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IN THE SUPREME COURT

OF THE

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

CHARLES ANTHONY CAPONE,

Defendant-Appellant.

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

HONORABLE CARL B. KERRICK, DISTRICT JUDGE

SARA B. THOMAS
STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

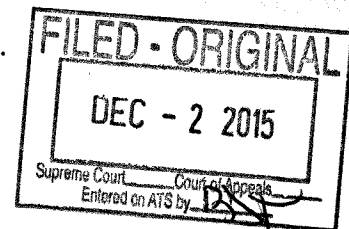
KENNETH K. JORGENSEN

ATTORNEY FOR RESPONDENT

Filed this ___ day of _____, 2015.

STEPHEN W. KENYON, CLERK

By _____
Deputy



SUPREME COURT CASE NO. ~~43142~~

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CR 2013-1358
CASE NO

2014 MAY 28 PM 2:25

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *A* DEPUTY

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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 ANTHONY CAPONE,
Defendant.

Case No. CR-2013-0001358

CERTIFICATE OF ENDORSEMENT


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

- (1) That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
- (2) That Luis A. Avila, who currently resides in the State of Washington, at Airway Heights Corrections Center, 11919 W. Sprague Ave., Airway

Heights, WA 99001-1899, is a necessary and material witness for the State in this matter;

- (3) That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 a.m., and that the witness shall be required to attend the trial;
- (4) That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between June 27 through July 7, 2014;
- (5) That the witness will be transported through the Interstate Transport to and from the court where the hearing or prosecution is pending;
- (6) That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 28 day of May, 2014.


 Michael J. Griffin
 District Judge

CASE NO. CR 2013-1358

2014 MAY 29 AM 10: 04

CLERK OF DISTRICT COURT
LATAH COUNTY
BY QUN DEPUTY

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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-2013-0001358
)	
v.	)	RESPONSE IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO ALLOW
CHARLES ANTHONY CAPONE,	)	DEFENSE TO SHOW VIDEO AND
Defendant.	)	CO-DEFENDANT'S STATEMENTS
	)	TO LAW ENFORCEMENT
)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully submits the following in response to the Defendant's "Motion to Allow Defense to Show Video of Co-defendant's Statements to Law Enforcement".

HEARSAY AND NON-HEARSAY STATEMENTS; CHARACTER EVIDENCE

The Defendant seeks to admit the video recordings of law enforcement's interviews of David Stone, the co-defendant in this matter, which occurred on November 12, 2013, at

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the Lewiston Police Department and on November 20, 2013, at Moscow Police Department. The Defendant seeks admission for the alleged "non-hearsay purpose of showing how good of a liar Mr. Stone is."

The crux of the Defendant's argument is that the video recordings should be admitted for the alleged non-hearsay theory of showing "how good a liar Mr. Stone is" and "other possible non-hearsay theories" such as "proving the opposite of the assertions the evidence presents" (although that statement is not defined), "showing non-verbal conduct that is intended as assertions" (although which particular conduct at issue is not defined by defense counsel), and "rehabilitating witnesses who have been impeached" (although the witnesses to be rehabilitated have not been named), and concludes that these other "theories" have been "found to be non-hearsay purposes that coincide with proving Mr. Stone a liar." In other words, the purpose for which the Defendant seeks admission of the video recordings is to attack the credibility of Mr. Stone.

Evidence of character or conduct of a witness is governed by I.R.E. 608. Idaho Rule of Evidence 608(a) states that the credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation (subject to defined limitations). However, I.R.E. 608(b) states:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the credibility, of the witness, other than conviction of crime as

provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning (1) the character of the witness for untruthfulness or untruthfulness, or (2) the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The Defendant is essentially seeking to use extrinsic evidence of specific instances of conduct to attack the credibility of Mr. Stone. In defining extrinsic evidence, the Idaho Supreme Court in State v. Bergerud, 155 Idaho 705, 316 P.3d 117 (2013) relied upon the Black's Law Dictionary (8th ed. 2004) definition where is said: "extrinsic evidence in this context means 'evidence that is calculated to impeach a witness's credibility, adduced by means other than cross-examination of the witness.' It 'may include evidence in documents and recordings and the testimony of other witnesses.'"

The State will be calling Mr. Stone to testify at trial, and the Defendant will have ample opportunity to cross-examine Mr. Stone. If the Court finds the November interviews to be probative of truthfulness or untruthfulness, the Defendant may be allowed to inquire into the interviews during that cross-examination. (Note: for the Court's information, defense counsel has had both interviews at issue transcribed so the defense can readily refer to any specific statements they wish without needing to play the video).

Furthermore, to show the videos (extrinsic evidence), would be duplicative, wasteful, and would unfairly highlight portions of the interview. Idaho Rule of Evidence 403 states that:

Although 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Finally, the issue here is whether Mr. Stone is truthful in court, not whether he was being truthful in a prior out of court conversation. To ask the Court to admit the video recordings and provide a limiting instruction that "the purpose of the admission of these video recordings is for the sole purpose of showing that the witness, Mr. Stone, is a good liar" would be to impermissibly invade the province of the jury. It would, in essence, be the Court commenting on the credibility of a witness - a matter left solely for the jury to decide.

Based upon the above, the State respectfully requests that the Court deny the Defendant's motion.

Respectfully submitted this 29th day of May, 2014.



Michelle M. Evans
Sr. Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copies of the foregoing DEFENDANT'S MOTION TO ALLOW DEFENSE TO SHOW VIDEO AND CO-DEFENDANT'S STATEMENTS TO LAW ENFORCEMENT were served on the following in the manner indicated below:

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

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

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

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery
 e-mail: D.RayBarker@turbonet.com

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

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

Dated this 29th day of May, 2014.

Kate Mecham

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

- COURT MINUTES -

Michael J. Griffin
District Judge

Keith Evans, Court Reporter
Recording No. Z:03/2014-5-30

Date: May 30, 2014

Time: 1:56 P.M.

STATE OF IDAHO,

) Case No. CR-13-01358
)
)

Plaintiff,

vs

) APPEARANCES:
)
)

CHARLES ANTHONY CAPONE,

) William Thompson, Jr., Prosecutor
) Michelle Evans, Deputy Prosecutor
) Mia Vowels, Deputy Prosecutor
)

Defendant.

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

Subject of Proceedings: Motion Hearing

This being the time for conducting a motion hearing, Court noted the presence of counsel and the defendant.

Court took up the State's motion for permission to supplement discovery that was filed on May 13, 2014. Court questioned Mr. Thompson stating that Chelsey Dahl is the new witness. Court questioned Mr. Thompson regarding the State's motion for the on-going experiment to recreate the disposal of the body. Court ruled that experiment will not be brought up at trial unless remains or a body are found. Court questioned Mr. Barker. Mr. Barker had no objection to Ms. Dahl being on the State's witness list.

Mr. Barker presented argument in support of the defendant's motion for telephone records of Captain Hally. Court questioned Mr. Thompson. Mr. Barker presented further argument. Court questioned Mr. Barker. Mr. Monson made a statement to the Court. Court denied the defendant's motion to quash the subpoena for Captain Hally's telephone records as being overbroad. Court questioned Mr. Monson. Court ordered Mr. Thompson provide to defense counsel any telephone records between Captain Hally and Rachel Anderson between the dates of April 10, 2010 and April 19, 2010 and redact any other numbers that are not relevant.

Court took up the State's motion to amend the criminal information. Court questioned Mr. Thompson. Mr. Thompson stated that the purpose of the filing of the motion to amend the criminal

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information is to delete the ninth overt act and correct two typographical errors. There being no objection by counsel, Court granted the State's motion to amend the criminal information.

Court took up the defendant's second motion to retain a forensic pathologist. Mr. Monson presented argument in support of the Court granting the motion to retain a forensic pathologist. Ms. Vowels presented argument in opposition. Court questioned Ms. Vowels. Court questioned Mr. Monson. Court further questioned Ms. Vowels. Mr. Monson made a statement to the Court. Court took the motion to retain a forensic pathologist under advisement.

Court took up the defendant's motion to allow the defense to show a video of David Stone's interview with law enforcement. Mr. Barker presented argument in support of the defendant's motion to show a video of David Stone's interview with law enforcement. Court questioned Mr. Barker. Court ruled that the video will not be allowed to be shown to the jurors but will allow the transcript to be used for impeachment purposes if it is relevant.

Court took up the defendant's motion for payment of an additional \$523.00 for the services of an expert on cadaver dogs. Mr. Monson presented argument in support of said motion. Court questioned Mr. Barker. Court questioned Ms. Vowels. Court questioned Mr. Monson. Court reserved ruling on the motion for payment of an additional \$523.00.

Court noted that there were eighty-three names of witnesses that were sent out with the juror questionnaire. Court ordered that due to the number of witnesses to be called at trial that the schedule for the trial would be 8:30 a.m. to 5:00 p.m., with two breaks and a lunch break. The first day of trial Court will meet with counsel at 8:00 a.m.

Mr. Thompson made a statement to the Court in regard to the defense witnesses. Mr. Thompson moved the Court make an inquiry of the witnesses the defense intends to call. Mr. Thompson stated that they have not received a summary of the testimony of the defense witnesses'. Court questioned Mr. Monson. Mr. Barker stated that the defense has provided witness information to the State. Court ordered Mr. Barker provide summaries of what the defense witnesses are going to testify to. Mr. Monson made an inquiry of the Court.

Mr. Barker inquired of the Court in regard to the defendant's motion for change of venue. Court stated that the defendant's motion for change of venue is still under advisement. Court stated that after reviewing the questionnaires that he will rule on the motion.

Court recessed at 2:37 p.m.

APPROVED BY:



MICHAEL J. GRIFFIN
DISTRICT JUDGE

001635

CASE NO CR 2013-1358

2014 JUN -2 AM 9:02

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA DEPUTY

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

STATE OF IDAHO,	)	CASE NO. CR 2013-1358
)	
Plaintiff,	)	ORDER RE: MOTIONS
)	
vs.)	
)	
CHARLES CAPONE,)	
)	
Defendant.)	

Several pre-trial motions were argued May 30, 2014.

The State's motion to supplement discovery is granted.

The State's motion to quash the subpoena for officer Hally's phone records as being overbroad and is granted. However, the State shall obtain, if they exist, any phone records for officer Hally's phone regarding phone calls between officer Hally and Rachel Anderson that occurred between April 10th and April 19, 2010, and immediately provide those records to defense counsel.

The State's request to offer evidence of a recent attempt to locate Rachel Anderson's body in the Snake River by placing a weighted object into the river at the location where Rachel Anderson's body was allegedly placed in the Snake River, and tracing that object is denied. There is no evidence that the depth of the silt on the bottom of the river or the contour of the

river bottom is the same as it was 4 years ago, nor any evidence that the river flow (cfs) was similar.

The State's motion to amend the Information consistent with the proposed amended Information is granted.

The defense motion to show video interviews of David Stone to the jury is denied. David Stone is not a co-defendant in this case. If David Stone testifies at trial, then the defense may impeach the witness, but only as permitted by the rules of evidence.

The defense motion to retain Dr. Todd Grey for consultation regarding the state's theory that Rachel Anderson died from strangulation is granted. The defense is authorized to spend no more than \$2,500.00 for such consultation.

The other defense motion regarding fees to consult with an expert regarding scent dogs is reserved.

Dated this 2nd day of June 2014..


Michael J. Griffin
District Judge

CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 2 day of June, 2014, to:

Latah County Prosecuting Attorney

U. S. Mail
 Facsimile *hand del*

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

U. S. Mail
 Facsimile *882-7604*

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

U. S. Mail
 Facsimile *882-0589*

Sue Anderson
Deputy Clerk

CASE NO. CR 2013-1358

2014 JUN -2 PM 3: 33

CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ AD DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
MIA M. VOWELS
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 6564

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

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2013-0001358
V.)	
	)	MOTION TO RECONSIDER
CHARLES ANTHONY CAPONE,	)	TRIAL SCHEDULE
Defendant.)	
_____)	

COME NOW, the State of Idaho, by and through Mia M. Vowels, Latah County Deputy Prosecuting Attorney, and D. Ray Barker, Counsel for the Defendant, and jointly move this Court to reconsider its May 30, 2014, decision to move from a 9:30 a.m. to 2:00 p.m. trial schedule to an 8:30 a.m. to 5:00 p.m. trial schedule. In support of said motion, the parties respectfully request this Court to consider the following:

- 1) The preliminary hearing that was held in this case lasted only three days and consisted of 30 witnesses and approximately 72 exhibits. The preliminary hearing schedule consisted of approximately 8 hours of testimony each day (24 hours total).
- 2) Unlike the upcoming trial, at the preliminary hearing there were two

ORIGINAL
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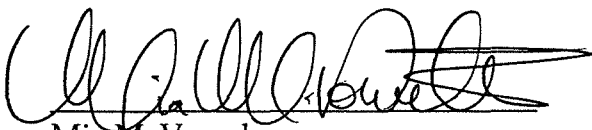
defendants that were each represented by two attorneys so there were two full cross-examinations for each witness. Additionally, there were four charges at the time, including Conspiracy to Commit Murder with eight overt acts, which is no longer being pursued.

3) An abbreviated trial schedule of 9:00 a.m. to 3:00 p.m. would be a benefit to the Court and the Jury because it would assist both parties in making their presentations more efficient which would be beneficial for everyone.

4) An abbreviated trial schedule would enable the jury to take care of personal matters and aid them in being more alert and attentive over the course of this anticipated three week trial, which would provide less disruption for all.

The State and Counsel for the Defendant respectfully request that after the jury is selected this Court consider implementing a 9:00 a.m. to 3:00 p.m. trial schedule.

DATED this 2 day of June, 2014.



Mia M. Vowels
Deputy Prosecuting Attorney



D. Ray Barker
Counsel for Defendant

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Motion to Reconsider Trial Schedule was served on the following in the manner indicated below:

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 2nd day of June, 2014.

Kate Mecham

CASE NO. CR 2013-1358

June 2, 2014
CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA 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.)	
	)	SECOND AMENDED
CHARLES ANTHONY CAPONE,	)	CRIMINAL INFORMATION
Defendant.)	
_____)	

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

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

has perpetrated crimes against the State of Idaho, MURDER IN THE FIRST DEGREE,
Idaho Code 18-4001, 18-4003(a); 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:

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
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;

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;

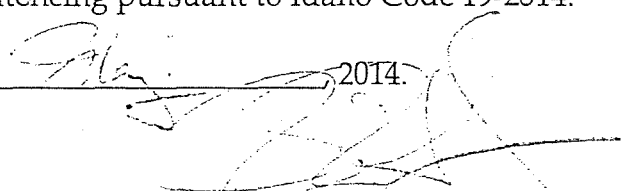
(4) On or about the 18th day of February, 1998, the defendant was convicted of Aggravated Assault, a Felony, in Latah County, Idaho, case no. CR-97-01687;

(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 23 day of Jan, 2014.



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 Second Amended Criminal Information was

mailed, United States mail, postage prepaid

hand delivered

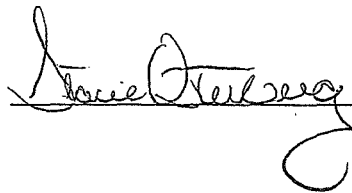
sent by facsimile, original by mail

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 23 day of May, 2014.



CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 3 day of June, 2014, to:

Latah County Prosecuting Attorney

U. S. Mail
 ~~Facsimile~~ *hand del.*

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

U. S. Mail
 Facsimile 882-7604

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

U. S. Mail
 Facsimile 882-0589

Sue Anderson
Deputy Clerk

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

CASE NO. CR 2013-1358
2014 JUN -3 PM 3:00
CLERK OF DISTRICT COURT
LATAH COUNTY
BY aw DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

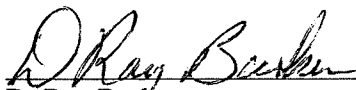
Defendant.

Case No. CR-2013-1358

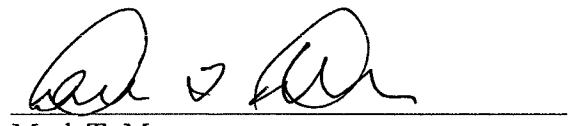
**MOTION FOR ISSUANCE OF
CERTIFICATE OF ENDORSEMENT
PURSUANT TO IDAHO CODE §19-3005**

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

Date: June 3, 2014



D. Ray Barker



Mark T. Monson

**MOTION FOR ISSUANCE OF CERTIFICATE OF
ENDORSEMENT PURSUANT TO IDAHO CODE §19-3005**
Page 1 of 1

001650

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

CASE NO. CR 2013-1358

2014 JUN -3 PM 3:02

CLERK OF DISTRICT COURT
LATAH COUNTY
BY GM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

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

Page 1 of 2

001651

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Christopher Montambo is a necessary and material witness in this case and his testimony may include, but not be limited to, the following: He was acquainted with a state's witness, Brent Glass. Brent Glass is expected to give testimony against the defendant regarding incriminating statements allegedly made by the defendant when the defendant and Brent Glass were housed together. It is anticipated that Mr. Montambo will testify that after being released from custody, Brent Glass went to Mr. Montambo's house and bragged that he lied about the defendant to get out of jail.

That Mr. Montambo's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

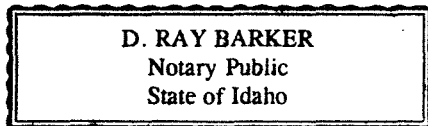
5. That Christopher Montambo, is currently residing at 818 7th Street, Clarkston, WA 99403, approximately thirty-five (35) miles from Moscow, Idaho.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3 day of June, 2014.



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




NOTARY PUBLIC for Idaho
Residing at: Moscow
Commission expires: July 6, 2016

CASE NO. CR2013-1351

2014 JUN -3 PM 2: 55

CLERK OF DISTRICT COURT
LATAH COUNTY
BY gm DEPUTY

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

MARK T. MONSON, P.A.
Attorney at Law
803 S. Jefferson, Suite 4
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES A. CAPONE

Defendant.

Case No. CR-2013-1358


MOTION TO AUTHORIZE ADDITIONAL
FUNDS FOR COMPUTER FORENSIC
EXPERT

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court to authorize additional funds for computer forensic services in the above-referenced matter. Additional funds of \$3,677.20 are hereby requested.

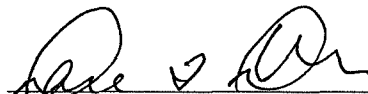
Counsel has retained Marcus Lawson and associates of Global CompuSearch, LLC to assist in analyzing electronic, computer, and cell phone data in this matter. Undersigned counsel has consulted with Global CompuSearch, LLC. Counsel is attaching the estimated costs for the

representative of CompuSearch to attend trial in this matter. It is anticipated that he would be required for two days plus travel and lodging.

DATED: June 3, 2014



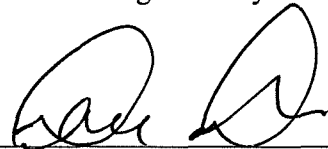
D. Ray Barker
Co-Counsel for Defendant



Mark T. Monson
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



For the Firm

Global CompuSearch LLC.

225 W. Main Ave. Suite 100

Spokane WA. 99201

Spokane, WA: 509.443.9293 | Portland, OR: 503.542.7448 | Palm Springs, CA: 760.459.2122 | Sacramento, CA: 916.760.7362



001655

Travel Estimate

6/3/2014

Mark Monson

ST of ID v. Charles Capone

Trial	\$1,500.00 <i>p/day</i>	2	\$3,000.00
Travel	\$125.00 <i>p/hour</i>	3	\$375.00

\$3,677.20

Travel Expenses: June 23-24, 2014

<i>Lodging</i>	\$115.00	<i>p/day</i>	\$115.00
<i>Mileage</i>	170	<i>\$0.56</i>	\$95.20
<i>Per Diem</i>	\$46.00	<i>p/day</i>	\$92.00

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

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

Attorneys for Defendant

CASE NO. CR 2013-1358

2014 JUN -3 PM 3:02

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

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

Page 1 of 2

001656

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

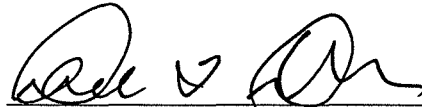
4. That Luis Avila is a necessary and material witness in this case and his testimony may include, but not be limited to, the following: Luis Avila was housed with the defendant in the Asotin County Washington jail. It is anticipated that Luis Avila will testify regarding his interaction with defendant during the time he was housed together with him and the circumstances surrounding his statements to the police regarding the defendant's statements.

That Luis Avila's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

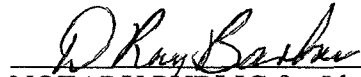
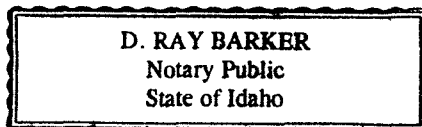
5. That Luis Avila, DOC#369547, is currently residing at Airway Heights Correctional Center, 11919 W. Sprague Avenue, Spokane County, Airway Heights, WA 99001-1899, approximately eighty-five (85) miles from Moscow, Idaho.

6. That the witness will be transported to the Latah County Jail by Interstate Transport.
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3 day of June, 2014.



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



NOTARY PUBLIC for Idaho
Residing at: Moscow
Commission expires: July 6, 2016

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

CASE NO. CR 2013-135

2014 JUN -3 PM 3:00

CLERK OF DISTRICT COURT
LATAH COUNTY
BY am DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Jesse Thacker is a necessary and material witness in this case and his testimony may include, but not be limited to, the following: Jesse Thacker was housed with the defendant in the Asotin County Washington jail. It is anticipated that Mr. Thacker will testify regarding his interaction with defendant during the time he was housed together with him and two other state's witnesses, Luis Avila and Brent Glass, and that during that time he did not make any incriminating statements.

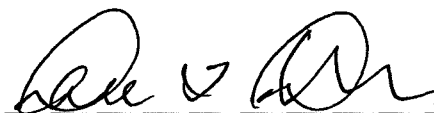
That Jesse Thacker's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

5. That Jesse Thacker, DOC#336804, is currently residing at Airway Heights Correctional Center, 11919 W. Sprague Avenue, Spokane County, Airway Heights, WA 99001-1899, approximately eighty-five (85) miles from Moscow, Idaho.

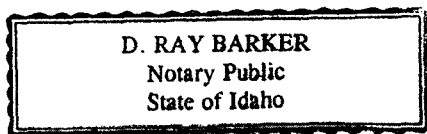
6. That the witness will be transported to the Latah County Jail by Interstate Transport.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3 day of June, 2014.



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




NOTARY PUBLIC for Idaho
Residing at: Moscow
Commission expires: July 6, 2016

CASE NO. CR 2013-135

2014 JUN -4 AM 9:32

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

Date: June 3, 2014

[Signature]
D. Ray Barker

[Signature]
Mark T. Monson

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

CASE NO. CR 2013-1358
2014 June 4 AM 9:32
CLERK OF DISTRICT COURT
LATAH COUNTY
BY Qm DEPUTY

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Teresa Capone-Mullen is a necessary and material witness in this case and her testimony may include, but not be limited to, the following: Ms. Capone-Mullen is the sister of the defendant. She may testify regarding phone calls with Rachel Anderson and being present during phone calls between the defendant and Rachel Anderson. In addition, she may testify regarding items that were removed from the defendant's shop after the state executed a search warrant in April/May 2010.

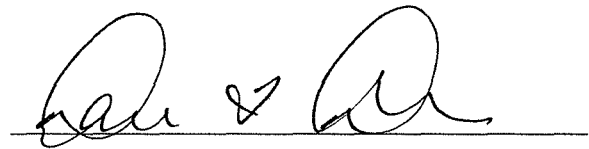
That Ms. Capone-Mullen's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

5. That Teresa Capone-Mullen, is currently residing at 1087 Sanctuary Cove Drive, North Palm Beach, Florida 33408, approximately three thousand (3,000) miles from Moscow, Idaho.

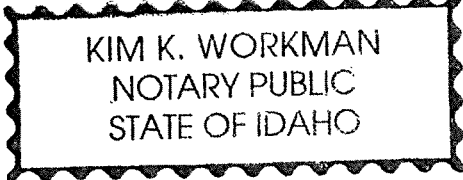
6. It is anticipated that appropriate flight arrangements will be made for this witness to attend trial.

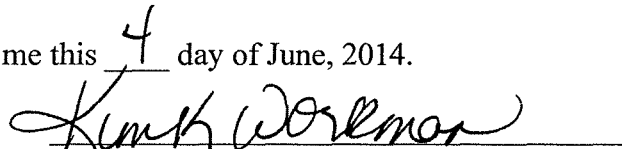
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 4 day of June, 2014.



SUBSCRIBED AND SWORN to before me this 4 day of June, 2014.




NOTARY PUBLIC for Idaho
Residing at: Satah County
Commission expires: 8/7/18

CASE NO. CR 2013-135

2014 JUN -4 AM 9:31

CLERK OF DISTRICT COURT
LATAH COUNTY

BY GM DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

Date: June 4, 2014

D. Ray Barker
D. Ray Barker

Mark T. Monson
Mark T. Monson

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

Page 1 of 1

001663

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

CASE NO CR 2013-1358
2014 JUNE 4 AM 9:3
CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

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

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Anthony Capone is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Mr. Capone is the brother of the defendant. He may testify regarding phone calls with Rachel Anderson. He may testify regarding items that were removed from the defendant's shop after the state executed a search warrant in April/May 2010. Mr. Capone may also testify regarding the numerous letters received from the defendant and that the defendant has never made any incriminating statements to him.

That Mr. Capone's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

5. That Anthony Capone, is currently residing at 16053 N. 47th Drive, Glendale, AZ 85306, approximately one thousand three hundred (1,300) miles from Moscow, Idaho.

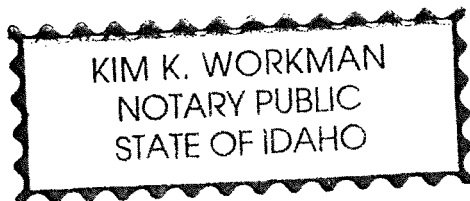
6. It is anticipated that appropriate flight arrangements will be made for this witness to attend trial.

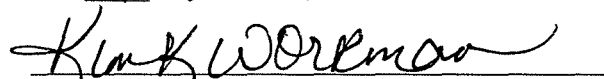
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 4 day of June, 2014.



SUBSCRIBED AND SWORN to before me this 4 day of June, 2014.




NOTARY PUBLIC for Idaho
Residing at Blatah County
Commission expires: 8/7/18

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

CASE NO. CR 2013-1358
2014 Jun-4 AM 9:31
CLERK OF DISTRICT COURT
LATAH COUNTY
BY REM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

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

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

3. That the above entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That Steven Jackson is a necessary and material witness in this case and this witness's testimony may include, but not be limited to, the following: Steven Jackson was housed with the defendant, Brent Glass and Luis Avila in the Asotin County Washington Jail. It is anticipated that Mr. Jackson will testify about his interactions with Brent Glass, Luis Avila and the defendant while incarcerated. It is also anticipated that Mr. Jackson will testify that Brent Glass and/or Luis Avila approached him about a reward for the location of Rachel Anderson.

That Mr. Jackson's testimony is estimated to occur between the dates of July 7, 2014 to July 11, 2014;

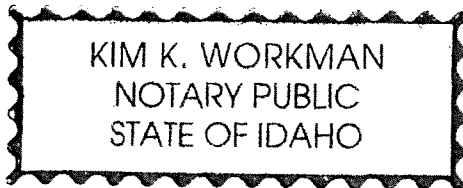
5. That Steve Jackson, is currently residing at 12715 E. Mission, Spokane, Washington, approximately ninety (90) miles from Moscow, Idaho.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 4 day of June, 2014.



SUBSCRIBED AND SWORN to before me this 4 day of June, 2014.





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

CASE NO. CR 2013-1358

2014 JUN -4 PM 3:43

CLERK OF DISTRICT COURT
LATAH COUNTY
BY gm DEPUTY

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

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

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

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

1. Michael J. East is currently incarcerated until November 18, 2017, at the *Idaho State Correctional Institution Unit #10* in Boise, Idaho.

ORIGINAL
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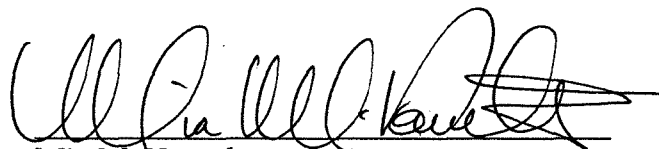
2. That Michael East is a necessary and material witness in that on or about January 19, 2014, Charles A. Capone, had a conversation with Michael J. East about Capone's involvement with the murder of Rachael Anderson and the disposal of her body.

3. That on June 23, 2014, a jury trial is set to begin in the above entitled matter which is anticipated to last three weeks. Michael J. East is under subpoena as a witness at the trial.

Wherefore the State respectfully requests an order to transport Michael J. East to the Latah County Sheriff's Office at least one week prior to the trial date.

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

DATED this 4th day of June, 2014.



Mia M. Vowels
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

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

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

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

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

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

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 4th day of June, 2014.

Kate Meckam

CASE NO. CR 2013-1358

2014 JUN -5 AM 9:38

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *am* DEPUTY

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

STATE OF IDAHO,)
Plaintiff,)
V.)
CHARLES A. CAPONE,)
Defendant.)

Case No. CR-2013-01358

ORDER FOR PRODUCTION
OF PRISONER

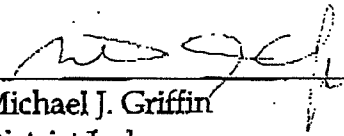
The above matter having come before the Court pursuant to the State's "Motion for Order for Production of Prisoner," the Court being fully advised in the premises and good cause appearing;

IT IS HEREBY ORDERED pursuant to Idaho Code 19-4601, 19-3012 and 9-711, that Michael J. East, a prisoner currently in the custody of the Idaho Department of Correction be brought before this Court no later than the 16th day of June, 2014, for the purpose of testifying at the trial herein.

ORDER FOR PRODUCTION OF
PRISONER: Page -1-

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

SO ORDERED this 5th day of June, 2014.



Michael J. Griffin
District Judge

CERTIFICATE OF SERVICE

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

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

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

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

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

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

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Sheriff Wayne Rausch
Latah County Sheriff's Office
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

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

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

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

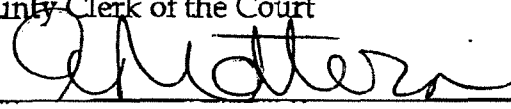
E-Mail

ISCI Unit 10 (certified)
P.O. Box 14
Boise, ID 83707
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

on this 5 day of June, 2014.

SUSAN PETERSEN
Latah County Clerk of the Court

By: 
Deputy Clerk

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

- COURT MINUTES -

Michael J. Griffin
District Judge Not Present

No Court Reporter
Recording: None

Date: June 5, 2014

Time: 2:29 P.M.

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

Case No. CR-13-01358

APPEARANCES:

No one present representing the State

No one present representing the defense

Subject of Proceedings: Numbering Selection of Prospective Jurors

The clerk called the case into the record, noting that Judge Griffith and neither attorney for the State nor the defense were present in the courtroom.

The clerk randomly selected the names of the following prospective jurors.

1. Mary Rebecca Chastain
2. Vonda Larae Hunt
3. Cindy Lenore Bogar
4. Shawn Dennis Smith
5. Jeffrey Daniel Nelson
6. Tiffany Marie Fuller
7. Amber Nicole Witt
8. Ronald J. Vietmeier
9. Daniel Joseph Rogers
10. Brandy Shantel Ramos
11. Robert John Ouderkerken
12. Andrew J. Aring
13. Joyce V. Jones
14. Linda Marie Brower

15. Robert Barry Hamm
16. Rhiannon Sara Slack
17. Deena Renee Roy Kinkeade
18. Emily Anne Shearouse
19. John E. Mozingo
20. Molli Elizabeth Lee-Painter
21. Steve Ray Griffin
22. Isaac Clay Young
23. Dianna C. Olson
24. Gary Kendall
25. Tracy T. Kanikkeberg
26. Tara Nicole Beebe
27. Doris Jean Hansen
28. Linda K. Norton
29. Gary R. Hess
30. Corinne Frances Hunter
31. Henry Michael Gibson
32. Brian Lee Jemes
33. Karen Anne Dangerfield
34. Autumn Marie Scheffler
35. Edward William Walker
36. John Alan Ringo
37. Craig M. Redger
38. Terrie Lynn Nelson
39. Gerald Allen Page
40. Craig Robert Staszkw
41. Mary Michelle Olsen
42. Eric Graham Shaw
43. Emily Ann Pierce
44. Nicholas Mark Guho
45. Micah Ray Kramer
46. Larry Vinson Francis
47. Rodna Louise Hansen
48. Mona Lee Cobb
49. Aaron James Griffin
50. Lonnie Deloy Coles
51. David Alan Evans
52. Jay W. Roach
53. Jacob Ian Blazzard
54. Charles Ernest Crossler

55. Deborah Voorhees Berman
56. Erin N. Fitt
57. Eric Lane Martin
58. Angie Joy Miller
59. Christopher Ryan Hammond
60. Roberta Lewis Radavich
61. Candice Paulette McGreal
62. Trevor M. Stone
63. Derek Omar Forseth
64. Lee Ann Berg
65. Pamela J. Bettis
66. Kent David Chambers
67. Robert Park III
68. Timothy V. Steury
69. John F. Camm
70. Teresa Ann Monroe
71. Kyleah Autumn McCoy
72. Janelle D. Leachman
73. Gary Edward Reed
74. Susan Katherine Struble
75. Amy Elizabeth Newsome
76. Thomas Gerard Bode
77. Mary Louise Jones
78. Roger G. Kasper
79. Robin Lee Brocke
80. Dorothy Louise Lohman
81. Yvonne Velvet McGehee
82. Katherine Louise Michaels
83. Steve Mark Yoder, II
84. Meredith Jeannine Stone
85. Dale R. Ralston
86. Susan Marie Fluegel
87. Craig Alan Klas
88. Janna Lynn Shaw
89. Jesse B. Izzo
90. Moein Poudat
91. Thomas Francis Riedner
92. Jennifer Lyn Russell
93. Daniel Aaron Bechtel
94. Tevis William Lee

95. Gary David Knerr
96. Arthur Max Smith
97. Lori Marie Stinson
98. Billie Lee Long
99. Claire D. Anderson
100. Jennifer Anne Allred
101. Connie E. Larson
102. Brittany Marie Nelson
103. Mark Schwarzlaender
104. Benjamin Edward Armstong
105. David Lee Germer
106. Everett David Sherman
107. Jeff Richard Klone
108. Marsha Kay Schoeffler
109. Kaitlynn Bethany Ballester
110. Wendy Louise Waltner
111. Brandon Lee Carpenter
112. Constance Ann Lucas
113. Lance Corey Fountain
114. Jessica Josefina Garcia
115. Nicholas Alan Alexander
116. Thomas Lloyd Marsh
117. Christina Lorraine Luther
118. Mary K. Givler
119. John William Weber
120. Linda Mae Baxter
121. Matthew David Anne Farnsworth
122. Stephanie Anne Smith
123. Brad Albert King
124. Sandra Louise Frisbey
125. Celeste Ann Shaw

Court recessed at 2:55 p.m.

001678

CASE NO. CR 2013-1358

2014 JUN -5 AM 9:44

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *cm* DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT

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

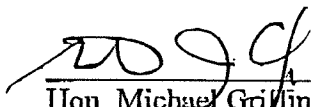
1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Steven Jackson, who currently resides in the State of Washington, at 12715 E. Mission, Spokane Washington, is a necessary and material witness for the State in this matter;

CERTIFICATE OF ENDORSEMENT

Page 1 of 2

3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between June 23 and July 11, 2014;
5. That the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5 day of June, 2014.



Hon. Michael Griffin
District Judge

CASE NO. CR 2013-1358

2014 JUN -5 AM 9:42

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

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT


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

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Teresa Capone-Mullen, who currently resides in the State of Florida, at 1087 Sanctuary Cove Drive, North Palm Beach, Florida 33408, is a necessary and material witness for the State in this matter;

CERTIFICATE OF ENDORSEMENT
Page 1 of 2

3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between *June 24, 2014 and July 11, 2014*
5. That the witness will be transported by herself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5th day of June, 2014.



Hon. Michael Griffin
District Judge

CASE NO

CR 2013-1358

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

2014 JUN -5 AM 9:41

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT


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

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Jesse Thacker, who currently resides in the State of Washington, at Airway Heights Corrections Center, 11919 W. Sprague Ave., Airway Heights, WA 99001-1899, is a necessary and material witness in this matter;

CERTIFICATE OF ENDORSEMENT
Page 1 of 2

3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between ~~June 23~~ through July 11, 2014;
5. That the witness will be transported through the Interstate Transport to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5th day of June, 2014.



 Hon. Michael Griffin
 District Judge

CASE NO CR2013-1358

2014 JUN -5 AM 9:40

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT

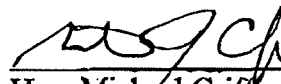
The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code 19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Luis Avila, who currently resides in the State of Washington, at Airway Heights Corrections Center, 11919 W. Sprague Ave., Airway Heights, WA 99001-1899, is a necessary and material witness in this matter;

CERTIFICATE OF ENDORSEMENT
Page 1 of 2

- 3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
- 4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between ~~June 23~~ through July 11, 2014;
- 5. That the witness will be transported through the Interstate Transport to and from the court where the hearing or prosecution is pending;
- 6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5th day of June, 2014.



 Hon. Michael Griffin
 District Judge

CASE NO CR 2013-1358

2014 JUN -5 AM 9:40

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT

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

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

3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between ~~June 23~~ through July 11, 2014;
5. That the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5 day of June, 2014.



 Hon. Michael Griffin
 District Judge

CASE NO CR 2013-1358

2014 JUN -5 AM 9:44

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

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

CERTIFICATE OF ENDORSEMENT

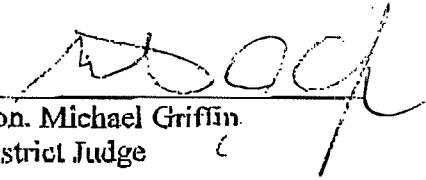
The Court, having been fully advised through the Affidavit of Mark T. Monson, does hereby certify, pursuant to Idaho Code 19-3005(2);

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Anthony Capone, who currently resides in the State of Florida, at 16053 N. 47th Drive, Glendale, AZ. 85306, is a necessary and material witness for the State in this matter;

CERTIFICATE OF ENDORSEMENT
Page 1 of 2

- 3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
- 4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between June 23, 2014 and July 11, 2014.
- 5. That the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
- 6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 5 day of June, 2014.


 Hon. Michael Griffin
 District Judge

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

CASE NO. CR 2013-1358

2014 JUN -6 PM 2:51

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AMENDED CERTIFICATE OF
ENDORSEMENT**

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

1. That the above-referenced matter is a prosecution pending in the Second Judicial District court of the State of Idaho, in and for the County of Latah;
2. That Anthony Capone, who currently resides in the State of Arizona, at 16053 N. 47th Drive, Glendale, AZ 85306, is a necessary and material witness for the State in this matter;

CERTIFICATE OF ENDORSEMENT
Page 1 of 2


No. 4726 P. 1/2

001691

Jun. 6. 2014 2:35PM

3. That the trial in this matter is scheduled to commence on the 23rd day of June, 2014, at 9:00 .m. and that the witness shall be required to attend the trial.
4. That the trial is estimated to take three (3) weeks, with the witness' testimony expected to take place between ~~June 24th~~ through July 11, 2014;
5. That the witness will be transported by himself to and from the court where the hearing or prosecution is pending;
6. That if the witness comes into the State of Idaho in obedience to the subpoena directing the witness to attend and testify at said hearing, the laws of the State of Idaho grant the witness protection from arrest or the service of process, civil or criminal, in connection with any matters which arose before entrance into the State of Idaho pursuant to the subpoena.

DATED this 6th day of June, 2014.



Hon. Michael Griffin
District Judge

CASE NO. CR 2013-1358

2014 JUN -6 PM 3:07

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

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of subpoenas pursuant to Idaho Code §19-3008. The defendant is requesting the court issue subpoenas for the following individuals:

- | | | |
|---------------|----------------|----------------------|
| Luis Avila | Brett Bennett | Wayne Boyer |
| Ed Button | Anthony Capone | Teresa Capone Mullen |
| David Colbert | Ed Comer | Nathan Donner |
| Dan Evans | John Houser | Steve Jackson |
| Brad Jager | Jeff Johnson | Paul Langworthy |

**MOTION FOR ISSUANCE OF CERTIFICATE OF
SUBPOENAS PURSUANT TO IDAHO CODE §19-3008**

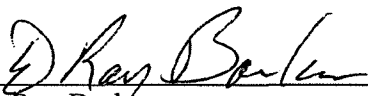
Page 1 of 3

001693

Dan MacPherson	Stephanie Rath	Mike Mastro
Chris Montambo	Blake Nelson	Don Reed
Angel Rivera	Chuck Schoonover	Mack Snyder
Louis Soule	Debbie Stamper	Earl Stamper
Gary Steckel	Alisa Stone	Skyler Sullivan
Deby Sweet	Jesse Thacker	Matthew Tournay
John Wheaton	Travis Williams	Greg Wilson, Ph.D
Stephanie Wiltse	Joshua Michel	Todd Grey, MD

This motion is based upon the Affidavit of Charles A. Capone. A list of the above named witnesses with summaries of their anticipated testimony has been submitted to the court by letter and was previously disclosed to the State.

Date: June 6, 2014




D. Ray Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 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

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

CASE NO. CR 2013-1358

2014 JUN -6 PM 3: 08

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *am* DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**AFFIDAVIT OF DEFENDANT IN
SUPPORT OF ISSUANCE OF
SUBPOENAS PURSUANT TO IDAHO
CODE 19-3008**

Charles A. Capone, being first duly sworn, states as follows:

1. That I am the Defendant in the above-captioned case.
2. That I am charged with the felony offenses of MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a); PRINCIPAL TO FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 18-204, 19-4301A(1)(3) and CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301(A)(1)(3), 18-1701;

**AFFIDAVIT OF DEFENDANT IN SUPPORT
OF ISSUANCE OF SUBPOENAS PURSUANT
TO IDAHO CODE 19-3008**

Page 1 of 2

001696

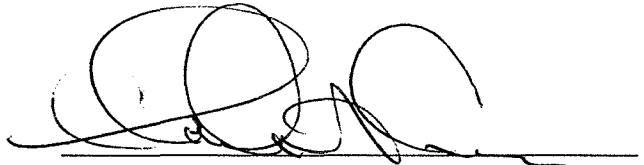
3. That the above-entitled case has been set for trial to begin on June 23, 2014, at 9:00 a.m., and the trial is expected to last for three (3) weeks;

4. That the following witnesses are material to my defense and I cannot go to trial safely without them:

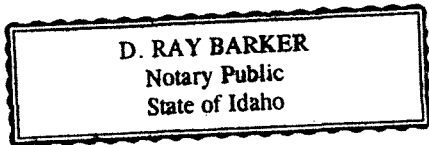
Luis Avila	Brett Bennett	Wayne Boyer
Ed Button	Anthony Capone	Teresa Capone Mullen
David Colbert	Ed Comer	Nathan Donner
Dan Evans	John Houser	Steve Jackson
Brad Jager	Jeff Johnson	Paul Langworthy
Dan MacPherson	Stephanie Rath	Mike Mastro
Chris Montambo	Blake Nelson	Don Reed
Angel Rivera	Chuck Schoonover	Mack Snyder
Louis Soule	Debbie Stamper	Earl Stamper
Gary Steckel	Alisa Stone	Skyler Sullivan
Deby Sweet	Jesse Thacker	Matthew Tournay
John Wheaton	Travis Williams	Greg Wilson, Ph.D
Stephanie Wiltse	Joshua Michel	Todd Grey, MD

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 6 day of June, 2014.



SUBSCRIBED AND SWORN to before me this 6th day of June, 2014.




D. Ray Barker
NOTARY PUBLIC for Idaho
Residing at: MOSCOW
Commission expires: July 6, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of June, 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

CR 2013-1358
CASE NO

2014 JUN -9 PM 3:06

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

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

THIS MATTER came before the Court on the Motion of the Defendant to issue subpoenas pursuant to Idaho Code 19-3008. The Court, having reviewed the file and affidavit of the Defendant in support of the Motion for Issuance of Subpoenas Pursuant to Idaho Code 19-3008, finds that the individuals listed below are material to the Defense and that good cause exists to enter the following order:

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

Brett Bennett

Wayne Boyer

Ed Button

David Colbert

Ed Comer

Dan Evans

Dan MacPherson

Stephanie Rath

Mike Mastro

Chris Montambo

Skyler Sullivan

Deby Sweet


Travis Williams

Greg Wilson, Ph.D

Joshua Michel

Todd Grey, MD

DATED this 9th day of June, 2014.


District Judge

CERTIFICATE OF SERVICE

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

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

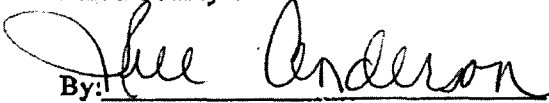
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 9 day of June, 2014.

SUSAN PETERSON
Latah County Clerk of the Court


By: _____
Deputy Clerk

CC: Prosecutors Office 6/12/2014

001700

CR 2013-1358
CASE NO

2014 JUN -9 PM 3: 38

CLERK OF DISTRICT COURT
LATAH COUNTY

BY aa DEPUTY

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

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

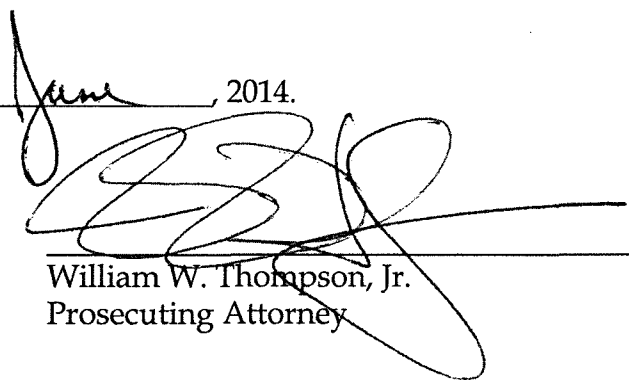
STATE OF IDAHO,)
Plaintiff,)
V.)
CHARLES ANTHONY CAPONE,)
Defendant.)
_____)

Case No. CR-2013-0001358

REQUEST FOR
JURY INSTRUCTIONS

COMES NOW THE STATE OF IDAHO and submits to the Court the following
State's Request for Jury Instructions.

DATED this 9th day of June, 2014.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing REQUEST FOR JURY INSTRUCTIONS was

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

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

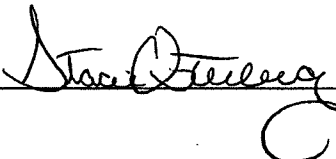
Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

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

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

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

Dated this 9 day of June, 2014.



STATE'S REQUESTED

INSTRUCTION NO. 1

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

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

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

Comment

The Due Process Clause of the Fourteenth Amendment requires that the jury be instructed on the presumption of innocence. *Taylor v. Kentucky*, 436 U.S. 478 (1977). Although technically not a "presumption", the presumption of innocence is a way of describing the prosecution's duty both to produce evidence of guilt and to convince the jury beyond a reasonable doubt. *Id.*

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001703

"The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Indeed, so long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government's burden of proof. Rather, 'taken as a whole, the instructions [must] correctly conve[y] the concept of reasonable doubt to the jury.'" *Victor v. Nebraska*, 511 U.S. 1, 5 (1994) (citations omitted).

The above instruction reflects the view that it is preferable to instruct the jury on the meaning of proof beyond a reasonable doubt. This instruction defines that term concisely while avoiding the pitfalls arising from some other attempts to define this concept.

ICJI 103.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001704

STATE'S REQUESTED

INSTRUCTION NO. 2

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

ICJI 110.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001705

STATE'S REQUESTED

INSTRUCTION NO. 3

The death penalty is not a sentencing option for the court or the jury in this case.

Comment

I.C. § 18-4004A(2) requires the court to instruct potential jurors at the outset of jury selection that the death penalty is not a sentencing option for the court or the jury where the prosecuting attorney has not filed notice of intent to seek the death penalty or put the court on notice that the State does not intend to seek the death penalty.

This instruction should only be given if the defendant is charged with murder in the first degree.

ICJI 1701.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001706

STATE'S REQUESTED

INSTRUCTION NO. 4

In every crime or public offense there must exist a union or joint operation of act and [intent] [or] [criminal negligence].

ICJI 305.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001707

STATE'S REQUESTED

INSTRUCTION NO. 5

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

ICJI 208.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001708

STATE'S REQUESTED

INSTRUCTION NO. 6

An act or a failure to act is "wilful" or done "wilfully" when done on purpose. One can act wilfully without intending to violate the law, to injure another, or to acquire any advantage.

ICJI 340.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001709

STATE'S REQUESTED

INSTRUCTION NO. 7

The law makes no distinction between a person who directly participates in the acts constituting a crime and a person who, either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps or hires another to commit a crime with intent to promote or assist in its commission. Both can be found guilty of the crime. Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not, in the absence of a duty to act, sufficient to make one an accomplice.

ICJI 311.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001710

STATE'S REQUESTED

INSTRUCTION NO. 8

All persons who participate in a crime either before or during its commission, by intentionally aiding, abetting, advising, hiring, counseling or procuring another to commit the crime with intent to promote or assist in its commission are guilty of the crime. All such participants are considered principals in the commission of the crime. The participation of each defendant in the crime must be proved beyond a reasonable doubt.

ICJI 312.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001711

STATE'S REQUESTED

INSTRUCTION NO. 9

The Defendant, CHARLES ANTHONY CAPONE, is charged in Count I with the crime of MURDER IN THE FIRST DEGREE, Idaho Code 18-4001, 18-4003(a), committed as follows:

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

To such charge the Defendant has pleaded not guilty.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001712

STATE'S REQUESTED

INSTRUCTION NO. 10

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

ICJI 701.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001713

STATE'S REQUESTED

INSTRUCTION NO. 11

Malice may be express or implied.

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

Malice is implied when:

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

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

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

ICJI 702.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001714

STATE'S REQUESTED

INSTRUCTION NO. 12

In order for CHARLES ANTHONY CAPONE to be guilty of First Degree Murder as charged in Count I, the State must prove each of the following:

1. On or about the 16th day of April, 2010;
2. in the State of Idaho;
3. CHARLES ANTHONY CAPONE engaged in conduct which caused the death of Rachael Anderson,
4. the defendant acted with malice aforethought, and
5. the murder was a willful, deliberate, and premeditated killing.

Premeditation means to consider beforehand whether to kill or not to kill, and then to decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered, as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not premeditation;

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001715

If you find that the state has failed to prove beyond a reasonable doubt any of the elements one (1) - four (4) above or failed to prove the circumstances listed in element five (5), you must find the defendant not guilty of First Degree Murder. If you find that elements one (1) - four (4) above have been proven beyond a reasonable doubt, and you unanimously agree that the state has proven any of the above circumstance[s] under element five (5) beyond reasonable doubt, you must find the defendant guilty of First Degree Murder.

ICJI 704A.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001716

STATE'S REQUESTED

INSTRUCTION NO. 13

If your unanimous verdict is that the defendant is not guilty of First Degree Murder, you must acquit him of that charge. In that event, you must next consider the included offense of Second Degree Murder.

In order for CHARLES ANTHONY CAPONE to be guilty of Second Degree Murder, the State must prove each of the following:

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

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

I.C. 18-4001, 18-4003.
ICJI 705.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001717

STATE'S REQUESTED

INSTRUCTION NO. 14

If your unanimous verdict is that the defendant is not guilty of Second Degree Murder, you must acquit him of that charge. In that event, you must next consider the included offense of Voluntary Manslaughter.

In order for CHARLES ANTHONY CAPONE to be guilty of Voluntary Manslaughter, the State must prove each of the following:

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

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

I.C. 18-4006.
ICJI 708.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001718

STATE'S REQUESTED
INSTRUCTION NO. 15

The Defendant, CHARLES ANTHONY CAPONE, is charged in COUNT II with the crime of FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 18-204, 19-4301A(1)(3), committed as follows:

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

To such charge the Defendant has pleaded not guilty.

I.C. 18-204, 19-4301A(1)(3).

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001719

STATE'S REQUESTED

INSTRUCTION NO. 16

In order for CHARLES ANTHONY CAPONE to be guilty of Failure to Notify Coroner or Law Enforcement of Death, Idaho Code 18-204, 19-4301A(1)(3), as charged in Count II, the State must prove each of the following:

1. On or about the 16th day of April, 2010;
2. in the State of Idaho;
3. CHARLES ANTHONY CAPONE failed to notify, or did aid and abet David Christopher Stone in failing to notify law enforcement or the Latah County Coroner
4. of the death of Rachael Anderson,
5. and/or the defendant failed to take reasonable precautions to preserve the body, body fluids and the scene of the event,
6. with the intent to prevent discovery of the manner of death of Rachael Anderson.

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

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001720

STATE'S REQUESTED

INSTRUCTION NO. 17

Failure to Notify Coroner or Law Enforcement of Death is defined by law as:

Where any death occurs which would be subject to investigation by the coroner under section 19-4301(1), Idaho Code, the person who finds or has custody of the body shall promptly notify either the coroner, who shall notify the appropriate law enforcement agency, or a law enforcement officer or agency, which shall notify the coroner. Pending arrival of a law enforcement officer, the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation or any person who, with the intent to prevent discovery of the manner of death, fails to notify or delays notification to the coroner or law enforcement.

I.C. 19-4301 requires a County coroner to investigate deaths if:

- (a) The death occurred as a result of violence, whether apparently by homicide, suicide or by accident;
- (b) The death occurred under suspicious or unknown circumstances.

I.C. 19-4301A.
I.C. 19-4301(1).
ICJI 1102.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001721

STATE'S REQUESTED

INSTRUCTION NO. 18

The Defendant, CHARLES ANTHONY CAPONE, is charged in COUNT III with the crime of CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, committed as follows:

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;

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001722

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;

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

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001723

STATE'S REQUESTED

INSTRUCTION NO. 19

The crime of conspiracy involves an agreement by two or more persons to commit a crime. They need not agree upon every detail. The agreement may be established in any manner sufficient to show an understanding of the parties to the agreement. It may be shown by evidence of an oral or written agreement, or may be implied from the conduct of the parties.

State v. Gallatin, 106 Idaho 564, 682 P.2d 105 (Ct. App. 1984)
ICJI 1103.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001724

STATE'S REQUESTED

INSTRUCTION NO. 20

In order for CHARLES ANTHONY CAPONE to be guilty of CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, as charged in Count III, the State must prove each of the following:

1. On or about the 16th day of April, 2010;
2. in the State of Idaho;
3. CHARLES ANTHONY CAPONE and David Christopher Stone agreed
4. to commit the crime of Failure to Notify Coroner or Law Enforcement of Death, Idaho Code 19-4301A(1)(3);
5. the defendant intended that the crime would be committed;
6. one of the parties to the agreement performed at least one of the following acts:
 - a. Charles Capone killed and murdered Rachael Anderson;
 - b. Charles Capone and David Stone hid/disposed of Rachael Anderson's body after she was murdered;
 - c. David Stone lied to his wife, Alisa, to hide his and Charles Capone's true activities;

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001725

- d. Charles Capone purchased a tarp to replace one used in the murder of Rachael Anderson and/or the disposal of her body;
- e. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachael Anderson in order to remove evidence of her death;
- f. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
- g. Charles Capone left fictitious communications on Rachael Anderson's phone after her death in order to hide the fact of her death and the circumstances of her death;
- h. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators;

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

ICJI 1101.
I.C. 18-1701 and I.C. 19-2111.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001726

STATE'S REQUESTED

INSTRUCTION NO. 21

In this case you will return a verdict, consisting of a series of questions. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

"We, the Jury, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is Charles Anthony Capone guilty or not guilty of Murder in the First Degree as alleged in Count I?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "Guilty," then proceed to answer Question No. 4. If you unanimously answered Question No. 1 "Not Guilty," then proceed to answer Question No. 2.

QUESTION NO. 2: Is Charles Anthony Capone guilty or not guilty of Murder in the Second Degree?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 2 "Guilty," then proceed to answer Question No. 4. If you unanimously answered Question No. 2 "Not Guilty," then proceed to answer Question No. 3.

QUESTION NO. 3: Is Charles Anthony Capone guilty or not guilty of Voluntary Manslaughter?

Not Guilty _____ Guilty _____

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001727

QUESTION NO. 4: Is Charles Anthony Capone guilty or not guilty of Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II?

Not Guilty _____ Guilty _____

QUESTION NO. 5: Is Charles Anthony Capone guilty or not guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count III?

Not Guilty _____ Guilty _____

After you have unanimously answered these questions as instructed, then you should simply sign the verdict form and advise the bailiff.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001728

STATE'S REQUESTED

INSTRUCTION NO. 22

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

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2013-01358
V.)	
)	
CHARLES ANTHONY CAPONE,	)	VERDICT
Defendant.)	
_____)	

We, the Jury, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is Charles Anthony Capone guilty or not guilty of Murder in the First Degree as alleged in Count I?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "Guilty," then proceed to answer Question No 4. If you unanimously answered Question No. 1 "Not Guilty," then proceed to answer Question No. 2.

QUESTION NO. 2: Is Charles Anthony Capone guilty or not guilty of Murder in the Second Degree?

Not Guilty _____ Guilty _____

GIVEN _____
 REFUSED _____
 MODIFIED _____
 COVERED _____
 OTHER _____

If you unanimously answered Question No. 2 "Guilty," then proceed to answer Question No. 4. If you unanimously answered Question No. 2 "Not Guilty," then proceed to answer Question No. 3.

QUESTION NO. 3: Is Charles Anthony Capone guilty or not guilty of Voluntary Manslaughter?

Not Guilty _____ Guilty _____

QUESTION NO. 4: Is Charles Anthony Capone guilty or not guilty of Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count II?

Not Guilty _____ Guilty _____

QUESTION NO. 5: Is Charles Anthony Capone guilty or not guilty of Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, as alleged in Count III?

Not Guilty _____ Guilty _____

Dated this _____ day of _____, 2014.

Presiding Juror

ICJI 224.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001730

STATE'S REQUESTED

INSTRUCTION NUMBER 23

Having found the defendant guilty of [Murder in the First Degree, Principal to Failure to Notify Coroner or Law Enforcement of Death, or Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death], you must next consider whether the defendant has been convicted on at least two prior occasions of felony offenses.

The State alleges the defendant has prior convictions as follows:

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

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001731

- (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.

The existence of the prior convictions must be proved beyond a reasonable doubt and your decision must be unanimous.

ICJI 1601.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001732

STATE'S REQUESTED

INSTRUCTION NUMBER 24

A person who has pled guilty to an offense, or found guilty by a jury or court, has been "convicted" of the offense.

I.C. 19-109.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001733

STATE'S REQUESTED

INSTRUCTION NUMBER 25

A judicial record may be proven by the production of the original, or by a copy, certified by the Clerk or other person having legal custody of the record.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001734

STATE'S REQUESTED

INSTRUCTION NUMBER 26

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

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2013-0001358
V.)	
)	
CHARLES ANTHONY CAPONE,	)	SPECIAL VERDICT
Defendant.)	
_____)	

QUESTION NO. 1: Has Charles Anthony Capone been previously convicted of at least two felony offenses?

Yes _____ No _____

Once you have unanimously answered Question No. 1, then you should sign the verdict form and advise the bailiff.

DATED this _____ day of _____, 2014.

Presiding Juror

GIVEN _____
 REFUSED _____
 MODIFIED _____
 COVERED _____
 OTHER _____

001735

CASE NO. CR 2013-135

2014 JUN 10 AM 11:33

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CM DEPUTY

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ADDITIONAL FUNDS
FOR 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 are hereby requested. Mr. Schoonover is the Defendant's primary investigator and it is expected that he will attend trial that is scheduled to commence on June 23, 2014 and is expected to last three weeks. Mr. Schoonover will also be expected to assist counsel in the evenings and weekends in order to facilitate the Court's anticipated trial schedule. Mr. Schoonover continues to locate and interview witnesses and consult with court-appointed counsel. In addition, Mr. Schoonover has assisted in

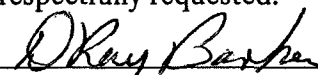
MOTION FOR ADDITIONAL FUNDS FOR INVESTIGATOR

organizing voluminous amounts of cell phone data that has taken the state a significant amount of time to compile. Mr. Schoonover is also assisting in organizing witness testimony and extrapolating data from specific reports provided by the state in discovery in anticipation of preparing specific trial exhibits. Mr. Schoonover has also met with expert witnesses and counsel in Spokane and has been available and on call in order to locate specific items of evidence as requested by counsel. It is anticipated that Mr. Schoonover will continue to assist in locating witnesses, interviewing witnesses, serving subpoenas and other activities as described above. Mr. Schoonover is the Defendant's primary investigator and it is anticipated that he will be needed to attend trial that is scheduled to begin on June 23, 2014 and is anticipated to last three weeks.

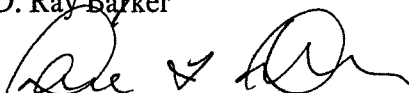
The Defendant notes that the State has objected to payment of additional investigative costs, and anticipates further objection. The Defendant respectfully notes that the state has formed a taskforce to investigate the disappearance of Rachel Anderson, which includes most, if not all, of the local law enforcement agencies in Latah County, Nez Perce County, and Asotin County Washington. The state has also involved the United States Coast Guard, the ATF, FBI, and law enforcement agencies from Florida. These agencies have been investigating the disappearance for approximately four years, and continue to investigate. The undersigned respectfully submit that even today, the news reports that these agencies are continuing to investigate in an attempt to locate Rachel Anderson. The Defendant also respectfully notes that updated information continues to be discovered to the defense and expects additional discovery. The Defendant anticipates that the state will continue to involve the previously mentioned agencies up to the point of trial.

Additional funding in the amount of \$10,000 is respectfully requested.

DATED this 10th day of June, 2014



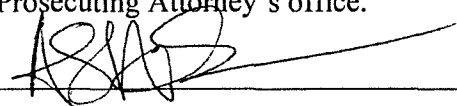
D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on June 10 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



CASE NO. CR 2013-1358

2014 JUN 12 AM 9:48

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA DEPUTY

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

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 COMPUTER EXPERT

THE COURT, having reviewed Defendant's *Motion for Additional Funds for Computer Forensic Expert* dated June 3, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$ 3,302.20 for expert costs is hereby authorized. Computer forensic costs in the amount of \$6,000.00 were previously approved. Such costs shall not exceed \$ 9,302.20 in total until further order of the court.

DATED this 12th day of June 2014.

[Signature]
JUDGE

CERTIFICATE OF SERVICE

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

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

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

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

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

on this 12 day of June, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: *Sue Anderson*
Deputy Clerk

CASE NO CR2013-1358

2014 JUN 12 AM 9:43

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING FUNDS
REGARDING INVESTIGATOR

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

IT IS HEREBY ORDERED that an additional \$ 10,000.00 for investigative costs is hereby authorized. Such ^{additional} costs shall not exceed \$ 10,000.00 ~~in total~~ until and unless the defendant obtains authorization for additional investigative costs.

DATED this 12 day of June 2014.

[Signature]
JUDGE

CERTIFICATE OF SERVICE

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

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

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

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

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

on this 12 day of June, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: Sue Anderson
Deputy Clerk

CASE NO. CR 2013-1358

2014 JUN 12 PM 2:36

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: [Signature] DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

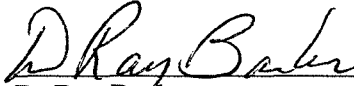
MOTION FOR CONTINUANCE

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court for an order continuing the trial in this case. The trial is scheduled to commence on June 23, 2014. The basis of the continuance is the following:

On May 14, 2014, Ray Barker, co-counsel attended a medical appointment at which time a tumor was located in his bladder. On June 5, 2014, Ray Barker underwent surgery and the tumor was removed. On June 11, 2014, Ray Barker attended a medical appointment at which time it was confirmed that the

tumor was cancerous. As a result of the surgery, Mr. Barker has very little bladder control and is on medication to restore bladder control, but it is anticipated that that will not be achieved for approximately 30 days. As a result, the trial schedule proposed by the Court will be difficult to endure for Mr. Barker.

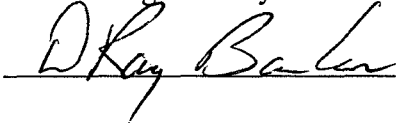
DATED this 12th day of June, 2014


D. Ray Barker


Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on June 12th 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.


D. Ray Barker

- 8:41 Monson responds to the court
- 8:42 Court responds to the counsel re: Dr. Gray
Court will authorize additional funds for P.I.
- 8:44 Vowels addresses court re: investigator sitting in trial
Court addresses counsel re: witness list
- 8:46 Monson responds to the court
- 8:48 Court responds
Monson responds
- 8:50 Court responds and discusses with Monson re: witness
- 8:51 Vowels addresses the court
Court responds
Monson addresses court
Court responds and discusses with counsel re: witnesses
- 8:52 Vowels questions court re: jury questions
- 8:54 Barker addresses court re: witness
Court responds and discusses with counsel
- 8:56 Barker requests motion to continue trial
- 8:57 Court responds and discusses with Barker
- 8:58 Monson addresses court re: additional witnesses
Court responds and discusses with Barker and Monson
- 8:59 Court addresses counsel re: timing and witness availability
- 9:00 Vowels responds to the court
- 9:01 Barker addresses court
- 9:03 Recess

Signed: _____


District Judge

Signed: _____


Deputy Court Clerk

001745

CASE NO. CR 2013-1358

2014 JUN 12 PM 2:37

CLERK OF DISTRICT COURT
LATAH COUNTY

BY sa DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION TO RECONSIDER MOTION
FOR ISSUANCE OF SUBPOENAS
PURSUANT TO IDAHO CODE §19-3008**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court to reconsider its Order for the Issuance of Subpoenas entered on June 8, 2014. The basis for the motion is that the following:

The State has alleged that the Defendant committed the crimes of murder in the first degree, failure to report a death, and conspiracy to fail to report a death. Central to the state's case is the anticipated testimony of Brent Glass, Luis Avila and David Stone. Brent Glass testified at the

**MOTION TO RECONSIDER MOTION FOR ISSUANCE OF
SUBPOENAS PURSUANT TO IDAHO CODE §19-3008**

preliminary hearing in this case that the Defendant made incriminating statements related to the disappearance of Rachel Anderson while the two of them were incarcerated in the Asotin County jail. In addition, Luis Avila provided statements to detectives that the Defendant made incriminating statements while he was housed with the Defendant in the Asotin County Jail.

David Stone is an alleged co-conspirator in this case. It is anticipated that David Stone will testify that he witnessed the defendant strangle Rachel Anderson to death after which he assisted the Defendant in disposing of her body. The State has provided several interviews in which David Stone has described the location, time, and manner of death. The State also provided to the Defendant statements from individuals with whom David Stone spoke subsequent to his release from custody in December 2013. The statements provided by the State indicate that David Stone described to them what his anticipated testimony would be at trial.

Undersigned counsel provided to the Court by letter a list of witnesses and their anticipated testimony. The list was provided in anticipation of the hearing requested by the Court on June 10, 2014. A copy of the witness list was provided to the state in response to the request for discovery filed by the State in this matter.


During the hearing conducted on June 10, 2014, defense articulated the reasons why the Defendant wished to call Debbie Stamper as a witness. Debbie Stamper is anticipated to testify regarding the timeframe between April 16, 2010 and April 21, 2010. The Yukon was located on April 21, 2010. Specifically it is anticipated that during this timeframe Ms. Stamper would testify that when she arrived at work the Yukon was not parked where David Stone testified that he and the defendant left the Yukon. This is material and important to contradict David Stone's testimony. The defendant respectfully asserts that her testimony is both relevant and material and requests that the Court authorize this witness to appear at the county's expense.

During the hearing conducted on June 10, 2014, defense counsel represented to the Court that a number of witnesses were housed together in Asotin County with the Defendant, Luis Avila, and Brent Glass. Specifically, Jesse Thacker, Steve Jackson, Skyler Sullivan, Ed Comer and Matthew Tournay. The Court's order did allow for a subpoena to be issued to Skyler Sullivan and Ed Comer. Pursuant to the court's oral ruling on June 12, 2014, the Defendant respectfully requests that the Court allow Jesse Thacker to appear at the county's expense rather than Skyler Sullivan. In the alternative, the defense requests reconsideration of the Court's ruling that only one of these individuals is allowed to appear at county expense. Because these individuals were housed together with the Defendant at the same time, they would be in a position to testify regarding the layout, whether or not discussions as alleged by Luis Avila and Brent Glass took place, and if so, the context of the conversations. The testimony of Steve Jackson, Matthew Tournay, Skyler Sullivan and Jesse Thacker is essential to rebut the testimony of Brent Glass at the preliminary hearing and the statements made by Luis Avila and the defendant cannot go to trial safely without their testimony.

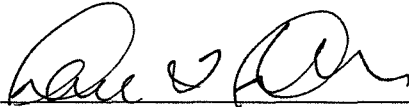
The Court inquired about Earl Stamper. David Stone provided statements regarding the Yukon and his involvement in disposing of the Yukon. Counsel represented to the Court that Mr. Stamper provided a statement to the police in which he recalls seeing a vehicle matching the description of the Yukon in the early morning hours of April 17, 2010, shortly after Mr. Stone alleges that he disposed of the Yukon. This testimony is material and essential because it could contradict the anticipated testimony of David Stone regarding the events of April 16, 2010. Undersigned counsel respectfully request that the Court authorize the clerk of the court to issue a subpoena to Earl Stamper.

The Court also inquired about Don Reed. Mr. Reed provided a statement to the police that on the weekend of April 17-18, 2010, in the Lewiston/Clarkston area, he saw a vehicle matching the Yukon's description with a woman matching Rachel Anderson's description. His testimony is material and essential to contradict the anticipated testimony of David Stone. Undersigned counsel respectfully request that the Court authorize the clerk of the court to issue a subpoena to Don Stamper.

Date: June 12, 2014



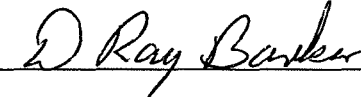
D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on June 12~~th~~ 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



CASE NO CR 2013-1358

2014 JUN 12 PM 2:37

CLERK OF DISTRICT COURT
LATAH COUNTY

BY sa DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**DEFENSE REQUEST FOR JURY
INSTRUCTION**

COMES NOW the Defense and submits the following Defense Request for Jury
Instructions.


The Defense objects to the State's Requested Instruction No. 12, 17, and 20, and has no
objection to the remaining State's Requested Jury Instructions.

DEFENSE REQUEST FOR
JURY INSTRUCTIONS: Page 1

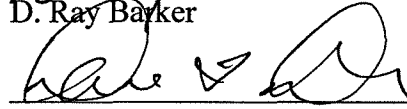
001750

In place of the State's Requested Jury Instructions No. 12, 17, and 20, the Defense submits the following:

DATED this 12th day of June, 2014




D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on June 12th 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



For the Firm

DEFENSE'S REQUESTED

INSTRUCTION NO. 12

In order for CHARLES ANTHONY CAPONE to be guilty of First Degree Murder as charged in Count I, the State must prove each of the following:

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

The murder was a willful, deliberate, and premeditated killing. Premeditation means to consider beforehand whether to kill or not to kill, and then to decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered, as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes and intent to kill, is not premeditation;

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

ICJI 704A.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001753

DEFENSE'S REQUESTED

INSTRUCTION NO. 17

Failure to Notify Coroner or Law Enforcement of Death is defined by law as:

Where any death occurs which would be subject to investigation by the coroner under section 19-4301(1), Idaho Code, the person who finds or has custody of the body shall promptly notify either the coroner, who shall notify the appropriate law enforcement agency, or a law enforcement officer or agency, which shall notify the coroner. Pending arrival of a law enforcement officer, the person finding or having custody of the body shall take reasonable precautions to preserve the body and body fluids and the scene of the event shall not be disturbed by anyone until authorization is given by the law enforcement officer conducting the investigation.

Any person who, with the intent to prevent discovery of the manner of death, fails to notify or delays notification to the coroner or law enforcement as required above shall be guilty of a felony.

I.C. 19-4301 requires a County coroner to investigate deaths if:

- (a) The death occurred as a result of violence, whether apparently by homicide, suicide or by accident;
- (b) The death occurred under suspicious or unknown circumstances.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001754

DEFENSE'S REQUESTED

INSTRUCTION NO. 20

In order for CHARLES ANTHONY CAPONE to be guilty of CONSPIRACY TO COMMIT FAILURE TO NOTIFY CORONER OR LAW ENFORCEMENT OF DEATH, Idaho Code 19-4301A(1)(3), 18-1701, as charged in Count III, the State must prove each of the following:

1. On or about the 16th day of April, 2010;
2. In the State of Idaho;
3. CHARLES ANTHONY CAPONE and David Christopher Stone agreed
4. To commit the crime of Failure to Notify Coroner or Law Enforcement of Death, Idaho Code 19-4301A(1)(3);
5. The defendant intended that the crime of Failure to Notify Coroner or Law Enforcement of Death would be committed;
6. One of the parties to the agreement performed at least one of the following acts;
 - a. Charles Capone killed and murdered Rachael Anderson;
 - b. Charles Capone and David Stone hid/disposed of Rachael Anderson's body after she was murdered;
 - c. David Stone lied to his wife, Alisa, to hide his and Charles Capone's true activities;

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

001755

- d. Charles Capone purchased a tarp to replace one used in the murder of Rachael Anderson and/or the disposal of her body;
- e. Charles Capone and/or David Stone cleaned a Yukon motor vehicle that had been operated by Rachel Anderson in order to remove evidence of her death;
- f. Charles Capone and/or David Stone drove the Yukon motor vehicle from Latah County to Lewiston, Idaho;
- g. Charles Capone left fictitious communications on Rachael Anderson's phone after her death in order to hide the fact of her death and the circumstances of her death;
- h. Charles Capone and David Stone denied any involvement in the death of Rachael Anderson to investigators;

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

ICJI 1101.
I.C 18-1701 and I.C. 19-2111.

GIVEN _____
REFUSED _____
MODIFIED _____
COVERED _____
OTHER _____

CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 12 day of June, 2014, to:

Latah County Prosecuting Attorney

hand del

U. S. Mail
 Facsimile

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

U. S. Mail
 Facsimile

882-7604

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

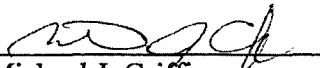
U. S. Mail
 Facsimile

882-0589

Lee Anderson
Deputy Clerk

Joshua Michel
Greg Wilson, Ph.D

Dated this 12 day of June, 2014.


Michael J. Griffin
District Judge

CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 12 day of June, 2014, to:

Latah County Prosecuting Attorney

hand del

U. S. Mail
 Facsimile

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

U. S. Mail
 Facsimile

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

U. S. Mail
 Facsimile

Julie Anderson

Deputy Clerk

CASE NO. CR 2013-1358

2014 JUN 12 PM 5:01

CLERK OF DISTRICT COURT
LATAH COUNTY

BY A DEPUTY

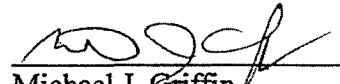
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,	)	CASE NO. CR 2013-1358
)	
Plaintiff,	)	ADDITIONAL ORDER FOR
	)	ISSUANCE OF SUBPOENA
vs.	)	IDAHO CODE 19-3008
)	
CHARLES CAPONE,)	
)	
Defendant.)	

This matter having come before the court on defendant's motion to issue subpoenas pursuant to Idaho Code 19-3008. The court having reviewed the file and affidavit of counsel in support of the motion, finds that the following individuals are material to the defense and the defendant cannot safely proceed without their appearance.

IT IS ORDERED that the Clerk of Court may issue subpoenas to the following:
Jesse Thacker

Dated this 12 day of June, 2014.


Michael J. Griffin
District Judge

CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 12 day of June, 2014, to:

Latah County Prosecuting Attorney

hand del.
 U. S. Mail
 Facsimile

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

U. S. Mail
 Facsimile

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

U. S. Mail
 Facsimile

Julie Anderson
Deputy Clerk

CR 2013-1358
CASE NO _____

2014 JUN 13 AM 10: 03

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *sa* DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION TO RECONSIDER ORDER
ALLOWING STATE TO REMOVE
WITNESS**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court to reconsider allowing the state to release Angel Riviera as a subpoenaed witness in this matter. The basis for this motion is the following:

On June 6, 2014, the Defendant moved the court pursuant to issue a subpoena to Angel Rivera at county expense pursuant to Idaho Code §19-3008. On June 10, 2014, the court heard

argument regarding witnesses requested in the Defendant's motion. The state represented that Angel Rivera was a state's witness. On June 6, 2014, the court issued an *Order for Issuance of Subpoenas Pursuant to Idaho Code 19-3008*, which did not authorize the Defendant to issue a subpoena at county expense to Angel Rivera. A pretrial hearing was held on June 12, 2014, at which time the Defendant requested clarification regarding the court's June 6, 2014 order. Undersigned counsel understood the court to state that the court had eliminated some of the witnesses requested by the Defendant because they were listed as state's witnesses and the court did not think it was necessary to have two subpoenas outstanding. The court then ordered that witnesses listed on the state's witness list could not be cancelled without permission from the court.

On June 12, 2014, at 3:31 pm, counsel for the state contacted the court and counsel requesting permission to release Mr. Rivera as a witness. Ray Barker spoke with Mr. Rivera by telephone on June 12, 2014. Mr. Rivera represented to undersigned counsel that his testimony would be consistent with his statement made to police on May 7, 2010, and on May 12, 2010, which appears in a narrative by Cpl. Tim L. Besst at pages 00591 and 00592 of the discovery material. A copy of said narrative is attached hereto and designated as Exhibit A.

The testimony of Mr. Rivera would be that he delivered parts to Palouse Multiple Services at 7:00 p.m. not 6:00 p.m. as stated in the State's e-mail to the court dated 6/12/2014 4:55 p.m. His testimony would contradict the anticipated testimony of the State's witness, David Stone, in that David Stone is expected to testify that at the time the parts were delivered he was at Palouse Multiple Services and his Dodge Durango was parked immediately in front of Palouse Multiple Services where Mr. Rivera would have had to have walked around it to get into the business to deliver the parts.

His statement that he didn't see anyone else at the shop other than Mr. Capone may not seem important but when viewed as a contradiction of Mr. Stone it becomes important to the defense.

The standard for compulsory process is that it applies if the defendant can at least make some plausible showing of how the witness' testimony would be both material and favorable to the defense judged in the context of the whole record. See *State v. Dalrymple* 144 Idaho 628, 635, 167 P.3d 765, 772 (2007).

The testimony of Mr. Rivera is material in that he was at Palouse Multiple Services the evening that the State alleges Rachael Anderson was killed, and it is favorable to the defense in that his testimony will contradict that of Mr. Stone. The credibility of Mr. Stone may be the most material issue in this case.

On June 12, 2014, at 4:39 pm undersigned counsel replied to the e-mail sent by counsel for the state and informed the court that counsel had spoken with Mr. Rivera regarding his anticipated testimony and that counsel believed that he was necessary for the Defendant's case and that defense counsel objected to releasing Mr. Rivera as a witness. At 4:41 pm, the court granted the state's motion and entered an *Order Allowing State to Remove Witness*.

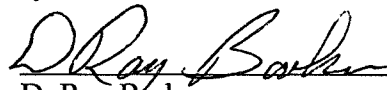
At 4:55 pm counsel for the state replied and provided information the state felt was relevant regarding its request. Undersigned counsel did not have any opportunity to present argument in opposition to the state's request. Based on the timing of the e-mail chain (attached hereto as Exhibit B) and the entry of the *Order Allowing State to Remove Witness* it is unknown if the court had opportunity to review or consider the Defendant's opposition to the state's request to release Mr. Rivera from subpoena prior to entering its order.

Based on the State's representations, it appears undisputed that Mr. Rivera has relevant and material information. Although the state believes the information is minimal to its case and not

worth the expense of travel from Texas, that does not mean that his testimony is not material for the defense.

On June 12, 2014, the court issued an *Amended Order for Issuance of Subpoenas Idaho Code 19-3008* and *Additional Order for Issuance of Subpoena Idaho Code 19-3008*. Neither of those order provided that the Defendant could issue a subpoena to Angel Rivera at county expense. The practical effect of the court's orders is that the defendant will be unable to secure Mr. Rivera's attendance at trial. Defendant is indigent has no means with which to pay for Mr. Rivera to travel from Texas to trial and testify. Defendant respectfully requests that the court reconsider its Order Allowing State to Remove Witness and require the state to produce Angel Rivera at trial. In the alternative, the Defendant respectfully requests that the costs associated with Mr. Rivera's attendance pursuant to subpoena be paid by the county.

DATED this 13 day of June, 2014


D. Ray Barker

CERTIFICATE OF SERVICE

I hereby certify that on June 13th 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.

A handwritten signature in cursive script, reading "D. Ray Bashu", is written over a horizontal line.

EXHIBIT A

001769

On 05/05/10, I contacted Seth Richmond at O'reilly Auto Parts formerly known as Schucks Auto Supply. I asked Richmond if O'reilly delivered auto parts. He told me they did. Richmond told me they delivered parts in the morning up until 1300 hours and occasionally they would deliver parts until 1700 hours. Richmond told me they never delivered past 1700 hours because they did not have enough personnel to cover the store during these hours.

I asked Richmond if Palouse Multiple Services had an account with them. He told me they did. I asked Richmond if he could access their system to find out if there were auto parts delivered to Palouse Multiple Services on 04/16/10. Richmond pulled the data up on the screen, which showed there were two deliveries made, one at 1137 hours and one at 1852 hours. Richmond told me delivery at 1852 hours is not something they do at this time. Richmond told me the person who made the entry could have entered it as a delivery by mistake, which would not be uncommon, or the parts were actually delivered. Richmond told me he would contact the employee and find out for sure. I told Richmond to have the employee contact me.

Richmond provided me with a historical print out of the purchases made by Palouse Multiple Services from 04/16/10 to 04/21/10. I noticed the transaction made on 04/16/10 at 1852 hours was paid for with cash (this was noted on the receipt). The parts that were delivered were 4 sparks plugs, brake pads, and brake rotors. These parts matched the parts that were on the work order that was completed for Rachel Anderson's vehicle on 4/16/10. There were no other parts for another vehicle delivered at this time.

Alisa Stone had completed a written statement for Det. Scot Gleason of the Moscow Police Department. Alisa had indicated that on 04/16/10 she had a phone conversation with her husband, David Stone, at around 1900 hours. David had told her that the part had been delivered for her car and that him and Charles would be putting it back together and they would be home later (Alisa's vehicle is a Dodge Durango and Anderson's is a Dodge Stratus).

On 05/07/10, I spoke to Angel Rivera by telephone. Rivera told me that he works for O'reilly Auto Parts (formally known as Schucks Auto Supply) and that he had delivered parts to Palouse Multiple Services at around 1900 hours on Friday, 04/16/10. According to Rivera, Charles was on the telephone at the time the parts were delivered. Rivera sat the parts on a work bench near the office then went into the office. Capone wrote a check out for the parts and gave it to Rivera. Rivera then left the store.

I asked Rivera if he saw anyone else at Palouse Multiple Services when he delivered the parts. Rivera told me he did not. I asked Rivera if he had seen a white Yukon or silver Dodge Durango parked inside or outside of Palouse Multiple Services. Rivera told me he did not. Rivera told me the only vehicle in the shop was a white Dodge Stratus, which was up on the hoist.

On 05/12/10, I met with Rivera at the Latah County Sheriff's Office. I asked Rivera again if he had recalled seeing anyone at the Palouse Multiple Services other than Capone

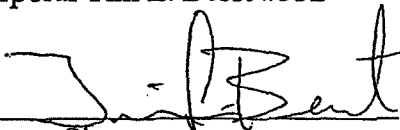
when he had delivered the parts on 04/16/10. Rivera told me he did not. Rivera recalled that Capone was on the phone when he arrived. Rivera told me that he thought Capone was talking to (Rachael) Anderson because Capone had told the person he was talking to that they could go to the mall and that he only needed 30 to 45 minutes and the car would be done. Rivera had met Anderson from past deliveries that he had made to Palouse Multiple Services. Rivera told me that Anderson was the person that he generally dealt with. She was the person who generally wrote out the check to pay for the parts when he delivered them.

I asked Rivera if he knew where the bathroom was in Capone's shop. Rivera told me that he did. I asked Rivera if he recalled anyone being in the bathroom when he was there. Rivera told me he did not pay attention to this (the bathroom is in the office at Palouse Multiple Services).

Rivera could only recall that Capone was the only person that he had seen when he delivered the parts. He did not know for sure if someone was in the bathroom (when I interviewed David Stone he told me he may have been in the bathroom when the parts were delivered). Rivera only saw the white Dodge Stratus in the shop, which was on the hoist. Rivera did not recall seeing a white Yukon or a silver Dodge Durango parked outside the shop when he left. However, Rivera said they could have been there and he may not have noticed them.

End of report

Corporal Tim L. Besst #332


Deputy Signature

5-19-10
Date

Supervisor Approval:



May 19, 2010
Date



EXHIBIT B

Subject: RE: Request to Release a Witness

From: "Mia Vowels" <mvowels@latah.id.us>

Date: 6/12/2014 4:55 PM

To: "D. Ray Barker" <d.raybarker@turbonet.com>, <mgriffin@idahocounty.org>, <districtcourt@idahocounty.org>

CC: "Mark Monson" <mark@mosmanlaw.com>, "Bill Thompson" <bthompson@latah.id.us>, <sosterberg@latah.id.us>

Judge Griffin,

When we spoke with Mr. Rivera today his memory of what he observed is that he delivered parts to Mr. Capone at his place of business close to 6:00 p.m. He recalled seeing a vehicle in Mr. Capone's shop and did not recall seeing anyone else at the shop. He relates he cannot remember the make or model of the vehicle in Mr. Capone's shop.

Although we have Mr. Rivera under subpoena we had not finalized travel arrangements pending our interview with him. If the Court authorizes Mr. Rivera as a defense witness, arrangements will need to be finalized and paid for outside our office's limited trial budget.

Mia M. Vowels

Latah County Deputy Prosecuting Attorney

P.O. Box 8068

Moscow, ID 83843

208-883-2246

mvowels@latah.id.us

This message is confidential and may be legally privileged. Unless you are the intended recipient, you may not use, copy, or disclose this message or any information herein. If you have received this message in error, please immediately delete it and any attachments, and notify us at pa@latah.id.us or by calling 208-883-2246. Thank you.

From: D. Ray Barker [mailto:d.raybarker@turbonet.com]

Sent: Thursday, June 12, 2014 4:39 PM

To: Mia Vowels; mgriffin@idahocounty.org; districtcourt@idahocounty.org

Cc: Mark Monson; Bill Thompson; sosterberg@latah.id.us

Subject: Re: Request to Release a Witness

Judge Griffin,

We have spoken with Mr. Rivera regarding his anticipated testimony and believe that he is necessary for our case. We would therefore object to releasing him as a witness at this time.

D. Ray Barker
Mark T. Monson

On 6/12/2014 3:30 PM, Mia Vowels wrote:

Dear Judge Griffin,

Per your request, we are notifying you and requesting permission to call off Angel Rivera as one of the State's witnesses. We understand Mr. Rivera's name was stricken from your "Order for Issuance of Subpoenas Pursuant to Idaho Code 19-3008", due to that witness being on the State's witness list.

We spoke to Mr. Rivera over the phone this afternoon and have determined the information he would provide at trial is minimal and not worth the cost of paying for him to travel from Texas. Therefore, we request your permission to release him as a witness.

001773

Sincerely,

Mia Vowels

Latah County Deputy Prosecutor

P.O. Box 8068

Moscow, ID 83843

208-883-2246

mvowels@latah.id.us

This message is confidential and may be legally privileged. Unless you are the intended recipient, you may not use, copy, or disclose this message or any information herein. If you have received this message in error, please immediately delete it and any attachments, and notify us at pa@latah.id.us or by calling 208-883-2246. Thank you.

This message is confidential and may be legally privileged. Unless you are the intended recipient, you may not use, copy or disclose this message or any information herein. If you have received this message in error, please immediately delete it and any attachments, and notify the sender.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2014.0.4592 / Virus Database: 3964/7667 - Release Date: 06/12/14

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2014.0.4592 / Virus Database: 3964/7667 - Release Date: 06/12/14

001774

CASE NO CR 2013-1358

2014 JUN 19 AM 10:09

CLERK OF DISTRICT COURT
LATAH COUNTY
BY em DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION TO ALLOW DEFENSE
WITNESS TO TESTIFY VIA
TELECONFERENCE**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel,
and hereby moves the court to allow Dr. Todd Grey, MD to testify in this matter by video. The
basis for this motion is the following:

On January 21, 2014, the Defendant moved the court for authorization to retain the
services of Dr. Todd Grey, a forensic pathologist. The State filed an objection on January 22,

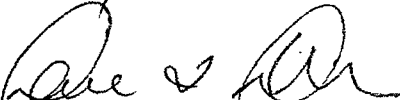
2014, and a hearing was conducted on February 10, 2014. On February 12, 2014, the court entered an order denying the Defendant's motion. On or about May 5, 2014, the Defendant filed a second motion for authorization to retain the services of Dr. Todd Grey. The court granted that motion on June 2, 2014. Undersigned counsel attempted to contact Dr. Grey on June 2, 2014, but did not receive a response. Undersigned counsel attempted to contact Dr. Grey again on June 9, 2014 and was informed that Dr. Grey was unavailable until June 16, 2014 as he was out of the country. On June 16, 2014, undersigned counsel contacted Dr. Grey and arranged a phone conference. Dr. Grey was not available for a phone conference until Wednesday, June 18, 2014, at 3:00 p.m. Undersigned counsel conducted a phone conference with Dr. Grey on June 18, 2014, and determined that Dr. Grey's testimony would be necessary to the defense. Undersigned counsel inquired about Dr. Grey's availability to participate in the trial. Dr. Grey indicated to undersigned counsel that given his schedule, the proximity of trial date, and the uncertainty of when the state would conclude its case, it would be very difficult to attend in person, but would be easier to participate via videoconference.

The Defendant has made a good faith effort to obtain the services of Dr. Grey in a timely manner and would prefer that he attend in person, however, under the circumstances of this case, it appears that the only manner in which Dr. Grey can be made reasonably available is via teleconference. Based on the above, the Defendant was unable to comply with I.C.R. 43.3 timelines.

DATED this 19th day of June, 2014



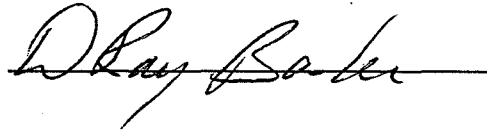
D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on June 19 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.

A handwritten signature in black ink, appearing to read "D. Ray Baker", with a horizontal line extending to the right from the end of the signature.

CASE NO. CR 2013-1358

2014 JUN 20 AM 8:48

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Adl DEPUTY

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

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

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2013-01358
)	
V.	)	RESPONSE TO DEFENDANT'S
	)	MOTION TO ALLOW DEFENSE
CHARLES ANTHONY CAPONE,	)	WITNESS TO TESTIFY VIA
Defendant.	)	TELECONFERENCE
_____)	

COMES NOW, the State of Idaho, by and through the Latah County Deputy Prosecuting Attorney, and respectfully submits the following response to the Defendant's June 19, 2014, "Motion to Allow Defense Witness to Testify Via Teleconference" for the Court's consideration.

The State objects to Dr. Todd Grey testifying based on his expert opinion relying

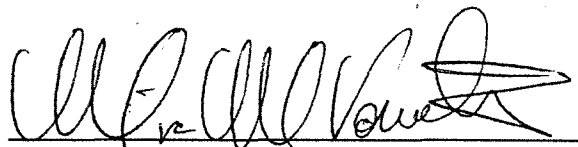
RESPONSE TO DEFENDANT'S MOTION TO
ALLOW DEFENSE WITNESS TO TESTIFY VIA
TELECONFERENCE:

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on speculations and inferences. In support, the State respectfully requests the court to see the attached summary which is being submitted under seal. If this Court allows Dr. Todd Grey to testify, the State will need time to consult with an independent expert. Furthermore, the State objects to Dr. Grey testifying by teleconference.

Based on the above, the State respectfully prays that the Court deny the defendant's motion to allow defense witness to testify via teleconference.

DATED this 20 day of June, 2014.



Mia M. Vowels
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the foregoing RESPONSE TO DEFENDANT'S MOTION TO ALLOW DEFENSE WITNESS TO TESTIFY VIA TELECONFERENCE 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

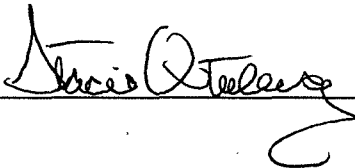
Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

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

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

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

Dated this 20 day of June, 2014.



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

- COURT MINUTES -

Michael J. Griffin
District Judge

Keith Evans
Court Reporter
Recording No. None
Time: 8:09 A.M.

Date: June 23, 2014

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

Case No. CR-13-01358

APPEARANCES:

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

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

Subject of Proceedings: Hearing

Court convened in the jury room with Court, counsel, Keith Evans, court reporter, and Maureen Coleman, court clerk, being present in the jury room. The defendant was not present in the jury room.

Court presented remarks to counsel.

Court recessed briefly at 8:12 a.m., reconvening at 8:14 a.m., all being present in the jury room as before.

Court stated that on Saturday he was made aware of some information that has nothing to do with the defendant or this case. Court explained the steps he took after receiving this information. The Court disqualified himself on this case and any other case that the Latah County Prosecutor's

Maureen Coleman
Deputy Clerk
Court Minutes 1

001781

Office is handling. In response to inquiry from the Court, neither Mr. Thompson, Ms. Vowels, Mr. Barker nor Mr. Monson had any remarks.

Court recessed at 8:17 A.M.

APPROVED BY:



MICHAEL J. GRIFFIN
DISTRICT JUDGE

Maureen Coleman
Deputy Clerk
Court Minutes 2

No. 4882 P. 2/4

001782

Jun. 23. 2014 4:13PM

Court reconvened at 8:38 a.m., with Court, counsel, and the defendant being present in the courtroom.

Court noted that in reviewing the juror questionnaires that he noticed that there are three prospective jurors that are seventy years of age or older. Court informed the prospective jurors that are seventy years of age or older that it is their choice whether they wish to be a juror or not. Court directed any juror seventy years of age or older that if they choose not to be a juror then they are to let the clerk know when they leave.

Court informed the prospective jurors that there have been some newspaper articles regarding this case and stated that each side is entitled to a fair jury and instructed each prospective juror not to read any newspaper articles, listen to the radio, or go on the internet to look things up about this case.

Court informed the prospective jurors that something came up this weekend that has nothing to do with the defendant or this case and the circumstances are completely out of the hands of counsel. Court apologized to the jurors for their inconvenience. Court excused all of the prospective jurors, informing them that they may be re-summoned when a new jury trial is scheduled.

Court recessed at 8:41 a.m.

APPROVED BY:



MICHAEL J. GRIFFIN
DISTRICT JUDGE

Maureen Coleman
Deputy Clerk
Court Minutes 2

No. 4882 P. 4/4

001784

Jun. 23. 2014 4:13PM

CASE NO. CR 2013-1358

2014 JUN 23 AM 8:57

CLERK OF DISTRICT COURT
LATAH COUNTY

BY Da DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
v.	)	CASE NO. CR2013-1358
CHARLES ANTHONY CAPONE,)	
)	
Defendant)	

ORDER REGARDING DISQUALIFICATION OF JUDGE

The undersigned Judge voluntarily disqualifies himself/herself from presiding over this case.

Plaintiff Defendant has moved to disqualify the undersigned Judge under IRCP § 40.
The motion is with cause without cause.
The motion is granted denied.

State Defendant has moved to disqualify the undersigned Judge under ICR § 25.
The motion is with cause without cause.
The motion is granted denied

June 23, 2014
Date

[Signature]
Judge

*Filed to
001785
Barker
Monson
hand del to
from Atty*

CASE NO. CR 2013-1358

2014 JUN 23 PM 3: 08

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

CLERK OF DISTRICT COURT
LATAH COUNTY
BY caj DEPUTY

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

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

Case No. CR-2013-01358
STIPULATION FOR DEPOSITION
AND PRESERVATION OF
TESTIMONY OF ANGELA CABRERA

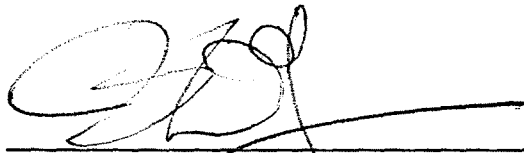
COME NOW the State of Idaho and the above named defendant, by and through their respective attorneys of record, and hereby stipulate to taking the deposition of Angela Cabrera, in order to preserve her testimony for trial, pursuant to Idaho Criminal Rule 15 and Idaho Rule of Evidence 804(b)(1). Angela Cabrera's testimony is material to the State's case, and a deposition to preserve her testimony for trial is necessary to prevent a failure of justice.

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The State respectfully submits that Angela Cabrera resides in Chesterfield, Virginia. Ms. Cabrera traveled to Idaho on June 22, 2014, in anticipate of this case being scheduled for trial to begin on June 23, 2014. The deposition will allow the State to preserve Angela Cabrera's testimony so it can be used in the trial.

Angela Cabrera's address is: 15632 Corte Castle Place, Chesterfield, Virginia 23838-4170. The State anticipates that any ordered deposition will take place on June 24, 2014, at 8:00 a.m., in Courtroom 2 of the Latah County Courthouse.

DATED this 23 day of June, 2014.



William W. Thompson, Jr.
Prosecuting Attorney



D. Ray Barker
Attorney for Defendant

CASE NO. CR 2013-1358

2014 JUN 25 PM 2:29

CLERK OF DISTRICT COURT
LATAH COUNTY
BY: *A* DEPUTY

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

STATE OF IDAHO,
Plaintiff,

vs.

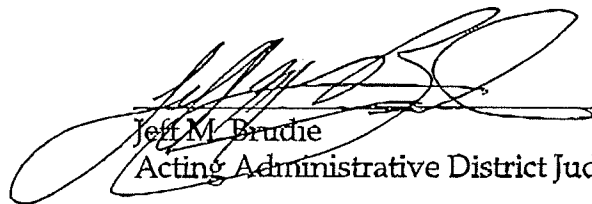
CHARLES ANTHONY CAPONE,
Defendant.

) Case No. CR 13-1358

) ORDER ASSIGNING JUDGE

It is ORDERED that Senior Judge Carl Kerrick, is assigned to preside over the Jury Trial scheduled to commence on September 2, 2014, for approximately three (3) weeks.

DATED this 25 day of June, 2014.


Jeff M. Brudie
Acting Administrative District Judge


CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete and correct copy of the foregoing *faxed & hand* ORDER ASSIGNING JUDGE was ~~mailed~~ to: *delivered*

William Thompson
Mia Vowels

D. Ray Barker 882-7604
Mark Monson 882-0589

on this 25 day of June 2014.


Deputy Clerk

CASE NO. CR-13-1358

2014 JUL -9 AM 10:06

CLERK OF DISTRICT COURT
LATAH COUNTY
BY MB DEPUTY

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

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

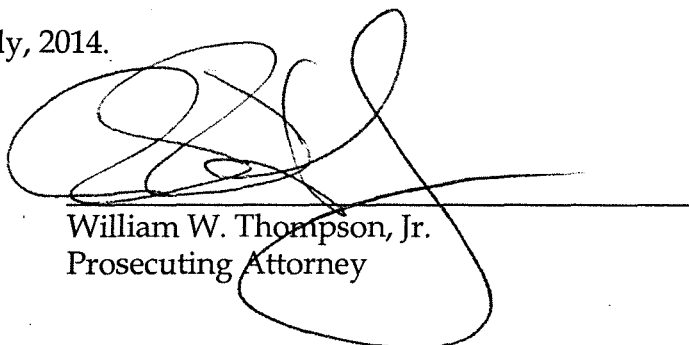
STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2013-001358
)	
V.	)	MOTION TO EXTEND
	)	NO CONTACT ORDER
CHARLES ANTHONY CAPONE,)	
Defendant.)	
_____)	

COMES NOW the State of Idaho by and through the Latah County Prosecuting Attorneys Office, and moves this Court for the extension of the No Contact Order previously entered herein prohibiting the defendant from having any contact with the victim's family members herein, pursuant to Idaho Code 18-920. This motion is based on the fact that the defendant has appeared and entered a plea of not guilty; that the Court has continued the trial date to September 2, 2014; that the current No Contact Order

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expires July 31, 2014, and that the State has contacted the Defendant's attorney, D. Ray Barker, in this matter and he does not have an objection to extending the No Contact Order to the end of the trial date on approximately September 23, 2014.

DATED this 8 day of July, 2014.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the foregoing MOTION TO EXTEND NO CONTACT ORDER were served on the following in the manner indicated below:

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

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

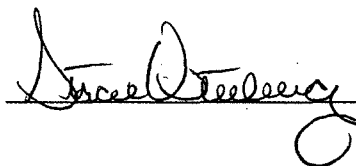
Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

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

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

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

Dated this 9 day of July, 2014.



CR2013-135

CASE NO

2014 JUL -9 PM 3: 24

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *[Signature]* DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**MOTION FOR ADDITIONAL FUNDS
FOR 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 are hereby requested. Mr. Schoonover is the Defendant's primary investigator and it is expected that he will attend trial that is scheduled to commence on September 2, 2014 and is expected to last three weeks. Mr. Schoonover will also be expected to assist counsel in the evenings and weekends in order to facilitate the Court's anticipated trial schedule. Mr. Schoonover continues to locate and interview witnesses located in Washington and Idaho and consult with court-appointed counsel. In addition, Mr.


MOTION FOR ADDITIONAL FUNDS FOR INVESTIGATOR

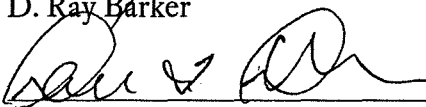
Schoonover has assisted in organizing voluminous amounts of cell phone data that has taken the state a significant amount of time to compile. Mr. Schoonover is also assisting in organizing witness testimony and extrapolating data from specific reports provided by the state in discovery in anticipation of preparing specific trial exhibits. Mr. Schoonover has also met with expert witnesses and counsel in Spokane and has been available and on call in order to locate specific items of evidence as requested by counsel. It is anticipated that Mr. Schoonover will continue to assist in locating witnesses, interviewing witnesses, serving subpoenas and other activities as described above.

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

Additional funding in the amount of \$10,000 is respectfully requested.

DATED this 9th day of July, 2014



D. Ray Barker


Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on July 9th 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



RETURN TO COURT

CASE NO. _____

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH COUNTY -9 PM 4:49

STATE OF IDAHO, Plaintiff

Case No. CR-2013-01358

CLERK OF DISTRICT COURT
LATAH COUNTY

vs. **CHARLES ANTHONY CAPONE**
Defendant

NO CONTACT ORDER

BY _____ DEPUTY
Eff. July 1, 2009

DOB: [REDACTED]

The Defendant has been charged with or convicted of violating Idaho Code Section(s):

- 18-901 Assault
- 18-903 Battery
- 18-905 Aggravated Assault
- 18-907 Aggravated Battery
- 18-909 Assault with Intent to Commit Felony
- 18-911 Battery with Intent to Commit Felony
- 18-913 Felonious Administering of Drug
- 18-915 Assault or Battery upon Certain Personnel
- 18-918 Domestic Assault or Battery
- 18-919 Sexual Exploitation by Medical Provider
- 18-6710 Use of Telephone - Lewd/Profane
- 18-6711 Use of Telephone - False Statements
- 18-7905 Stalking (1st °)
- 18-7906 Stalking (2nd °)
- 39-6312 Violation of a Protection Order
- Other: Principal to Murder in the First Degree, I.C. 18-204, 18-4001, 4003; Conspiracy to Commit Murder in the First Degree, I.C. 18-4001, 4003, 18-1701; Failure to Notify Coroner or Law Enforcement of Death, I.C. 19-4301A(1)(3) and Conspiracy to Commit Failure to Notify Coroner or Law Enforcement of Death, I.C. 19-4301A(1)(3).

THE COURT, having jurisdiction, and having provided the Defendant with notice of his/her opportunity to be heard, either previously or herein, **ORDERS THE DEFENDANT TO HAVE NO DIRECT OR INDIRECT CONTACT except through an attorney, WITH THE FOLLOWING PROTECTED PERSON(S): Amber Griswold, Ashley Colbert, Kristina Bonfield, Dennis Plunkett and Jennifer Norberg.** The Defendant shall not harass, follow, contact, attempt to contact, communicate with (in any form or by any means including another person), or knowingly go or remain within 1000 feet of the protected person(s) or the protected person(s)' property, residence, workplace or school. This order is issued under Idaho Code 18-920, Idaho Criminal Rule 46.2 and Administrative Order 2009 - 2.

IF THIS ORDER REQUIRES THE DEFENDANT TO LEAVE A RESIDENCE SHARED WITH THE PROTECTED PERSON(S), the Defendant must contact an appropriate law enforcement agency for an officer to accompany the Defendant while the Defendant remove any necessary personal belongings, including any tools required for Defendant's work. If disputed, the officer will make a preliminary determination as to what are necessary personal belongings; and in addition, may restrict or reschedule the time spent on the premises.

NOTICE OF RIGHT TO A HEARING: The Defendant is hereby notified of the right to a hearing before a Judge on the continuation of this Order within a reasonable time of its issuance. To request that hearing, and TO AVOID GIVING UP THIS RIGHT the Defendant must contact the Clerk of Court, Latah County Courthouse, 522 S. Adams, Moscow ID 83843, 208-883-2255.

A VIOLATION OF THIS ORDER IS A SEPARATE CRIME UNDER Idaho Code 18-920 for which bail will only be set by a judge; it is punishable by up to one year in jail and up to a \$1,000 fine. If the Defendant has pled guilty to or been found guilty of two violations of Idaho Code 18-920 and/or a substantially conforming foreign criminal violation within five years, then a violation of this order is a felony punishable up to five years imprisonment and a \$5,000 fine. **THIS ORDER CAN ONLY BE MODIFIED BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON September 23, 2014, OR UNTIL THIS CASE IS DISMISSED.**

If another **DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT** (Title 39, Chapter 63 of the Idaho Code), the most restrictive of any conflicting provisions between the orders will control; however, entry or dismissal of another order shall not result in dismissal of this order.

The Clerk of the Court shall give written notification to the records department of the sheriff's office in the county of issuance IMMEDIATELY and this order shall be entered into the Idaho Law Enforcement Telecommunications System.

7-9-2014
Date of Order
07-11-2014
Date of Service
7-11-14
Date of Service

JUDGE _____
DEFENDANT/ATTORNEY Signature of Service _____
OFFICER/AGENCY SERVING (include badge no.) 332 LEST

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

001795

RETURN TO COURT

CR 2013-1358
CASE NO

2014 JUL 11 PM 1:18

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *gm* DEPUTY

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

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

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2013-01358
)	
V.	)	MEMORANDUM IN SUPPORT
	)	OF STATE'S OBJECTION TO
CHARLES ANTHONY CAPONE,	)	DR. GREY TESTIFYING AS EXPERT
Defendant.)	
_____)	

COMES NOW, the State of Idaho, by and through Latah County Sr. Deputy Prosecuting Attorney, Mia M. Vowels, and respectfully submits the following memorandum in support of the State's objection to Dr. Todd Grey testifying as a defense expert witness.

On June 19, 2014, the Defendant filed a motion to allow Dr. Grey to testify via

MEMORANDUM IN SUPPORT OF
STATE'S OBJECTION TO DR. GREY
TESTIFYING AS EXPERT:

ORIGINAL
001796

teleconference. The State filed a response to Defendant's motion on June 20, 2014. In that response the State objected to Dr. Todd Grey testifying based on his expert opinion relying on speculations and inferences. The State attached the expert witness summary under seal for the Court to review.

Applicable Legal Standard

The admissibility of expert testimony is governed by I.R.E. 702 which provides as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

According to the above rule, experts are permitted and intended to assist the trier of fact; they are not, however, permitted to assume the jury's function of assessing the credibility of a witness. *State v. Waters*, 120 Idaho 46, 55, 813 P.2d 857, 866 (1990), citing *State v. Lindsey*, 149 Ariz. 472, 720 P.2d 73 (1986), (experts should not be allowed to give their opinion of the accuracy, reliability or credibility of a particular witness in the case being tried); *State v. Myers*, 382 N.W.2d 91 (Iowa 1986), *State v. Rimmasch*, 775 P.2d 388 (Utah 1989), *State v. Pinero*, 778 P.2d 704 (Hawaii 1989).

The Idaho Court of Appeals has held that "both expert and lay opinions are

subject to the restriction that when the question is one which can be decided by persons of ordinary experience and knowledge, it is for the trier of fact to decide." *State v. Johnson*, 119 Idaho 852, 855, 810 P.2d 1138, 1141 (1991), citing *State v. Williams*, 103 Idaho 635, 651 P.2d 569 (Ct. App. 1982).

Only relevant evidence is admissible. The Court in *State v. Schneider*, 129 Idaho 59, 921 P.2d 759 (1996) recognized that the rule governing expert testimony is expansive to allow admissibility of all relevant evidence. The Court, however, did make a distinction that "an expert's opinion that is unsubstantiated by facts in the record, or that is speculative or conclusory, has little or no probative value and may be excluded because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *Id.* citing *Ryan v. Beisner*, 123 Idaho 42, 47, 844 P.2d 24, 29 (Ct.App. 1992).

Testimony about possibilities is inadmissible because it is speculative. The Court further noted that "testimony about mere possibilities rather than probabilities is inadmissible because it is speculative or irrelevant and does not aid in the fact-finding process." *Id.* See also, *Coombs v. Curnow*, 148 Idaho 129, 140, 219 P.3d 453, 464 (2009).

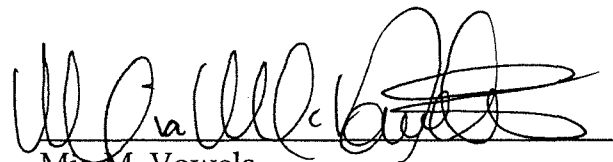
The defense expert is invading the province of the jury by offering his "interpretation" of the anticipated testimony of two witnesses and speculating as to the

length of time the strangulation of Rachael Anderson occurred. Dr. Grey's testimony will not be based on an examination of a body, and is based solely on anticipated testimony of witnesses and mere speculation. The defense is also attempting to have Dr. Grey testify as to "generally" how a victim might be expected to react to being strangled which is irrelevant. The jury has the sole duty to determine what evidence they believe and how much weight to give to a particular witness's testimony. The defense is essentially trying to bootstrap inadmissible extrinsic evidence through Dr. Grey to challenge the credibility of the State's witnesses pursuant to I.R.E. 608, 401, 402 and 403.

Finally, Dr. Grey's proposed testimony, at face value, acknowledges that Mr. Stone's stated events/timeline "is possible" further reducing any possible probative value to the defense.

Based on the above, the State respectfully prays that the Court exclude Dr. Todd Grey from testifying as an expert.

DATED this 11 day of July, 2014.



Mia M. Vowels
Sr. Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of State's Objection to Dr. Grey Testifying as an Expert 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

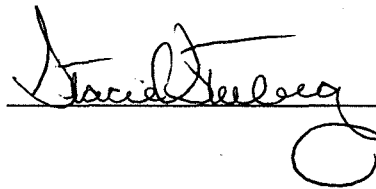
Mark T. Monson
Mosman Law Office
P.O. Box 8456
Moscow, ID 83843

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

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

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

Dated this 11 day of July, 2014.



CE 2013-1358
CASE NO _____

2014 JUL 14 AM 11:21

CLERK OF DISTRICT COURT
LATAH COUNTY

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

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

ORDER SETTING JURY TRIAL
AND SCHEDULING PROCEEDINGS

The above-entitled case is hereby scheduled as follows:

- August 18, 2014 at 10:00 am pretrial conference and select order of jurors.
- August 20, 2014 at 9:00 am completion of juror questionnaire by jury panel.
- August 27, 2014 at 9:00 am individual voir dire begins
- August 28, 2014 at 9:00 am individual voir dire continues.
- August 29, 2014 at 9:00 am individual voir dire continues.
- August 29, 2014 at 1:00 pm complete voir dire in open court and select jury.
- September 2, 2014 at 9:00 am opening statements and presentation of evidence begins.

Dated this 14th day of July, 2014.



Carl B. Kerrick
District Judge

ORDER SETTING JURY TRIAL
AND SCHEDULING PROCEEDINGS

CERTIFICATE OF SERVICE


I do hereby certify that a full, true, complete and correct copy of the foregoing ORDER SETTING JURY TRIAL AND SCHEDULING PROCEEDINGS was mailed/hand delivered on this 14th day of July, 2014, to:

Latah County Prosecutor's Office

Ray Barker
Attorney at Law
PO Box 9408
Moscow, ID 83843

Mark Monson
Attorney at Law
PO Box 8885
Moscow, ID 83843

SUSAN R. PETERSEN, CLERK


Deputy

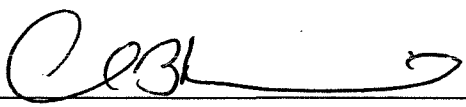
2014 JUL 14 PM 2:26

Juror # _____
DISTRICT COURT
LATAH COUNTY
BY MB DEPUTY

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

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR 2013-1358
vs.)	
	)	JUROR QUESTIONNAIRE
Charles A. Capone,)	
Defendant.)	

- A. **USE BLACK INK PEN ONLY.**
- B. Please print your answers.
- C. Answer these questions by yourself. Do not discuss your answers with other anyone else, including other potential jurors. We recognize that some of the questions are of a personal nature. Nonetheless, it is important that you answer all questions candidly and truthfully.
- D. The information you provide is confidential and for use by the lawyers, the parties, and the Court during questioning associated with jury selection. You will be questioned both in open court and individually. **This questionnaire will be part of the sealed court file and will not be available for public inspection or use.**
- E. If you do not understand a question, please put a question mark (?) in the space provided for the answer. The court and the attorneys will attempt to clarify the question for you during questioning.
- F. If the space provided for your answers is not sufficient, please turn to the last page of this questionnaire which has been provided to allow for supplemental answers and information. If you supplement your answers please make reference to the question number that you are referring to.
- G. **YOU ARE UNDER OATH AND MUST ANSWER ALL QUESTIONS TRUTHFULLY.**
- H. Do not do any investigation into this case. Do not listen to or view any reports about this case, whether on TV, radio, the internet, or any social network. Do not discuss this case with anyone.



 CARL KERRICK, DISTRICT JUDGE

SECTION I: FAMILY HISTORY

1. Name: _____
Last First Middle (maiden or former names)

2. Age: _____

3. Have you been married? Yes ____ No ____
What is your current marital status? Single married separated divorced widowed

Current spouse or partner: _____

4. Do you have children? Yes ____ No ____

If yes, please list below their age, sex, education, and occupation.

Age	Sex	Education	Occupation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SECTION II: EDUCATIONAL/OCCUPATIONAL INFORMATION

5. Current occupation: _____
(if self-employed in or outside of the home, please describe)

Who is your current employer? _____

Previous two jobs: _____

6. Education:
Highest grade completed: _____
Degrees earned: _____

Law Enforcement training: ____ Yes ____ No
If Yes, please describe: _____

Have you ever served in the military? ____ Yes ____ No
When _____ Where _____
Job duties _____
Type of Discharge _____

7. Medical background: Please describe any medical training you have received _____

SECTION III: PERSONAL ATTITUDES AND ACTIVITIES

8. What newspaper(s) do you read, and how often? _____
9. Do you watch television? Yes ____ No ____
What do you tend to watch? _____

SECTION IV: PREVIOUS JURY EXPERIENCE

10. Have you ever served on a grand jury? Yes ____ No ____ Not sure ____
If yes, when and where? _____
11. Have you ever been a juror in a coroner's inquest? Yes ____ No ____ Not sure ____
If yes, when and where? _____
12. Have you ever served as a trial juror (or alternate juror) in state or federal court?
Yes ____ No ____
If yes, please indicate the following.
When: _____
Where? _____
Type of case: Civil ____ Criminal ____ Unsure ____
What was the case about? _____
Was a verdict reached? Yes ____ No ____
If a verdict was not reached was it due to the inability of jurors to agree on a verdict or because of some other reason? Please explain. _____

13. Have you been called as a juror but not selected? Yes ____ No ____
If yes, how many times? _____
14. Do you have any concerns about the jury system? Yes ____ No ____
If yes, please explain. _____

SECTION V: PRIOR EXPERIENCES WITH LAW ENFORCEMENT PERSONNEL

15. Do you have any friends or relatives who have law enforcement experience of any kind? This includes being a police officer, sheriff's deputy, security guard, FBI agent, jail guard, probation/parole officer, prosecuting or city attorney, or any other position whatsoever connected with law enforcement. Yes ____ No ____

If yes, please describe:

Name	Relationship to you	Law enforcement	Years experience
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

16. Do you know any lawyers or judges? Yes ____ No ____

If your answer is yes to the above question, please provide the names of the lawyers you are acquainted with and what their area of practice is. _____

SECTION VI: EXPERIENCES WITH CRIMINAL JUSTICE SYSTEM

17. Have you or any of your friends or relatives been the victim of a crime (reported or unreported, including crimes of violence, domestic violence, sexual crimes, property crimes, etc.)?

Yes ____ No ____

If yes, please describe each incident, including when, where, a description of the circumstances, and whether a report was made. _____

18. Have you or any of your friends or relatives experienced, been present during, or been affected by a violent crime (including domestic violence)? Yes ____ No ____

If yes, please describe, including when, where, and a description of the circumstances.

19. Have you or any of your friends or relatives testified in court? Yes ____ No ____

If yes, please describe each incident, including when, where, and a description of the circumstances. _____

20. Have you or any of your friends or relatives ever been investigated for, arrested for, or charged with a crime? Yes ____ No ____

If yes, please describe each incident, including when, where, a description of the circumstances, and the outcome of the case. _____

21. Do you know of anyone who has received or requested a domestic violence no-contact order from a court? Yes _____ No _____

If yes, please describe: _____

22. Have you ever been a member of a group that advocates for crime victims?

Yes _____ No _____

If yes, please describe: _____

23. Do you know of anyone who has been the victim of, charged with, or a witness to the crime of stalking? Yes _____ No _____

If yes, please describe: _____

SECTION VII: PUNISHMENT OF CRIMINAL BEHAVIOR

24. Which of the following best describes your personal beliefs concerning the effectiveness of the criminal justice system in punishing those found guilty of criminal behavior? (please check one) Highly Effective _____ Somewhat Effective _____ Not Effective _____

25. Are there any particular types of crimes which you believe are punished too much or not punished enough by the criminal justice system? If so, please relate your thoughts on the subject. _____

SECTION VIII: PUBLICITY

The following questions are not intended to suggest that you have, should have, or will hear anything about this case. However, if you have been exposed to information concerning this case prior to today, please answer the following questions candidly:

26. Do you know, or have you read, or heard anything, from any source, at any time, about this case? Yes _____ No _____ If so, what have you heard? _____

27. If yes, please indicate the source(s) of your information: _____ radio _____ friends or family _____ newspaper _____ law enforcement _____ television _____ Internet _____ other: _____

CASE NO. CR 2013-135

2014 JUL 14 PM 2:28

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING FUNDS
REGARDING INVESTIGATOR

THE COURT, having reviewed Defendant's *Motion for Additional Funds Regarding Investigator* dated July 9, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$ 10,000⁰⁰ for investigative costs is hereby authorized. Such costs shall not exceed \$ 10,000⁰⁰ in total until and unless the defendant obtains authorization for additional investigative costs.

DATED this 14th day of July 2014.

[Signature]
JUDGE

CERTIFICATE OF SERVICE

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

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

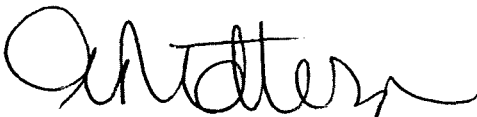
Via Facsimile: (208) 882-0589
 U.S. Mail
 Hand Delivery

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

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

on this 14 day of July, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

By: 
Deputy Clerk

CASE NO. CR 2013-1358

2014 JUL 14 PM 4:54

CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

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

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

Attorneys for Defendant

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**RESPONSE TO STATE'S OBJECTION
TO DR. GREY TESTIFYING AS AN
EXPERT WITNESS**

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel and respectfully provides the following response to State's objection to Dr. Grey testifying as an expert witness.

The admissibility of expert testimony is governed by Idaho Rule of Evidence 702, which provides:

**RESPONSE TO STATE'S OBJECTION TO DR. GREY
TESTIFYING AS AN EXPERT WITNESS**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Dr. Grey has specialized scientific, technical, and other specialized knowledge that jurors do not possess. The state asserts that Dr. Grey will be assuming the jury's function of assessing the credibility of a witness, and/or that he will be giving an opinion on the accuracy, reliability or credibility of David Stone. That is not the case.

In this case, the state intends to elicit testimony from David Stone, regarding what he witnessed on April 16, 2010. The state has disclosed to the defense audio and video recordings of interviews with David Stone, wherein he describes seeing Mr. Capone strangle Rachel Anderson to death. In the course of those interviews, David Stone provides great detail, and specifically a detailed timeline, of how the strangulation event took place.

Dr. Grey will not be commenting on David Stone's credibility, but rather will be using David Stone's statement regarding the manner of death, and specifically David Stone's timeline, as the basis for his opinion on whether or not it is possible for the alleged murder as described by David Stone to have occurred. This is exactly the situation for which I.R.E 702 was intended. "The wide reach of the rules governing expert testimony is derived from a fundamental policy favoring admissibility of all relevant evidence." *State v. Schneider*, 129 Idaho 59, 62, 921 P.2d 759 (1996).

The ultimate fact in issue is whether or not Mr. Capone killed Rachel Anderson. The state's theory is that Mr. Capone strangled Rachel Anderson to death. Dr. Grey's scientific, technical, or and other specialized knowledge regarding manner of death will assist the trier of


fact in understanding David Stone's testimony and ultimately in determining whether or not the death could have occurred as described by David Stone. The defense does not intend to ask Dr. Grey his opinion on David Stone's credibility, or his opinion on whether or not David Stone accurately reported what he is alleged to have seen.

Dr. Grey's testimony is relevant to the alleged manner of death of Rachel Anderson and will be based on evidence in the record, specifically the anticipated testimony from David Stone. Dr. Grey's testimony will be essential in order to assist the jury in determining what weight to accord David Stone's testimony. Under the circumstances, the defendant has no way to refute David Stone's anticipated testimony regarding the alleged timing and manner of death, except through expert testimony.

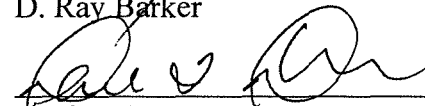
The anticipated testimony of Dr. Grey is also relevant in evaluating the testimony of David Stone regarding the apparent lack of any active resistance on the part of Rachel Anderson on April 16, 2010.

The defendant respectfully requests that the court overrule the state's objection and allow Dr. Grey to testify as an expert witness.

DATED this 14th day of July, 2014



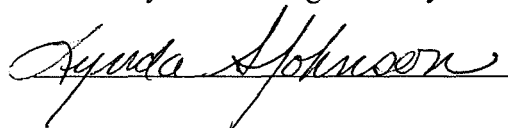
D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

I hereby certify that on July 14 2014 I caused a true and correct copy of the foregoing motion to be hand delivered to the offices of the Latah County Prosecuting Attorney's office.



Synda Johnson

**RESPONSE TO STATE'S OBJECTION TO DR. GREY
TESTIFYING AS AN EXPERT WITNESS**

Page 3 of 3

001814

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

MARK T. MONSON, P.A.
Attorney at Law
803 S. Jefferson, Suite 4
P.O. Box 8456
Moscow, ID 83843
(208) 882-0588
Idaho State Bar No. 6165
Washington State Bar No. 30497

Attorneys for Defendant

CASE NO. CR 2013-1358
2014 JUL 21 PM 2:57
CLERK OF DISTRICT COURT
LATAH COUNTY
BY AW DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES A. CAPONE

Defendant.

Case No. CR-2013-1358


MOTION TO AUTHORIZE ADDITIONAL
FUNDS FOR COMPUTER FORENSIC
EXPERT

COMES NOW the defendant, Charles A. Capone, by and through his appointed counsel, and hereby moves the court to authorize additional funds for computer forensic services in the above-referenced matter. Additional funds of \$1,800 are hereby requested.

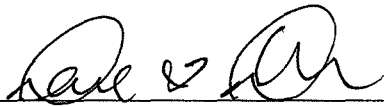
Counsel has retained Global CompuSearch, LLC to assist in analyzing phone evidence that the State has collected in this case. Undersigned counsel has consulted with Joshua Michel regarding trial expenses. The defendant previously obtained authorization for trial expenses from the

court, however, it is anticipated that there will be additional time required to complete additional work as requested by the defense and additional time required to prepare for trial and consult with defense counsel regarding this case. Mr. Michel estimates that 10-12 additional hours will be necessary.

DATED: July 21, 2014



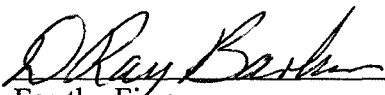
D. Ray Barker
Co-Counsel for Defendant



Mark T. Monson
Co-Counsel for Defendant

CERTIFICATE OF SERVICE

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



For the Firm

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

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

Attorneys for Defendant

CASE NO. CR 2013-1358

2014 JUL 21 PM 2:57

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

**SECOND MOTION FOR ISSUANCE OF
SUBPOENAS PURSUANT TO IDAHO
CODE §19-3008**

COMES NOW the Defendant, by and through his court-appointed counsel, and herby moves this Court for the issuance of subpoenas pursuant to Idaho Code §19-3008. The defendant is requesting the court issue subpoenas for the following individuals:

Brett Bennett	Wayne Boyer	Brian Birdsell
Ed Button	Anthony Capone	Teresa Capone Mullen
Ed Comer	Nathan Donner	Bruce Fager
Dan Evans	John Houser	Steve Jackson
Jeff Johnson	Alan Giusti	Eric Kjornes

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

Page 1 of 2

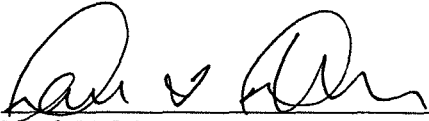
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Dan MacPherson	Stephanie Rath	Mike Mastro
Chris Montambo	Blake Nelson	Don Reed
Angel Rivera	Mack Snyder	Alison Pierce
Debbie Stamper	Earl Stamper	Mike Mooney
Alisa Stone	Skyler Sullivan	Joshua Michel
Jesse Thacker	Matthew Tournay	Travis Williams
Greg Wilson, Ph.D	Bonita Lawhead	Todd Grey, MD
Leon Merrill		

Date: July 21, 2014




D. Ray Barker



Mark T. Monson

CERTIFICATE OF SERVICE

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



LOGGED July 22, 2014 AT
A.M. 3:53 (P.M.) LEWISTON, IDAHO
BY CBK
CARL B. KERRICK am

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

STATE OF IDAHO

Plaintiff,

v.

CHARLES ANTHONY CAPONE

Defendant.

Case No. CR-2013-1358

ORDER AUTHORIZING FUNDS
REGARDING COMPUTER EXPERT

THE COURT, having reviewed Defendant's *Motion for Additional Funds for Computer Forensic Expert* dated July 21, 2014, and good cause appearing therefore,

IT IS HEREBY ORDERED that an additional \$1,800.00 for expert costs is hereby authorized. Computer forensic costs in the amount of \$9,302.80 were previously approved. Such costs shall not exceed \$11,102.80 in total until further order of the court.

DATED this 22nd day of July 2014.

Carl B. Kerrick
JUDGE

CERTIFICATE OF SERVICE

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

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

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


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

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

on this 22 day of July, 2014.

SUSAN PETERSON
Latah County Clerk of the Court

cc: PA

By: 
Deputy Clerk

LODGED July 23, 2014 AT
9:52 (P.M.) P.M. LEWISTON, IDAHO
BY CBK
CARL B. KERRICK *ck*

**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.	)	OPINION AND ORDER ON
	)	DEFENDANT'S MOTION
CHARLES ANTHONY CAPONE,	)	TO ALLOW DR. GREY
	)	TO TESTIFY VIA
Defendant.	)	TELECONFERENCE

This matter came before the Court on the Defendant's Motion to Allow Dr. Grey to Testify via Teleconference, filed June 19, 2014 and the State's Objection to Dr. Grey Testifying as Expert, filed on June 20, 2014. The State of Idaho was represented by Mia Vowels, Latah County Senior Deputy Prosecuting Attorney. The Defendant was represented by Ray Barker, attorney at law. The matter was submitted to the Court on the briefs filed. The Court, having heard the argument of counsel and being fully advised in the matter, hereby renders its decision.

FACTS AND PROCEEDINGS

On June 2, 2014, the Honorable Judge Griffin issued an Order Re: Motions which addressed several pre-trial motions which were argued on May 30, 2014. Within this

order, Judge Griffin granted the defense motion to retain Dr. Todd Grey for consultation regarding the state's theory that Rachel Anderson died from strangulation. On June 19, 2014, the Defendant filed a motion to allow Dr. Grey to testify via teleconference. The State responded with an objection to the motion on June 20, 2014. An expert witness summary was attached to the objection, under seal, for the Court's review.

The State filed a memorandum in support of the objection on July 11, 2014. The Defendant filed a response to the State's memorandum in support of the objection on July 14, 2014. The matter is currently before this Court for determination.

ANALYSIS

The State objects to Dr. Grey testifying as an expert because Dr. Grey's testimony is only being offered in order to assess the credibility of David Stone as a witness. Second, the State asserts that Dr. Grey's testimony is not relevant. Third, the State contends that Grey's testimony would be speculative, based on the fact that Grey's testimony would not be based upon the examination of a body, but solely upon anticipated testimony of witnesses.

The admissibility of expert witness testimony is governed by I.R.E. 702.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Id. I.R.E. 702 was discussed in *State v. Alger*, 115 Idaho 42, 764 P.2d 119 (Ct. App. 1988).

I.R.E. 702 broadly allows an expert witness to testify "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. . . ." Rule 704 further provides that otherwise admissible opinion testimony "is not objectionable because it embraces an ultimate issue to be decided by the

trier of fact.” The wide reach of the rules governing expert testimony is derived from a fundamental policy favoring admissibility of all relevant evidence. *See* I.R.E. 401.

Id. at 50, 764 P.2d at 127. A proper factual foundation for expert opinion is required.

The admission of expert testimony is within the sound discretion of the trial court. *Burgess v. Salmon River Canal Co., Ltd.*, 127 Idaho 565, 903 P.2d 730 (1995). Expert opinion must be based upon a proper factual foundation. “Expert opinion which is speculative, conclusory, or unsubstantiated by facts in the record is of no assistance to the jury in rendering its verdict, and therefore is inadmissible as evidence under Rule 702.” *Ryan* at 46, 844 P.2d at 28. Expert opinion that merely suggests possibilities would only invite conjecture and may be properly excluded. *Elce v. State*, 110 Idaho 361, 716 P.2d 505 (1986).

Bromley v. Garey, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999). The threshold test for the admission of expert testimony was discussed in *State v. Arrasmith*, 132 Idaho 33, 966 P.2d 33 (Ct. App.1998).

The threshold test for the admission of expert testimony is whether the scientific, or other specialized knowledge of the expert will assist the trier of fact to understand the evidence or to determine a fact in issue. I.R.E. 702. The function of the expert is to provide testimony on subjects that are beyond the common sense, experience and education of the average juror. *State v. Hester*, 114 Idaho 688, 694, 760 P.2d 27, 33 (1988), quoting *State v. Lindsey*, 149 Ariz. 472, 475, 720 P.2d 73, 76 (1986). Where the normal experience and qualifications of lay jurors permit them to draw proper conclusions from given facts and circumstances, then expert conclusions or opinions are inadmissible. *Hester*, at 696, 760 P.2d at 35, quoting *State v. Lash*, 237 Kan. 384, 699 P.2d 49, 51 (1985).

Id. at 42, 966 P.2d at 42.

The rule requires the Defendant to lay a proper foundation before Dr. Grey may testify. Based upon a review of the materials submitted, it appears the Defendant will be able to lay a foundation regarding Dr. Grey’s qualifications. Based upon information provided to the Court regarding Dr. Grey’s work, it appears that Dr. Grey can testify on

the subject of strangulation and provide testimony on this subject that is beyond the common sense, experience and education of the average juror.

However, the State's argument that Dr. Grey should be prohibited from testifying regarding the credibility of witnesses, David Stone in particular, is well taken. Dr. Grey cannot testify regarding whether David Stone is credible, or whether Stone's testimony is truthful or untruthful.

Under I.R.E. 704, an expert may testify to an opinion that embraces the ultimate issue to be decided by the trier of fact. However, there is some limitation on this within the realm of criminal trials. A similar issue was discussed in *State v. Walters*, 120 Idaho 46, 813 P.2d 857(1990).

Rule 704 has not opened the door to all opinions on every subject, particularly in a criminal trial. *State v. Pinero*, 778 P.2d 704, 711 (Hawaii, 1989). Rule 704 must be read in the light of Rule 702. Expert testimony is only admissible when the expert's specialized knowledge will assist the trier of fact to understand the evidence and determine a fact in issue. I.R.E. 702. Opinions which directly pass on the credibility of witnesses are generally not allowed. *State v. Lindsey*, 149 Ariz. 472, 720 P.2d 73 (1986), *State v. Myers*, 382 N.W.2d 91 (Iowa 1986), *State v. Rimmasch*, 775 P.2d 388 (Utah 1989), *State v. Pinero*, 778 P.2d 704 (Hawaii 1989). The Arizona Supreme Court in *State v. Lindsey*, a child sexual abuse case, explained that the basis for precluding expert testimony on the credibility of a witness was the danger of usurpation of the jury function and the lack of need for expert testimony on the truthfulness of witnesses. It said that:

Thus, even where expert testimony on behavioral characteristics that affect credibility or accuracy of observation is allowed, experts should not be allowed to give their opinion of the accuracy, reliability or credibility of a particular witness in the case being tried. Nor should such experts be allowed to give opinions with respect to the accuracy, reliability or truthfulness of witnesses of the type under consideration. Nor should experts be allowed to give similar opinion testimony, such as their belief of guilt or innocence. The law does not permit expert testimony on how the jury should decide the case ... [T]he expert's function is to provide testimony on subjects that are beyond the common sense, experience and education of the average juror ...

State v. Lindsey, 149 Ariz. 472, 720 P.2d at 76. Generally, expert testimony that purports to determine whether a particular witness is truthful on a particular occasion is not permitted because there is no reason to believe that experts are any more qualified to render such opinions than are jurors. *State v. Rimmasch*, 775 P.2d 388 (Utah 1989). In a criminal trial where the expert opinion, as in this case, involves the weighing of the credibility of witnesses based upon their out-of-court statements, special caution must be exercised by the trial court to make certain that the expert's opinion is based upon his or her expertise and that it will assist the trier of fact in determining a fact in issue. Historically, the evaluation of the credibility of witnesses has been committed solely to the jury and they alone have the responsibility to determine the guilt or innocence of the accused.

Id. at 55, 813 P.2d at 866.

The federal rule counterpart, F.R.E. 702, is similar to the Idaho rule. Thus, federal case law is useful for analysis of the issue before this Court. In *Nimely v. City of New York*, 414 F.3d 381 (2d Cir. 2005), Nimely was shot as he was running away from New York City police officers. Nimely claimed he was shot in the back as he ran away. The officers involved in the shooting testified that Nimely had turned toward them with a weapon in hand, thus, they were justified in shooting him. Expert witnesses were called by both parties to determine whether Nimely's testimony or the officers' testimony of the events were more credible.

It is a well-recognized principle of our trial system that "determining the weight and credibility of [a witness's] testimony.... belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men...." *398 *Aetna Life Ins. Co. v. Ward*, 140 U.S. 76, 88, 11 S.Ct. 720, 35 L.Ed. 371 (1891); see also *United States v. Scop*, 846 F.2d 135, 142 (2d Cir.1988) ("The credibility of witnesses is exclusively for the determination by the jury, and witnesses may not opine as to the credibility of the testimony of other witnesses at the trial." (internal citation omitted and emphasis added)). Thus, this court, echoed by our sister circuits, has consistently held that expert opinions that constitute evaluations of witness credibility, even when such evaluations are rooted in scientific or technical expertise, are inadmissible under Rule 702. See, e.g., *United States v. Lumpkin*, 192 F.3d 280, 289 (2d Cir.1999); *Scop*, 846 F.2d at 142-43; see also, e.g., *United States v.*

Charley, 189 F.3d 1251, 1267 (10th Cir.1999); *Westcott v. Crinklaw*, 68 F.3d 1073, 1076-77 (8th Cir.1995).

Nimely v. City of New York, 414 F.3d at 397-98. Further, the Court must consider the application of rule 403. The *Nimely* Court found that the practice of expert witnesses basing their conclusions on the in-court testimony of fact witnesses may improperly bolster the account given by the fact witnesses.

We also believe that the credibility assessments to which Dawson was allowed to testify should have been excluded by the trial court under Rule 403. We have, in other factual contexts, disapproved of the practice of expert witnesses basing their conclusions on the in-court testimony of fact witnesses, out of concern that such expert testimony may improperly bolster the account given by the fact witnesses. *See, e.g., United States v. Dukagjini*, 326 F.3d 45, 53 (2d Cir.2003); *United States v. Cruz*, 981 F.2d 659, 663 (2d Cir.1992). Dawson's testimony went at least one step further, in that it commented directly, under the guise of expert opinion, on the credibility of trial testimony from crucial fact witnesses.

Nimely v. City of New York, 414 F.3d at 398. The *Nimely* Court held that the trial court erred in allowing expert witness testimony which addressed the credibility of the officers.

In the case before this Court, the Defendant asserts that Dr. Grey will not be commenting on David Stone's credibility, but rather Dr. Grey will be using David Stone's statements regarding the manner or death, and specifically David Stone's timeline, as the basis for his opinion on whether or not it is possible for the alleged murder as described by David Stone to have occurred. The Court finds the State's objection to this line of questioning to be well warranted. If a foundation is laid, Dr. Grey may testify regarding his scientific, technical, or other specialized knowledge regarding the alleged manner of death, i.e. strangulation.

The Court notes that Dr. Grey's review of this case has been based solely upon review of statements made by witnesses due to the fact that there is no body of a victim in

this case. However, beyond the review of the facts of this case, Dr. Grey also has expert knowledge of strangulation as a manner of death. Therefore, Dr. Grey can testify regarding his knowledge of strangulation as a manner of death. However, based upon I.R.E. 702 and the guidance presented by our federal counterpart, Dr. Grey is prohibited from testifying regarding his opinion of David Stone's testimony. Dr. Grey cannot testify regarding David Stone's credibility, nor may he testify whether David Stone is truthful in his statement of the timeline of events which led to Rachel Anderson's death. These decisions on credibility are solely within the province of the jury to decide.

CONCLUSION

The Defendant seeks to present the testimony of Dr. Grey to the jury via teleconference. The Defendant may present the witness in this manner, so long as the jury is able to hear and understand the testimony presented. The State has objected to the Defendant presenting Dr. Grey as an expert witness in this case, on the basis that Dr. Grey's testimony will invade the province of the jury by addressing whether David Stone is a credible witness, and because the State asserts that Dr. Grey's testimony is speculative and not relevant.

Because the State asserts that the manner of death in this case is strangulation, the defendant is permitted to present expert witness testimony regarding scientific, technical, or other specialized knowledge regarding the alleged manner of death, i.e. strangulation. However, Dr. Grey cannot testify regarding whether David Stone is credible, or whether David Stone's testimony is truthful, as set forth in the analysis above. These matters are solely for the jurors to decide.

ORDER

The Defendant's Motion to Allow Dr. Grey to Testify via Teleconference is hereby GRANTED. The State's Objection to Dr. Grey Testifying as Expert is hereby GRANTED in part, and DENIED in part, consistent with the foregoing analysis. IT IS SO ORDERED.

DATED this 23rd day of July 2014.


CARL B. KERRICK – District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER ON DEFENDANT'S MOTION TO ALLOW DR. GREY TO TESTIFY VIA TELECONFERENCE was:

_____ hand delivered via court basket, or

faxed and mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 23rd day of July, 2014, to:

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P O Box 8456
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(208) 882-0589

D. Ray Barker
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P O Box 8068
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PATTY O. WEEKS, CLERK

By *Patty O. Weeks*
Deputy

