
12 Capone was immediately identified as a suspect in the disappearance of Rachel Anderson. During
13 the week following Rachel Anderson's disappearance, the police (specifically Dan Hally of the
14 Asotin County Sheriff's Office) met with and surreptitiously recorded interviews with Charles
15 Capone. The topic of the interviews surrounded the disappearance of Rachel Anderson. On May
16 6, 2010, Agent Lance Hart of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
17 arrested Mr. Capone at his place of business.
18

19 On May 6, 2010 at approximately 10:00 am, Charles Capone was arrested and transported
20 to the Moscow Police Department.
21

22 At approximately 10:15 am, Charles Capone was escorted into an interview room at the Moscow
23 Police Department. Present in the interview room was Dan Hally of the Asotin County Sheriff's
24 Office and ATF Agent Lance Hart.



1 ATF Agent Lance Hart provided Mr. Capone a copy of an Advice of Rights and Waiver
2 form, and read aloud to Mr. Capone his advice of rights. After being advised of his rights, Mr.
3 Capone invoked his right to have an attorney present.

4 After invoking his right to an attorney, Charles Capone was provided a phone to contact
5 his attorney. Deputy Dan Hally did not terminate the interrogation with Mr. Capone. Rather,
6 Deputy Dan Hally asked Mr. Capone if he would like to talk to him some more about Rachel
7 Anderson's disappearance. Mr. Capone did not reinitiate the conversation.

8 At approximately 11:40 am, the Attorney Mark Monson presented himself at the Moscow
9 Police Department requesting to speak with Charles Capone. ATF Agent Hart informed the
10 undersigned attorney at Charles Capone was being processed for fingerprints and pictures and
11 did not allow the undersigned to consult with Charles Capone at the time.

12 Subsequent to the undersigned being denied access to his client at the police station, ATF
13 Agent Hart alleges that Charles Capone made additional incriminating statements. ATF Agent
14 Hart agreed to contact Attorney Mark Monson so he could meet with Mr. Capone.

15 ATF Agent Hart advised Attorney Mark Monson that Mr. Capone agreed to assist in
16 locating Rachel Anderson in exchange for dismissing the federal criminal complaint. At that
17 point, Attorney Mark Monson was allowed access to Charles Capone.

18 ATF Agent Hart then summonsed Bill Thompson to the Moscow Police Department to
19 participate in plea negotiations with Attorney Mark Monson.

20 Subsequently on August 28, 2012, without notifying Capone's attorney, Mark Monson,
21 Deputy Hally and Deputy Nichols of the Asotin County Sheriff's Office travelled to the federal
22 detention facility in Sea Tac Washington to speak with Mr. Capone. Deputy Hally did not prepare
23
24



1 a written report about his interrogation of Mr. Capone, but testified regarding the event at the
2 preliminary hearing in this case. Deputy Hally testified at the preliminary hearing that Mr.
3 Capone immediately asserted his right to have an attorney present during the interrogation.
4 Deputy Hally testified that the preliminary hearing that he “totally ignored his request to have his
5 lawyer present there while [they] were there talking with him.” *Preliminary Hearing Transcript*, pg.
6 221. Deputy Hally testified that he did not terminate the conversation with Mr. Capone at that
7 point, but continue to talk to him. *See id.* Immediately after the contact with Mr. Capone, Deputy
8 Hally contacted Attorney Mark Monson to report that he had contacted Mr. Capone at Sea Tac.
9

10 **1. Mr. Capone’s statements on May 6, 2010 and August 28, 2012 should be**
11 **suppressed because the police failed to terminate interrogation after Mr. Capone**
12 **invoked his right to counsel.**

13 LEGAL AUTHORITY

14 The Fifth Amendment right to counsel is not offense specific. The Fifth Amendment
15 guarantees that “[n]o person ... shall be compelled in any criminal case to be a witness against
16 himself.” In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966), the Supreme Court adopted
17 a set of prophylactic measures to protect a suspect’s Fifth Amendment right from “inherently
18 compelling pressures.” *Miranda*, 384 U.S. at 467. The Fifth Amendment’s guarantee against
19 compulsory self-incrimination also carries a right to counsel that may be invoked during custodial
20 interrogation even if no charge has yet been filed. *See Edwards v. Arizona*, 451 U.S. 477, 484–85,
21 101 S.Ct. 1880, 1884–85, 68 L.Ed.2d 378, 385–87 (1981); *Miranda v. Arizona*, 384 U.S. 436, 86
22 S.Ct. 1602, 16 L.Ed.2d 694 (1966).



1 “The Fifth Amendment right to counsel is not offense specific.” *State v. Bagshaw*, 141
2 Idaho 257 (2004) (citing *McNeil v. Wisconsin*, 501 U.S. 171, 177 (1991)).

3 **Police must terminate interrogation if the accused invokes his right to counsel.** In order to
4 safeguard the Fifth Amendment privilege against self-incrimination, in *Miranda* the United States
5 Supreme Court held that persons subjected to custodial interrogation must be advised of certain
6 rights, including the right to private or appointed counsel, and that the **police must terminate the**
7 **interrogation if the accused requests the assistance of an attorney.** See *Miranda v. Arizona*, 384 U.S.
8 at 444-45 (emphasis added).

9
10 Building on *Miranda*, the United States Supreme Court in *Edwards v. Arizona* held that
11 once the accused request the assistance of an attorney, the custodial interrogation **must stop**
12 **immediately** and may not resume “until counsel has been made available to him, unless the
13 accused himself initiates further communication...” *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct.
14 1880 (1981) (emphasis added).

15 The *Edwards* rule is “designed to prevent police from badgering a defendant into
16 waiving his previously asserted *Miranda* rights,” *Harvey, supra*, at 350, 110 S.Ct.
17 1176. It does this by presuming his postassertion statements to be involuntary,
18 “even where the suspect executes a waiver and his statements would be
19 considered voluntary under traditional standards.” *McNeil v. Wisconsin*, 501 U.S.
20 171, 177, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). This prophylactic rule thus
“protect[s] a suspect’s voluntary choice not to speak outside his lawyer’s
presence.” *Texas v. Cobb*, 532 U.S. 162, 175, 121 S.Ct. 1335, 149 L.Ed.2d 321 (2001)
(KENNEDY, J., concurring).

21 *Montejo v. Louisiana*, 556 U.S. 778, 787, 129 S. Ct. 2079, 2085-86 (2009).

22 “The Fifth Amendment right ‘is protected by the prophylaxis of having an attorney
23 present to counteract the inherent pressures of custodial interrogation, which arise from the fact
24

1 of such interrogation and exist regardless of the number of crimes under investigation or whether
2 these crimes have resulted in formal charges.’” *Bagshaw*, 141 Idaho at 260 (quoting *Arizona v.*
3 *Roberson*, 486 U.S. 675, 685 (1988)).

4 **Police may not re-initiate questioning on an “unrelated offense” until an attorney is present.**

5 “If a defendant in custody invokes his Fifth Amendment right to counsel upon being read his
6 *Miranda* rights, police must cease the interrogation until an attorney is present.” *Bagshaw*, 141
7 Idaho at 260.

8 “Police may not re-initiate an interrogation with a defendant who has requested counsel.”
9 *Id.* “This prohibition applies even if the interrogation is about an offense that is unrelated to the
10 subject of the initial interrogation.” *Id.*

11 **Counsel must be “physically present” after an accused invokes his right to counsel.** The
12 *Miranda* Court stated that “the need for counsel to protect the Fifth Amendment privilege
13 comprehends not merely a right to consult with counsel prior to questioning, but also to have
14 counsel **present** during any questioning if the defendant so desires.” *Miranda*, 384 U.S. at 470
15 (emphasis added).
16

17 In a subsequent decision, *Minnick v. Mississippi*, 498 U.S. 146, 111 S.Ct. 486 (1990), the
18 United States Supreme Court considered whether the right to counsel outlined in *Miranda* and
19 *Edwards* was satisfied when, after the suspect invoked his right to counsel and an appointed
20 attorney had consulted with the suspect, police resumed interrogating the suspect in the
21 attorney’s absence. The *Minnick* Court rejected the notion that because counsel had been made
22 available to the suspect after he invoked the right to counsel and before questioning resumed, his
23 right to counsel was adequately honored. The requirement that an attorney be “made available”
24



1 to the accused “refers to more than an opportunity to consult with an attorney outside the
2 interrogation room.” *Id.* at 152, 111 S.Ct. at 490. The *Minnick* Court further explained:

3
4 In our view, a fair reading of *Edwards* and subsequent cases demonstrates that we
5 have interpreted the rule to bar police-initiated interrogation **unless the accused has**
6 **counsel with him at the time of questioning.** Whatever the ambiguities of our earlier
7 cases on this point, we now hold that when counsel is requested, interrogation
8 must cease, and **officials may not reinstate interrogation without counsel present,**
9 whether or not the accused has consulted with his attorney.

10
11
12 ... We decline to remove protection from police-initiated questioning based on
13 isolated consultations with counsel who is absent when the interrogation resumes.

14
15 *Id.* at 153-54, 111 S.Ct. at 491 (emphasis added).

16
17 The Idaho Court of Appeals stated, “Since *Minnick*, it has been clear that the Fifth
18 Amendment right to counsel encompasses a right to have counsel **present** during questioning, not
19 just a right to terminate questioning in order to consult with counsel before interrogation begins
20 anew.” *State v. Tapp*, 136 Idaho 354 (2001) (emphasis added).

21 ARGUMENT

22 1. Charles Capone did not waive his right to counsel on May 6, 2010 or August 28, 2012.

23 The *Edwards* Court acknowledged that an accused may validly waive his rights and
24 respond to interrogation after being advised of his *Miranda* rights, but stated that additional
25 safeguards are necessary when the accused requested counsel. *See Edwards v. Arizona*, 451 U.S. at
484. A suspect responding to additional police questioning after invoking his *Miranda* rights is
not sufficient to establish a waiver: “[W]hen an accused has invoked his right to have counsel
present during custodial interrogation, a valid waiver of that right cannot be established by



1 showing only that he responded to further police-initiated custodial interrogation even if he has
2 been advised of his rights.” *Id.* A waiver can take place if “the accused himself initiates further
3 communication, exchanges, or conversations with the police.” *Id.* at 484-85. However, the state
4 bears the burden of establishing a valid waiver and courts should indulge every reasonable
5 presumption against waiver of fundamental constitutional rights.” *State v. Contreras-Gonzales*,
6 146 Idaho 41, 45, (2008).

7
8 **May 6, 2010 Interrogation:**

9 In the present case, Deputy Dan Hally testified at the preliminary hearing that on May 6,
10 2010, Charles Capone was advised of his *Miranda* rights and invoked his right to have his attorney
11 present:

12 Q Okay. We’ll jump ahead now, uhm, to the first part of May of two thousand and
13 ten. Did you have an occasion to speak again with Mr. Capone on May sixth, two
thousand and ten?

14 A I did.

15 Q And where did that conversation occur?

16 A In the Moscow City Police Department.

17 Q Uh, do you recall approximately what time of day?

18 A I believe it was just after ten A.M.

19 Q Uh, and do you recall what the circumstances were, how you came to be-- Mr.
20 Capone came to be there?

21 A Yes. Mr. Capone had been arrested at his shop by the A-T-F, and Agent Lance
22 Hart had brought him into the Moscow Police Department.

23 Q So he was in custody at that point?

24 A He was.

25 Q Do you recall whether or not Mr. Capone was advised of his-- what are called
Miranda rights?

A He was.

Q Did you witness that?



1 A I did.

2 Q Uhm, did you speak with Mr. Capone after that in regard to Rachael Anderson?

3 A I did.

4 Q And how did that conversation get started? Who initiated it?

5 MR. MONSON: And-- and, Your Honor, if I can interject.

6 Mr. Thompson, I'm sorry. Uhm,--

7 THE COURT: That's fine.

8 MR. MONSON: Just in aid of objection, very briefly.

9 THE COURT: Sure.

10 MR. MONSON: **My understanding is, when he was advised of his rights, he invoked
11 his right to have an attorney there, is that correct?**

12 THE WITNESS: **He did.**

13 MR. MONSON: Okay. Judge, that's-- I'll-- I'll object to any testimony after
14 that, as he was advised of his right to have and attorney, invoked his right, and no attorney
15 was present.

16 *Preliminary Hearing Transcript*, pg. 192-94 (emphasis added). Although ATF Agent Heart did not
17 testify at the preliminary hearing, he provided a written report of his arrest and interrogation of
18 Charles Capone, attached hereto as Exhibit A.

19 ATF Agent Heart's report reflects that upon advising Charles Capone of his rights, he
20 invoked his right to speak with his attorney prior to questioning. ATF Agent Heart's report
21 reflects that upon request Mr. Capone was provided the opportunity to consult with Attorney
22 Mark Monson, consulted with Attorney Mark Monson **by phone**, and informed ATF Agent Hart
23 and Deputy Dan Hally that his attorney would not allow him to talk about the firearm case. ATF
24 Agent Heart's report then states, "CAPONE agreed to continue talking with Captain Hally about
25 the disappearance of his wife, Rachel Anderson."

Deputy Dan Hally testified at the preliminary hearing that he did not stop the
interrogation, and that he re-initiated the interrogation of Charles Capone without his attorney:



1 Q So, uhm, who advised Mr. Capone of his *Miranda* rights?

2 A Lance Hart.

3 Q And—

4 A He's an agent of the A-T-F.

5 Q A-T-F. Uhm, and the A-T-F arrest and charge was something unrelated to Rachael Anderson, is that correct?

6 A That's correct.

7 Q Uh, when Mr. Capone indicated that he wanted to have an attorney, did he indicate uh what subject matter he wanted to invoke his rights on?

8 A The possession of a Glock nine.

9 Q Was that the federal charge?

10 A That's correct.

11 Q Okay. Uh, and was he clear that, that was the scope of-- of his indication?

12 A He was clear.

13 Q So uhm, again, **how did the conversation initiate between you and him regarding Rachael Anderson, which was apparently unrelated?**

14 A **I asked him if he would like to talk to me some more about Rachael's disappearance.**

15 Q And what did he say?

16 A That would be fine.

17 *Preliminary Hearing Transcript*, pg. 194-95 (emphasis added). On cross-examination, Deputy

18 Hally confirmed that in spite of Mr. Capone's invocation of his right to have counsel present, he
19 did not terminate the interrogation of Mr. Capone :

20 Q And I think your testimony earlier today with regard to your interaction with him on May sixth, two thousand ten, was that he also invoked his right to have a lawyer when he was arrested at the Moscow Police Department, isn't that right?

21 A He invoked his right to have an attorney present in reference to the gun charge.

22 Q And you didn't stop the conversation at that point, did you?

23 A I didn't talk to him about the gun charge, no.

24 Q **But you didn't terminate the conversation with Mr. Capone at that time, did you?**

25 A **I did not.**

Preliminary Hearing Transcript, pg. 221 (emphasis added).



1 It is undisputed that Charles Capone invoked his right to counsel and that Mr. Capone did
2 not re-initiate further communications with the police. Rather, Deputy Hally's testimony
3 establishes that the interrogation was not immediately terminated as required and it was Dan
4 Hally who re-initiated contact with Mr. Capone. Therefore, Mr. Capone did not waive his right to
5 have an attorney present on May 6, 2012.

6 **August 28, 2012 Interrogation:**

7 Deputy Dan Hally testified that when he and Deputy Jackie Nichols contacted Charles
8 Capone at the federal detention center in Sea-Tac on August 28, 2012, (1) he knew that Charles
9 Capone was represented by a lawyer, and (2) the first thing Charles Capone did was assert his
10 right to have an attorney present:
11

12 Q So other than the April twentieth, two thousand ten visit with Mr. Capone in
13 his shop, the May sixth, two thousand ten interrogation at the Moscow P-D, uh, did you
14 have any other personal contacts with Mr. Capone?

15 A I had contact with him at the federal facility in Sea-Tac.

16 Q Okay. And that took place on August twenty-eight, two thousand twelve?

17 A I believe that's correct.

18 Q Do you remember writing a narrative about that?

19 A I don't recall whether I did or the other detective present did.

20 Q Uh, who else was present with you?

21 A Detective Jackie Nichols.

22 Q Uhm, and that interview took place on August twentieth of two thousand
23 twelve, about eight o'clock in the morning, is that right?

24 A It wasn't an interview.

25 Q Well, you went to go talk to them, didn't you?

A I went to provide him an update—

Q You went—

A -- on his wife's case.

Q You went to go give him one more chance, correct?



1 A I went specifically, as I told him there, I'm not here to interview. I'm not here
2 to ask you any questions. I'm here to tell you what happened.

3 Q **So you were aware, at the time that you went over there, that he was represented
4 by a lawyer, or maybe two lawyers, or maybe three, is that correct?**

5 A **That's correct.**

6 Q Uhm, in fact, after you concluded your contact with Mr. Capone, you called my
7 office, is that right?

8 A That's correct.

9 Q **Okay. The first thing that Mr. Capone did when you showed up is he asserted his
10 right to have an attorney, isn't that right?**

11 A **He did.**

12 *Preliminary Hearing Transcript, pg. 217-18 (emphasis added).*

13 Although Deputy Dan Hally did not prepare a written report about this contact, he
14 testified that he reviewed the report prepared by Deputy Jackie Nichols and that it was accurate:

15 Q And, in fact, that was-- I'll represent to you that that's the fourth sentence on--
16 on a narrative that Detective Nichols provided. That's true, right?

17 A That's correct.

18 Q And you still went after him, isn't that right?

19 A No, that's not. I didn't go after him.

20 Q I'm going to show you this page. [PAUSE] I want you to take a look at that and
21 tell me if that refreshes your recollection about the events of that day.

22 [PAUSE]

23 A It does.

24 Q Is there anything in that—

25 THE COURT: Tell you what, I'm going to interrupt just for one second. I want
you to just flip all those papers over. I just want to make sure that whatever you're saying
is-- is from refreshed recollection and not off any of those documents. Thank you.

Go ahead.

[MR. MONSON CONTINUING]

1 Q Is there anything in that record or your contact, that was provided by Detective
2 Nichols, with which you disagree?

3 A No.

4 Q Is there anything inaccurate about that?

5 A No. It appears to be accurate.

6 Q Is there anything you want to change about what's written in there to match
7 your recollection of how events took place?

8 A No, it's-- it's fine.

9 *Preliminary Hearing Transcript*, pg. 218-20. A copy of Deputy Jackie Nichol's report is attached
10 hereto as Exhibit B. The report reflects that Charles Capone did not waive his right to an
11 attorney, and that the police did not immediately terminate the contact with Charles Capone.

12 **2. Charles Capone's Fifth Amendment right to counsel was violated by police procedures.**

13 **May 6, 2010 interrogation:**

14 In the present case, Mr. Capone was placed under formal arrest and escorted into the
15 interrogation room. Present at the time of arrest and at the police station were representatives
16 from the "task force", comprising several different law enforcement agencies. Because Mr.
17 Capone was in custody, *Miranda* warnings were required and were provided to Mr. Capone. Mr.
18 Capone clearly invoked his right to counsel, and the reports and testimony of the police confirm
19 this fact. According to ATF Agent Hart's report, Mr. Capone was allowed to consult with counsel
20 by telephone, but was denied access to counsel when Attorney Mark Monson presented at the
21 police station subsequent to the phone call. According to his signed report, ATF Agent Hart
22 represented to Attorney Mark Monson that access was denied to Charles Capone because he was
23 being processed for photographs and prints. According to ATF Agent Hart's report, Charles
24 Capone had been subject to interrogation by police for at least an hour and a half at the time that



1 Attorney Mark Monson was denied access to Charles Capone. Interestingly enough, no pictures
2 or fingerprints have been provided to the defense from that “processing”. Between the time Mr.
3 Capone was advised of his rights, invoked his right to counsel, and counsel was allowed to be
4 physically present, Mr. Capone is alleged to have made incriminating statements, which
5 statements were introduced against him at the preliminary hearing in this matter. In addition, it is
6 clear from ATF Agent Hart’s report and Deputy Dan Hally’s testimony at the preliminary
7 hearing that upon invoking his right to counsel, Deputy Hally did not immediately terminate the
8 interrogation, but rather continued to interrogate Charles Capone regarding the disappearance of
9 Rachel Anderson.

10
11 The *Tapp* Court addressed a nearly identical situation to the present case and clearly held
12 that simply providing the accused access to a phone to consult with an attorney does not satisfy
13 the requirement that police make an attorney available to the accused. *See State v. Tapp*, 136 Idaho
14 354, 361-62 (2001). In *State v. Tapp*, the Idaho Court of Appeals held that a murder defendant’s
15 close proximity and opportunity for his attorneys to observe police interrogation, albeit on a
16 television monitor, in another room did not satisfy the requirement under *Miranda* that counsel
17 be “present” during interrogation. *See id.* at 362. Although defendant’s attorneys could see and
18 hear the defendant, he could not see them and lacked the ability to turn to them for an immediate
19 consultation, even if he was free to terminate the interrogation and talk to his attorneys at any
20 time. *See id.*

21 In *State v. Tapp*, Tapp’s attorneys were not present during the interrogation, but were
22 allowed to view the interrogation on a television monitor in another room. The Court stated,
23 “Tapp’s attorneys were allowed to monitor the interrogation and, presumably, could have
24

1 interrupted or terminated it if they wished to do so by walking into the interrogation room. The
2 question presented is thus whether this close proximity and opportunity for the attorneys to
3 observe the interrogation, albeit on a television monitor in another room, satisfies the
4 requirement that counsel be ‘present’ during interrogation.” *Id.* at 361.

5 The *Tapp* Court explained that the purpose expressed in *Miranda* for affording a right to
6 counsel “was to provide a counterbalance for the coercive atmosphere of custodial interrogation
7 and thereby prevent violation of the right to be free from compelled self-incrimination.” *Id.* The
8 *Tapp* Court then quoted the *Miranda* Court’s decision:

9
10 We have concluded that without proper safeguards the process of in-custody
11 interrogation of persons suspected or accused of crime **contains inherently**
12 **compelling pressures** which work to undermine the individual’s will to resist and to
13 compel him to speak where he would not otherwise do so as freely. In order to
14 combat these pressures and to permit a full opportunity to exercise the privilege
15 against self-incrimination, the accused must be adequately and effectively apprised
16 of his rights and the exercise of those rights must be fully honored.

17

18 The circumstances surrounding in-custody interrogation can operate very quickly
19 to overbear the will of one merely made aware of his privilege by his interrogators.
20 **Therefore, the right to have counsel present at the interrogation is indispensable to**
21 **the protection of the Fifth Amendment privilege** under the system we delineate
22 today.

23 *State v. Tapp*, 136 Idaho at 361 (quoting *Miranda v Arizona*, 384 U.S. at 467) (emphasis added).

24 In analyzing the factual situation, the *Tapp* Court stated, “Although *Tapp*’s attorneys
25 could see him and hear his words, he could not see or hear them; he was as physically alone with
the interrogating officers as he would have been if he attorneys were in their own offices. He did



1 not have the psychological reassurance of their physical presence nor the ability to turn to them
2 for an **immediate** consultation.” *Id.* The Court continued:

3
4 We think it obvious that a suspect’s knowledge that his attorney is monitoring the
5 interrogation from some other point in the building cannot provide the same
6 bulwark against the coercive pressures of in-custody interrogation that is afforded
7 by the immediate availability and reassuring presence of an attorney in the same
8 room. It is no answer to say that Tapp was free to terminate the interrogation and
9 talk with his attorneys at any time, **for the same could be said if his attorneys were**
10 **available by telephone from their offices.** The interrogation system employed here
11 prevented Tapp from simply turning to his attorneys for advice; it required that he,
12 in effect, reinvoke his right to counsel by terminating the interrogation any time he
13 desired a consultation. It afforded Tapp the opportunity for a series of
14 consultations with his counsel instead of the presence of his counsel throughout
15 the police interrogation.

16
17 Further, the value of any service the attorneys could provide was diminished by
18 the physical separation. **Attorneys in such a situation cannot instantaneously stop**
19 **questioning that they deem to be inappropriate or police conduct that they deem to**
20 **be abusive or coercive.** Regardless of how vigorously the attorneys might object to a
21 question or wish to terminate an answer, they can do nothing to stop a client’s
22 response until they physically enter the interrogation room to interrupt. **This lapse**
23 **between an attorney’s objection and the opportunity to communicate it could have**
24 **very inimical consequences for the accused.**

25 *Id.* at 361-62.

Similarly, in the present case, it is no answer to say that Charles Capone had an attorney
“made available” to him when they provided him an opportunity to speak briefly with his
attorney by phone. The system employed by the police in this case prevented Charles Capone
from simply turning to his attorney for advice. In addition, when ATF Agent Hart physically
prevented Attorney Mark Monson from having contact with Charles Capone, ATF Agent Hart
prevented the opportunity for Mr. Capone’s attorney to instantaneously stop questioning he



1 deemed inappropriate or to be abusive or coercive. Mr. Capone's attorney had no opportunity to
2 interrupt or stop Charles Capone's responses. According to testimony by Deputy Dan Hally, the
3 consequences of the State's actions had very inimical consequences for Charles Capone.

4 The *Tapp* Court recognized that to allow police procedures of the type used by ATF
5 Agent Hart and Deputy Dan Hally would lead to uncertainty and would obscure the *Miranda*
6 rule:

7
8 Also contributing to our decision is the realization that a holding that the *Miranda*
9 standards were satisfied in this circumstance would obscure the rule and lead to
10 uncertainty. If the arrangement here is constitutionally acceptable, would the same
11 be true if the attorneys were on another floor of the same building or in a nearby
12 building? What if they were monitoring the interrogation room by closed circuit
13 television from a point across town but could communicate with those in the
14 interrogation room by telephone? It has often been noted that in the arena of
15 constitutional rights, a bright line rule that can be readily understood and applied
16 by officers in the field is preferable to obscure or flexible standards requiring case-
17 by-case application in the courts.

18 *State v. Tapp*, 136 Idaho at 362.

19 This court should apply the bright line rule that counsel must be physically present after
20 an accused invokes his right to counsel before re-initiating interrogation. The methods the police
21 employed in this case were unconstitutional and therefore violated Charles Capone's right to
22 counsel. Therefore, any statements made during the May 6, 2010 interrogation should be
23 suppressed.

24 **August 28, 2010 Interrogation:**

25 Deputy Hally and Deputy Nichols violated Charles Capone's right to counsel on August
28, 2010 when Charles Capone immediately and clearly asserted his right to counsel, and they



1 refused to terminate contact with Charles Capone and completely ignored his request to have his
2 attorney present during interrogation.

3 Deputy Dan Hally testified that (1) Charles Capone was angered that the deputies were
4 there, (2) that he immediately requested an attorney, (3) that he (Deputy Hally) was aware of
5 Charles Capone's right to have an attorney present, and (4) that he (Deputy Hally) totally ignored
6 Charles Capone's request to have his attorney present during questioning:

7
8 **Q Okay. So, as I understand your testimony, uh, you and-- and-- you show up and
Mr. Capone immediately says, I want my lawyer, is that correct?**

9 A It's—

10 Q He—

11 A -- pretty close, yes.

12 Q He was upset at seeing you, wasn't he?

13 A Yes, he was.

14 Q And you didn't leave, did you?

15 A No.

16 Q In fact, there's four more paragraphs about interaction that you had after he
17 asserted his right to have a lawyer there present, isn't there?

18 A There is.

19 Q **So you totally ignored his request to have a lawyer, isn't that right?**

20 A I guess, is what I'm not understanding is, are you saying I—

21 Q My—

22 A ignored—

23 Q **My question is, isn't it true that you totally ignored his request to have his lawyer
24 present while you were there talking with him?**

25 A **That would be correct.**

Q And you're aware he has a constitutional right to have his lawyer there, is that
right?

A During questioning, yes.

Q Didn't matter to you at that time, is that right?

A I wasn't questioning him.

1 *Preliminary Hearing Transcript*, pg. 220-21 (emphasis added). The law is clear – once the accused
2 requests the assistance of an attorney, the custodial interrogation must cease **immediately**. *See*
3 *Edwards*, 451 U.S. at 484-85. The interrogation did not cease, Mr. Capone’s rights were
4 knowingly and intentionally violated by Deputies Hally and Nichols and any reference to the
5 contact on August 28, 2012 should be suppressed.

6
7 Although Deputy Hally seeks to excuse his conduct by characterizing the contact with Mr.
8 Capone as a visit to “provide him an update”, Deputy Jackie Nichol’s report makes clear that the
9 purpose of the visit was to interrogate him by enticing Charles Capone to talk about Rachel
10 Anderson’s disappearance.

11 Interrogation is defined as not only express questioning but also its “functional
12 equivalent.” *Rhode Island v. Innis*, 446 U.S. 291, 300–01, 100 S.Ct. 1682, 1689–90 (1980). The
13 functional equivalent of interrogation includes “any words or actions on the part of the police
14 (other than those normally attendant to arrest and custody) that the police should know are
15 reasonably likely to elicit an incriminating response.” *Id.* at 301, 100 S.Ct. at 1689–90 (footnote
16 omitted).

17 Every action taken by the two deputies on August 28, 2012 was designed to elicit an
18 incriminating response from Charles Capone. In the present case, the deputies showed Charles
19 Capone a “love letter” from Rachel Anderson written to him during their marriage. The report
20 reflects that this elicited a response from Charles Capone. Deputy Dan Hally also stated to
21 Charles Capone that he thought it odd that Charles Capone wasn’t at all interested in an update
22 on his missing wife. Again, this elicited a response from Charles Capone. In addition, Deputy
23 Hally told Charles Capone that he was going to be facing federal charges on interstate stalking,
24



1 which statement elicited a response from Charles Capone. Finally, Deputy Hally told Charles
2 Capone that he had made a statement previously that he could either tell police that he killed
3 Rachel Anderson or he could take the police to her body, which statement elicited a response
4 from Charles Capone.

5 The contact between Deputies and Charles Capone on August 28, 2012, was in every
6 sense of the term an "interrogation" and was conducted in violation of Charles Capone's rights.
7 Any reference to the contact on August 28, 2012, should be suppressed.

8
9 **2. Charles Capone's statements to the police on May 6, 2010 should be**
10 **suppressed because his due process rights were violated when the police knowingly**
11 **and deliberately failed to preserve his alleged incriminating statement.**

12 LEGAL AUTHORITY

13 The prosecution is required to preserve evidence for use by the defense. Pursuant to the Due
14 Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with
15 prevailing notions of fundamental fairness. *See California v. Trombetta*, 467 U.S. 479, 485, 104
16 S.Ct. 2528, 2532, 81 L.Ed.2d 413, 419 (1984); *State v. Ward*, 135 Idaho 68, 72, 14 P.3d 388, 392
17 (Ct.App.2000). Consequently, the prosecution's failure to disclose evidence favorable to an
18 accused violates due process where the evidence is material either to guilt or to punishment. *See*
19 *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215, 218 (1963). Evidence
20 favorable to the accused includes evidence that, if disclosed and used effectively, may make the
21 difference between conviction and acquittal. *See United States v. Bagley*, 473 U.S. 667, 676, 105
22 S.Ct. 3375, 3380, 87 L.Ed.2d 481, 490 (1985); *State v. Avelar*, 124 Idaho 317, 321, 859 P.2d 353,
23 357 (Ct.App.1993). Both exculpatory evidence and impeachment evidence are considered



1 evidence favorable to the accused. *See Bagley*, 473 U.S. at 676, 105 S.Ct. at 3380, 87 L.Ed.2d at
2 490; *Avelar*, 124 Idaho at 321, 859 P.2d at 357. Similarly, the prosecution is required to preserve
3 material evidence. *United States v. Booth*, 309 F.3d 566, 574 (9th Cir.2002); *State v. Dopp*, 129
4 Idaho 597, 606, 930 P.2d 1039, 1048 (Ct.App.1996). Implicit in this duty to disclose exculpatory
5 evidence is a duty to preserve such evidence for use by the defense. *See State v. Lewis*, 144 Idaho
6 64, 66 (2007).

7 To meet the standard of materiality, evidence must both possess an exculpatory value that
8 was apparent before the evidence was destroyed and be of such a nature that the defendant would
9 be unable to obtain comparable evidence by other reasonably available means. *See Trombetta*, 467
10 U.S. at 489, 104 S.Ct. at 2528, 81 L.Ed.2d at 422; *Booth*, 309 F.3d at 574.

11 Destruction of evidence is not a *per se* violation of a defendant's rights and depends upon
12 the nature of the proceeding, nature of the evidence, and the circumstances surrounding the
13 destruction of the evidence. *See Garcia v. State Tax Comm'n of the State of Idaho*, 136 Idaho 610,
14 615, 38 P.3d 1266, 1271 (2002). In a criminal context, Idaho courts have applied a balancing test
15 which examines: "(1) whether the evidence was material to the question of guilt or the degree of
16 punishment; (2) whether the defendant was prejudiced by the loss or destruction of the evidence;
17 and (3) whether the government was acting in good faith when it destroyed or lost the evidence."
18 *State v. Lewis*, 144 Idaho at 67 (quoting *State v. Porter*, 130 Idaho 772, 781, 948 P.2d 127, 136
19 (1997)). This same standard has been applied in the civil context. *Id.* Where the value of the
20 evidence is known, the person asserting the due process violation has the affirmative burden of
21 establishing the materiality and prejudice elements of the balancing test. *Id.* Where the value of
22
23
24



1 the evidence is unknown, the materiality and prejudice elements are presumed and the inquiry
2 focuses on the presence of bad faith. *Id.*

3 **ARGUMENT**

4 **1. The May 6, 2010 deleted audio/video recording was material.**

5 In Mr. Capone's case, the value of the evidence is known. Deputy Dan Hally testified at
6 the preliminary hearing about the material nature of the defendant's statement:

7
8 Q So uhm, again, how did the conversation initiate between you and him
regarding Rachael Anderson, which was apparently unrelated?

9 A I asked him if he would like to talk to me some more about Rachael's
10 disappearance.

11 Q And what did he say?

12 A That would be fine.

13 Q So what did you say? What did you all talk about?

14 A **I told him specifically—I said today you're going to tell me that you killed Rachel
and you're going to tell me where her body is.**

15 Q And his response?

16 A **You've got one of those correct.**

17 Q Did he expound on which of those you had correct?

18 A **He did by stating that he didn't kill her.**

19 *Preliminary Hearing Transcript*, pg. 194-95 (emphasis added). Following the testimony from
20 Deputy Dan Hally about the alleged statement made by Mr. Capone, Detective James Fry of the
21 Moscow Police Department testified that the interrogation of Mr. Capone was recorded:

22 Q Mr. Fry, uh, there's been testimony about an interview conducted uh at the
23 Moscow Police Department by Captain Dan Hally and A-T-F Agent Hart. Were you at
24 the police department at that time?

25 A I was.

Q And are you aware that there was no recording made of that interview?

A There was a recording.



1 Q There was a recording?

2 A Yes, there was.

3 *Preliminary Hearing Transcript*, pg. 816.

4 There is no question that the state believes that the alleged statement is material to the
5 question of guilt in this case as Mr. Capone is charged with murder, failure to notify law
6 enforcement of a death, and conspiracy to fail to notify law enforcement of a death.

7 **2. Charles Capone is prejudiced by the destruction of the recording.**

8 Deputy Dan Hally and one other deputy are the only persons who allegedly heard the Mr.
9 Capone make the incriminating statement. Although ATF Agent Hart was present at the
10 Moscow Police Department on May 6, 2010, he was not present during at the time Mr. Capone
11 allegedly made the incriminating statement to Deputy Dan Hally. Rather, ATF Agent Hart states
12 in his report that Deputy Hally told him about the incriminating statement. The only other
13 person who heard the alleged statement was Latah County Sheriff's Deputy Tim Besst, who
14 testified in very general terms. *See Preliminary Hearing Transcript*, pg. 907-08. On cross-
15 examination, Deputy Besst had an imperfect memory of what actually took place in the interview
16 room:
17

18 BY MR. BARKER:

19 Q Mr. Besst, you just testified regarding the interview between Hally and Mr.
20 Capone.

21 A Yes.

22 Q Uh, and you quoted uh Mr. Hally as saying something to the effect, you're
23 going to tell me today that you killed Rachael and you're going to take us to the body?

24 A **Something-- it was something to that effect.**

25 Q Can you tell us what was said just before that?

A **Just before, no. I-- I know that there was the mirandize-- he-- he was
mirandized and that was— [PAUSE].**

Q Did you observe him being mirandized?



1 A Yes, I did.

2 Q Did you observe uh him assert his right to counsel?

3 A Yes.

4 Q And then uh Mr. Hally went on and continued to question him after that?

5 A Yes.

6 Q Did you think that was strange?

7 A Ye-- yes and no. Some of them were just-- he wasn't questioned, he was just talking.

8 Q But did you think it was strange that after he asserted his right to counsel, that Mr. Hally went on with questioning?

9 A Yes.

10 Q Would you have done that?

11 A No.

12 Q **Do you know whether or not Mr. Hally told Charles other things that Charles was going to do, other than telling that he killed Rachael and was going to take them to the body?**

13 A I-- I have no memory of that.

14 Q **So, it's possible that Mr. Hally told Charles several things that Charles was going to do?**

15 A Yes.

16 *Preliminary Hearing Transcript*, pg. 909-10 (emphasis added).

17 Unexplainably, Deputy Tim Besst did not include anything about the alleged
18 incriminating statement in any of his reports. Nor was Deputy Besst aware of any other law
19 enforcement officer (aside from Dan Hally and ATF Agent Hart) who did put it in the reports.
20 Subsequent police investigation has not revealed anyone else who was present and actually heard
21 the statement.

22 Because the police did not preserve the recording, the defendant is greatly prejudiced.
23 There is no way to know the context in which the statement was allegedly made. There is no way
24 to objectively review Deputy Hally's version of events. Compounding the problem is the fact that



1 the Deputy Dan Hally is the only officer who is “certain” of what was said. Deputy Hally’s
2 testimony is suspect, at best, because of his conduct toward Mr. Capone throughout his
3 investigation. As noted previously, Deputy Hally knowingly violated Mr. Capone’s constitutional
4 rights by intentionally ignoring his request for counsel on May 6, 2010 and again on August 28,
5 2012.

6 **3. The state acted in bad faith when it failed to retain the recording.**

7 The defense concedes that at times, recordings are lost, equipment malfunctions, or for
8 various other reasons outside the control of the police, interrogation recordings are lost.

9 However, in this case, the state made a conscious decision not to preserve the recording. See
10 *Preliminary Hearing Transcript*, pg. 821.

11 The police seek to excuse their actions based on an “attorney privilege problem”. See
12 *Preliminary Hearing Transcript*, pg. 817. Detective Fry testified that Mr. Capone made the alleged
13 statement well before Attorney Mark Monson arrived at the police department:
14

15 Q Lieutenant Fry, a couple of things. Number one, uh, nobody was ever in the
16 room with Mr. Capone and me at the same time, is that right?

17 A I don’t believe so. I was-- there was times I was back in the bullpen, which is
18 what we call our detective area in the back, so I don’t know if anybody was in there with
19 you guys—

20 Q Okay.

21 A -- at any other time.

22 Q But before-- before I arrived,--

23 A Um hmm.

24 Q -- **you had Mr. Capone in the interrogation room, is that right?**

25 A The interview room, yes.

Q The interview room. We won’t split hairs. Uhm, you had him in the interview
room, is that right?



1 A That's correct.

2 Q The video and audio was going, is that right?

3 A That's also correct.

4 Q It was recording?

5 A That is correct.

6 Q And then-- and also the video-- the-- the monitor where other people were
7 able to monitor it, that was going as well, is that right?

8 A Out in the bullpen?

9 Q Out in the bullpen.

10 A That's correct.

11 Q Okay. How many people were there?

12 A Uh, quite a few were back in the bullpen area, four or five.

13 Q And they were all watching this happen, isn't that right?

14 A Some. At times I was not in there. I was doing other things. So people were
15 coming and going. Uhm,--

16 Q And it-- it's true that you had Mr. Capone in there for probably two hours
17 before I came on scene, is that right?

18 A You'd need probably to ask Captain Hally about that or uh Agent Hart. They
19 would have a more accurate timeframe on that.

20 Q You're aware that it took some time before I was given access to Mr. Capone, isn't
21 that right?

22 A It took a while before he asked for his attorney, yes.

23 Q Okay. And you've reviewed the reports and you're aware that-- that Captain
24 Hally alleges that Mr. Capone made a statement that could be construed as some kind of
25 admission, tacit or otherwise, isn't that right?

A That's correct.

Q And that would have taken place well before I got there, isn't that right?

A That is also correct.

Q And that would have been recorded, isn't that right?

A That is correct.

Q Okay. So who made the decision not to preserve that tape?

A Myself, Agent Hart and uhm Corporal Gleason, because we felt that there was
a privilege problem that we had and we did not want to hear anything we were not
supposed to hear.



1 Q Okay. Is it the privilege problem because he invoked his right to counsel right
2 immediately after you got in there, or is it a privilege problem because I showed up?

3 A I know nothing about that information.

4 Q Okay. So this is a murder case, is that right?

5 A That's correct.

6 Q And you made a conscious decision to not preserve a recording that you knew
7 was critical evidence in this case, isn't that right?

8 A We made a conscious decision to protect the client and not hear anything we
9 weren't supposed to hear.

10 Q But you could have-- you could have turned-- my understanding is you could
11 have turned that recording-- that recording turns on and off, isn't that right?

12 A It-- no, it's a-- it's a motion sensor. So any time there's motion in the room, a
13 light comes on, anything, it is recording constantly.

14 Q **So why wouldn't you have put Mr. Capone and me in a separate room that wasn't
15 on the same loop?**

16 A **Looking back now, I wished I would have done that. But when you came in, you
17 came in and you entered into the room and started conversation.**

18 Q And to your knowledge, is there any report from anybody that talks about what
19 happened to that recording?

20 A No, there's not.

21 Q Why not?

22 A Because we got caught up in everything that was going on and, to be quite
23 honest, we forgot.

24 Q Is there anything else in this investigation that you forgot to document?

25 A You know, it's a big case. There probably could be some things. I'm not going
to say there's not.

Q So you—

A I can't honestly say that there's not, or if there is.

Q You forgot to document probably the most critical piece of evidence that you
have in this case at this point, isn't that right?

A I don't know if I'd say that.

Q How would you characterize it?

A I would say that we should have documented that in the case, yes.



1 *Preliminary Hearing Transcript*, pg. 818-22 (emphasis added).

2 Detective Fry was subsequently questioned about how the interviews are provided to the
3 prosecutor's office, to which he testified that usually the detectives would physically burn the
4 CD. *See Preliminary Hearing Transcript*, pg. 830. Detective Fry testified that he ran the system
5 and understood the system and "how to pull stuff off", but that wasn't his specialty. *See*
6 *Preliminary Hearing Transcript*, pg. 841.

7 Officer Bruce Fager of the Moscow Police Department testified regarding how a
8 recording is transferred to a DVD and also Detective Fry's experience with transferring such
9 recordings:
10

11 **Q Are you familiar-- are you familiar with how the-- the audio/video equipment**
12 **works at the Moscow Police Department?**

13 A Yes.

14 **Q Have-- have you ever-- do you have any experience taking those recordings off**
15 **the hard drive?**

16 A Yes.

17 Q And how does that happen?

18 A The uh-- in order to uh burn a D-V-D of-- of the interview, uh, you go in and
19 you have to find the start of the interview. You, typically, by selecting the date and time
20 range and you watch it until you get the exact start. We write that down. You then skip
21 to the end of the interview, try to pick the exact time that the interview ended. You then
22 have to go to a save option. Uh, and once you're in the-- the-- the save option, you put
23 in the date and the time range, down to the second of when the interview started, when it
24 stopped, uhm, select up your drive, put a D-V-D in and just hit record. And it--

25 **Q Okay. And-- and so what you're telling me is, it's as easy as-- as determining the**
two points in time and then just saving that part?

A Yes.

Q Uh, I'll represent to you that we heard some testimony that there was a ninety
day time loop. Do you know how that works?



1 A The uh-- the information is stored digitally on a hard drive. And depending on
2 how many interviews are conducted inside that ninety days, the timeframe in which it
3 starts to overwrite data could be less or it could be more. Uh, but the general rule of
4 thumb is, I believe, ninety days. I don't know that for certain though.

5 Q And-- and you may have answered this and I apologize if I misunderstood you,
6 but is it a fairly simple matter to-- is it a routine procedure to copy a-- a particular time on a
7 C-D? Is that-- is that easy to do?

8 A It is. You just have to listen to this-- again, the start of the interview and the end
9 of the interview.

10 Q Is-- is the clock-- is the clock uh on the recording device, is that in real time?

11 A Yes.

12 Q Okay. So if you knew about what time the interview started and about what time
13 it ended, you could go directly to those points, is that right?

14 A Yes.

15 Q Okay. How many people, to your knowledge, are trained to do that?

16 A The majority of the department.

17 Q Is Lieutenant Fry trained to do that?

18 A Yes.

19 Q Is Detective Gleason trained to do that?

20 A Yes.

21 Q Is Officer Fager trained to do that?

22 A Yes.

23 MR. MONSON: I'm sorry. Obviously,--

24 THE COURT: That would be-- I-- I was--

25 MR. MONSON: I--

THE COURT: I thought you were just being clever.

MR. MONSON: It was going so-- it was going so well, until I heard laughter over
there, so.

THE COURT: Yeah.

[MR. MONSON CONTINUING]

Q I meant Officer Bruce, I'm sorry, Danny Bruce?

A I'm not sure, to be honest with you.

Q Uh, do you know if-- if uh Detective Besst would be trained to do that?



1 A I don't think so.

2 Q Would anybody from Latah County Sheriff's Office be trained to do that?

3 A Probably not.

4 Q **And then who typically takes the recording? Is it the investigating officer who does that?**

5 A Yes.

6 Q **In your experience has-- has Lieutenant Fry done that on a number of occasions?**

7 A Yes.

8 Q Uhm, how about Officer Bruce? Has he done that on a number of occasions, to your experience?

9 A Uh, Sergeant Bruce?

10 Q Yes.

11 A Again, I'm not sure. Some of the guys just ask the detectives that are back there to do it because we do it more often. So— I know he's familiar with it, but—

12 Q **Has Corporal Gleason done that?**

13 A Yes.

14 Q **I-- I recognize he's no longer there, but he's done that on a number of occasions?**

15 A Yes.

16 MR. MONSON: I don't think I have any further questions. Thank you.

17 THE COURT: Thank you, Mr. Monson.

18 MR. KOVIS: No questions.

19 THE COURT: Thank you, Mr. Kovic.

20 Redirect?

21 REDIRECT EXAMINATION OF BRUCE FAGER

22 BY MS. VOWELS:

23 Q Uhm, Detective Sergeant Fager, when you're recording, when-- when you want to save that recording, do you listen a little bit before the interview starts and a little bit after the interview ends to make sure you've got the entire recording?

24 A Yes, you can-- it's audio and visual and you click it and usually you can tell when the interview is going to begin—

25 Q Um hmm.

A -- because you'll walk into the room, as one would expect on a video.

Q Um hmm.

1 A At the end, when everybody's standing up and starting to walk out is typically
2 when we stop the-- the recording, write down those times and then make our recording
3 from there.

4 Q But you listen to make sure you have the entire recording?

5 A **Uhm, we don't listen—**

6 Q At least to the end time?

7 A -- **if-- if it's a long interview,--**

8 Q Um hmm.

9 A -- we're not going to listen to the whole thing right there. We'll just get the
10 start and the end times, burn it to a disk and then that disk can then be either copied,
11 stuck in-- in any computer and played and then you can listen to it from that point.

12 Q Right. But that process includes then listening and, for the sake of this
13 questioning, would be at the end, listening at the end to make sure you have the entire
14 recording?

15 A Yes.

16 MS. VOWELS: No further questions.

17 THE COURT: Thank you.

18 RE-CROSS EXAMINATION OF BRUCE FAGER

19 BY MR. MONSON:

20 Q Uh, Sergeant, when you-- when you talk about kind of cueing it up for uh-- for
21 burning. Uh, I think I understood you in your previous testimony to say you could-- you
22 could see the video but turn down the audio, is that right?

23 A You have that option, yes.

24 Q **Okay. So when you're-- so when you're getting it ready, you don't have to listen
25 to the audio, is that correct?**

A **Correct.**

Q So when you're watching the video, you could tell if an attorney had walked
into that-- into that interview room with the defendant?

A Well, you'd have to listen to it and see when they walk in and you'll hear the
audio. And you-- you could certainly turn it off at that point.

Q Okay. But—

A As far as being able to monitor it.



1 Q But the audio and the video that-- that's synchronized, is that correct?

2 A Yes.

3 Q Okay. So you could see when the attorney walked into-- into the room, is that
4 right?

5 A Yes.

6 Q And as I understood your testimony, you don't necessarily-- when you're
7 cueing this up, you don't necessarily have to listen to the audio portion?

8 A You don't have to, no, but we typically do, so—

9 *Preliminary Hearing Transcript*, pg. 1059-68 (emphasis added).

10 The troubling aspect about the loss of this audio/video is that Officer Bruce Fager
11 testified that "the majority of the department" is trained to transfer recorded interviews onto
12 CDs - including Detective Fry and Corporal Gleason - two of the three individuals identified
13 who made the conscious decision not to preserve the recording. Officer Fager testified that both
14 Detective Frye and Corporal Gleason had transferred recordings on a number of occasions.

15 The process of transferring recordings to CDs is as simple as (1) identifying the start
16 point; (2) identifying the end point; (3) inputting those points into the program; and (4) pushing
17 record. In addition, the clock and video are synchronized in real time, and the transfer to CD can
18 be easily accomplished without the need to listen to any of the recordings. Importantly, it is
19 undisputed that Mr. Capone's allegedly incriminating statement was made well before Attorney
20 Mark Monson arrived at the police department, and it was well documented what time Attorney
21 Mark Monson arrived at the police department. There would have been an easily identifiable
22 "break" in time between the alleged incriminating statement and when Attorney Mark Monson
23 arrived at the police station. There is no valid reason not to have preserved the recording.



1 More troubling is that the entire police department was aware of the fact that the
2 interview rooms were automatically recorded, and the police failed to provide an interview room
3 for Mr. Capone and his attorney that was not under surveillance – again, a very easy thing to
4 accomplish. Most troubling, however, is the fact that in spite of the apparent common knowledge
5 of those present in the police department of Mr. Capone’s incriminating statement, not a single
6 officer (other than Dan Hally and ATF Agent Hart) made mention of any incriminating
7 statement in a report, and that the police waited over three years to disclose this to the
8 prosecuting attorney.

9
10 The police conduct in this matter was more than “mere negligence”. This was clearly
11 contrary to police procedure. “A deviation from normal practice can indicate bad faith.” *State v.*
12 *Lewis*, 144 Idaho at 67. Unlike the circumstances surrounding the loss of the recording in *State v.*
13 *Lewis*, in this case the loss of the recording was intentional. The loss of the recording in this case
14 cuts against due process and constitutes bad faith on the part of the state.

15 CONCLUSION

16 Any statements made by Charles Capone subsequent to his arrest and interrogation on
17 May 6, 2010, and interrogation on August 28, 2012 should be suppressed because Charles
18 Capone’s right to counsel was violated by police procedures utilized in this case. On both
19 occasions, Charles Capone clearly invoked his right to counsel, the police failed to immediately
20 terminate the interrogation, and counsel was not allowed to be physically present during the
21 interrogation.

1 DATED this 7 day of February 2014.

2
3 D Ray Barker
4 D. Ray Barker
5 Co-Counsel for Defendant

6 Mark T. Monson
7 Mark T. Monson
8 Co-Counsel for Defendant

9
10 **Certificate of Service**

11 I HEREBY CERTIFY that a true and correct copy of the foregoing **Memorandum in**
12 **Support of Motion to Suppress** was served on the following individuals by the method indicated:

13
14 William Thompson
15 Latah County Prosecuting Attorney
16 PO Box 8068
17 Moscow, ID 83843

[] Via Facsimile:
[] U.S. Mail
[X] Hand Delivery

18 on this 7 day of October, 2013.

19 By: Mark T. Monson

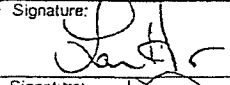

Title of Investigation: Capone, Charles A.	Investigation Number: 787050-10-0037	Report Number: 3
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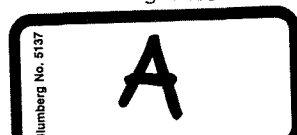
SUMMARY OF EVENT:

On May 6, 2010, Charles A. CAPONE was arrested at his business in Moscow, Idaho by ATF Special Agents, and Task Force Officers from the Asotin County and Latah County Sheriff's Office and the Moscow Police Department (MPD). On May 18, 2010, CAPONE was indicted by a federal grand jury on two counts of felon in possession of a firearm and on May 27, 2010, CAPONE appeared for an arraignment in federal court.

NARRATIVE:

1. On May 5, 2010, SSA Hart prepared a criminal complaint and obtained an arrest warrant for Charles CAPONE, for violation of 18 U.S.C. 922 (g)(1) – felon in possession of a firearm.
2. On May 6, 2010, Agents from the Spokane ATF Field Office traveled to Moscow, Idaho to arrest CAPONE. Prior to executing the arrest warrant, a briefing was conducted at the Moscow Police Department at approximately 9:30 a.m. At approximately 10:00 a.m., CAPONE was contacted at his business, Palouse Multiple Services (PMS) located at 2216 South Main Street, Moscow, Idaho by ATF Special Agents and MPD Officers. CAPONE was placed under arrest by SSA Hart and transported to the Moscow Police Department.
3. At approximately 10:15 a.m., CAPONE was escorted to an interview room at the Moscow Police Department. While in the interview room, CAPONE was unhandcuffed. Captain Dan Hally, a Task Force member from the Asotin County Sheriff's Office was also present in the interview room. CAPONE was provided a copy of ATF F 3200.4 – Advice of Rights and Waiver. SSA Hart read aloud the advice of rights to CAPONE. After being advised of his rights, CAPONE said that he wanted to talk to SSA Hart about the GLOCK firearm, but he wanted to first telephone his divorce attorney Mark Monson before being questioned. CAPONE was advised of the circumstances outlined in the criminal complaint and the process that would ensue. Agent Hart advised CAPONE that if he were without funds he would be appointed an attorney from the federal defender's office and that he would appear before a federal magistrate in Coeur d' Alene. Agent Hart also advised CAPONE that he would be detained pending a detention hearing before a federal magistrate. CAPONE asked how he could be released and Agent Hart advised him that the government would be seeking his detention, pending trial. CAPONE was advised that he would have appointed counsel and a hearing to determine whether he was released pending trial.
4. At approximately 10:21 a.m., CAPONE was provided telephone to call his attorney. After speaking with his

Prepared by: Lance A. Hart	Title: Senior Special Agent, Spokane I Field Office	Signature: 	Date: 6/2/2010
Authorized by: Steven T. Lowhurst	Title: Resident Agent in Charge, Spokane I Field Office	Signature: 	Date: 6-3-10
Second level reviewer (optional): Ivin N. Crenshaw	Title: Special Agent in Charge, Seattle Field Division	Signature:	Date:



attorney, CAPONE said that he wanted to talk to Agent Hart about the GLOCK, but his attorney would not let him. Agent Hart then terminated his interview with CAPONE. CAPONE agreed to continue talking with Captain Hally about the disappearance of his wife, Rachael Anderson. Agent Hart then left the interview room. Subsequently, Capt. Hally informed Agent Hart that he (Capt Hally) had told CAPONE that he knew that CAPONE killed Rachael and that he knew that CAPONE knew where Rachael's body was located. According to Capt. Hally, CAPONE responded, "one of those statements is correct".

5. At approximately 11:40 a.m., CAPONE's divorce lawyer, Mark Monson stopped by the Moscow Police Department and requested that he be allowed to meet with CAPONE. Monson was advised that CAPONE was being processed for prints and photographs. Monson was advised by Agent Hart that he would allow CAPONE to contact him by telephone after being processed. Monson provided Agent Hart with his business card and then left the police department.

6. After CAPONE was processed, he was escorted back to the interview room to wait for the transporting agents to return from lunch. CAPONE initiated conversation with Agent Hart and made comments that his life was over and that he didn't want to be viewed as a "monster". CAPONE asked Agent Hart to help him get out of custody to get his affairs in order. Agent Hart reminded CAPONE that he had invoked his right not to answer any questions and in fact had been allowed to consult with his attorney over the phone. CAPONE said that he remembered, but that he just wanted to get some things off his chest, so that the record was clear about the firearms. CAPONE said that he was just trying to live a normal life and that he didn't have a reckless disregard for the federal firearms laws. Agent Hart advised CAPONE that he would not question him about the firearms. CAPONE continued to talk voluntarily, stating that he wanted Agent Hart's assistance in helping him get released, so that he could get his affairs in order. Agent Hart advised CAPONE that he could not make any promises, but that if he (CAPONE) assisted law enforcement with providing information concerning the location of Rachael Anderson, his estranged wife, that assistance would be brought to the attention of the U.S. Attorney's Office and they would ultimately make any decision regarding his release conditions. Agent Hart then consulted with the U.S. Attorney's Office by telephone regarding CAPONE's request.

7. Agent Hart subsequently advised CAPONE that if he assisted law enforcement with the recovery of Rachael Anderson that he would seek a dismissal of the criminal complaint. Agent Hart further advised CAPONE that the government would not seek additional federal firearms charges if CAPONE provided assistance to law enforcement regarding the recovery of Rachael Anderson. CAPONE said that he didn't want people thinking he was a "monster" and he agreed to help lead detectives to the location of Rachael's body. CAPONE asked Agent Hart if his attorney could be with him through the process of recovering Rachael's body. Agent Hart advised CAPONE that he would call his attorney and request that he come to the police station, if it would help in the recovery of Rachael. CAPONE said, "yes, it would help".

8. Agent Hart then telephoned Monson and asked him to come to the Moscow Police Department. CAPONE requested and was allowed to be escorted outside to smoke a cigarette. Agent Hart advised Monson, that CAPONE had agreed to lead authorities to the location of Rachael's body in exchange for dismissing the federal criminal complaint. Monson was then allowed to meet with CAPONE. Latah County Prosecutor Bill Thompson was summoned to Moscow Police Department to participate with the negotiations with Monson. Agent Hart contacted the Assistant U.S. Attorney Mike Mitchell by telephone in the presence of Monson and Prosecutor Thompson. Agent Hart placed AUSA Mitchell on speakerphone so that Monson could be fully advised of the circumstances of the government's agreement to dismiss the complaint in exchange for CAPONE's cooperation with recovering Rachael Anderson. Monson met with CAPONE on and off over a period of time, during the negotiations. At one point, Monson inquired whether CAPONE would be allowed to be released to get his affairs in order. Monson was advised that CAPONE would not be released. Monson was allowed to confer with Prosecutor Thompson. Monson then asked Agent Hart if he could get

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the agreement in writing. Agent Hart then telephoned AUSA Mitchell and requested that the agreement be detailed in writing and emailed to the Moscow Police Department. Monson then re-contacted CAPONE. Subsequently, Monson advised Agent Hart that he would not be able to secure an agreement now. CAPONE was then escorted outside and transported to Coeur d' Alene by ATF Special Agents Rich Jessen, Jennifer Marks and Mike Northcutt.

9. On May 11, 2010, CAPONE, represented by counsel appeared for a detention hearing. CAPONE was ordered held without bond.

10. On May 18, 2010, CAPONE was indicted by a federal grand jury in Coeur d'Alene, Idaho, on 2-counts of felon in possession of a firearm.

11. On May 27, 2010, CAPONE appeared for an arraignment on the grand jury indictment.

Investigation to continue.

Law Supplemental Narrative:

Supplemental Narratives

Seq Name Date Narrative

26 Jackie Nichols 09:37:29 10/05/12

SUPPLEMENTAL NARRATIVE

On August 28, 2012, Capt. Dan Hally and I met with Charles Capone at the Charles was defensive and angered that we were there. Charles stated he had been waiting for two years for us to come and arrest him.

Charles stated he had nothing to say to us without his attorney being there. We told Charles we wanted to share some information with him. Charles became angry and said this had all started out as a game and still was a game. Charles said the only reason he had gotten upset and emotional when he first met with us at his shop was because he thought Rachael was playing a game with him. Charles said that the phone calls between him and Rachael had been a two-way street.

Capt. Hally showed Charles a letter Rachael had written to him during their marriage about how much she loved him. Charles looked at it, showed no emotion and stated that there were a lot of things we didn't know about. Charles said we had no idea how hard this had been on him. Charles said he used to have a nice life, had his own business and everything was going good for him until this. Charles went to the door and yelled for the guards to come get him.

Capt. Hally said he thought it was odd that he wasn't at all interested in an update on his missing wife. Charles got very angry and told us of course he was interested but he wasn't going to talk to us because he didn't trust us. Capt. Hally told Charles he was going to be facing Federal Charges on Interstate Stalking. Charles said he didn't care and he would fight the charges because it was a two-way street between him and Rachael.

Charles said he would like to think that Rachael was in South Dakota somewhere. (Where her family members live). Capt. Hally reminded him that he had said during an interview that he could either tell us he killed Rachael or he could take us to her body. Charles yelled that he did no such thing. Capt. Hally said the interview was recorded. Charles said he never said that and he wanted to hear the recording. Charles was extremely angry and went to the door and yelled for the guards to come and get him, which they did.

DATE, TIME, REPORTING OFFICER:

Fri Oct 05 09:40:20 PDT 2012

Detective Nichols, #210

Approved by:

Date, Time

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct to the best of my knowledge and belief.

Signed at (Asotin / Clarkston), Washington on 10-5-12 Date



John [Signature] #210 00069 000553

CR-2013-1358

CASE NO _____

2014 FEB -7 PM 2: 18

CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ DEPUTY

MARK T. MONSON, P.A.
MOSMAN LAW OFFICES
803 S. Jefferson, Suite 4
P.O. Box 8456
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

**MOTION TO SUPPRESS AND
MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

COMES NOW the defendant, by and through his undersigned attorney of record, and moves to suppress and/or moves in limine that the court prohibit the Plaintiff, State of Idaho, its witnesses and legal counsel from introducing or producing evidence, or making any comment during trial, with respect to all items of oral evidence by witnesses not subject to confrontation pursuant to the Sixth Amendment of the United States Constitution, *Crawford v. Washington*, 541 U.S. 36 (2004), *Giles v. California*, 554 U.S. 353 (2008), and applicable state law.

MOTION TO SUPPRESS AND MEMORANDUM
IN SUPPORT OF MOTION TO SUPPRESS

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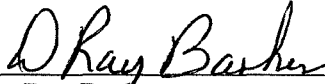



MOSMAN
LAW OFFICES
000554

1 This Motion is based upon the *Memorandum in Support of Motion to Suppress* (below) and
2 upon the testimony to be elicited at the hearing.

3 Oral argument is requested.

4 DATED this 7 day of February 2014.

5
6 
7 _____
8 D. Ray Barker
9 Co-Counsel for Defendant

10 
11 _____
12 Mark T. Monson
13 Co-Counsel for Defendant

14 **MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS**

15 On September 5, 2009, Charles Capone and Rachel Anderson married. Shortly thereafter, on
16 January 2, 2010, Rachel Anderson reported to the Clarkston Police Department that she and Charles
17 had been fighting a week earlier (on December 29, 2009), when she alleged that Charles Capone
18 pushed and strangled her. An investigation ensued and Charles Capone denied the assault happened.
19 No charges were filed and no further action was taken. In the months prior to her disappearance,
20 Rachel Anderson made a number of reports to the police and friends involving incidents she
21 attributed to Charles Capone. In April 2010, nearly four months after the alleged assault, Rachel
22 Anderson disappeared. Subsequently, Charles Capone and David Stone were arrested and charged
23 with murder and conspiracy to commit murder.



LEGAL AUTHORITY AND ARGUMENT

In criminal prosecutions, the admission of hearsay against a criminal defendant may implicate the Confrontation Clause of the United States Constitution. The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” U.S. Const. amend. VI.

“[T]he principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused.” *Crawford v. Washington*, 541 U.S. 36, 50, 124 S.Ct. 1354, 1363 (2004).

Hearsay in the form of a “testimonial” statement of a declarant who does not appear at trial is not admissible unless the declarant is unavailable as a witness and the defendant had a prior opportunity to cross-examine:

The Amendment contemplates that a witness who makes testimonial statements admitted against a defendant will ordinarily be present at trial for cross-examination, and that if the witness is unavailable, his prior testimony will be introduced only if the defendant had a prior opportunity to cross-examine him.

Giles v. California, 554 U.S. 353, 358 (2008) (citing *Crawford v. Washington* 541 U.S. 36, 68 (2004)(see also *State v. Kramer*, 153 Idaho 29, 33 (2012)).

In *Crawford*, the United States Supreme Court held that the Confrontation Clause is “most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding.” *Giles*, 554 U.S. at 358 (citing *Crawford*, 541 U.S. at 54). The *Giles* Court listed the two forms of testimonial statements admitted at common law even though unfronted: (1) declarations made by a speaker who was both on the brink of death and



1 aware that he was dying, and (2) statements of a witness who was “detained” or “kept away” by the
2 “means or procurement” of the defendant (i.e., forfeiture by wrongdoing). *See Giles*, 554 U.S. at
3 358-59.

4 Testimonial Statements

5 “Not all evidence, however, implicates the Confrontation Clause. Rather, ‘[i]t is the
6 testimonial character of the statement that separates it from other hearsay that, while subject to
7 traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause.’” *State v.*
8 *Kramer*, 153 Idaho 29, 33 (quoting *Davis v. Washington*, 547 U.S. 813, 821, 126 S.Ct. 2266, 2273, 165
9 L.Ed.2d 224, 237 (2006)). “Thus, the Idaho Supreme Court has stated that ‘the threshold question
10 in a Confrontation Clause case is whether the statement is testimonial.’” *Id.* (quoting *State v.*
11 *Hooper*, 145 Idaho 139, 143). The Court employs a totality of the circumstances analysis to determine
12 whether statements are testimonial in nature. *See State v. Shackelford*, 150 Idaho 355, 373, 247 P.3d
13 582, 600 (2010); *State v. Hooper*, 145 Idaho 139, 146 (2007).

14 Regarding what constitutes a “testimonial statement”, the Idaho Supreme Court held:

15 Thus, a statement is testimonial under *Crawford* and *Davis* when the
16 circumstances objectively indicate that the **primary purpose of the interrogation is**
17 **to establish or prove past events potentially relevant to later criminal prosecution,**
18 unless made in the course of police interrogation under circumstances objectively
19 indicating the primary purpose of the interrogation is to enable police assistance to
20 meet an ongoing emergency.

21 *State v. Hooper*, 145 Idaho at 143-44 (2007) (emphasis added).

22 In what it termed a “core class of ‘testimonial’ statements, the United States Supreme court
23 court included “[s]tatements that were made under circumstances which would lead an objective
24



1 witness reasonably to believe that the statement would be available for use at a later trial.” *Crawford*,
2 541 U.S. at 51-52.

3 “An accuser who makes a formal statement to government officers bears testimony...”
4 *Crawford*, 541 U.S. 51. Statements taken by police officers in the course of interrogations are
5 testimonial even under a narrow standard. *See Crawford*, 541 U.S. at 52. Regarding what constitutes
6 an “interrogation”, the *Crawford* court stated, “[w]e use the term ‘interrogation’ in its colloquial,
7 rather than any technical legal sense. Just as various definitions of ‘testimonial’ exist, one can
8 imagine various definitions of ‘interrogation,’ and we need not select among them in this case.
9 Sylvia’s recorded statement, knowingly given in response to structured police questioning, qualifies
10 under any conceivable definition.” *Id.* at 53, n.4. The circumstances surrounding Rachel Anderson’s
11 contact with police officers objectively indicate the primary purpose of her interviews with police
12 was to establish or prove past events relevant to later prosecution. Therefore, any statements made
13 by Rachel Anderson to the police are testimonial in nature.

14 **Statements on the “Brink of Death”**

15
16 In *Giles v. California*, the defendant shot his ex-girlfriend. *See Giles*, 554 U.S. at 356.
17 Prosecutors sought to introduce statements that his girlfriend had made to a police officer
18 responding to a domestic-violence report about three weeks prior to the shooting. *See id.* The
19 girlfriend, “who was crying when she spoke, told the officer that Giles had accused her of having an
20 affair, and that after the two began to argue, Giles grabbed her by the shirt, lifted her off the floor,
21 and began to choke her.” *Id.* at 357-58. The United States Supreme Court held that the girlfriend
22 “did not make the unconfronted statements admitted at Giles’ trial when she was dying, so her
23



1 statements do not fall within this historic exception.” *Id.* at 358-59. Similarly, any statements made
2 by Rachel Anderson in the present case were not made as she was “dying” and therefore do not fall
3 within this exception.

4 Forfeiture by Wrongdoing

5 In 2008, the United States Supreme Court held that out of court testimonial statements of an
6 absent witness may be admitted at trial under the forfeiture by wrongdoing doctrine as an exception
7 to the right of confrontation, **but only where the defendant’s wrongful act was designed to prevent the**
8 **witness from testifying.** *See Giles v. California*, 554 U.S. at 359-61, 368. The United States Supreme
9 Court stated,

10
11 In cases where the evidence suggested that the defendant had caused a person to
12 be absent, but had not done so to prevent the person from testifying—as in the
13 typical murder case involving accusatorial statements by the victim—the
14 testimony was excluded unless it was confronted or fell within the dying-
15 declarations exception.

16 *Id.* at 361-62.

17 The *Giles* court cautioned against the argument that when a defendant commits some act of
18 wrongdoing that renders a witness unavailable, he forfeits his right to object to the witness’s
19 testimony on confrontation grounds, but not on hearsay grounds. *See id.* at 364-65. The Court stated,
20 “[n]o case or treatise that we have found, however, suggested that a defendant who committed
21 wrongdoing forfeited his confrontation rights but not his hearsay rights. And the distinction would
22 have been a surprising one, because courts prior to the founding excluded hearsay evidence in large
23 part *because* it was unopposed.” *Id.* at 365 (emphasis in original). The Court stated, “[t]he notion
24 that judges may strip the defendant of a right that the Constitution deems essential to a fair trial, on
25



1 the basis of a prior *judicial* assessment that the defendant is guilty as charged, does not sit well with
2 the right to trial by jury. It is akin, one might say, to ‘dispensing with jury trial because a defendant is
3 obviously guilty.’” *Id.* (emphasis in original).

4 The *Giles* court summarized:

5 In sum, our interpretation of the common-law forfeiture rule is supported by (1)
6 the most natural reading of the language used at common law; (2) the absence of
7 common-law cases *admitting* prior statements on a forfeiture theory when the
8 defendant had not engaged in conduct designed to prevent a witness from
9 testifying; (3) the common law’s uniform exclusion of uncontroverted inculpatory
10 testimony by murder victims (except testimony given with awareness of
11 impending death) in the innumerable cases in which the defendant was on trial for
12 killing the victim, but was not shown to have done so for the purpose of preventing
13 testimony; (4) a subsequent history in which the dissent’s broad forfeiture theory
14 has not been applied. The first two and the last are highly persuasive; the third is
15 in our view conclusive.

16 *Id.* at 368 (emphasis in original).

17 After analyzing the dissent’s arguments, the *Giles* court stated, “The boundaries of the
18 doctrine seem to us intelligently fixed so as to avoid a principle repugnant to our constitutional
19 system of trial by jury: that those murder defendants whom the judge considers guilty (after less than
20 a full trial, mind you, and of course before the jury has pronounced guilt) should be deprived of fair-
21 trial rights, less they benefit from their judge-determined wrong.” *Id.* at 374.

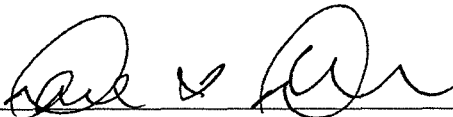
22 The court must be careful to not incorrectly apply the “forfeiture by wrongdoing” doctrine
23 and approve its application where there is no connection between the witness’ disappearance and
24 the testimony sought to be prevented. This is the very trap sought to be avoided by the United States
25 Supreme Court – depriving Charles Capone of his constitutional right to confrontation simply
because the court considers him guilty in Rachel Anderson’s disappearance.

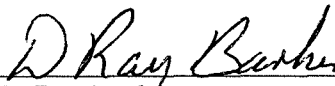
1 The State's burden is very high for good reason; its aim is to prevent the state from violating
2 Charles Capone's Sixth Amendment right to confrontation. The state must demonstrate by clear,
3 cogent, and convincing evidence that Charles Capone caused Rachel Anderson's disappearance in
4 order to prevent her from testifying. This is critically different from showing that Charles Capone
5 was simply responsible for her disappearance.
6

7 **CONCLUSION**

8 Based on the foregoing, the Defendant respectfully requests that evidence of statements
9 made by Rachel Anderson to police and/or friends be suppressed together with such other relief as
10 to the Court may seem just and proper.

11 DATED this 7 day of February 2014.

12
13 
14 _____
15 Mark T. Monson
16 Co-Counsel for Defendant

17 
18 _____
19 D. Ray Barker
20 Co-Counsel for Defendant
21
22
23

Certificate of Service

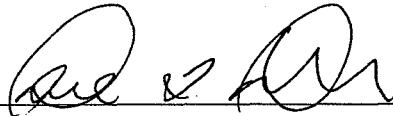
I HEREBY CERTIFY that a true and correct copy of the foregoing **Motion to Suppress and Memorandum in Support of Motion to Suppress** was served on the following individuals by the method indicated:

William Thompson
Latah County Prosecuting Attorney
PO Box 8068
Moscow, ID 83843

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

on this 7 day of February 2014.

By: _____



CR 2013-1357
CASE NO.

2014 FEB -7 PM 2:19

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] 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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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

**MOTION TO SUPPRESS AND
MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

COMES NOW the defendant, by and through his undersigned attorney of record, and moves to suppress and/or moves in limine that the court prohibit the Plaintiff, State of Idaho, its witnesses and legal counsel from introducing or producing evidence, or making any comment during trial, with respect to the following matters:

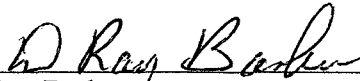
To suppress all items of evidence obtained pursuant to search warrants issued contrary to the provisions of the United States Constitution and the Idaho State Constitution, and applicable state law.

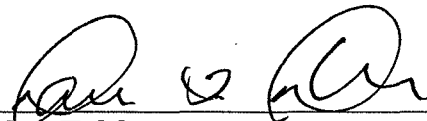


1 This Motion is based upon the *Memorandum in Support of Motion to Suppress* (below) and
2 upon the testimony to be elicited at the hearing.

3 Oral argument is requested.

4 DATED this 6 day of February 2014.

5
6 
7 D. Ray Barker
8 Co-Counsel for Defendant

9 
10 Mark T. Monson
11 Co-Counsel for Defendant

12
13 **MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS**

14 In April 2010, Rachel Anderson disappeared. Within a week of Rachel Anderson's
15 disappearance, search warrants were applied for and issued in Nez Perce County and Latah County.
16 In each of the affidavits submitted in support of the search warrants, the same narrative prepared by
17 Deputy Dan Hally of the Asotin County Sheriff's Office was used.

18 **LEGAL AUTHORITY AND ARGUMENT**

19 In *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the United States
20 Supreme Court set forth the procedure under the Fourth Amendment for a defendant to challenge a
21 warrant based on allegedly false information. The Idaho Supreme Court adopted the *Franks*
22 approach for Art. 1, § 17 of the Idaho Constitution in *State v. Lindner*, 100 Idaho 37, 592 P.2d 852
23

1 (1979). "According to *Franks* and *Lindner*, a defendant must show by a preponderance of the
2 evidence not only that an affiant made a false statement to obtain a warrant, but also that the affiant
3 either provided the false statement to the magistrate knowingly and intentionally or with reckless
4 disregard for the truth." *State v. Kluss*, 125 Idaho 14, 21, (1993).

5 In the present case, Deputy Hally drafted a report that was intended to be used as the basis
6 for search warrant affidavits. See *Preliminary Hearing Transcript*, pg. 210-11. A copy of the "affidavit"
7 prepared by Deputy Hally and entered into the police computer system is attached as Exhibit 1. The
8 narrative from this "affidavit" was used in subsequent search warrant affidavits. Absent in the
9 subsequent affidavits submitted by other officers is any affirmation or oath by Deputy Hally, or any
10 information pertaining to Deputy Hally's knowledge, training, or experience that support his
11 conclusion of probable cause. This is significant because subsequent officers simply "copied and
12 pasted" this statement into their warrant affidavits. Further, there is no indication in the warrants or
13 affidavits for warrants that subsequent officers did anything to corroborate this information or to
14 form their own basis of knowledge regarding the same prior to utilizing his statement in their
15 affidavits.
16

17 In the information provided by Deputy Hally, (and used in the search warrant affidavits)
18 there are several misleading statements. Statements include:

- 19 1. "Charles told me that he was the one who was stalking and harassing Rachel"
- 20 2. "[Charles Capone] told me ... that he had left harassing messages on her phone."
- 21 3. "He [Charles Capone] had left numerous messages and email to scare her because he
22 believed she was harassing him."
23

1 4. "He [Robert Bogden] said that he had a conversation with Charles because Charles had
2 told him that he had ben following and harassing Rachel..."

3 A review of the reports and audio recording of the interview with Mr. Capone that form the
4 basis for the "affidavit" reveals that at no time does Charles Capone admit to "stalking" or
5 "harassing" Rachel Anderson. In addition, the review of the reports and audio recording of the
6 interview with Mr. Capone shows that at no time did Charles Capone admit to sending numerous
7 email to "scare" Rachel Anderson.

8 Robert Bogden testified regarding this conversation at the preliminary hearing. *See*
9 *Preliminary Hearing Transcript*, pg. 635-36. No where in Robert Bogden's testimony at the
10 preliminary hearing does he testify that Charles Capone admitted to "harassing" Rachel Anderson.
11 *See id.*

12 Deputy Hally's testimony at the preliminary hearing was also inconsistent with the what was
13 included in the search warrant affidavits. As an example, at the preliminary hearing, Deputy Hally
14 testified that Charles Capone told him that Rachel Anderson had four beers and Charles Capone had
15 two beers. *See Preliminary Hearing Transcript*, pg. 174. However, the language in the affidavits for the
16 search warrants state that Charles Capone told Deputy Hally that Rachel Anderson had one beer and
17 Charles had two beers.

18 Deputy Hally also misrepresents the contents of police reports made by Rachel Anderson to
19 the Clarkston Police Department. These misrepresentations are included in each of the search
20 warrant affidavits used in this case. As an example, each of the affidavits state: "On February 21,
21 2010 there is a report where Charles allegedly was harassing her by text messages and voice mail
22
23

1 messages.” A copy of the report from February 21, 2010 reveals that the responding officer stated,
2 “None of the text messages are threatening or aggressive in nature” and “the message was not
3 threatening or aggressive in nature and was similar to the other messages.” A copy of the report is
4 included as Exhibit 2 attached hereto. The report does not identify who sent text messages or voice
5 mail messages, and in fact references the content of the messages as saying things like “I am praying
6 for you and Charles, we missed you at church on Sunday, I heard about you and Charles getting a
7 divorce in pray circle and we are praying for you.” The report itself contradicts the assertion
8 contained in each of the search warrant affidavits “On February 21, 2010 there is a report where
9 Charles allegedly was harassing her by text messages and voice mail messages.”

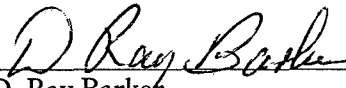
11 Deputy Hally also omits the circumstances surrounding the statement attributed to him in
12 each of the search warrants that “Charles was scheduled to come in to the Moscow Police
13 Department for an interview at 8:00 pm on April 21, 2010. Charles did not show up for the interview
14 and appears to be evading surveillance by the Moscow Police Department with the assistance of
15 acquaintances.” Regarding the 8:00 p.m. interview on April 21, 2010, Deputy Hally failed to include
16 information from Detective Scot Gleason of the Moscow Police Department who contacted Charles
17 Capone on April 21, 2010 at 1245 hour and asked whether Mr. Capone was still planning to meet
18 with Hally that evening. A copy of Detective Gleason’s report is attached hereto as Exhibit 3.
19 Detective Gleason reported that Charles Capone informed him that he had nothing else to say to the
20 police and referred the police to his attorney, Mark Monson. Detective Gleason then reports that he
21 left Charles Capone’s shop and called Detective Hally to report about his contact with Charles
22 Capone.

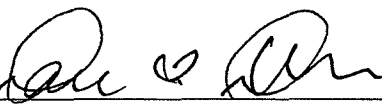
1 The misleading statements and omissions by Deputy Hally which were used in the search
2 warrant affidavits in this case are reveal a pattern of behavior directed toward Charles Capone by
3 Deputy Hally. Deputy Hally's testimony is suspect, at best, because of his conduct toward Mr.
4 Capone throughout his investigation. As noted previously, Deputy Hally knowingly violated Mr.
5 Capone's constitutional rights by intentionally ignoring his request for counsel on May 6, 2010 and
6 again on August 28, 2012. *See Preliminary Hearing Transcript*, pg. 192-95, 220-21.

7
8 **CONCLUSION**

9 Based on the foregoing, the Defendant respectfully requests that evidence obtained as a
10 result of search warrants be suppressed together with such other relief as to the Court may seem just
11 and proper.

12 DATED this 7 day of February 2014.

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14 
15 D. Ray Barker
16 Co-Counsel for Defendant

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18 Mark T. Monson
19 Co-Counsel for Defendant

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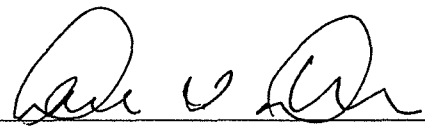
Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing **Motion to Suppress and Memorandum in Support of Motion to Suppress** was served on the following individuals by the method indicated:

William Thompson
Latah County Prosecuting Attorney
PO Box 8068
Moscow, ID 83843

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

on this 7 day of February 2014.

By: 

Law Supplemental Narrative:

Seq Name	Date	Supplemental Narratives Narrative
1 Dan Hally	20:59:09 08/29/10	AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

I, Captain Daniel S. Hally, being duly sworn, depose and state as follows, to wit:

I am a commissioned law enforcement officer for the Asotin County Sheriff's Office. I am currently assigned to the position of Captain and supervise both the patrol and investigation sections of this Office. I have been employed with the Asotin County Sheriff's Office since July of 2003. Prior to my employment with the Asotin County Sheriff's Office I was employed as a Captain with the Nez Perce Tribal Police Department. I successfully completed the Idaho Peace Officer Standards and Training Academy in September of 2001. I successfully completed the Washington State Criminal Justice Training Commission Law Enforcement Equivalency Academy in October of 2003. I received my Bachelor of Science Degree in Justice Studies from Lewis Clark State College in December of 1997. I have successfully completed training in and I currently provide training on the topics of Stalking, Domestic Violence, Dating Violence and Offender Behavior. I have also successfully completed training in Criminal Investigations, Crime Scene Investigations, Cyber Crime Investigations, Internet Crimes Against Children Investigations, Undercover Internet Crimes Against Children Investigations, Interviewing Child Abuse Victims, Interviewing Victims of Trauma, Homicide Investigations, Interviewing and Interrogations, Forensic Social Imaging, Fraud Investigations and Wild Land Arson Investigations. I have a total of 12 years experience in criminal investigations.

I am submitting this Affidavit in support of an Application for a Search Warrant authorizing a search of the SUBJECT COMPUTER an EMachine Computer with Serial Number QE726L0800433 that is currently located in the Moscow Idaho City Police Department Property Room.

The purpose of this application is to seize evidence of violations of
18 U.S.C. 2261A(2) (2009) Cyber Stalking.
18 U.S.C § 2261A Interstate Stalking.
Washington State RCW 9a.46.110 Stalking.

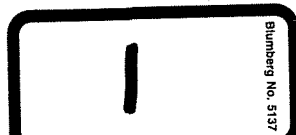
Items to be searched for and seized:

1. Images of Rachael Anderson, DOB: _____) or her family members.
Images of her residence located at _____ or her
vehicles or vehicles she was know to be driving and files containing these
images in any form wherever it may be stored or found including, but not limited
to:

a. Any commercial software and hardware, computer disks, disk drives, tape
drives, disk application programs, data disks, system disk operating systems and
hard drives.

2. Information, correspondence, records, electronic documents or other
materials pertaining to stalking of Rachael Anderson, DOB: _____ but not
limited to:

Electronic mail, chat logs, and electronic messages, establishing
possession, access to, or transmission through interstate or foreign commerce
via the internet.



000570 00136

Records bearing on the production, reproduction, receipt, shipment, orders, requests, purchases, or transactions of any kind involving the transmission through interstate or foreign commerce by computer of any contact with or surveillance of Rachael Anderson, DOB: _____ .

c. Any and all records of Internet usage including user names and e-mail addresses and identities assumed for the purposes of communication on the Internet. These records may include ISP records, i.e., billing and subscriber records, chat room logs, e-mail messages, and include electronic files;

3. Credit card information including but not limited to bills and payment records;

4. Records or other items which evidence ownership of said computer and hard drive, including, but not limited to, sales receipts, bills for Internet access, and typed notes.

5. For any electronic media found to contain information otherwise called for by this warrant:

a. Evidence of who used, owned, or controlled the computer at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, saved usernames and passwords, documents, and browsing history;

b. Evidence of software that would allow others to control the computer, such as viruses, Trojan horses, and other forms of malicious software;

. Evidence of the lack of such malicious software;

d. Evidence of the times the computer was used;

e. Passwords, encryption keys, and other access devices that may be necessary to access the computer.

The statements contained in this Affidavit are based on my experience and background as a Detective. I have been employed in law enforcement for approximately 12 years. I am responsible for conducting county investigations relating to crimes stalking and domestic violence. I graduated from the Washington State Criminal Justice Training Commission and have received basic, advanced, and on-the-job training in the investigation of cases involving stalking and cyber stalking.

The statements contained in this Affidavit are also based on information provided by Detective Jackie Nichols of the Asotin County Sheriff's Office and Detective Eric Olson of the Lewiston City Police Department.

Because this Affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning his investigation. I have set forth only those facts that I believe are

necessary to establish probable cause to believe that evidence of violations - are located on the SUBJECT COMPUTER an EMachine Computer with Serial Number QE726L0800433.

On April 13, 2010 at 0900 hours I met with Rachael L. Anderson, DOB: _____ in my office located at 127 2nd Street, Asotin, Washington which is the Asotin County Sheriff's Office. Rachael came to the office to report being stalked and harassed by text messaging, phone calls, email and damage to her vehicle since February 19, 2010. She told me that she lives at _____ t _____. I told Rachael that it would be a Clarkston City Police Department case and she told me she has already talked to Clarkston City Police on four occasions. She stated the Clarkston City Police Officers told her that the person stalking her was her husband, Charles A. Capone, DOB: 07/16/1961. Rachael said she was divorcing Charles because he had strangled her three months ago and she had caught him on the internet looking at pornography and pictures of dismembered bodies. Rachael told me Clarkston Police kept telling her to get a protection order against Charles, but she didn't believe it was Charles that was stalking her. She told me that she believed it was William C. Slempp, DOB: _____

She told me she had dated Slempp for a couple of weeks in 2008 and then broke it off. She said Slempp lived at _____. Rachael indicated she had a list of phone calls and she showed me a list of calls that Charles had told her he had received. She told me she was convinced Charles was not the person calling and harassing her because he was also receiving calls. I asked Rachael why did she believe it was Slempp and she told me that Charles had told her it was Slempp and she then stated that Charles made statement about why would he harass her when he loved her. I asked Rachael to start from the beginning and explain what had been happening.

Rachael told me that Charles had told her he was receiving phone calls from someone who he believed was Slempp. She told me the person calling was using something to spoof the caller ID and to digitally alter their voice. I asked Rachael if any threats had been made and she told me there had not been any threats, but the calls were just weird. Rachael told me she was very afraid because of what was happening. She told me she had borrowed a pistol for protection and that she was sleeping on her couch not in her bedroom so she could hear if someone entered the house. Rachael told me the thing that scares her the most was that she would receive calls telling her things like, "you just turned off the bathroom light" and she said she had just turned off the bathroom light just before the call came in.

I asked Rachael if she had told this information to the Clarkston Police Department and she told me she had not. She said every time she tried to talk with them they just told her to get a protection order. Rachael told me that when she explained different events to the Clarkston City Police Department they kept coming to the conclusion that Charles was the person responsible for the harassment.

I asked Rachael about the strangulation incident and if she had called the police. She indicated she had and that was why she was divorcing Charles. A review of our Spillman Records indicates incident 10P00027 was generated at 1512 hours on January 2, 2010 and was completed by Clarkston City Police Officer Jon Coe. The report indicates Rachael told Officer Coe that she has been married to Charles Capone since September 2009 and that they are constantly arguing. She told Officer Coe that on Sunday, December 27, 2009 she told Charles she wanted

nim to leave and that Charles pushed her in the chest area so she went to another room to sleep and Charles came in and was on top of her with his hands around her throat strangling her. Rachael advised that she started to cry because she was scared and he finally stopped and left her alone. The report indicates Officer Coe spoke to Charles who denied the assault happened and advised that Rachael is a liar and he is trying to save their marriage. Additional Spillman records indicate Rachael reported incidents of harassment or property damage. On January 3, 2010 there is a report where Charles allegedly took her property and would not return it. On January 29, 2010 there is a report where Charles allegedly removed the oil filter on her car. Charles is a mechanic by profession. On February 21, 2010 there is a report where Charles allegedly was harassing her by text messages and voice mail messages. On March 14, 2010 there is a report where Charles allegedly slashed two of her car tires. All of these incidents were reported to the Clarkston Police Department by Rachael. I told Rachael we would try and meet on Friday morning to go over her information.

On April 19, 2010 Detective Jackie Nichols of the Asotin County Sheriff's Office responded to _____ which is the last known residence of Rachael Anderson in reference to Rachael being reported as missing. Detective Nichols contacted Mark C. Tenney, DOB: _____, who lives at _____ Tenney reported to Detective Nichols that he had been previously contacted twice by Charles Capone on January 10, 2010 and Capone had asked him to check Rachael's residence to see what vehicles were there and Capone asked Tenney to watch if Rachael was seeing anyone.

On Friday, April 16, 2010 at 0930 hours I received a phone message from Rachael indicating she could not meet and she was working on her statement for me and that she was gathering materials. At 12:39 hours I spoke with Rachael and she indicated she was making copies of information for me and she asked if I had any additional information on Slemp. I told her that Slemp could be interviewed after we discussed the information she was going to provide. I told Rachael that I believed it was Capone who was stalking her and from what she had told me he was going to great lengths to stalk and harass her. I told her he could be dangerous and recommended that she obtain a protection order and to not have contact with him. I told her I believed he was trying to scare her by making her believe Slemp was the one stalking her so that she would take Capone back. Rachael indicated she thought that was possible and that she did not trust Capone at all. I asked Rachael if she could come in Monday morning to meet with me and she told me that she could. I told her she could come in anytime and I would be there. Rachael told me that she was working with Susan Martz on the protection orders. I told her to please call 9-1-1 if she believed anyone was around her house or if she was being followed. I told her if she was driving and she believed she was being followed that she should call 9-1-1 and drive to the police department if possible. She told me that she would.

On Friday, April 16, 2010 at 1858 hours I received a call on my cell phone. My cell phone number is 509-552-9858. I recognized the caller as Rachael and her cell phone number 509-780-3014 was displayed on my phone's screen. Rachael asked me about the statement she was writing for me and she told me that she was going to talk with Charles and inform him that she was ending their relationship. She told me she was telling Charles that she would only talk with him about the stalking she believed Slemp was doing and that if he brought up their relationship she would never speak to him again. I told Rachael that it was not a good idea to talk with Charles because he could get violent again. Rachael's cell phone records were obtained from AT&T which is

ner phone service provider on April 20, 2010 by Clarkston City Detective Dan Combs. The records indicated the call she made to me was placed from the Moscow, Idaho area based upon the cell tower which received her phone signal.

On Friday April 16, 2010 Rachael's ex-husband, Dennis Plunkett, reported that he had received a message from Rachael on his cell phone at 8:09 pm in which Rachael said she wanted to ask him a question. Dennis said he tried to call her back several times but the phone went to her voicemail. Cell phone records indicate this phone call was placed in Moscow, Idaho. This is the last activity recorded on Rachael's cell phone.

On Sunday evening, April 18, 2010 Rachael's 6-year-old and 10-year-old sons were scheduled to be returned to her after being on visitation for the weekend with their father. Robert Wilcox went to the house at _____ to drop off the boys and Rachael was not home. This was highly unusual for Rachael to not be home for the return of her children.

On Monday, April 19, 2010, Rachael did not show up for her job at a pathology lab where she works as a phlebotomist. It is very unusual for Rachael to miss work. Rachael's daughter, Amber N. Griswold, DOB: _____, reported Rachael to the Clarkston City Police Department as being missing. She indicated none of Rachael's family or friends had heard from or seen Rachael since Friday, April 16, 2010. Amber indicated that Rachael is very good about always letting people know where she is and is adamant about her daughters telling her where they are at. Amber and her sister Ashley Colbert DOB: _____ were frantic and stated that something had to have happened to Rachael because this was so out of character for her.

Detective Nichols met with Ashley, Amber and Rachael's friend, Jennifer Norberg at Rachael's residence and they let her into the home. Detective Nichols did not observe any signs of struggle in the residence or any evidence to indicate that Rachael intended to leave for any length of time. The house was cluttered but did not appear to be in disarray. Detective Nichols noticed a post-it note on Rachael's refrigerator which indicated the date Rachael had filed for divorce, the date the paperwork was served and then the dates 04/11 and 04/19 with a question mark. Ashley, Amber and Jennifer told Detective Nichols that they were very suspicious of Rachael's estranged husband, Charles Capone. Amber said that they had checked Rachael's bank records and there had been no activity on her account since Friday, April 16th, 2010. Amber said this too was highly unusual because Rachael is a "shopper." Jennifer told Detective Nichols that Rachael had told her that Charles had said on Tuesday, April 13th that Rachael had three days to make up her mind about their relationship.

On Tuesday, April 20, 2010 I contacted Attorney Scott Galina who is representing Rachael in her divorce case against Charles. He did confirm that he is representing Rachael and that the divorce has been filed. He told me as of April 11, 2010 enough time has passed so the divorce could be finalized. He indicated a date had not been set yet and that Charles has been increasingly insistent that there is a reconciliation. Galina told me that he has not heard from Rachael since April 12, 2010.

On Tuesday, April 20, 2010 at approximately 1300 hours I contacted Charles at his place of business which is located at 2216 S Main Street, STE B1, Moscow, Idaho. I asked Charles about Rachael and I told him that I was looking into her being stalked and that she was missing. Charles told me that he was the one who was stalking and harassing Rachael and that he wanted us to know

chat because now it had gotten out of hand. He told me he has used the internet service Spoof.com to fake his caller ID and that he had left harassing messages on her phone. He told me he sent her numerous messages and email to scare her because he believed she was harassing him. He told me that he had tried to convince Rachael that it was not Slemp doing the harassing.

I asked Charles if Rachael had been to Moscow to see him and he said that she has over a hundred times and that the last time she was there was on Friday, April 16, 2010. He told me that Rachael came to his shop to pick up her vehicle which he was repairing. He said she arrived around 4:30 pm and was upset because her vehicle was not ready. Charles said Rachael told him she needed a computer because her computer was not working properly. He told me she stayed at the shop for about an hour and a half and then he gave Rachael his debit card for her to go to Office Depot and buy a computer and she left. He said she returned later with a six pack of Grolsch beer. He said she was working on a statement for me and that she drank a beer and he drank two of the beers. Charles said she then left to go to Crazy Computers in Moscow to buy a computer or get the computer he had them working on. He said the plan was for her to return but she later called and told him Crazy Computers was closed and she was upset so she was going to drive home. The vehicle Rachael was driving was a 1997 GMC Yukon with Idaho License plate [REDACTED]. He indicated that he did not see her after she left. At our request, Charles accessed his computer which is the EMachine Computer with Serial Number QE726L0800433 printed a page from his bank statements which showed the purchase he indicated Rachael had made regarding the beer. He started to hand me the complete list of his bank records which he accessed on the computer in the shop but then stopped and said he did not want me to see all of his bank records. Charles allowed the Moscow Police Department to download and copy his text messages from his cell phone. There were hundreds of text messages to Rachael since March 15, 2010 recovered from Charles' phone. The nature of most of the messages regard Charles' desire to continue his relationship with Rachael, that he loves her and of him convincing her that someone other than Charles was stalking her, harassing her and committing acts of vandalism to her vehicle.

I returned to Charles' shop. I met Robert H. Bogden, DOB: [REDACTED] Robert told me that Charles has been living with him and his family at [REDACTED] and that he has been there since January of 2010. Robert then told me that on Friday, April 16, 2010 at 6:15 pm he was with his children at the Baskin Robbins on the Palouse Highway in Moscow, Idaho. He said he saw Rachael drive by Baskin Robbins in his Yukon that Charles had loaned to Rachael with his permission. He said he was positive it was his Yukon and that he was positive that Rachael was driving it. He provided me his contact information and left. I asked Charles about Crazy Computers. I asked if he has recently had them do work on a computer and he said it has been a couple of weeks since he did. I asked if he had an employee or a friend pick up a computer on Friday, April, 16, 2010 and he said that he had not done that. I went outside the shop to meet with Asotin County Detective Jackie Nichols, Clarkston City Detective Dan Combs and Moscow City Detectives James Fry and Scot Gleason who had arrived. While we were outside Charles came outside and he was upset. Charles made several statements that he was trying to tell us everything and that we could look around his shop and he was telling us everything he knew. He told me we could search his pickup which was parked on the side if we wanted to and that he had nothing to hide. Detective Fry looked in the pickup and noticed a box of black latex gloves. While speaking with Charles he started to cry and said he wanted Rachael's vehicle to be moved because it was upsetting him by it being there. Charles made the statement, "It wasn't supposed to happen

like this."

I asked Charles if he had recently been intimate with Rachael and he said that he had not been intimate with her for a long time and he then made the spontaneous statement that he had "put grease on her head". I asked him what he meant by that and he said he always used to do that to Rachael. Charles added that he had a counseling session scheduled for him and Rachael at 7:00 pm that evening with Greg Wilson in Pullman, Washington because he wanted to see if they could save the marriage. I asked Charles if he would meet for an interview and he agreed to come to the Moscow Police Department on April 21, 2010 at 8:00 pm.

On April 20, 2010 Tim Wheaton of Bovill, Idaho called the Asotin County Sheriff's Office to relay the following information. Tim said that he has been a friend of Charles Capone. Tim stated that approximately three months ago, Charles told him that he could kill his wife and law enforcement would never find the body.

On April 21, 2010 I spoke with Robert Bogden by telephone and asked him if he could tell me when Charles came home Friday, April 16, 2010. Robert told me that he was up until just after 10:30 pm and Charles had not come home yet. He told me his wife Carol came home later which he believed was closer to midnight and she had noticed that Charles was still not home. He said he could not say exactly when Charles came home. He said he was home Saturday morning. Robert told me he had told Charles he could no longer live there and that Charles has moved out today. He said he had a conversation with Charles because Charles had told him that he had been following and harassing Rachael and that with Rachael now being missing he was too concerned to have Charles still live in his house. Robert said he was flying to Japan today and that he was so afraid for his family because of the situation with Charles that he had his wife and daughter fly to Utah today.

On April 21, 2010 Detective Eric Olson of the Lewiston City Police Department interviewed Susan Jeppson a close friend of Rachael Anderson. Jeppson supplied two Facebook messages sent to her by Charles Capone regarding his relationship with Rachael.

On April 27, 2010 Detective Brian Birdsell contacted Brad Mittendorf. Mittendorf is a former Lewiston City Police Officer and current private investigator. Mittendorf said that in April of 2010 he was contacted by a man named Charles from Moscow, Idaho. Mittendorf stated Charles told him he wanted to reconcile with his wife who lived in Clarkston, however Charles wanted Mittendorf to follow her to make sure she is/wasn't cheating on him. Charles told Mittendorf that his wife had two tires slashed and that she was receiving harassing phone calls.

On April 22, 2010 Charles Capone's Auto Repair Business, Palouse Multiple Service located at 2216 S. Main Street, Suite B-1 in Moscow Idaho was searched after a search warrant was obtained. The EMachine Computer with Serial Number QE726L0800433 was seized as evidence and is currently being stored at the Moscow City Police Department in evidence.

On May 4, 2010 at 10:00 pm while on duty for the Asotin County Sheriff's Office I contacted Nathan D. Donner, DOB: _____ I had called Nathan and asked him to come to the Clarkston City Police Department so I could talk with him about Charles A. Capone, DOB: [REDACTED] I introduced myself to Nathan and explained to him that I was a Captain with the Asotin County Sheriff's Office

and that I was investigating the disappearance of Rachael L. Anderson, DOB: — . I asked Nathan if he could come back to a interview room so we could talk and he said that he would.

Once inside the interview room I explained to Nathan that I wanted him to be honest and he stated that he would. I asked him if I could record the conversation and he told me that would be fine. I showed him my Olympus Digital Recorder and activated it. The following is a summary of the taped conversation I had with Nathan and is not intended to represent a word for word transcript of the conversation:

I stated my name, the date and the time. I then asked Nathan if he was aware that the conversation was being taped and he indicated he was aware. I asked if I had his permission to tape the conversation and he stated I had his permission. I asked Nathan if I had made any threats or promises to get him to talk to me and he indicated that I did not make threats or promises to get him to talk with me. I asked Nathan if he was here on at my invitation and he stated, "Yes". I explained to Nathan that he was here to talk with me about his involvement with Charles Capone. I told Nathan that as I had explained to him prior to turning on the recorder that I knew he was involved with Charles Capone either talking to you, calling you or providing information about Rachael's whereabouts and what she was doing. I told Nathan that it was also my belief that Nathan had no idea that Charles Capone was up to criminal activity and that it was Nathan's intention to be honest with me. I asked Nathan if that was correct and he stated, "Yes". I explained to Nathan that at this point I had no intention of charging him with a crime. I asked Nathan if he understood that and he stated, "Yes". I explained to Nathan that it was important for him to be honest with me.

I asked Nathan how long had he known Capone. Nathan told me that he has known Capone since the summer of 2006. I asked Nathan where did he meet Capone and he told me he met him when Nathan was a Fedex Driver and he had to deliver to Capone's shop. I asked him if he knew where Capone's shop was and he told me he believed it was at 2216 South Main Street, Moscow, Idaho. I asked Nathan how many times has he been to Capone's shop and he indicated he had been there more times than he could count.

I told Nathan that I had a couple of house keeping questions to ask him and I then asked him his date of birth and he indicated it was — I asked Nathan where he lived and he told me he lived at —

I asked him if he knew Rachael Anderson and Nathan indicated that he did. I asked him how long had he known Rachael and he indicated he has known her since he was in High School. I asked him if he knew Rachael and Capone were in a relationship and he stated, "Yes". I asked him to describe their relationship as to if they were dating or if they were married. Nathan told me he was the one who introduced Rachael and Charles to each other. He told me he and Charles were out to dinner one night and they decided to go to a bar and when they got there Rachael was just leaving. He indicated he recognized her and he told her "Hi, how are you," and he introduced them. He indicated it was about a year ago. I asked Nathan Rachael and Charles were married. He told me that he heard later that they were married. He indicated he had heard that from his Dad. I asked if his Dad knew Charles and he indicated that his Dad did know Charles and that he had met him once. I asked if he had ever confirmed that they were married and Nathan indicated that Charles told him he and Rachael had been married after Nathan asked him.

I asked Nathan if Rachael and Charles had any problems in their relationship and he told me that they had their spats. I asked him to describe what he meant by spats and he told me that Charles had a Vogue Magazine in his shop for when women customers had to wait on their cars being repaired and Rachael didn't want Charles to have it. He told me that Capone had told him that he had to get rid of the magazine because Rachael thought it was demeaning towards women. He also told me that Charles had told him that Rachael would hit him when he looked at other women. I asked Nathan if he had ever witnessed Rachael hit Charles and he indicated that he had not and this was based upon what Charles had told him. He told me that when he had seen Rachael and Charles together they were always all over each other. I asked Nathan if he knew if Charles and Rachael lived together and Nathan told me that Charles had told him that they were living together. I asked if he knew Rachael's address and he told me it was the same house number as his and her house is at — . I asked if he had ever been in her home and Nathan indicated that he had not been in her home.

I asked Nathan if Charles had ever asked him about Rachael and what she was doing. Nathan told me that Charles had said that he wondered what she was doing and that Charles had asked Nathan to go past her home and see who was there. Nathan told me that he had to go past the house because he was dating a girl who lived in the 900 block of Riverview. I asked him if Charles had asked him to keep an eye out and he indicated that Capone had asked him and that Capone had told him to let him know if there were a bunch of rigs at her house.

I asked Nathan if Charles had ever called him and asked him if he could go check on Rachael. Nathan indicated that Charles had called him and asked him to go past Rachael's and see if she was home. Nathan said Charles had indicated he was trying to call Rachael but he could not reach her. He said he would never get out of his rig, but he would just drive by and look. I asked Nathan what would he do after he drove by. I asked if Nathan would call Charles and he indicated that he would not call Charles, but Charles would call him and ask what had he seen. He said he would let Charles know what vehicles were there.

I asked Nathan how many times did he believe Charles had asked him to check on Rachael in the past year and he told me that Charles had asked him about four times to check on Rachael. I asked how many times Charles had asked in the last month and he indicated Charles had not asked him. I asked him how many times since January and he told me after Charles and Rachael broke up, Charles had told him to go over and get his stuff and he did. He said Rachael was there and hardly said a word to him. Nathan indicated he just stood there while Rachael loaded everything. I asked Nathan how many times he believed he had seen Charles since January and Nathan indicated it was quite a bit. He told me that he used to work for Capone when he got laid off. He indicated he had worked at the shop. I asked Nathan if Charles had talked to him about Rachael and he indicated that Charles had not because Nathan would just change the subject. He said Charles would stay stuff about Rachael ignoring him and about paying her bills. Nathan told me that he had told Charles to just wash his hands of her because she had been the one who kicked him out. I asked Nathan what he thought Charles thought about that and he indicated he believed Charles was still in love with Rachael. He said he knew Charles loved Rachael and that Charles was always talking to his Pastor about Rachael and that he was trying to get her to go to counseling. Nathan said it got to the point where he did not want to hear about it. I asked Nathan if Charles had talked about Rachael a lot and that he got tired of it and then changed the subject. Nathan indicated that was correct.

On August 26, 2010 I spoke with Rachael's sister, Kristina Bonefield, by telephone. During that conversation Kristina told me that Rachael had shown her numerous messages from Charles to Rachael that were posted via the internet on Rachael's Facebook page. Kristina told me that Charles would frequently send her harassing messages via the internet as well. She said she believed Charles did not like her because she was constantly trying to get Rachael to end the relationship with Charles and that she feared for Rachael's life because of the stalking and harassing behavior that Charles was doing.

DEFINITIONS

a. "Computer" as used herein, is defined pursuant to 18 U.S.C. 1030(e)(1), as "an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device."

b. "Computer hardware" as used herein, consists of all equipment which can receive, capture, collect, analyze, create, display, convert, store, conceal, or transmit electronic, magnetic, or similar computer impulses or data. Computer hardware includes any data-processing devices (including, but not limited to, central processing units, internal and peripheral storage devices such as fixed disks, external hard drives, floppy disk drives and diskettes, and other memory storage devices); peripheral input/output devices (including, but not limited to, keyboards, printers, video display monitors, and related communications devices such as cables and connections), as well as any devices, mechanisms, or parts that can be used to restrict access to computer hardware (including, but not limited to, physical keys and locks).

c. "Computer software" as used herein, is digital information which can be interpreted by a computer and any of its related components to direct the way they work. Computer software is stored in electronic, magnetic, or other digital form. It commonly includes programs to run operating systems, applications, and utilities.

d. "Computer-related documentation" as used herein, consists of written, recorded, printed, or electronically stored material which explains or illustrates how to configure or use computer hardware, computer software, or other related items.

e. "Computer passwords and data security devices" as used herein, consist of information or items designed to restrict access to or hide computer software, documentation, or data. Data security devices may consist of hardware, software, or other programming code. A password (a string of alpha-numeric characters) usually operates a sort of digital key to "unlock" particular data security devices. Data security hardware may include encryption devices, chips, and circuit boards. Data security software of digital code may include programming code that creates "test" keys or "hot" keys, which perform certain pre-set security functions when touched. Data security software or code may also encrypt, compress, hide, or "booby-trap" protected data to make it inaccessible or unusable, as well as reverse the progress to restore it.

f. "Internet Service Providers" or "ISPs" are commercial organizations, which provide individuals and businesses access to the Internet. ISPs provide a range of functions for their customers including access to the Internet, web hosting,

e-mail, remote storage, and co-location of computers and other communications equipment. ISPs can offer various means by which to access the Internet including telephone based dial-up, broadband based access via a digital subscriber line (DSL) or cable television, dedicated circuits, or satellite based subscription. ISPs typically charge a fee based upon the type of connection and volume of data, called bandwidth that the connection supports. Many ISPs assign each subscriber an account name such as a user name or screen name, an e-mail address, and an e-mail mailbox and the subscriber typically creates a password for the account. By using a computer equipped with a telephone or cable modem, the subscriber can establish communication with an ISP over a telephone line or through a cable system, and can access the Internet by using his or her account name and password.

g. "ISP Records" are records maintained by ISPs pertaining to their subscribers (regardless of whether those subscribers are individuals or entities). These records may include account application information, subscriber and billing information, account access information (often times in the form of log files), e-mail communications, information concerning content uploaded and/or stored on or via the ISP's servers, and other information, which may be stored both in computer data format and in written or printed record format. ISPs reserve and/or maintain computer disk storage space on their computer system for their subscribers' use. This service by ISPs allows for both temporary and long-term storage of electronic communications and many other types of electronic data and files.

h. "Internet Protocol address" or "IP address" refers to a unique number used by a computer to access the Internet. IP addresses can be dynamic, meaning that the Internet Service Provider (ISP) assigns a different unique number to a computer every time it accesses the Internet. IP addresses might also be static, if an ISP assigns a user's computer a particular IP address which is used each time the computer accesses the Internet.

i. The terms "records," "documents," and "materials," as used herein, include all information recorded in any form, visual or aural, and by any means, whether in handmade form (including, but not limited to, writings, drawings, painting), photographic form (including, but not limited to, microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, photocopies), mechanical form (including, but not limited to, phonograph records, printing, typing) or electrical, electronic or magnetic form (including, but not limited to, tape recordings, cassettes, compact discs, electronic or magnetic storage devices such as floppy diskettes, hard disks, CD-ROMs, digital video disks (DVDs), Personal Digital Assistants (PDAs), Multi Media Cards (MMCs), memory sticks, optical disks, printer buffers, smart cards, memory calculators, electronic dialers, or electronic notebooks, as well as digital data files and printouts or readouts from any magnetic, electrical or electronic storage device).

j. "Digital device" includes any electronic system or device capable of storing and/or processing data in digital form, including: central processing units; laptop or notebook computers; personal digital assistants; wireless communication devices such as telephone paging devices, beepers, and mobile telephones; peripheral input/output devices such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices such as modems, cables, and connections; storage media such as hard disk drives, floppy disks, compact disks, magnetic tapes, and memory chips; and security devices.

k. "Image" or "copy" refers to an accurate reproduction of information contained on an original physical item, independent of the electronic storage device. "Imaging" or "copying" maintains contents, but attributes may change during the reproduction.

m. "Steganography" refers to the art and science of communicating in a way that hides the existence of the communication. It is used to hide a file inside another. For example, a child pornography image can be hidden inside another graphic image file, audio file, or other file format.

n. "Compressed file" refers to a file that has been reduced in size through a compression algorithm to save disk space. The act of compressing a file will make it unreadable to most programs until the file is uncompressed.

BACKGROUND ON COMPUTERS AND CYBER STALKING

Based upon my knowledge, training, and experience in stalking and cyber stalking, and the experience and training of other law enforcement officers with whom I have had discussions, computers and computer technology have revolutionized the way in which stalking and harassment activities are conducted. For instance:

a. Individuals can monitor countless social media websites such as Facebook and MySpace to monitor the activities of another and to send messages anonymously.

b. Modems allow computers to connect to another computer through the use of telephone, cable, or wireless connection. Electronic contact can be made to literally millions of computers around the world allowing offenders to remotely access the computer of a victim for purposes of surveillance.

c. The Internet, the World Wide Web, and other Internet components afford individuals many different and relatively secure and anonymous venues for communicating with others to do so or to stalk others.

d. As is the case with most digital technology, computer communications can be saved or stored on hardware and computer storage media used for these purposes. Storing this information can be intentional, i.e., by saving an e-mail as a file on the computer or saving the location of one's favorite websites in, for example, "bookmarked" files. However, digital information can also be retained unintentionally, e.g., traces of the path of an electronic communication may be automatically stored in many places (e.g., temporary files or ISP client software, among others). In addition to electronic communications, a computer user's Internet activities generally leave traces or "footprints" in the web cache and history files of the browser used. Such information is often maintained for very long periods of time until overwritten by other data.

g. The interaction between software applications and the computer operating systems often results in material obtained from the Internet being stored multiple times, and even in different locations, on a computer hard drive without the user's knowledge. Even if the computer user is sophisticated and understands this automatic storage of information on his computer's hard drive, attempts at deleting the material often fail because the material may be automatically stored multiple times and in multiple locations within the computer media. As a result, digital data that may have evidentiary value to this investigation could exist in the user's computer media despite, and long after, attempts at deleting it. A thorough search of this media could uncover

evidence of stalking.

h. Data that exists on a computer is particularly resilient to deletion. Computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the Internet. Electronic files downloaded to a hard drive can be stored for years at little to no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensic tools. When a person "deletes" a file on a home computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space that is, in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits.

BACKGROUND ON COMPUTERS AND EVIDENCE ASSESSMENT PROCESS IN STALKING AND CYBER STALKING INVESTIGATIONS

Based upon my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that segregating information before commencement of the review of digital evidence by the examining agent is inconsistent with the evidence assessment process in stalking and cyber stalking investigations.

a. This warrant seeks permission to locate not only computer files that might serve as direct evidence of the crimes described in the warrant, but also for evidence that establishes how computers were used, the purpose of their use, and who used them. Additionally, the warrant seeks information about the possible location of other evidence.

b. As described above this application seeks permission to search and seize records that might be found in the SUBJECT COMPUTER, in whatever form they are found. One form in which the records might be found is stored on a computer's hard drive, or other electronic media. Some of these electronic records might take the form of files, documents, and other data that is user-generated. Some of these electronic records, as explained below, might take a form that becomes meaningful only upon forensic analysis.

c. Although some of the records called for by this warrant might be found in the form of user-generated documents (such as word processor, picture, and movie files), computer hard drives can contain other forms of electronic evidence that are not user-generated. In particular, a computer hard drive may contain records of how a computer has been used, the purposes for which it was used, and who has used these records, as described further in the attachments, called for by this warrant. For instance, based upon my knowledge, training, and

experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that:

Data on the hard drive not currently associated with any file can provide evidence of a file that was once on the hard drive but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file).

Virtual memory paging systems can leave traces of information on the hard drive that show what tasks and processes the computer were recently in use.

Web browsers, e-mail programs, and chat programs store configuration information on the hard drive that can reveal information such as online nicknames and passwords.

Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices, and the times the computer was in use.

Computer file systems can record information about the dates files were created and the sequence in which they were created. This information may be evidence of a crime, or indicate the existence and location of evidence in other locations on the hard drive.

d. Further, in finding evidence of how a computer has been used, the purposes for which it was used, and who has used it, sometimes it is necessary to establish that a particular thing is not present on a hard drive or that a particular person (in the case of a multi-user computer) was not a user of the computer during the time(s) of the criminal activity. For instance, based upon my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that when a computer has more than one user, files can contain information indicating the dates and times that files were created as well as the sequence in which they were created, and, for example, by reviewing the Index.dat files (a system file that keeps track of historical activity conducted in the Internet Explorer application, whether a user accessed other information close in time to the file creation dates, times and sequences so as to establish user identity and exclude others from computer usage during times related to the criminal activity.

e. Evidence of how a digital device has been used, what it has been used for, and who has used it, may be the absence of particular data on a digital device and requires analysis of the digital device as a whole to demonstrate the absence of particular data. Evidence of the absence of particular data on a digital device is not segregable from the digital device.

f. The types of evidence described above may be direct evidence of a crime, indirect evidence of a crime indicating the location of evidence or a space where evidence was once located, contextual evidence identifying a computer user, and contextual evidence excluding a computer user. All of these types of evidence may indicate ownership, knowledge, and intent.

g. This type of evidence is not "data" that can be segregated, that is, this type of data cannot be abstractly reviewed and filtered by a seizing or imaging agent and then transmitted to investigators. Rather, evidence of this type is a conclusion, based on a review of all available facts and the application of

knowledge about how a computer behaves and how computers are used. Therefore, contextual information necessary to understand the evidence described in Attachment B also falls within the scope of the warrant.

1. Based upon my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that it is necessary to seize all types of electronic devices capable of storing digital evidence as described in the Affidavit and Attachment B for off-site review because computer searches involve highly technical, complex, and dynamic processes.

a. Data in digital form can be stored on a variety of digital devices and during the on-site search of the premises it is not always possible to search digital devices for digital data for a number of reasons, including the following:

i. Searching digital devices can be a highly technical process that requires specific expertise, specialized equipment and knowledge of how electronic and digital devices are often used in child pornography and online child exploitation matters. There are so many types of digital devices and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. Because of the numerous types of digital devices and software that may contain evidence in Stalking and Cyber Stalking cases, it may also be necessary to consult with specially trained personnel who have specific expertise in the type of digital device, software application or operating system that is being searched in an off-site and controlled laboratory environment.

ii. Digital data is particularly vulnerable to inadvertent or intentional modification or destruction. Searching digital devices can require the use of precise, scientific procedures that are designed to maintain the integrity of digital data and to recover "hidden," erased, compressed, encrypted or password-protected data. Data hiding analysis can be useful in detecting and recovering such data and may indicate knowledge, ownership, or intent. The recovery of "hidden" data is highly specialized and time-intensive. For this reason on-site key word searches are not sufficient to recover inadvertently or intentionally modified or destroyed data. As a result, a controlled environment, such as a law enforcement laboratory, is essential to conducting a complete and accurate analysis of data stored on digital devices.

iii. The volume of data stored on many digital devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 gigabytes (GB) of data are now commonplace in desktop computers. Consequently, each non-networked, desktop computer found during a search can easily contain the equivalent of 240 million pages of data, that, if printed out, would completely fill three 35' x 35' x 10' rooms to the ceiling. Further, a 500 GB drive could contain as many as approximately 450 full run movies or 450,000 songs.

iv. Electronic files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted or viewed via the Internet. Electronic files saved to a hard drive can be stored for

years with little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. Normally, when a person deletes a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space, i.e., space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a swap or recovery file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits. Recovery of residue of electronic files from a hard drive requires specialized tools and a controlled laboratory environment.

v. Digital device users can attempt to conceal data within digital devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Digital device users can also attempt to conceal data by using encryption, which means that a password or physical device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, digital device users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography, a digital device user can conceal text in an image file that cannot be viewed when the image file is opened. "Digital devices may also contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed." A substantial amount of time is necessary to extract and sort through data that is concealed, encrypted, or subject to booby traps, to determine whether it is evidence, contraband or instrumentalities of a crime.

vi. Based upon my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices in cases involving suspected violations of the stalking and cyber stalking statutes set forth in this affidavit, I know that there is a risk of concealment, encryption, or booby traps that may destroy digital data in this investigation because I know that individuals involved in the commission of the offenses set forth in this affidavit commonly employ these techniques to attempt to avoid detection and apprehension.

2. Based upon my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that establishing a prospective, pre-execution search protocol in stalking and cyber stalking investigations is not practical because computer searches involve a dynamic process of electronic data review and information sharing between the examining agent and agents involved in the investigation.

3. After initial seizure and imaging of digital evidence, the examining agent thoroughly assesses the digital evidence to determine the proper search

protocol. The process of determining the appropriate search protocol involves several steps, including, but not limited to: reviewing the search warrant (or other legal authorization), learning the details of the case, understanding the nature of hardware and software, understanding the potential evidence sought, and knowing the circumstances of the seizure by which the evidence was acquired.

Only then does the examining agent develop the search protocol and begin the forensic search of the digital evidence.

b. During the course of that review, the examining agent may, and often does, discover evidence within the scope of the warrant that could result in or requires other investigative work to obtain additional evidence. For instance: sending a preservation order to an Internet service provider, identifying and securing remote storage locations, obtaining e-mail, obtaining external media that had been used on or with the computer. This additional investigative work, which will require additional legal process, is the result of information contained on a hard drive but not learned of until after the forensic examination has begun. Therefore, this information could not be included in a prospective, pre-execution search warrant protocol.

PROTOCOL FOR EVIDENCE OF OTHER CRIMES

3. The search methodology for this matter will be formulated to provide for the search and seizure of evidence related to the crimes set forth in the warrant, and Affidavit. In the course of that examination, the examining agent may discover evidence of other crimes. If an examiner discovers information during the course of the authorized search that is evidence of a crime not set forth in the warrant, and Affidavit:

a. The government will not waive its ability to seize and, with appropriate legal process, may investigate evidence of other crimes that are inadvertently discovered during the course of a search authorized by the federal warrant.

b. The examining agent will continue with the authorized search pursuant to the grant of authority in the warrant, that search being designed to discover evidence of the crimes as authorized by the warrant, but exclude the inadvertently discovered information from the authorized search. The examining agent will not amend or expand the search criteria to include the inadvertently discovered information.

c. Because evidence discovered inadvertently during the course of a search is constitutionally obtained evidence of a crime, the examining agent will seize the inadvertently discovered evidence, and immediately inform the investigating agents and prosecutors involved in the investigation of the inadvertent discovery and provide that inadvertently discovered evidence to the investigating agents and prosecutors involved in the investigation.

d. If the government decides to investigate crimes related to the inadvertently discovered information, it will submit an application for a separate search warrant that authorizes a search for evidence of that criminal activity.

RETURN AND REVIEW PROCEDURES

Inventory: An officer present during the execution of the warrant must prepare and

verify an inventory of any property seized.

Return: The officer executing the warrant must promptly return it together with a copy of the inventory to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

Pursuant to this Rule, I understand and will act in accordance with the following:

Rule 41(f)(1)(D) requires that an agent file with the court an inventory return, an itemized list of the property seized, in a "prompt" manner.

a. It is the practice within this jurisdiction to file the inventory return within ten (10) days of the execution of the warrant.

b. The requirement for the timing and filing of the return is not the same as the requirement for the forensic review of the seized items. I understand that if the court decides to impose a time deadline for the forensic review of the seized items, I will abide by that deadline and apply for proper authorization from this court to extend that deadline as necessary.

c. Written permission is necessary to retain copies of seized items and data after the completion of the forensic review. I request that authorization herein, and will renew by request as the court deems necessary, to retain copies, as many as were necessary to create pursuant to other requirements set forth in or imposed by the court, of the seized media after the completion of the forensic review through the investigation and final disposition of any charges filed against the person subject to this warrant based upon the seized media. This judicial authorization is appropriate in this matter because:

i. Should the execution of the warrant uncover data that may later need to be introduced into evidence during a trial or other proceeding, the authenticity and the integrity of the evidence and the government's forensic methodology may be contested issues. Retaining copies of seized storage media can be required to prove these facts.

ii. Returning the original storage medium to its owner will not allow for the preservation of that evidence. Even routine use may forever change the data it contains, alter system access times, or eliminate data stored on it.

iii. Because the investigation is not yet complete, it is not possible to predict all possible defendants against whom evidence found on the storage medium might be used. That evidence might be used against persons who have no possessory interest in the storage media, or against persons yet unknown. Those defendants might be entitled to a copy of the complete storage media in discovery. Retention of a complete image assures that it will be available to all parties, including those known now and those later identified.

iv. The act of destroying or returning original storage media could create an opportunity for a defendant to claim, falsely, that the destroyed or returned storage medium contained evidence favorable to him. Maintaining a copy of the storage medium would permit the government, through an additional warrant if necessary, to investigate such a claim.

v. Similarly, should a defendant suggest an explanation for the presence of evidence on storage media, it may be necessary to investigate such an explanation by, among other things, re-examining the storage medium with that defense in mind. This may require an additional examination of the storage medium for evidence that is described in Attachment B but was not properly identified and segregated previously.

vi. Thus, the government proposes that a full image copy of the seized media be filed under seal with the court until further order of the court.

d. Should an examiner, in the course of the forensic review search, discover any information on the electronic media that is not set forth in Attachment B, that information will be copied onto a hard drive and returned to the person from whom the information was seized upon request and at reasonable intervals during the course of or at the completion of the forensic review.

CONCLUSION

Based on the foregoing, there is probable cause to believe that 18 U.S.C. 2261A(2) (2009) Cyber Stalking, 18 U.S.C § 2261A Interstate Stalking and Washington State RCW 9a.46.110 Stalking have been violated, and that the evidence and instrumentalities of these offenses are located at the SUBJECT COMPUTER an EMachine Computer with Serial Number QE726L0800433 that is currently located in the Moscow Idaho City Police Department Property Room.

Respectfully submitted,

[Affiant]

[Affiant's Title]

Subscribed and sworn before me this _____ of _____ 2009

Judge

04/20/10
07:53

Clarkston Police Department
LAW Incident Table:

Page: 431
1

Incident Number: 10P00869

Nature: Harassment

Case Number:

Image:

Addr=

Area: CPDA Clarkston Poli

City: CLARKSTON

ST: WA Zip: 99403

Contact: Rachael

Complainant& 87350

Lst: ANDERSON

Fst: RACHAEL

Mid: LEIGH

DOB: 1

SSN:

Adr=

Rac: W Sx: F Tel:

Cty: CLARKSTON

ST: WA Zip: 99403

Offense Codes: HARA

Reported: HARA Observed: HARA

Circumstances: LT20

Rspndg Officers: Jeremy Foss

Rspnsbl Officer: Jeremy Foss

Agency: CPD

CAD Call ID: 10-006648

Received By: Rachel Whitmore

Last RadLog: 13:14:22 02/21/10 CMPLT

How Received: T Telephone

Clearance: CR Computer Report Only

When Reported: 12:43:25 02/21/10

Disposition: CLO Disp Date: 02/21/10

Occurrd between: 12:42:03 02/21/10

Judicial Sts:

and: 12:42:03 02/21/10

Misc Entry:

MO:

Narrative: (See below)

Supplement:

INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
NM	87350	02/21/10	ANDERSON, RACHAEL LEIGH	*Complainant
NM	87350	02/21/10	ANDERSON, RACHAEL LEIGH	Contacted
NM	137573	02/21/10	CAPONE, CHARLES ANTHONY	Mentioned
CA	10-006648	02/21/10	12:43 02/21/10 Harassment	*Initiating Call

LAW Incident Offenses Detail:

Offense Codes

Seq Code	Amount
1 HARA Harassment	0.00

LAW Incident Circumstances:

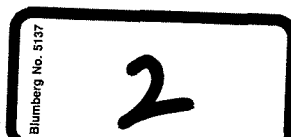
Contributing Circumstances

Seq Code	Comments
1 LT20 Residence/Home	

LAW Incident Responders Detail

Responding Officers

Seq Name	Unit
1 Jeremy Foss	C119



000589 00083

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
13:14:22 02/21/10	1	C119	CMPLT	CPD	CPD	incid#=10P00869 Completed call
13:01:29 02/21/10	1	C119	TI	CPD	CPD	reversal on - did
12:46:11 02/21/10	1	C119	ARRVD	CPD	CPD	incid#=10P00869 jail lobby cal
12:43:56 02/21/10	1	C119	ENRT	CPD	CPD	incid#=10P00869 Enroute to a c

Narrative:

Spoke with Rachael Anderson about some text messages she has been receiving. The text messages say things like, I am praying for you and Charles, we missed you at church on Sunday, I heard about you and Charles getting a divorce in pray circle and we are praying for you.

Charles is Rachael's soon to be ex husband. None of the text messages are threatening or aggressive in nature and I explained to Rachael that cell phone companies can block numbers and she should contact her cell phone company. Rachael said she thinks it might be Charles sending the texts. I asked Rachael if she has contacted the courts about protection orders per our last conversation a few weeks ago. Rachael said no because her lawyer did not think she needed one. I again told her to contact the courts regarding an order. Rachael said she does not want to talk to Charles or to have him call her but did not want to get an order.

I attempted to contact the phone number provided by Rachael that was sending the texts with negative results. I left a message for the person to call the PD and left my name. Phone message was left on 02/21/2010 at approximately 1310 hours.

At around 1530 on this same day Rachael returned to the Jail Lobby and wanted to show me another message she had received after talking to me the first time. The message was not threatening or aggressive in nature and was similar to the other messages. This one said something along the lines of, what happened to the Rachael I used to know, the fun one. The phone number it was sent from is 202- . The voice mail box is not set up on this phone number. Rachael was again advised to block the number if she did not want to speak to or receive texts from this number.

Law Supplemental Narrative:

Supplemental Narratives

Seq Name	Date	Narrative
2 Scot Gleason	21:27:13 04/21/10	
U-Haul Supplemental	#112/App.107	

On 04-21-10 at about 1200 hours, I responded to U-Haul in Moscow, Idaho to see if there was a possibility that Charles Capone and or Rachael Anderson had a storage unit at that location.

When I arrived, I spoke with an employee and briefly explained to him about our investigation. I then asked the employee if he could just tell me if either Capone or Anderson had a unit. The employee checked the computer and told me that Capone did have a storage unit at their business. He also told me that Anderson was also on the lease, but there had been a flag on the account. I asked the employee what the flag said. He told me that Anderson was not allowed in this unit. The employee then told me he thought this was because of a divorce.

I told the employee that if any further information was needed that I would make sure there was either a subpoena or a search warrant. The employee told they would need something like that so they could give any further information to us.

After leaving, I called and spoke with Det. Hally (Asotin) and told him what I had found out. Hally then told me he had just received a phone call from a witness who told him they had located the car at the North Lewiston Dyna Mart in Lewiston, Idaho. Hally then told me the information he received was that it was possible that the white Yukon had just been left at that location. Hally then asked me if I could respond out to Capone's shop to see if he was there.

At about 1245 hours I arrived at Capone's shop and spoke with Capone. As I entered the shop, Capone was on the phone. When he got off the phone, Capone became somewhat agitated and asked me what I wanted. I told Capone I just wanted to see if he was still planning to meet with Hally at our police department at 2000 hours. Capone then told me he had nothing else to say to the police because he told them everything yesterday (04-20-10). I again told Capone I was just there to see if he was going to show up for the meeting. He then told me he did not have anything else to say and that because of yesterday's meeting it ruined his whole work day. He said he was trying to run a business and that meeting was upsetting. As the conversation continued, Capone then told me that maybe "we" (police) should talk with "Mark". I asked him who "Mark" was. He said Mark Monson. I asked Capone who Monson was. He said a friend, a client and also his attorney. I again told Capone that I was not here to talk to him, but just to confirm a meeting. He said he did not know if he would make the meeting because he was busy and that he had bible study at 1830 hours.

I then left Capone's shop and called Hally to tell him about our contact.

Wed Apr 21 21:54:35 PDT 2010

Det. Scot Gleason #112
Moscow Police Department

Mon Apr 26 09:39:05 PDT 2010
Reviewed by Sgt. Fry



000592⁰⁰²⁶⁹