12-20-2016

State v. Fairchild Clerk's Record Dckt. 44617

IN THE SUPREME COURT OF THE

STATE OF IDAHO

STATE OF IDAHO, Plaintiff- Appellant, -vs- TAYLOR JAMES FAIRCHILD, Defendant- Respondent.	))))))))))	Supreme Court No. 44617-2016

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE GEORGE A. SOUTHWORTH, Presiding

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

Attorney for Appellant

Eric D. Fredericksen, State Appellate Public Defender,
322 East Front Street, Suite 570, Boise, Idaho 83702

Attorney for Respondent

Felony

Date		Judge
7/11/2016	New Case Filed-Felony	George A. Southworth
	Affidavit Of Probable Cause	Robert L Jackson
	Criminal Complaint	Robert L Jackson
	Hearing Scheduled (Arraignment (In Custody) 07/11/2016 01:32 PM)	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Arraignment / First Appearance	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Constitutional Rights Warning	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Order Appointing Public Defender	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Commitment On Bond - $10,000	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Upon Posting Bond - Report to Pre-Trial Release	Robert L Jackson
	Hearing result for Arraignment (In Custody) scheduled on 07/11/2016 01:32 PM: Notice Pretrial Release Services	Robert L Jackson
	Hearing Scheduled (Preliminary Hearing 07/22/2016 08:30 AM)	Gary D. DeMeyer
7/12/2016	Request For Discovery	Gary D. DeMeyer
7/13/2016	PA Response and Objection to Request For Discovery	Gary D. DeMeyer
	Request For Discovery	Gary D. DeMeyer
	Demand For Notice Of Defense Of Alibi	Gary D. DeMeyer
7/22/2016	Hearing result for Preliminary Hearing scheduled on 07/22/2016 08:30 AM: Preliminary Hearing Held	Gary D. DeMeyer
	Hearing result for Preliminary Hearing scheduled on 07/22/2016 08:30 AM: Order Binding Defendant Over to District Court	Gary D. DeMeyer
	Hearing Scheduled (Arrn. - District Court 08/05/2016 09:00 AM)	Davis F. VanderVelde
	PA's First Supplemental Response to Request for Discovery	George A. Southworth
	Information	George A. Southworth
7/25/2016	Motion to Produce Preliminary Hearing Transcript (with order)	George A. Southworth
7/27/2016	Order to Produce Preliminary Hearing Transcript	George A. Southworth
8/5/2016	Hearing result for Arrn. - District Court scheduled on 08/05/2016 09:04 AM: Hearing Held	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 08/05/2016 09:04 AM: District Court Hearing Held Court Reporter: Christine Rhodes Number of Transcript Pages for this hearing estimated: Less than 100 pages	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 08/05/2016 09:04 AM: Arraignment / First Appearance	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 08/05/2016 09:04 AM: Appear & Plead Not Guilty - stnw	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 08/05/2016 09:04 AM: Notice Of Hearing	Gregory M Culet

Felony

Date		Judge
8/5/2016	Hearing Scheduled (Pre Trial 10/03/2016 09:00 AM)	George A. Southworth
	Hearing Scheduled (Jury Trial 11/01/2016 09:00 AM)	George A. Southworth
	Hearing Scheduled (Motion Hearing 08/12/2016 09:00 AM)	Juneal C. Kerrick
	PA's Second Supplemental Response to Request for Discovery	Juneal C. Kerrick
8/12/2016	Hearing result for Motion Hearing scheduled on 08/12/2016 09:06 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 08/12/2016 09:06 AM: Hearing Held	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 08/12/2016 09:06 AM: Motion Bond REduction Held	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 08/12/2016 09:06 AM: Motion Granted	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 08/12/2016 09:06 AM: Order Release to Pre-trial Release Program	Gregory M Culet
8/17/2016	PA's Third Supplemental Response to Request for Discovery	George A. Southworth
8/26/2016	Transcript Filed (Preliminary Hearing 7-22-16)	George A. Southworth
9/2/2016	Motion To Suppress Evidence Pursuant To Idaho Criminal Rule 12 (no order)	George A. Southworth
9/13/2016	Notice Of Hearing on Motion To Suppress	George A. Southworth
	Hearing Scheduled (Motion Hearing 10/12/2016 03:30 PM) mtn to suppress	George A. Southworth
	Brief In Support of Motion To Suppress Evidence	George A. Southworth
9/20/2016	Hearing Scheduled (Motion Hearing 10/07/2016 11:00 AM) mtn to suppress - BLOCK 1 HOUR	George A. Southworth
	Order Resetting Case	George A. Southworth
9/27/2016	Objection to Motion to Suppress Evidence	George A. Southworth
10/3/2016	Hearing result for Pre Trial scheduled on 10/03/2016 09:00 AM: Hearing Held PCS {F} JT 11/1 GAS	George A. Southworth
	Hearing result for Pre Trial scheduled on 10/03/2016 09:00 AM: District Court Hearing Held Court Reporter: PAtricia Terry Number of Transcript Pages for this hearing estimated: less than 100 pages	George A. Southworth
	Affidavit in Support of Motion to Suppress	George A. Southworth
10/6/2016	PA's Fourth Supplemental Response to Request for Discovery	George A. Southworth
10/7/2016	Hearing result for Motion Hearing scheduled on 10/07/2016 11:00 AM: Hearing Held mtn to suppress - UNDER ADVISEMENT	George A. Southworth

State of Idaho vs. Taylor James Fairchild

Felony

Date		Judge
10/7/2016	Hearing result for Motion Hearing scheduled on 10/07/2016 11:00 AM: District Court Hearing Held Court Reporter: Patricia Terry Number of Transcript Pages for this hearing estimated: less than 100 pages	George A. Southworth
10/11/2016	Affidavit of Eric Phillips In Support of the State's Objection to Motion to Suppress Evidence	George A. Southworth
	Hearing Scheduled (Conference - Status 10/31/2016 01:00 PM)	George A. Southworth
10/13/2016	Supplement to Objection to Motion to Suppress Evidence	George A. Southworth
	Memorandum of Law in Support of Motion to Suppress Evidence	George A. Southworth
10/26/2016	Memorandum Decision and Order Granting Defendant's Motion to Suppress	George A. Southworth
10/31/2016	Hearing result for Conference - Status scheduled on 10/31/2016 01:00 PM: Hearing Held	George A. Southworth
	Hearing result for Conference - Status scheduled on 10/31/2016 01:00 PM: District Court Hearing Held Court Reporter: Patricia Terry Number of Transcript Pages for this hearing estimated: less than 100 pages	George A. Southworth
	Hearing result for Jury Trial scheduled on 11/01/2016 09:00 AM: Hearing Vacated	George A. Southworth
	Hearing Scheduled (Conference - Status 11/28/2016 01:30 PM)	George A. Southworth
11/14/2016	Notice of Appeal	George A. Southworth
	Appealed To The Supreme Court	George A. Southworth
11/18/2016	Copies	George A. Southworth
11/28/2016	Hearing result for Conference - Status scheduled on 11/28/2016 01:30 PM: Hearing Held	George A. Southworth
	Hearing result for Conference - Status scheduled on 11/28/2016 01:30 PM: District Court Hearing Held Court Reporter: Patricia Terry Number of Transcript Pages for this hearing estimated: less than 100 pages	George A. Southworth
	Hearing result for Conference - Status scheduled on 11/28/2016 01:30 PM: Order To Release On Own Recognizance	George A. Southworth
12/2/2016	Motion to Appoint State Appellate Public Defender (w/order)	George A. Southworth
12/8/2016	Order Appointing State Appellate Public Defender	George A. Southworth

created 06/03/15

IN THE DISTRICT COURT OF THE 3RD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
MAGISTRATE DIVISION

FILED A.M. 8:12 P.M.

JUL 11 2016

CANYON COUNTY CLERK
M. NYE, DEPUTY

16-6503

STATE OF IDAHO
Plaintiff

vs.

TAYLOR JAMES FAIRCHILD
Defendant.

DOB: [redacted]
SSN:
OLN:
State: IDAHO

AFFIDAVIT OF PROBABLE CAUSE

Case No. CR16-12011

Agency Case No. 16-17275

I E. PHILLIPS #133 of the CALDWELL POLICE DEPARTMENT being first duly sworn,

state that the following is true and accurate. The following acts occured at: LASTER LN. & LATHROP AVE. CALDWELL

Canyon County, State of Idaho.

Alleged Crime(s) Occurred at 0855 on the date of: 07-08-2016

Crime(s) alleged to have been committed

(F) POSSESSION OF A CONTROLLED SUBSTANCE I.C. 37-2732(C)1

1. Please state what you did or observed that gives you reason to believe the individual(s) committed the crime(s) alleged:

On 07-08-2016, at approximately 0846 hours, I was dispatched to the area of Laster Ln. and Lathrop Ave. in the City Of Caldwell, County Of Canyon, State Of Idaho for a report of a suspicious circumstance. While en-route, CCSO dispatch advised that two males had been sitting in a red Dodge Ram for approximately ten minutes. A male showed up in a green passenger car and got in the red truck. I began running the license plates the caller had identified as being at the location. The black 1999 Hyundia Accent (2O60718) returned to Jessie Andrew Blount (DOB: [redacted]. The red Dodge Ram (135GSC)(Oregon plate) belonged to Philip Daniel Wietz (DOB [redacted]. I am familiar with Philip due to a suicidal call that his grandmother had called in on 03-19-2016. Philip was placed on a mental hold and I seized multiple drug and drug paraphernalia items from his residence. I had seized drugs and a pistol from his red Dodge Ram with the same license plate. Due to the call comments and my previous experience with Philip, I had suspicion that a possible drug transaction or use of drugs was taking place. I parked at Hobart Ave. and Laster Ln. to standby for an assist unit. While parked, I observed the red Dodge Ram begin driving westbound from Laster Ln., down a dirt road to Indiana Ave. quickly. The black Hyundia began driving towards me on Laster Ln. eastbound. As the car approached I activated my overhead lights and shut them off to get the attention of the male driver. I stuck my hand out the window to motion to the driver to stop. As I drove up to the vehicle and it stopped, I observed a male identified as Taylor James Fairchild (DOB [redacted]) in the drivers seat. He was wearing a hat with "420" on the front. I asked the male for his identification and where he was coming from. Taylor was staying the night at his friends house. I advised Taylor of why I was there. Taylor initially denied that he knew who was in the red truck. I ran Taylor's information through CCSO dispatch and dispatch advised he had an arrest warrant. I asked him if he was on probation and Taylor said he was for paraphernalia. Taylor admitted to using pot three days ago and meth a few weeks ago. I had Taylor step out of the vehicle due to the report of the arrest warrant. I had Taylor place his hands on top of the vehicle so I could check him for weapons and contraband prior to applying handcuffs. In Taylor's front right pocket, I located two clear plastic baggies with a white crystal substance in both baggies. Through my experience and training I recognized the white crystal substance to be methamphetamine.

2. What further information do you have regarding what others did or observed giving you reasonable grounds to believe that the individual(s) committed the crime(s) alleged?

After reading Taylor the Miranda warning, he admitted to buying $10.00 worth of methamphetamine from Philip Weitz. He paid with two $5.00 bills. He had been communicating with Philip by Facebook. I tested one of the baggies of the white

crystal substance with NARK II test kit ##15 test kit. The substance tested presumptive positive for methamphetamine.

3. Set out any information you have and its source as to why a warrant instead of a summons should be issued.
In custody.

"I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct."

Dated this 08 day of JULY 20 16.

#183

Signature of Officer

PC found
7/11/16

16-6503

FILED
A.M. 2:31 P.M.
JUL 11 2016
CANYON COUNTY CLERK
M. NYE, DEPUTY

es/dm

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

TAYLOR JAMES FAIRCHILD
D.O.B. [redacted]

Defendant.

CASE NO. CR 2016- 12011

CRIMINAL COMPLAINT

POSSESSION OF CONTROLLED SUBSTANCE
Felony, I.C. §37-2732(c)(1)

STATE OF IDAHO)
ss
County of Canyon)

PERSONALLY APPEARED before me this 11th day of July, 2016, Dallin Creswell, of the Canyon County Prosecuting Attorney's Office, who being duly sworn, complains and says:

That the Defendant, Taylor James Fairchild, on or about the 8th day of July, 2016, in the County of Canyon, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to **Idaho Code,** Section 37-2732(c)(1) and against the power, peace and dignity of the State of Idaho.

Complainant

SUBSCRIBED AND SWORN to before me this 11th day of July, 2016.

Magistrate

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON

☒ **ARRAIGNMENT** ☒ **IN-CUSTODY** ☐ **SENTENCING / CHANGE OF PLEA**

STATE OF IDAHO, Plaintiff
-vs-
Taylor James Fairchild
Defendant.

☐ True Name
Corrected Name:

Case No. CR-2016-12011-C
Date: July 11, 2016
Judge: Jackson
Recording: Mag7 (357-403)

APPEARANCES:
☒ Defendant
☒ Defendant's Attorney Tera Harden
☒ Prosecutor Dallin Creswell
☐ Interpreter

ADVISEMENT OF RIGHTS: Defendant
☒ was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.
☒ requested court appointed counsel.
☒ Indigency hearing held.
☒ Court appointed public defender.

☒**PRELIMINARY HEARING:**
☒ Preliminary Hearing set
Statutory time waived: ☐Yes ☒No
July 22, 2016 at 8:30am
☐ Preliminary Hearing Waived before Judge DeMeyer

BAIL: State recommends bond be set at $10,000 with Pretrial Release conditions

☐ Released on written citation promise to appear
☐ Released on own recognizance (O.R.)
☐ Released to pre-trial release officer.
☐ No Contact Order ☐ entered ☐ continued
☐ Address Verified
☐ Corrected Address: _____
☐ Released on bond previously posted.
☒ Remanded to the custody of the sheriff.
☒ Bail set at $10,000
☐ Cases consolidated
☒ Defendant to Report to Pretrial Release Services upon posting bond.

OTHER: Ms. Harden requested that bond be set at $5,000 with Pretrial Release conditions.

BEvans, Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 7·11·16 AT 4:03 P.M.
CLERK OF THE DISTRICT COURT
BY BEvans, Deputy

THE STATE OF IDAHO/or
Taylor James Fairchild

Case No. CR2016-12011C

ORDER APPOINTING PUBLIC DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for _____.

☒ THE MATTER IS SET FOR Prelim on July 22, 2016 at 8:30am before Judge DeMeyer.

☐ THE MATTER SHALL BE SET FOR _____ before Judge _____.

Dated: 7·11·16 Signed: _____ Judge

☒ In Custody -- Bond $ 10,000
☐ Released: ☐ O.R.
☐ on bond previously posted
☐ to PreTrial Release

Juvenile: ☐ In Custody
☐ Released to _____

☐ No Contact Order entered.

☐ Cases consolidated.

☐ Discovery provided by State.

☐ Interpreter required.

☐ Additional charge of FTA.

Judge Southworth

Original--Court File Yellow--Public Defender Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC DEFENDER 2/06

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 7·11·16 AT 4:03P.M.
CLERK OF THE DISTRICT COURT
BY BEvans, DEPUTY

STATE OF IDAHO,
Plaintiff,
-vs-
Taylor James Fairchild
Defendant,

Case No. CR2016-12011C

ORDER FOR

☐ Conditional Release/Pretrial Services
☐ Release on Own Recognizance
☐ Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

☐ Defendant is Ordered released

☐ On own recognizance ☐ Placed on probation ☐ Case Dismissed

☒ Bond having been set in the sum of $ 10,000 ☒ Total Bond

☐ Bond having been ☐ increased ☐ reduced to the sum of $ _____ ☐ Total Bond

☐ Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:

☒ Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:

☐ Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____.

☒ Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.

☒ Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.

☐ Not operate or be in the driver's position of any motor vehicle. 1x/week

☐ Abide by any No Contact Order and its conditions.

☐ Submit to ☐ GPS ☐ Alcohol monitoring as directed by Pretrial Services.
Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.

OTHER: _____.

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 7·11·16 Signed _____
Judge

☒ White - Court ☒ Yellow – Jail/Pretrial Services ☒ Pink – Defendant 10/11

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON
PRELIMINARY HEARING

STATE OF IDAHO, Plaintiff
-vs-
TAYLOR JAMES FAIRCHILD, Defendant.
☐ True Name
Corrected Name:

Case No. **CR-2016-12011-C**
Date: July 22, 2016
Judge: Gary D. Demeyer
Recording: Mag 2 (900-917)

APPEARANCES:
☒ Defendant
☒ Prosecutor Patrick Denton
☒ Defendant's Attorney Ryanl Dowell
☐ Interpreter

PROCEEDINGS:
☒ **Preliminary hearing held.**

STATE'S WITNESSES SWORN: 1. **ERIK PHILLLIPS** 2. _____ 3. _____ 4. _____ 5. _____

DEFENDANT'S WITNESSES SWORN: 1. 2. 3. 4. 5.
☒ Defendant had no testimony or evidence to present.

STATES EXHIBIT 1 ADMITTED: ☒ As set forth on attached list.

COURT'S RULING:
☒ Probable cause found for offense set forth in Complaint.
☒ Defendant held to answer to the District Court. **DISTRICT COURT ARRAIGNMENT SET AUGUST 5, 2016 @ 9:00 A.M. BEFORE HONORABLE JUDGE VANDERVELDE.**
☐ Misdemeanor case(s) continued consolidated with felony case for further proceedings.
☒ Motion for bond reduction continued until the time of District Court Arraignment.

BAIL: The Defendant was continued
☐ Released on written citation promise to appear
☐ Released on own recognizance
☐ Released to pre-trial release officer.
☐ Released on bond previously posted.
☒ Remanded to the custody of the sheriff.
☒ Bail as set at $10,000
☒ Defendant to Report to Pretrial Release Services upon posting bond.

OTHER:_____.

_____, Deputy Clerk

Third Judicial District Court, State of Idaho
In and For the County of Canyon
1115 Albany Street
Caldwell, Idaho 83605

Filed: 7/22/16 at 9:17 A. M
Clerk of the District Court
By Garcia, Deputy

STATE OF IDAHO
Plaintiff,
vs.
Daylon James Fairchild
Defendant,

Case No: CR-2016-12011-C

ORDER BINDING DEFENDANT OVER TO DISTRICT COURT

Preliminary hearing having been ☐ waived ☒ held in this case on the 22nd day of July, 20 16 and the Court being fully satisfied that a public offense has been committed and that there is probable or sufficient cause to believe the Defendant guilty thereof,

IT IS HEREBY ORDERED that the Defendant herein be held to answer in the District Court of the Third Judicial District of The State of Idaho, in and for the County of Canyon, to the charge of (F) Possession of Controlled Substance.

a felony, committed in Canyon County, Idaho on or about the 9th day of July, 20 16.

IT IS FURTHER ORDERED that the Defendant herein shall be arraigned before the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, on the 3rd day of August, 20 16 at 9:00 a.m. before Honorable Judge Vandenvelde

☐ Defendant is continued released on the bond posted.

☐ Defendant's personal recognizance release is ☐ continued ☐ ordered.

☒ Defendant's release to Pre-Trial Release Officer is ☒ continued ☐ ordered. upon posting bond.

☒ YOU, THE SHERIFF OF CANYON COUNTY, IDAHO, are commanded to receive into your custody and detain the Defendant until legally discharged. Defendant is to be admitted to bail in the sum of $10,000 as set

Dated: 7/22/16

Signed _____
Magistrate

ba

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

TAYLOR JAMES FAIRCHILD
D.O.B. [redacted]

Defendant.

CASE NO. CR2016-12011

INFORMATION

POSSESSION OF CONTROLLED SUBSTANCE
Felony, I.C. §37-2732(c)(1)

BRYAN F. TAYLOR, Prosecuting Attorney in and for the County of Canyon, State of Idaho, who in the name and by authority of said state prosecutes in its behalf, in proper person comes into the above entitled Court and informs said Court that the above name Defendant stands accused by this Information of crime of

POSSESSION OF CONTROLLED SUBSTANCE
Felony
Idaho Code Section 37-2732(c)(1)

committed as follows:

That the Defendant, Taylor James Fairchild, on or about the 8th day of July, 2016, in the County of Canyon, State of Idaho, did unlawfully possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to **Idaho Code,** Section 37-2732(c)(1) and against the power, peace and dignity of the State of Idaho.

DATED this 22nd day of July, 2016.

DALLIN CRESWELL for
BRYAN F. TAYLOR
Prosecuting Attorney for Canyon County, Idaho

JD
Ryan K. Dowell, Deputy Public Defender, ISB #7796
Marc Bybee, Deputy Public Defender, ISB #9245
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
Canyon County Administration Building
111 N. 11th Ave, Suite 120
Caldwell, ID 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Email: rdowell@canyonco.org

Attorneys for the Defendant

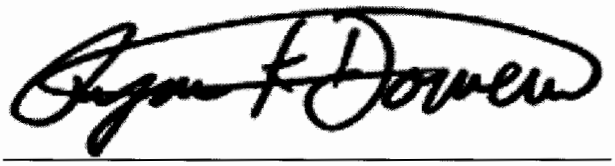
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO Plaintiff, vs. TAYLOR JAMES FAIRCHILD Defendant.	Case No. CR-2016-12011 MOTION TO PRODUCE PRELIMINARY HEARING TRANSCRIPT

COMES NOW, TAYLOR JAMES FAIRCHILD, the defendant above-named, by and through counsel, Ryan K. Dowell, Canyon County Public Defender's Office, and moves this honorable court for an Order to produce the record of preliminary hearing held in this matter on the 22nd day of July, 2016 in front of the Honorable Judge Gary D. Demeyer leading to the filing of the Information in this matter.

THIS MOTION is made pursuant to the provisions of Idaho Rules of Criminal Procedure 5.2.

DATED this 25th day of July, 2016



Ryan Dowell, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 25th day of July, 2016, a copy of the foregoing MOTION TO PRODUCE PRELIMINARY HEARING TRANSCRIPT was served on the following named persons at the addresses shown and in the manner indicated.

Canyon County Prosecuting Attorney Canyon County Courthouse 1115 Albany Street Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery-Court Mailbox [ ] Electronic Mail
Clerk of the Court-Criminal Proceeding Canyon County Courthouse 1115 Albany Street, Rm 201 Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery [ ] Electronic Mail

DATED this 25th day of July, 2016.

Juana Delgado

Canyon County Public Defender's Office

JD
Ryan K. Dowell, Deputy Public Defender, ISB #7796
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
Canyon County Administration Building
111 N. 11th Ave, Suite 120
Caldwell, ID 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Email: rdowell@canyonco.org

Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO Plaintiff, vs. TAYLOR JAMES FAIRCHILD Defendant.	Case No. CR-2016-12011 ORDER TO PRODUCE PRELIMINARY HEARING TRANSCRIPT

The above named Defendant having filed a Motion for an Order to produce the record of the Preliminary Hearing of the above named Defendant, good cause appearing and under authority of Idaho Criminal Rule 5.2 therefore;

IT IS FURTHER ORDERED AND THIS DOES ORDER a transcript of the Preliminary Hearing proceedings be prepared within 30 days of the filing of this Order and delivered to the Court, prosecuting attorney and defense counsel thereafter, to be prepared by the court reporter assigned at that hearing.

IT IS FURTHER ORDERED, that:

Based upon Idaho Criminal Rule 5.2 the defendant has previously been determined by a court to indigent as the public defender was appointed and therefore order the payment of the preliminary hearing transcript to be conducted at county expense. To be prepared by Patty Terry

DATED this 27 day of July, 2016

Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of July, 2016, I served a true and correct copy of the foregoing document, ORDER TO PRODUCE PRELIMINARY HEARING TRANSCRIPT, upon the individual(s) named below in the manner noted:

☑ By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
☐ By depositing copies of the same in the United States Mail, postage prepaid first class.
☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
☐ By faxing copies of the same to said attorney(s) at the facsimile number:

Canyon County Prosecutor's Office
1115 Albany Street
Caldwell, Idaho 83605

☑ By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
☐ By depositing copies of the same in the United States Mail, postage prepaid first class.
☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
☐ By faxing copies of the same to said attorney(s) at the facsimile number:

Canyon County Public Defender
111 N. 11th Ave, Ste 120
Caldwell, Idaho 83605

☑ By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
☐ By depositing copies of the same in the United States Mail, postage prepaid first class.
☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
☐ By faxing copies of the same to said attorney(s) at the facsimile number:

Transcript Clerk
Canyon County Courthouse
Caldwell, Idaho 83605

CHRIS YAMAMOTO
Clerk of the Court

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GREGORY M. CULET** DATE: **August 5, 2016**

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	COURT MINUTES CASE NO: CR2016-12011*C TIME: 9:00 a.m. REPORTED BY: Christine Rhodes DCRT 5 (10:20-10:25)

This having been the time heretofore set for **arraignment** in the above entitled matter, the State was represented by Mr. Matthew Bever, Deputy Prosecuting Attorney for Canyon County and the defendant was present in court with counsel, Mr. Scott Gatewood

The Court called the case and determined the defendant's true name was charged. The Court advised the defendant of the charge in the above referenced case and possible penalties for the same.

The Court determined the defendant had received a copy of the Information and waived formal reading of the same. In answer to Court's inquiry, the defendant indicated he understood the nature of the charge and the maximum possible penalties.

In answer to the Court's inquiry, Mr. Gatewood indicated the defendant would enter a plea of **not guilty** and **demand speedy trial**.

The Court set this matter for **pretrial conference the 3rd day of October 2016 at 9:00 a.m. and a three day jury trial commencing the 1st day of November 2016 at 9:00 a.m., both before Judge Southworth.** The Court inquired regarding the issue of bail.

Mr. Gatewood advised the Court he had no notes in his file regarding bond and requested a set over to next week for the motion.

The Court set this matter for a **bond reduction motion the 12th day of August 2016 at 9:00 a.m. before this Court.**

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings or the posting of bond.

K. Beckley
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GREGORY M. CULET** DATE: **AUGUST 12, 2016**

THE STATE OF IDAHO Plaintiff, vs **TAYLOR JAMES FAIRCHILD,** Defendant.	COURT MINUTES CASE NO: **CR-2016-12011-C** TIME: 9:00 A.M. REPORTED BY: Kathy Klemetson DCRT 5 (1225-1229)

This having been the time heretofore set for **motion for bond reduction** in the above entitled matter, the State was represented by Mr. Christopher Boyd, Deputy Prosecuting Attorney for Canyon County, and the defendant appeared in court with counsel, Mr. Scott Gatewood.

The Court called the case, noted the matter was set for defendant's motion for bond reduction.

Mr. Gatewood presented argument in support of the motion and requested the Court release the defendant on his own recognizance. Mr. Gatewood noted the defendant is currently being supervised on misdemeanor probation in Bingham County.

Mr. Boyd submitted to the Court's discretion and noted the State had no specific objection.

The Court expressed views and **granted** the motion and released the defendant on his own recognizance to report to Pre Trial Release Services.

Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 8/12/16 AT 1226 P.M.
CLERK OF THE DISTRICT COURT
BY _____, DEPUTY

STATE OF IDAHO,
Plaintiff,
-vs-
Taylor J Fairchild
Defendant,

Case No. CR-16-12011-C

ORDER FOR

☒ Conditional Release/Pretrial Services
☐ Release on Own Recognizance
☐ Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

☒ Defendant is Ordered released

☒ On own recognizance ☐ Placed on probation ☐ Case Dismissed

☐ Bond having been set in the sum of $ _____ ☐ Total Bond

☐ Bond having been ☐ increased ☐ reduced to the sum of $ _____ ☐ Total Bond

☐ Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:

☒ Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:

☒ Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____.

☒ Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.

☒ Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.

☐ Not operate or be in the driver's position of any motor vehicle.

☐ Abide by any No Contact Order and its conditions.

☐ Submit to ☐ GPS ☐ Alcohol monitoring as directed by Pretrial Services.
Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.

OTHER: _____.

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 8/12/16 Signed: _____
Judge

☒ White - Court ☒ Yellow – Jail/Pretrial Services ☒ Pink – Defendant 10/11

RYAN K. DOWELL, Deputy Public Defender
CANYON COUNTY PUBLIC DEFENDER
Canyon County Administration Building
111 N. 11th Ave., Suite 120
Caldwell, Idaho 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Idaho State Bar # 7796
rdowell@canyonco.org

Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

TAYLOR FAIRCHILD,

Defendant.

CASE NO. CR-2016-12011-C

MOTION TO SUPPRESS EVIDENCE PURSUANT TO IDAHO CRIMINAL RULE 12

COMES NOW, the Defendant, by and through the Canyon County Public Defender, Ryan K. Dowell, hereby moves this Honorable Court for an ORDER, pursuant to Idaho Criminal Rule 12(b), suppressing evidence on the grounds that it was illegally obtained. This motion is for the reason that the State's evidence, including the statements of the Defendant, were seized without a warrant and in violation of the Fourth Amendment of the United States Constitution and Article 1, § 17 of the Idaho Constitution. Defendant respectfully requests oral argument and evidentiary hearing.

DATED September 1, 2016

Ryan K. Dowell
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2016, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

X By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.
☐ By depositing copies of the same in the United States Mail, postage prepaid first class.
☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.
☐ By faxing copies of the same to said attorney(s) at the facsimile number:

Canyon County Prosecutor's Office
1115 Albany Street
Caldwell, Idaho 83605

Ryan K. Dowell, Attorney for Defendant

RYAN K. DOWELL, Deputy Public Defender
CANYON COUNTY PUBLIC DEFENDER
Canyon County Administration Building
111 N. 11th Ave., Suite 120
Caldwell, Idaho 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Idaho State Bar # 7796
rdowell@canyonco.org

Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

TAYLOR FAIRCHILD,

Defendant.

CASE NO. CR-2016-12011-C

BRIEF IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

COMES NOW, the Defendant, by and through the Canyon County Public Defender, Ryan K. Dowell, and submits a BRIEF IN SUPPORT OF MOTION TO SUPPRESS.

STATEMENT OF FACTS

All of the facts as provided herein come directly from Officer Phillips's (hereinafter Officer) report along with Officer Phillips testimony at the preliminary hearing on this case. On 7/8/16 a call was made to the police regarding odd behavior in which two men were sitting in a Dodge Ram whereby one of the men pulled up in a passenger car (Hyundai) and they were sitting alongside the road in the Ram pickup. The caller provided license plate numbers for both vehicles. While enroute Officer ran the plates for both vehicles. The Officer had previous contacts with the "owner" of the

Dodge Ram, to wit Philip Wietz. That prior contact involved Mr. Wietz as being suicidal and having possession of drugs and a firearm. When the Officer arrived he witnessed the Dodge Ram drive away. The Officer did not identify the driver of that vehicle. The driver of the Hyundai drove directly towards the Officer. The Officer thereafter turned on his overhead lights to stop the Hyundai and also stuck out his arm to waiver the driver of the Hyundai to stop. At the preliminary hearing the officer conceded he was "stopping" this vehicle and that he had not observed the driver of this vehicle violate any traffic laws. It should be reiterated that the officer had not identified any individuals and did not observe any law violation when he stopped this vehicle.

The defendant was identified as the driver of the Hyundai. The defendant had an active warrant for his arrest, a search of his person was completed, a crystal like substance was obtained, and the defendant was charged with the offenses in this case.

LEGAL BASIS FOR SUPRESSION

1. **Probable cause is required to stop or pull over a motor vehicle based upon the Fourth Amendment**

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

There are three (3) types of contacts between law enforcement and private individuals, including (1) consensual encounters which is not a seizure and no

justification is required; (2) stop/investigative detention justified by reasonable suspicion; and (3) actual arrests justified by probable cause. *State v. Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct.App. 1995); *State v. Zubizareta*, 122 Idaho 823, 839 P.2d 1237 (Ct.App. 1992); and *State v. Knapp*, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991).

Whenever an officer stops an individual and restrains their freedom, even momentarily, that person is seized within the meaning of the Fourth Amendment, and therefore, the stop and detention must comply with the constitutional standards of reasonableness. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968); *Matter of Clayton*, 113 Idaho 817, 819, 748 P.2d 401 (1988); and *State v. Waldie*, 126 864, 893 P.2d 811 (Ct.App. 1995). The stop and detention of a suspect is justifiable under the Fourth Amendment only if the officer has a reasonable suspicion, based on specific and articulable facts, that the suspect has been, is, or is about to engage in criminal activity. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574 (1975); *State v. Benefiel*, 131 Idaho 226, 953 P.2d 976 (1998); and *State v. Manthei*, 130 Idaho 237, 939 P.2d 556 (1997). The stop must be based on more than mere speculation, inarticulated hunches or instinct. See *Terry*; *State v. Flowers*, 131 Idaho 205, 953 P.2d 645 (Ct.App. 1998); and *State v. Emory*, 119 Idaho 661, 664, 809 P.2d 522, 525 (Ct.App. 1991).

Ordinary and routine traffic stops are a seizure within the meaning of the Fourth Amendment, and therefore, the stop must be based on reasonable, articulable suspicion that the vehicle is being driven in violation of the traffic laws or that the vehicle or an occupant has been or is about to engage in criminal activity. *United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690 (1981); *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979); and *State v. Nickerson*, 132 Idaho 406, 973 P.2d 758 (1999). Moreover, a reasonable

suspicion requires more than a "'mere hunch' or 'inchoate and unparticularized suspicion.'" *State v. Bishop,* 146 Idaho 804, 203 P.3d 1203, 1211 (2009); (quoting *Alabama v. White*, 496 U.S. 325, 329, 110 S.Ct. 2412, 2415, 110 L.ed.2d 301, 308 (1990)). Whether reasonable suspicion exists depends on the particular facts surrounding the stop.

It is well established law that an individual has a reasonable or legitimate expectation of privacy where there is a subjective expectation of privacy in the area searched or seized and society is willing to accept the subjective expectation of privacy. *Smith v. Maryland*, 442 U.S. 735, 99 S.Ct. 2577 (1979); *Katz v. United States*, 289 U.S. 347, 88 S.Ct. 507 (1967); and *State v. Johnson*, 126 Idaho 859, 893 P.2d 806 (Ct.App. 1995). Generally the driver of a vehicle has standing to contest the reasonableness of an investigatory stop as well as the continued detention. *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984).

Warrantless searches and seizures are presumptively unreasonable and in violation of the Fourth Amendment, thus if it is established that the warrantless search or seizure infringed on an individual's legitimate privacy interest, the state must show that the search or seizure fell within the delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982 (1991); *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022 (1971); and *State v. Weaver*, 127 Idaho 288, 900 P.2d 196 (1995). Evidence obtained by searches and seizures in violation of an individual's Fourth Amendment rights must be suppressed, as "fruit of the poisonous tree." *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961); and *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927). In

summary, the evidence acquired as a result of a constitutionally impermissible search or seizure will be excluded unless the causal connection between the seizure and the acquisition has been broken. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963); and *State v. Bainbridge*, 117 Idaho 245, 787 P.2d 231 (1990).

2. Reasonable suspicion did not exist to stop the defendant

In the case before the court the officer provided his reasons for stopping the defendant in his report. A call had been received by dispatch that a "green passenger" car and a red Dodge Ram truck were stopped on a dirt road adjacent to (fill in). The caller indicated that a male got out of the "green" car and got into the truck and, further, that the two men had been in the truck for about "ten minutes." The caller provided the license plate number of at least one, if not both cars. There was no further clarification as to how long after the incident the caller called dispatch. No other information was relayed in the call.

Officer Phillips arrived at the location and confirmed that a red Dodge Ram was present and a black, not green, Hyundai. Whatever license plate information that was provided by the caller matched at least the truck, if not the Hyundia also. Officer Phillips drove down the dirt road and observed the Dodge Ram drive out onto the roadway "quickly." The Hyundia began to drive in the direction toward Officer Phillips car. Officer Phillips motioned for the Hyundia to pull over which it did. The Dodge Ram continued down the road.

To support his reasonable suspicion for pulling over defendant the officer, in his report, Officer Phillips cites: 1) previous experience with Phillip Wietz, former owner of the Dodge Ram; specifically, the fact that Officer Phillips had, in a previous search of the

Dodge, found a gun and drugs; 2) the facts relayed to him from the call to dispatch; 3) the ten minutes the car was reported to have been at the location. This falls short of reasonable suspicion that defendant committed a crime required to stop a vehicle.

A court, in determining whether an officer had reasonable suspicion, based upon a tip, as in the case before the court, will look at whether the tip bear adequate indicia of reliability. *State v. Bishop,* 146 Idaho at 812, 203 P.3d at 1211. A citizen tip is often considered adequate to generate reasonable suspicion if the content of the tip and the basis of knowledge for the tip are adequate to substantiate reasonable suspicion. *Id.* at 813 and 1212. The court will look at whether a citizen informant is readily identifiable. *Id.* In other words, was the tip anonymous or can their identity be easily verified? *Id.* The court will also consider how detailed the information is in determining the adequacy of the basis of knowledge of the tipster. *Id.* at 814 and 1213. For example, a tipster that was a carnival worker was determined to be adequate to readily identify the provider. *Id.* at 813 and 1212.

The call into dispatch in the case before the court is likely a citizen tip. However, the tipster apparently did not provide his name. This is significant because it reduces the likelihood that his identity can be readily ascertained. Further, there is no indication that he provided any other information which would allow his identity to be ascertained. If, for example, the caller had stated that he was the property owner of the land on which the events that prompted the call occurred, it could be argued that the caller's identity is readily ascertainable.

Significantly, the tipster also did not indicate how long before his call the events he said observed took place. Further, the caller described the car as a "green" Hyundai,

not a black Hyundia. The significance of this is that, even in the dark, a green car is more likely to look black not the other way around. While the license plate number of the Hyundia matched, the inaccuracy is relevant in considering the indicia of reliability of the caller's information. *State v. Bishop,* 146 Idaho at 812, 203 P.3d at 1211.

Officer Phillips did not independently observe any behavior of criminal activity. When Officer Phillips arrived on the scene he determined that the two cars appeared to be those described by the caller and the cars, almost immediately, began to leave the area. In particular, the Hyundai moved, without indication of a traffic violation, toward the officer. If anything, the behavior of the Hyundai was consistent with lawful behavior. While the information regarding the license plate numbers was readily verifiable, (*See Id.)* by police; information regarding any criminal behavior was not. Officer Phillips must have reasonable suspicion of any car he stops. He cannot use the fact that the Dodge Ram left the area "quickly" to justify stopping the Hyundai.

Besides the fact that there was no indication the Dodge Ram violated any traffic laws, actions by the Dodge Ram should not be considered in stopping the Hyundia, particularly when, as in this case, the Hyundia was not connected to the activity observed by the officer. Officer Phillips, before stopping the Hyundia, must consider specifically what reasonable suspicion he has of criminal activity with respect to that automobile, not another automobile in the close area. In other words, Officer Phillips cannot use "suspicious behavior" of one vehicle to justify stopping another vehicle. The court must look only at the officer's reasonable suspicion of criminal conduct by the Hyundai, yet he cites the "quick" entry onto the main roadway to support his conclusion that drug activity between the two cars.

Returning to the three points Officer Phillips articulated to support reasonable suspicion of criminal activity; first was his previous experience in dealing with the listed owner of the Dodge Ram, Philip Wietz specifically; previously discovering weapons and drugs in the Dodge Ram while driven by Mr. Wietz. This fact has little or no relevance to the potential for criminal activity on the part of a subsequent driver of another vehicle. There was no evidence that Officer Phillips confirmed the driver of the Ram. Reasonable suspicion that once exists does not follow a vehicle through subsequent chain of possession. This factor should have no bearing on reasonable suspicion. Had the officer confirmed that Mr. Wietz was driving the car and/or had he been given reason to believe the truck was stolen, Officer Phillips may have had reasonable suspicion of criminal activity.

Second, Officer Phillips relied upon the comments of the caller into dispatch. In addition to the fact that the tip did not meet the standard of citizen-informant because the identity of the tipster is not readily identifiable. The reliability of the basis of the information provided by the caller was also not reliable. The call was of suspicious circumstances, not criminal behavior observed by the caller. The caller did not claim to see any criminal conduct take place. The call was of "suspicious circumstances." As a result, the officer should have observed and confirmed the information to establish reasonable suspicion. The caller did not even speculate as to any criminal activity resulting from his observations. In fact, the caller said he did not know what was going on. The basis of the caller's information was inadequate to provide reasonable suspicion for the officer absent substantiation by the officer.

The third factor Officer Phillips cited to support reasonable suspicion was the ten

minute period of time that the caller apparently observed during which defendant was in the Dodge Ram. This is simply restating a portion of the second factor; the information provided by the caller. It is not an independent basis of reasonable suspicion.

For these reasons, Officer Phillips lacked probable cause to initially stop the Hyundai and the initial stop violated defendant's Fifth Amendment right to be free of unreasonable searches and seizures.

3. A proper stop will be a violation of the Fourth Amendment if the scope of the detention does not tie closely to the purpose of the original stop.

The court performs a "dual inquiry;" once the court determines that a stop was proper at its inception the stop must be reasonably related in scope to the circumstances which justified it in the beginning. *See State v. Perez-Jungo,* 156 Idaho 609, 614, 329 P.3d 391, 396 (Ct App. 2014) (citing *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct App. 2004); *State v. Parkinson,* 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct App. 2000)). An Investigative detention is acceptable if the police have "specific articulable suspicion" that the detained person has or is about to commit a crime. *Id.*

Whether or not the police have a specific articulable suspicion is based upon the totality of the circumstances. *See State v. Sheldon,* 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct App. 2003) (citing *State v. Rawlings,* 121 Idaho 930, 932, 829 P.2d 520, 522 (1992). A detaining officer must show "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* (quoting *United States v. Cortez,* 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *State v. Salato,* 137 Idaho 260, 264, 47 P.3d 763, 767 (Ct. App. 2001)). Suspicion may, however shift from one offense to another. *Id.* At 984 and 1224 (citing *State v. Parkinson,* 135 Idaho

357, 362, 17 P.3d. 301, 306 (Ct App. 2000); *State v. Myers,* 118 Idaho 608, 613, 798 P.2d. 453, 458 (Ct App. 1990)). Even a short detention must be tied to the purpose of the original stop. *State v. Gutierrez,* 137 Idaho 647, 652, 51 P.3d. 461, 466 (Ct. App. 2007) (criticized on other grounds). Even a warrants check requires reasonable suspicion to detain and support the inquiry. *See State v.Gutierrez,* 137 Idaho at 652 and 466. While a reasonable suspicion standard is less than probable cause to arrest; both the quantity and content will be considered in the determination. *See State v. Sheldon* 139 Idaho at 984 and 1224. In other words, if the tip has a low level of reliability then other evidence must be greater. *See id.*

4. Even assuming the stop had been proper, the continued detention of defendant was without reasonable suspicion because it exceeded the scope of the purpose of the original stop.

Officer Phillips is clear in his report that he stopped the Hyundai based upon a suspicion of a drug transaction. He approached the Hyundai and asked for identification and asked where the defendant was coming from. Defendant indicated that he was staying at a friend's house. Curiously, Officer Phillips did not provide the address given by defendant in his report for consideration. He said only that the address "sounded like" one off Carnegie Street and Barkley Way. Although he apparently does not make an effort to clarify, he opines that the explanation is inadequate because Laster runs "parallel" to Laster Lane. He makes no other effort to clarify his reasoning nor does he follow up with this line of questioning to determine if defendant could clarify his concern. If Officer Phillips further questioned defendant it should have been directed at

confirming or dispelling this concern.

Instead, Officer Phillips went on to ask defendant if he knew the person in the red Dodge Ram. Defendant told him he did not. Then, a second time defendant denies association with the red truck. At this point nothing Officer Phillips has seen refuted this claim by defendant. Further, defendant explained the reason he is parked on Laster, because he will not have to turn corners when leaving. Officer Phillips made no further inquiry, therefore, it is unclear if defendant's explanation was reasonable. For example, if defendant was trying to avoid left hand turns into traffic and, thereby, to avoid unnecessary traffic delay. Officer Phillips left the explanation at that, and did not explain, in his report, any reason why the provided explanation did not make sense, if that is the case. Instead, he lengthened the detention by running a warrant check.

At that point Officer Phillips had gained no more information to bolster his initial hunch of drug activity than he had upon pulling over the vehicle; nor had he gained any reasonable suspicion that any other offense occurred to shift a continued stop into another area of investigation. The continued detention to run a warrant check is not based upon reasonable suspicion and is a violation of defendant's Fourth Amendment rights. It is only after these violations of defendant's rights that he found an existing warrant as an exploitation of the prior illegal stop and detention.

5. There existed no intervening circumstances which would have purged the illegality of the detention

The state may attempt to argue that, despite the illegality of the detention, evidence gleaned from the incident should be admissible as evidence because intervening

circumstances purged the illegality. In *State v. Page,* 140 Idaho 841, 103 P.3d 454 (2004), a police officer noticed Mr. Page walking down the middle of a roadway carrying some bags. *See id.* at 455 and 842. The roadway was clear of cars and the area had no sidewalks, however, the officer stopped behind Page and approached him to talk to him. *See id.* at 456 and 843. The officer exercised a "community caretaker" function as the basis for the stop. *Id.* In fact, the officer's questions, upon approaching Page, were directed at his well-being. *See id.* This was what is characterized as a level one encounter. Page was on foot not in a car.

The officer asked Page for some identification and was given a driver's license. *See id.* The officer went back to his vehicle after telling Page that he was going to "check" his name with the station to "let them know who he had stopped." *Id.* The officer was then told that an outstanding warrant existed. *See id.* In the course of arresting Page on the warrant illegal drugs were found on Page's person. *See id.*

The defendant, on appeal, did not argue that the initial stop was unlawful; only that the detention was. Defendant conceded that the "community caretaker" function was proper to stop Page, who was on foot. *Id.* The trial court grated the motion to suppress the evidence based on the detention. The Idaho Supreme Court, however, disagreed for a very specific reason. The Court determined that an "intervening circumstance" had occurred between the stop and the running of the warrant check which purged any illegality with respect to the detention. The Court looked at all the circumstances surrounding the stop and actually agreed that no compelling reason existed to seize Page's driver's license and conduct a warrant check. *See id.* at 458 and 845. The Court indicated that once the community caretaker function was accomplished the officer must

have additional reason to further detain Page. *See id.* Therefore, this case does not allow police in any circumstances to allow for a warrants check. In fact, the Court specifically reiterated that random stops to check for warrants is a Fourth Amendment violation. *See id.*

The Court, however, points out that in this instance the discovery of the warrant was "attenuated" from the illegal detention. *See id.* The Court goes on to list three factors to determine whether "the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful conduct. . . ". *Id.* The factors are: 1) the elapsed time between the misconduct and the acquisition of the evidence, 2) the occurrence of the intervening circumstances, and 3) the flagrancy and purpose of the improper law enforcement action. *Id.*

The case before this court, however, has significant differences from the Page case. First, the case before this court involves a level two encounter and the stopping of the individual in a car. While an officer can approach anyone on the street (a level one encounter) and engage in conversation, as long as the participant willingly remains, the officer must have reasonable suspicion of criminal activity to stop a vehicle; a level two encounter. In the case before the court the initial stop was unlawful in addition to the detention. As a result, the evidence in this matter was obtained from exploitation of two instances of prior police misconduct. Both the increase in time between the misconduct and the discovery of the evidence and the flagrancy and purpose of the improper law enforcement action are, therefore, substantially increased.

At the point when Officer Phillips ran a warrant check on defendant he had not asked him any questions regarding drug activity at all. It is only once Officer Phillips ran

defendant's information and discovers an outstanding warrant that questioning turns toward drug activity. All previous questioning related to simply where defendant was coming from and where he was staying and whether defendant knew the driver of the Dodge Ram. Defendant was not free to leave the level two stop as was Mr. Page in *State v. Page*. This fact changed significantly the analysis of the Court. Reliance on *Page* to claim that all stops allow for a warrant check and are ultimately justified as long as a warrant is discovered is misplaced. Further, it is clear that result was not intended by the Court.

Courts have made clear the limitations of the *Page* case. In *Padilla v. State*, 158 Idaho 184, 345 P.3d 243 (Ct App. 2014), the defendant was walking on a street when an officer noticed him. He did not appear intoxicated but did appear lost. Mr. Padilla ran after looking back at the officer and did not stop when the officer yelled for him to. Evidence seized on Padilla at the jail was suppressed.

State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct App. 2006), had a factual pattern very similar to the case before this court. Cardenas was in a parked car. The officer approached and asked Cardenas if he knew "Sarah." *Id.* at 706. Cardenas replied that he did not. *See id.* The officer then asked who owned the Sentra which Cardenas was driving. Cardenas told the officer that a friend owned it but he did not know the friend's name. *See id.* The officer requested to search the vehicle for ownership papers, which he did. *See id.* Eventually evidence of a crime was discovered. The Court found that Cardenas was seized when the officer told him he wanted to talk him. *See id.* This was despite the fact that the car had been parked. Because the detention resulted from an unlawful seizure there was a Fourth Amendment violation. *See id.* Certainly Officer

Phillips flagging over of the driving vehicle in the case before the court was a seizure. In *Cardenas* the court stated the burden is on the state to prove that the evidence obtained was, therefore, not tainted by the unlawful police conduct. *See id.* at 909 and 710. The court affirmed the trial court's granting of defendant's motion to suppress evidence.

The stop of the Hyundai driven by defendant was not justified; neither in its inception nor in the detention. Evidence gained in the unlawful stop; drugs found in defendant's pocket in the search incident to the arrest, and detention must be suppressed because no attenuating circumstances exist which would allow it into court against defendant. Therefore defendant requests that the evidence be suppressed based upon the violation of his Fourth Amendment right against unlawful search and seizure.

In this case, the police officers lacked a valid warrant to stop the vehicle, lacked probable cause to stop the vehicle, lacked any reasonable suspicion to stop the vehicle as a mere hunch is not good enough, this was not a consensual encounter, thus the evidence obtained by this unlawful stop, search, seizure and arrest must be suppressed.

Dated this 8 day of Sept, 2016

Ryan K. Dowell, Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of Sept, 2016, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

X By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.

☐ By depositing copies of the same in the United States Mail, postage prepaid first class.

☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

☐ By faxing copies of the same to said attorney(s) at the facsimile number: (208) _____.

Canyon County Prosecutor's Office

Ryan K. Dowell, Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	**CASE NO. CR-2016-12011-C** **ORDER RESETTING HEARING**

IT IS HEREBY ORDERED that the hearing upon Defendant's Motion to Suppress previously scheduled for October 12, 2016, shall be VACATED and RESCHEDULED for **FRIDAY, OCTOBER 7, 2016 at 11:00 A.M.** before District Judge George A. Southworth at the Canyon County Courthouse, Caldwell, Idaho.

Dated: September 20, 2016.

George A. Southworth
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of September, 2016, I caused to be served a true and correct copy of the foregoing **ORDER RESETTING HEARING** by the method indicated below, and addressed to the following persons:

CANYON COUNTY PROSECUTOR'S OFFICE
1115 Albany St
Caldwell, ID 83605

- ☐ U.S. Mail
- ☒ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ E-Mail

CANYON COUNTY PUBLIC DEFENDER
111 N. 11th Ave., Ste. 120
Caldwell, ID 83605

- ☐ U.S. Mail
- ☒ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ E-Mail

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk

dc

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	CASE NO. CR2016-12011 **OBJECTION TO MOTION TO SUPPRESS EVIDENCE**

COMES NOW the Plaintiff, State of Idaho, by and through its attorney, DALLIN CRESWELL and does hereby object to the Defendant's Motion to Suppress based on the argument(s) presented below.

Statement of Facts

Whereas the motion to suppress hearing has not yet been held, the State reserves presentation of facts for said hearing. Argument(s) below may include at least some anticipated fact(s).

Argument

Assuming for the sake of argument, that reasonable, articulable suspicion does not support the stop/detention of Defendant in this case, Idaho case law supports a finding in this case that any taint from such unlawful conduct is dissipated through application of the attenuation doctrine.

> Generally, evidence obtained as the result of an unlawful search may not be used against the victim of the search. Wong Sun v. United States, 371 U.S. 471, 485, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963). To determine whether to suppress evidence as "fruit of the poisonous tree," the court must inquire whether the evidence has been recovered as a result of the exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. Green, 111 F.3d at 520. The attenuation doctrine - whether the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful conduct - has been used to support the admission of evidence, including for example, voluntary confessions obtained after unlawful arrests. Id. at 522 (citing Brown v. Illinois, 422 U.S. 590, 45 L. Ed. 2d 416, 95 S. Ct. 2254 (1975)). There are three factors for a court to consider when determining whether unlawful conduct has been adequately attenuated. Id. at 521 (citing Brown, 422 U.S. at 603-04). The factors are: (1) the elapsed time between the misconduct and the acquisition of the evidence, (2) the occurrence of intervening circumstances, and (3) the flagrancy and purpose of the improper law enforcement action. Id.

State v. Page, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004).

The State begins this analysis by considering the elapsed time between the misconduct and the acquisition of the evidence. Officer Phillips found two baggies of suspect substance. About four to five minutes elapse from the time Officer Phillips stops Defendant to the discovery of the first baggie. About seven minutes have elapsed since the stop when Officer Phillips discovers the second baggie. In making the attenuation doctrine analysis in Page, the court found "the attenuation analysis in [United States v. Green, 111 F.3d 515 (7th Cir. 1997)] to be persuasive." Id. In Green, "only about five minutes elapsed between the illegal stop of the Greens and the search of the car." Green, 111 F.3d at 521. Green found that "this weighs against finding the search attenuated." Id. But, the very next sentence, Green added, "'However, the time span between the police misconduct and the [search] is not "dispositive on

the question of taint"' United States v. Fazio, 914 F.2d 950, 958 (7th Cir. 1990)." Id. Green then found that the intervening circumstances of discovering a warrant dissipated any taint caused by the illegal stop because in that case those intervening circumstances were not outweighed by flagrant official misconduct.

Clearly the discovery of a warrant against Defendant is an intervening circumstance. Green states, "Where a lawful arrest pursuant to a warrant constitutes the 'intervening circumstance' (as in this case), it is an even more compelling case for the conclusion that the taint of the original illegality is dissipated." Id. at 522.

The final factor to weigh is the flagrancy and purpose of unlawful official conduct. Law enforcement was responding to a call of suspicious circumstances. Responding to calls of suspicious circumstances is not an unusual or inappropriate function of their job, as they work to serve and protect our communities. Officer Phillips witnessed facts consistent with the call information when he responded. Officer Phillips stopped Defendant's vehicle because of its apparent involvement in or connection to what the officer was informed of and/or observed, as opposed to just being some random vehicle passing by the area. Even if the stop and detention in this case are not supported by reasonable, articulable suspicion of a violation of the law, that does not equal flagrant action or improper purpose.

Assuming an illegal stop in Defendant's case, the discovery of the evidence was not the result of exploitation of the illegality. Rather, the taint of the unlawful conduct was sufficiently dissipated to allow admission of the evidence. Green states the following language, which was essentially recognized by block quote in Page:

> It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant--in a sense requiring an official call of "Olly, Olly, Oxen Free." Because the arrest is lawful, a search incident to the arrest is also lawful. The lawful arrest

> of Avery constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop.

Green, 111 F.3d at 521. In Page, the court ruled:

> [], [O]nce the officer discovered that there was an outstanding warrant, an intervening event under Green, he did not have to release Page and was justified in arresting him at that point. Once he had effectuated a lawful arrest, he was clearly justified in conducting a search incident to that arrest for the purpose of officer or public safety or to prevent concealment or destruction of evidence. Chimel v. California, 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969). Therefore, it was not unlawful for the officer to seize the drugs discovered incident to that arrest.

Page, 140 Idaho at 846-47.

The Page decision is simpler than Defendant's brief may indicate. Defendant tries to create an issue by talking about "level one" and "level two" encounters. But, this Court will not find any such terminology in the Page decision. It is irrelevant to the attenuation doctrine application in this case that the detention in Page was preceded by a consensual encounter and the stop in the present case was not. That attenuation doctrine analysis starts with an unlawful stop or detention. In Page, the unlawful detention happened to have occurred during a consensual encounter. In the present case, the State is assuming for the sake of argument that an unlawful stop occurred when the officer stopped Defendant's vehicle. It is also irrelevant for the attenuation doctrine analysis in this case that Defendant's case involves a stop by vehicle and that the Page case involved a detention by foot. A stop is a stop. Regardless of whether law enforcement stops or detains an individual, by foot or by vehicle, the Fourth Amendment requirements are the same: reasonable, articulable suspicion. In fact, the Green decision, which the Page decision finds persuasive, involved the unlawful stop of a vehicle.

Defendant's brief rather generally states, "Courts have made clear the limitations of the *Page* case." Brief in Support of Motion to Suppress Evidence, 14. Yet, despite the plural

indicator in the word "Courts", the only case then cited by Defendant on this subject is Padilla v. State, 158 Idaho 184, 345 P.3d 243 (Ct. App. 2014). In referring to Padilla, Defendant presents an insufficient review of that case. Defendant fails to acknowledge that Padilla is distinguishable from the present case inasmuch as the search leading to discovery of the evidence in Padilla occurred before the discovery of the arrest warrant; a fact which precluded the arrest warrant from being considered an intervening circumstances in that case. Nevertheless, the language in the Padilla decision – a December 2014 decision – essentially stands as a testament that the attenuation doctrine continues to be applicable to cases such as the present case.

Defendant also refers to State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct. App. 2006). That case is inapposite to the application of the attenuation doctrine in this case.

Assuming an illegal stop in Defendant's case, the discovery of the evidence was not the result of exploitation of the illegality. Rather, the taint of the unlawful conduct was sufficiently dissipated to allow admission of the evidence.

Conclusion

Based on the foregoing, the State requests that the Court deny Defendant's motion to suppress in its entirety.

DATED this 26th day of September, 2016.

DALLIN CRESWELL
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 26th day of September, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
111 N. 11th Ave, Suite 120
Caldwell, ID 83605

() U.S. Mail, Postage Prepaid
() Hand Delivered
(X) Placed in Court Basket
() Overnight Mail
() Facsimile
() E-Mail

DALLIN CRESWELL
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GEORGE A. SOUTHWORTH** DATE: October 3, 2016

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	COURT MINUTE CASE NO: CR2016-12011*C TIME: 9:00 A.M. REPORTED BY: Patricia Terry DCRT2 (910-912)

This having been the time heretofore set for **pretrial conference** in the above entitled matter, the State was represented by Mr. Dallin Creswell, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present, represented by counsel, Mr. Ryan Dowell.

The Court reviewed prior proceedings and inquired as to the status of this case.

Mr. Dowell advised the Court this matter was not settled and would request the pretrial conference be continued for this Friday with the motion to suppress.

The Court noted the **motion to suppress was set for October 7, 2016 at 11:00 a.m. before Judge Southworth** and **jury trial for four days to commence on November 1, 2016 at 9:00 a.m. before Judge Southworth.**

The defendant was continued released on his own recognizance to Pretrial Services.

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Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GEORGE A. SOUTHWORTH** DATE: October 7, 2016

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	COURT MINUTE CASE NO: CR2016-12011*C TIME: 11:00 A.M. REPORTED BY: Patricia Terry DCRT2 (11:03-12:01)(1:44-1:47)

This having been the time heretofore set for **motion to suppress** in the above entitled matter, the State was represented by Mr. Dallin Creswell, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present in court, with counsel, Mr. Ryan Dowell.

The Court reviewed prior proceedings held, noted this was the time set for hearing on the defendant's motion to suppress and instructed Mr. Dowell to proceed.

Mr. Dowell advised the Court he filed an Affidavit which as he understood, shifted the burden to the State.

The Court indicated it would allow the State to proceed.

Mr. Creswell advised the Court the State had an evidentiary matter to address prior to calling the officer. The State had certain evidence it would like to present to the

Court, that being an audio CD of the reporting citizen speaking with dispatch and the Call Detail Report, and Mr. Creswell advised the Court as to the relevance of the evidence. Mr. Creswell requested the Court allow admission of that evidence for purposes of this hearing.

Mr. Dowell advised the Court that he was in no way challenging credibility of the call to dispatch, whether it was credible or not credible was not for him to determine and he had no issue with the call details coming in, his objection was a matter of what basis the officer was using to stop the vehicle and was there reasonable suspicion based on what he knew at that time.

The Court indicated it would allow the Call Detail Report and the audio CD for purposes of this hearing, but the Court was not making a decision at this point as to what extent, if any, the Court would consider that in making its decision.

State's exhibit #1, identified as the Call Detail Report was marked, and State's exhibit #2, identified as the audio CD of the call by the reporting citizen to dispatch was marked and each were Ordered admitted for purposes of this hearing.

Mr. Creswell advised the Court for the record, he had communicated with the defense prior to this date, and it was his understanding if the Court allowed the exhibits, the defense would stipulate to their admission.

Mr. Dowell advised the Court the defense would not object as far as foundation.

State's exhibit #2 was published from the beginning up until 2 minutes and 22 seconds into the recording.

In answer to the Court's inquiry, each of counsel waived the requirement that the Court Reporter report State's exhibit #2.

The State's first witness, **ERIC PHILLIPS,** was called and sworn by the clerk. Mr. Dowell advised the Court that for purposes of this hearing, the defense stipulated to law enforcement qualifications as a peace officer in the State of Idaho. The witness was direct-examined. State's exhibit #3 was marked and identified as a CD of the video recording of the officer's contact with the defendant. Mr. Creswell offered into evidence exhibit #3 and requested the exhibit be published. Mr. Dowell examined the witness in aid of objection, objected on the grounds of relevance, the objection was overruled and exhibit #3 was Ordered admitted and was published. The witness was cross-examined.

Mr. Creswell advised the Court that the State had no further evidence.

Mr. Dowell advised the Court the defense did not have additional evidence.

Mr. Creswell presented argument in opposition to the motion to suppress.

Mr. Dowell responded with argument in support of the motion and requested the Court suppress all evidence obtained.

The Court advised counsel it had one question to address, the officer received information that there may have been a warrant, but he didn't receive verification that the warrant was valid and still in effect until after he had already searched the defendant and inquired if that made any difference on the attenuation document.

Mr. Dowell indicated the Court already heard the testimony and could rely on that as far as he was concerned.

The Court took this matter under advisement and indicated it would issue a decision in due course.

The Court adjourned at 12:01 p.m.

Later this date. . . the Court reconvened at 1:44 p.m. Mr. Creswell was present on behalf of the State, and the defendant was not personally present, but was represented by Mr. Dowell.

Mr. Creswell noted that this Court had a question about some facts presented in the motion to suppress, and requested this Court reopen the record to allow the officer to come back this afternoon to present facts clarifying when he received confirmation of the warrant. If the Court was not willing to do that, Mr. Creswell requested the State be be allowed to submit additional briefing next Tuesday or Wednesday on what was already presented earlier today.

The Court indicated it would allow the State until next Tuesday, October 11th, to submit an Affidavit from the officer regarding when he received confirmation of the warrant, rather than reopening the testimony.

Mr. Creswell advised the Court his concern was that the State did not want to deprive the defense an opportunity to cross examine the witness if an Affidavit was submitted.

Mr. Dowell advised the Court if the officer was going to testify that he learned about the warrant at a certain point, there was nothing he could cross-examine him on, so if the State wanted to submit an Affidavit the defense was fine with that.

Upon request of Mr. Creswell, the Court indicated both sides could submit additional briefing, in addition to further points and authorities by 5:00 p.m. on October 14th.

The defendant was continued released on his own recognizance to Pretrial Services.

Deputy Clerk

dc

BRYAN F. TAYLOR
CANYON COUNTY PROSECUTING ATTORNEY
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

TAYLOR JAMES FAIRCHILD,

Defendant.

CASE NO. CR2016-12011

SUPPLEMENT TO OBJECTION TO MOTION TO SUPPRESS EVIDENCE

COMES NOW the Plaintiff, State of Idaho, by and through its attorney, DALLIN CRESWELL and does hereby submit this supplement to the State's previously filed objection to Defendant's motion to suppress evidence.

Attenuation Doctrine Analysis: Timing of Warrant Confirmation

At hearing on Defendant's motion to suppress, the Court inquired as to the timing of when Dispatch confirmed the existence of a warrant against Defendant. The Supreme Court of Idaho in State v. Page, 140 Idaho 841, 847, 103 P.3d 454, 460 states:

> It is important to note that had the drug evidence in this case been seized after the officer seized Page's license and took it back to the patrol vehicle, but

> prior to discovery of the valid warrant, the considerations outlined in Green would not justify the conclusion that the evidence was sufficiently attenuated from improper police conduct so as to be admissible. See, e.g., State v. Maland, ISCR , 140 Idaho 817, 103 P.3d 430, 2004 Ida. LEXIS 192 (November 24, 2004). In such a case, evidence [***18] seized prior to the arrest, unless justified by some other exception, would not be admissible simply because, ultimately, a valid arrest warrant was discovered. A judicial determination of probable cause focuses on the information and facts the officers possessed at the time. State v. Schwarz, 133 Idaho 463, 467, 988 P.2d 689, 693 (1999). It is only the fact that there was an intervening factor between the unlawful seizure and discovery of the evidence -- the discovery of the warrant in this case -- that creates the exception, which permitted the officer to arrest Page and made the subsequent seizure of evidence admissible.

In light of the possibility that analysis of the attenuation doctrine in this case may draw a distinction between the time Dispatch first notified the officer of a warrant and the time that warrant was confirmed, the State presents the facts and argument below.

Dispatch notified the officer of a warrant against Defendant. The officer received that notification prior to finding the first baggie of white crystal substance. However, Dispatch then had to confirm that the warrant was still valid and not just in their database. This requires Dispatch to go to the warrants section in Dispatch, get out the actual paperwork, and look at the warrant. When notified of a warrant, they (i.e. law enforcement) would detain at that point pending confirmation, so that is when the officer had asked Defendant to step out of the vehicle because as they were going to be continuing forward Defendant was going to be placed in custody for the warrant and if it was confirmed the officer would take Defendant to the Canyon County jail. Thus, while there is no evidence in the record establishing confirmation of the warrant prior to the discovery of the first baggie of white crystal substance, the evidence does support a finding that the officer was notified of a warrant against Defendant prior to finding that first baggie.

Furthermore, the evidence shows that the warrant was confirmed prior to the discovery of a second baggie of white crystal substance. Based on the officer's affidavit filed on October 11, 2016 and the video admitted into evidence at the hearing, the officer conducted a subsequent search of Defendant and while doing so advised Defendant he was under arrest for a warrant. The officer explains in his affidavit that he "would not have made that statement as heard in the video unless the warrant had been confirmed." Affidavit of Eric Phillips, 2. Subsequent to telling Defendant he was under arrest for a warrant, the officer found a second baggie of white crystal substance.

There are two pieces of potential evidence in this case: two baggies of white crystal substance. The first baggie was found after the officer was notified of a warrant against Defendant. The second baggie was found after the officer received confirmation of that warrant from Dispatch. The State earlier argued that assuming law enforcement performed an illegal traffic stop of Defendant, the discovery of the evidence is admissible pursuant to the attenuation doctrine.

The State recognizes that the Court may find it more difficult to apply the attenuation doctrine to the first baggie of substance inasmuch as the warrant had not yet been confirmed by Dispatch and Defendant was apparently not yet under arrest for that warrant. However, the State argues that even if the Court finds the attenuation doctrine insufficient to admit the first baggie of substance, the attenuation doctrine would still allow admissibility of the second baggie of substance, wherein it was found after the warrant was confirmed and after the officer told Defendant he was under arrest for the warrant.

Inevitable Discovery Analysis: If Stop is Lawful but Discovery of First Baggie is Unlawful

In the event the Court finds that there was a reasonable articulable suspicion for the traffic stop but that the discovery of the first baggie of substance is still inadmissible based on an unlawful search, then the State argues for admissibility of said baggie based on the inevitable discovery doctrine.

State v. Bunting, 142 Idaho 908, 915, 136 P.3d 379, 386 (Ct. App. 2006) states:

> The exclusionary rule is the judicial remedy for addressing illegal searches and bars the admission or use of evidence gathered pursuant to the illegal search. See Stuart v. State, 136 Idaho 490, 496, 36 P.3d 1278, 1284 (2001). An exception to the exclusionary [***18] rule is the inevitable discovery doctrine. Id. The inevitable discovery doctrine applies when a preponderance of the evidence demonstrates that the information would have inevitably been discovered by lawful methods. Nix v. Williams, 467 U.S. 431, 444, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984); State v. Gibson, 141 Idaho 277, 286 n.4, 108 P.3d 424, 433 n.4 (Ct. App. 2005).

Further, State v. Rowland, 158 Idaho 784, 787-88, 352 P.3d 506, 509-10 (Ct. App. 2015) provides that:

> This doctrine balances society's interests in deterring illegal police conduct and in having juries receive all probative evidence of a crime by only applying the exclusionary rule to put the government in the same, not a worse, position that it would have occupied absent the police misconduct. Nix, 467 U.S. at 443; State v. Russo, 157 Idaho 299, 306, 336 P.3d 232, 239 (2014); see also State v. Bower, 135 Idaho 554, 558, 21 P.3d 491, 495 (Ct. App. 2001) (noting that, because of the high cost the exclusionary rule imposes upon society by allowing the guilty to escape prosecution, it should be employed only when there has been a substantive violation of a defendant's constitutional rights). When the discovery of the evidence would have been inevitable as the result of other lawful means, the exclusionary rule [***9] fails to serve this purpose, and, therefore, does not apply. Nix, 467 U.S. at 443-44.
>
> Although those lawful means need not be the result of a wholly independent investigation, State v. Buterbaugh, 138 Idaho 96, 102, 57 P.3d 807, 813 (Ct. App. 2002), they must be the result of some action that actually took place (or was in the process of taking place) that would inevitably have led to the discovery of the unlawfully obtained evidence, Bunting, 142 Idaho at 915-16, 136 P.3d at 386-87. Indeed, the inevitable discovery doctrine was never intended to swallow the exclusionary rule by substituting what the police *should* have done

> for what they really did or were doing. State v. Holman, [**510] [*788] 109 Idaho 382, 392, 707 P.2d 493, 503 (Ct. App. 1985); Cook, 106 Idaho at 226, 677 P.2d at 539.

Other cases provided to the State on this subject – most of which are cited in the material above – are: Nix v. Williams, 467 U.S. 431 (1984); State v. Cook, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984); State v. Buterbaugh, 138 Idaho 96, 57 P.3d 807 (Ct. App. 2002) (e.g. "We therefore hold that a wholly independent investigation, while certainly relevant to whether discovery was inevitable, is not a prerequisite to application of the inevitable discovery exception." Buterbaugh, 138 Idaho at 102, 57 P.3d at 813); State v. Holman, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985); State v. Zapp, 108 Idaho 723, 701 P.2d 671 (Ct. App. 1985); Stuart v. State, 136 Idaho 490, 36 P.3d 1278 (2001); Murray v. United States, 487 U.S. 533 (1988); State v. Wigginton, 142 Idaho 180, 125 P.3d 536 (Ct. App. 2005).

If this Court finds that the traffic stop is supported by reasonable, articulable suspicion but that the discovery of the first baggie of substance is not admissible, then the Court is essentially concluding that the search which led to that discovery was an unlawful search. The question then, under the inevitable discovery doctrine, is whether a preponderance of the evidence shows that the first baggie would have inevitably been discovered by lawful methods.

> "The crucial inquiry for a court evaluating an inevitable discovery claim is whether proper and predictable police investigatory procedures [***14] normally followed by the police department in question would have uncovered the evidence without the illegality." W. RINGEL, SEARCHES & SEIZURES, ARRESTS AND CONFESSIONS § 3.3(b) at 3-17 (1983).
>
> ....
>
> Finally, it should be recognized that normally HN7 the state must establish two things before the inevitable discovery doctrine can be applied. The state must show first that "certain proper [***16] and predictable investigatory procedures would have been utilized." Second, the state must demonstrate that "those procedures would have inevitably resulted in the discovery of the evidence in question." LaCount and Girese, *The "Inevitable Discovery Rule," An Evolving*

Exception To The Constitutional Exclusionary Rule, 40 ALB.L.REV. 483, 491 (1976). Although the state in the present case offered no affirmative showing of these two elements, the record amply supplies the required facts....

State v. Cook, 106 Idaho 209, 216-17, 677 P.2d 522, 529-30 (Ct. App. 1984). Because of the discovery of the warrant in this case, there is little doubt Defendant would have been searched and arrested after the warrant was confirmed. That search would have led to the discovery of the first baggie of substance, as well as the second baggie of substance.

DATED this 13th day of October, 2016.

DALLIN CRESWELL
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 13th day of October, 2016, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
111 N. 11th Ave, Suite 120
Caldwell, ID 83605

() U.S. Mail, Postage Prepaid
() Hand Delivered
(X) Placed in Court Basket
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() Facsimile
() E-Mail

DALLIN CRESWELL
Deputy Prosecuting Attorney

RYAN K. DOWELL, Deputy Public Defender
CANYON COUNTY PUBLIC DEFENDER
Canyon County Administration Building
111 N. 11th Ave., Suite 120
Caldwell, Idaho 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Idaho State Bar # 7796
rdowell@canyonco.org

Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO, Plaintiff, vs. TAYLOR FAIRCHILD, Defendant.	CASE NO. CR-2016-12011-C MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

COMES NOW, the Defendant, by and through the Canyon County Public Defender, Ryan K. Dowell, and submits a MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS.

LEGAL BASIS FOR SUPRESSION

PROBABLE CAUSE GENERAL

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

There are three (3) types of contacts between law enforcement and private individuals, including (1) consensual encounters which is not a seizure and no justification is required; (2) stop/investigative detention justified by reasonable suspicion; and (3) actual arrests justified by probable cause. *State v. Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct.App. 1995); *State v. Zubizareta*, 122 Idaho 823, 839 P.2d 1237 (Ct.App. 1992); and *State v. Knapp*, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991).

Whenever an officer stops an individual and restrains their freedom, even momentarily, that person is seized within the meaning of the Fourth Amendment, and therefore, the stop and detention must comply with the constitutional standards of reasonableness. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968); *Matter of Clayton*, 113 Idaho 817, 819, 748 P.2d 401 (1988); and *State v. Waldie*, 126 864, 893 P.2d 811 (Ct.App. 1995). The stop and detention of a suspect is justifiable under the Fourth Amendment only if the officer has a reasonable suspicion, based on specific and articulable facts, that the suspect has been, is, or is about to engage in criminal activity. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574 (1975); *State v. Benefiel*, 131 Idaho 226, 953 P.2d 976 (1998); and *State v. Manthei*, 130 Idaho 237, 939 P.2d 556 (1997). The stop must be based on more than mere speculation, inarticulated hunches or instinct. See *Terry*; *State v. Flowers*, 131 Idaho 205, 953 P.2d 645 (Ct.App. 1998); and *State v. Emory*, 119 Idaho 661, 664, 809 P.2d 522, 525 (Ct.App. 1991).

Ordinary and routine traffic stops are a seizure within the meaning of the Fourth Amendment, and therefore, the stop must be based on reasonable, articulable suspicion that the vehicle is being driven in violation of the traffic laws or that the vehicle or an occupant has been or is about to engage in criminal activity. *United States v. Cortez*, 449

U.S. 411, 101 S.Ct. 690 (1981); *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979); and *State v. Nickerson*, 132 Idaho 406, 973 P.2d 758 (1999). Moreover, a reasonable suspicion requires more than a "'mere hunch' or 'inchoate and unparticularized suspicion.'" *State v. Bishop,* 146 Idaho 804, 203 P.3d 1203, 1211 (2009); (quoting *Alabama v. White*, 496 U.S. 325, 329, 110 S.Ct. 2412, 2415, 110 L.ed.2d 301, 308 (1990)). Whether reasonable suspicion exists depends on the particular facts surrounding the stop.

It is well established law that an individual has a reasonable or legitimate expectation of privacy where there is a subjective expectation of privacy in the area searched or seized and society is willing to accept the subjective expectation of privacy. *Smith v. Maryland*, 442 U.S. 735, 99 S.Ct. 2577 (1979); *Katz v. United States*, 289 U.S. 347, 88 S.Ct. 507 (1967); and *State v. Johnson*, 126 Idaho 859, 893 P.2d 806 (Ct.App. 1995). Generally the driver of a vehicle has standing to contest the reasonableness of an investigatory stop as well as the continued detention. *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984).

Warrantless searches and seizures are presumptively unreasonable and in violation of the Fourth Amendment, thus if it is established that the warrantless search or seizure infringed on an individual's legitimate privacy interest, the state must show that the search or seizure fell within the delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982 (1991); *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022 (1971); and *State v. Weaver*, 127 Idaho 288, 900 P.2d 196 (1995). Evidence obtained by searches and seizures in violation of an individual's Fourth Amendment rights must be suppressed, as "fruit of the poisonous

tree." *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961); and *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927). In summary, the evidence acquired as a result of a constitutionally impermissible search or seizure will be excluded unless the causal connection between the seizure and the acquisition has been broken. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407 (1963); and *State v. Bainbridge*, 117 Idaho 245, 787 P.2d 231 (1990).

REASONABLE SUSPICION

A court, in determining whether an officer had reasonable suspicion, based upon a tip, as in the case before the court, will look at whether the tip bear adequate indicia of reliability. *State v. Bishop,* 146 Idaho at 812, 203 P.3d at 1211. A citizen tip is often considered adequate to generate reasonable suspicion if the content of the tip and the basis of knowledge for the tip are adequate to substantiate reasonable suspicion. *Id.* at 813 and 1212. The court will look at whether a citizen informant is readily identifiable. *Id.* In other words, was the tip anonymous or can their identity be easily verified? *Id.* The court will also consider how detailed the information is in determining the adequacy of the basis of knowledge of the tipster. *Id.* at 814 and 1213. For example, a tipster that was a carnival worker was determined to be adequate to readily identify the provider. *Id.* at 813 and 1212.

FACTS, NOT THE CHARGE, GIVE RISE TO AN ARREST

Hernandez v. State, 132 Idaho 352, 972 P.2d 730 (Ct. App. 1998) address the issue of facts, not the charge, give rise to an arrest. In Hernandez the officer was conducting routine patrol in Caldwell, Idaho at 12:42 a.m. and observed Mr. Hernandez, outside of a bar looking around suspiciously and appeared to be a hand to hand delivery

of something. The officer had prior drug related dealings with one of the individuals and followed that vehicle to a residence. Mr. Hernandez exited the vehicle after reaching and collecting something from one of the other passengers. As Mr. Hernandez "hurried into the residence" the officer told Hernandez to stop and Hernandez looked at the officer then "hurried into the residence." Later the officer observed packages of white substance in the kitchen where Mr. Hernandez went after entering the house.

The court came to a conclusion that "this entire incident was treated as a *Terry* stop by the officer, and Hernandez dutifully complied and fully cooperated once he was summoned from the house. The state's argument is postured to provide hindsight justification for Hernandez's concededly illegal arrest for public urination." We will not permit the state to bootstrap an illegal arrest onto a retrospectively rationalized arrestable offense. *State v. Foldesi*, 131 Idaho 778, 780 n. 1, 963 P.2d 1215, 1217 n. 1 (Ct. App. 1998)(noting that officers cannot "lift themselves by their bootstraps" by demanding to search a vehicle and, if the occupant says "no," using that resistance as an excuse to arrest the occupant). The objective actions of Officer Damron in detaining Hernandez through the execution of the search warrant were at all times consistent with a *Terry* stop, and at no time was Hernandez placed in "police custody" consistent with an arrest. *Compare State v. Cootz*, 110 Idaho 807, 810, 718 P.2d 1245, 1248 (Ct. App. 1986)–49. It was only after the search warrant was fully executed and proved fruitless that Hernandez was arrested.

ACTIVATION OF PATROL CAR LIGHTS

In *State v. Mireles*, 133 Idaho 690, 991 P.2d 878 (Ct. App. 1999) the Idaho Court of Appeal determined that the activation of a patrol car's overhead lights is a stop and

detention. A person is seized within the meaning of the Fourth Amendment if, in view of all the circumstances, a reasonable person would have believed he or she was no longer free to leave. *Waldie*, 126 Idaho, 866. Once Hulse activated the police car's emergency lights, Mireles, assuming he was cognizant of the fact, was not free to drive away. *See* I.C. § 49–1404 (prohibiting fleeing or attempting to elude a police officer when signaled to stop by the officer's emergency lights and/or siren). Thus, the district court erroneously concluded that Mireles had not been detained. Because Mireles was technically detained, it was incumbent upon the state to prove a proper justification for the detention. *State v. Sevy*, 129 Idaho 613, 615, 930 P.2d 1358, 1360 (Ct. App. 1997).

UNUSUAL BEHAVIOR IN HIGH CRIME AREA

In *State v. Fry*, 122 Idaho 100, 831 P.2d 942 (Ct. App. 1991) the Idaho Court of Appeals addressed the issue of unusual behavior in a high crime area. The court ultimately concluded (1) defendant who was sitting in pickup in parking lot was "seized" within meaning of Fourth Amendment; (2) officers did not have objective basis for making investigative stop; and (3) officers were not exercising community caretaking function by approaching pickup and questioning driver. *Id.*

SCOPE

The court performs a "dual inquiry;" once the court determines that a stop was proper at its inception the stop must be reasonably related in scope to the circumstances which justified it in the beginning. *See State v. Perez-Jungo,* 156 Idaho 609, 614, 329 P.3d 391, 396 (Ct App. 2014) (citing *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct App. 2004); *State v. Parkinson,* 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct App. 2000)). An Investigative detention is acceptable if the police have "specific articulable

suspicion" that the detained person has or is about to commit a crime. *Id.*

Whether or not the police have a specific articulable suspicion is based upon the totality of the circumstances. *See State v. Sheldon,* 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct App. 2003) (citing *State v. Rawlings,* 121 Idaho 930, 932, 829 P.2d 520, 522 (1992). A detaining officer must show "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* (quoting *United States v. Cortez,* 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *State v. Salato,* 137 Idaho 260, 264, 47 P.3d 763, 767 (Ct. App. 2001)). Suspicion may, however shift from one offense to another. *Id.* At 984 and 1224 (citing *State v. Parkinson,* 135 Idaho 357, 362, 17 P.3d. 301, 306 (Ct App. 2000); *State v. Myers,* 118 Idaho 608, 613, 798 P.2d. 453, 458 (Ct App. 1990)). Even a short detention must be tied to the purpose of the original stop. *State v. Gutierrez,* 137 Idaho 647, 652, 51 P.3d. 461, 466 (Ct. App. 2007) (criticized on other grounds). Even a warrants check requires reasonable suspicion to detain and support the inquiry. *See State v.Gutierrez,* 137 Idaho at 652 and 466. While a reasonable suspicion standard is less than probable cause to arrest; both the quantity and content will be considered in the determination. *See State v. Sheldon* 139 Idaho at 984 and 1224.

PAGE & PADILLA

In *State v. Page,* 140 Idaho 841, 103 P.3d 454 (2004), a police officer noticed Mr. Page walking down the middle of a roadway carrying some bags. *See id.* at 455 and 842. The roadway was clear of cars and the area had no sidewalks, however, the officer stopped behind Page and approached him to talk to him. *See id.* at 456 and 843. The officer exercised a "community caretaker" function as the basis for the stop. *Id.* In fact,

the officer's questions, upon approaching Page, were directed at his well-being. *See id.* Page was on foot not in a car.

The officer asked Page for some identification and was given a driver's license. *See id.* The officer went back to his vehicle after telling Page that he was going to "check" his name with the station to "let them know who he had stopped." *Id.* The officer was then told that an outstanding warrant existed. *See id.* In the course of arresting Page on the warrant illegal drugs were found on Page's person. *See id.*

The defendant, on appeal, did not argue that the initial stop was unlawful; only that the detention was. Defendant conceded that the "community caretaker" function was proper to stop Page, who was on foot. *Id.* The trial court grated the motion to suppress the evidence based on the detention. The Idaho Supreme Court, however, disagreed for a very specific reason. The Court determined that an "intervening circumstance" had occurred between the stop and the running of the warrant check which purged any illegality with respect to the detention. The Court looked at all the circumstances surrounding the stop and actually agreed that no compelling reason existed to seize Page's driver's license and conduct a warrant check. *See id.* at 458 and 845. The Court indicated that once the community caretaker function was accomplished the officer must have additional reason to further detain Page. *See id.* Therefore, this case does not allow police in any circumstances to allow for a warrants check. In fact, the Court specifically reiterated that random stops to check for warrants is a Fourth Amendment violation. *See id.*

The Court, however, points out that in this instance the discovery of the warrant was "attenuated" from the illegal detention. *See id.* The Court goes on to list three

factors to determine whether "the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful conduct. . . ". *Id.* The factors are: 1) the elapsed time between the misconduct and the acquisition of the evidence, 2) the occurrence of the intervening circumstances, and 3) the flagrancy and purpose of the improper law enforcement action. *Id.*

Addressing the 3 factors in Page, the case before this court, however, has significant differences from the Page case. First, the case before this court involves an encounter that is more significant than that in Page (i.e. the stopping of the individual in a car vs. a consensual encounter on the street). Thus, the flagrancy and purpose behind the improper law enforcement action is more significant.

Regarding the passage of time it can be referred to both the call log which this court has as an exhibit along with the video of the stop which does not immediately start when the stop begins. The call report does not indicate when Phillips arrived on scene but we do know that he was the first officer on scene. We do see the call indicating the red vehicle driving off at 8:55:22 but no indication if that was reported during, before or after the stop. We can also see that Fairchild was detained at 09:02:45 which is more than 7 minutes later. Time can somewhat be inferred from the video of the stop and from testimony but several minutes had elapsed. Another issue with the lapse in time is that the search of Fairchild can be seen on the video but at the same time Phillips had made no indication of a warrant until after the search was completed, which both Page and Padilla indicate as an illegal seizure.

At the point when Officer Phillips ran a warrant check on defendant he had not asked him any questions regarding drug activity at all. It is only once Officer Phillips ran

defendant's information and discovers an outstanding warrant that questioning turns toward drug activity. All previous questioning related to simply where defendant was coming from and where he was staying and whether defendant knew the driver of the Dodge Ram. This fact changed significantly the analysis of the Court. Reliance on *Page* to claim that all stops allow for a warrant check and are ultimately justified as long as a warrant is discovered is misplaced. Further, it is clear that result was not intended by the Court. This would encourage rouge policing whereby police can simply stop vehicles randomly just too see if people have warrants.

Courts have made clear the limitations of the *Page* case. In *Padilla v. State*, 158 Idaho 184, 345 P.3d 243 (Ct App. 2014), the defendant was walking on a street when an officer noticed him. He did not appear intoxicated but did appear lost. Mr. Padilla ran after looking back at the officer and did not stop when the officer yelled for him to. Evidence seized on Padilla at the jail was suppressed.

State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct App. 2006), had a factual pattern very similar to the case before this court. Cardenas was in a parked car. The officer approached and asked Cardenas if he knew "Sarah." *Id.* at 706. Cardenas replied that he did not. *See id.* The officer then asked who owned the Sentra which Cardenas was driving. Cardenas told the officer that a friend owned it but he did not know the friend's name. *See id.* The officer requested to search the vehicle for ownership papers, which he did. *See id.* Eventually evidence of a crime was discovered. The Court found that Cardenas was seized when the officer told him he wanted to talk him. *See id.* This was despite the fact that the car had been parked. Because the detention resulted from an unlawful seizure there was a Fourth Amendment violation. *See id.* Certainly Officer

Phillips flagging over of the driving vehicle in the case before the court was a seizure. In *Cardenas* the court stated the burden is on the state to prove that the evidence obtained was, therefore, not tainted by the unlawful police conduct. *See id.* at 909 and 710. The court affirmed the trial court's granting of defendant's motion to suppress evidence.

In this case, the police officers lacked a valid warrant to stop the vehicle, lacked probable cause to stop the vehicle, lacked any reasonable suspicion to stop the vehicle as a mere hunch is not good enough (which is exactly what this case entails), this was not a consensual encounter, thus the evidence obtained by this unlawful stop, search, seizure and arrest must be suppressed.

Dated this 13 day of Oct, 2016

Ryan K. ~~Dowell~~, Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of Oct, 2016, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

X By depositing copies of the same in Canyon County Courthouse Interdepartmental Mail.

☐ By depositing copies of the same in the United States Mail, postage prepaid first class.

☐ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

☐ By faxing copies of the same to said attorney(s) at the facsimile number: (208) _____.

Canyon County Prosecutor's Office

Ryan K. Dowell, Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	**CR-2016-12011**
	)	
	)	**MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS**
-vs-	)	
	)	
TAYLOR JAMES FAIRCHILD,	)	
	)	
Defendant.	)	

Defendant Taylor James Fairchild has filed a motion to suppress. For the following reasons, the Court has granted his motion.

PROCEDURAL HISTORY

Defendant has been charged with possession of a controlled substance (methamphetamine), a felony under Idaho Code section 37-2732(c)(1). On August 5, 2016, he entered a plea of not guilty. He filed a motion to suppress on September 2, 2016. The State filed an objection to Defendant's motion on September 27, 2016. A hearing was held on Defendant's motion on October 7, at which time the Court took this matter under advisement. On October 11, 2016, the State filed an affidavit prepared by Officer Eric Phillips in support of the State's objection to Defendant's motion. On October 13, 2016, the State also filed a supplement to its

objection to Defendant's motion. The same day, Defendant filed a memorandum of law in support of its motion to suppress.

STATEMENT OF FACTS

The following facts are derived from the briefing, affidavits, and evidence submitted by the parties. At about 8:30 am on July 8, 2016, Caldwell resident Layne Stark contacted the sheriff's office to report two men sitting in a truck parked near his house. When dispatch answered his call, Stark said, "I was wondering if I could have somebody sent out. I'm a little concerned about a transaction or something going down behind my house." The dispatcher asked him what was taking place, and he replied, "two cars just come up really fast and pull around and meet up and they get out and they're just both just sitting in the truck together . . . It could be nothing but too often things happen back there and the way they pulled up so fast it looks like [unintelligible]." Stark provided dispatch with the make, description, and license plate numbers of both vehicles. One was a red Dodge Ram pickup. The other was a dark-colored Hyundai. Stark stated that two individuals had been sitting in the truck for about ten minutes. In addition to providing the description and license plate numbers of the vehicles, Stark provided his home address and identified Laster Lane and Lathrop Avenue as nearby streets. Officer Eric Phillips was dispatched to the area. While en route, he ran the plate numbers provided by Stark and discovered that the Dodge pickup was registered to Philip Daniel Wietz, whom Officer Phillips knew from previous experience to be a drug user.

When Officer Phillips arrived, he noticed both vehicles driving away from the scene. The Dodge drove away from Officer Phillips in the direction of Indiana Avenue. The Hyundai—driven by Defendant—headed down Laster Lane toward Officer Phillips. As the car approached him, Officer Phillips flicked his overhead lights and stuck his hand out the patrol car window to

motion the Defendant to stop. The Defendant complied.

Officer Phillips' body camera video footage shows that Defendant stopped his car on a portion of Later Lane that runs between what appears to be a well-kept subdivision full of newer-looking homes on one side, and a field of farmland on the other. The footage also shows that it was daytime and sunny outside during the encounter.

After stopping Defendant, Officer Phillips walked toward Defendant's car and requested that Defendant provide his identification. Defendant handed Officer Phillips his driver's license, and Officer Phillips radioed Defendant's information into dispatch. He then began questioning Defendant about where Defendant was coming from, and whether he had been interacting with the driver of the red pickup truck. Defendant told Officer Phillips that he was in the area because he had spent the night at a friend's house, and denied having contact with the driver of the pickup truck.

Officer Phillips told Defendant that "[y]ou guys got called in for being parked back here . . . People were just concerned because normally people don't park back here. There was two vehicles parked next to each other." Officer Phillips continued to question Defendant about what he had been doing in the area, and Defendant continued to deny being involved with the driver of the red truck.

Officer Phillips instructed Defendant to turn off his vehicle and asked Defendant if he was on probation. Defendant replied that he was on probation "out of Pocatello Idaho" for a paraphernalia charge. Officer Phillips told Defendant to step out of the car and asked Defendant to allow him to search him. Defendant obeyed. Officer Phillips patted him down, but also reached into Defendant's pants pockets. It does not appear from Officer Phillips' video that there was any indication that Defendant was armed or dangerous. After reaching into one of

Defendant's pockets, Officer Phillips found and removed a small baggie of a white powdered substance. Officers immediately arrested Defendant, placed him in handcuffs, and read his Miranda rights.

Officer Phillips asked another officer at the scene to watch the Defendant so he could get gloves from his patrol car. Officer Phillips then walked to his patrol car, opened the trunk, and used his radio to report that he had found methamphetamine on the Defendant. Officer Phillips retrieved disposable gloves from the trunk. Officer Phillips walked back to Defendant and asked, "what else do you have in here?" Defendant replied, but his reply is unintelligible on the body camera footage. Officer Phillips then stated, "Ok so you do have a warrant . . . out of Pocatello . . . so you are under arrest for that." On the body camera footage, the audio did not pick up the precise moment when Officer Phillips received confirmation of Defendant's warrant. However, Officer Phillips' affidavit makes clear that the warrant was not confirmed until after the officers conducted the initial search, found the methamphetamine, and arrested Defendant:

> during the detention of Defendant, another officer watched Defendant while I opened the trunk of my patrol vehicle . . . subsequent to opening the trunk of my patrol vehicle, I again contacted Defendant[. D]uring the second contact with Defendant I informed him that he was under arrest for the warrant . . . by the time I informed defendant he was under arrest for the warrant, Canyon County Sheriff's Office Dispatch had confirmed that there was a warrant, and I know that is true because based on my common practice of handling warrant arrests I would not have made that statement as heard in the video unless the warrant had been confirmed . . . subsequent to informing Defendant he was under arrest for the warrant, and thus subsequent to the Canyon County Sheriff's Officer Dispatch confirming the existence of a warrant against Defendant, I discovered a second baggie of white crystal substance.

Aff. of Eric Phillips, Octf. 11 2016, pg. 2. The body camera video shows that Officer Phillips opened his trunk, retrieved disposal gloves, and put them on. After returning from his trunk with the gloves, Officer Phillips asked Defendant what else he had "in there" *before* telling him about the warrant. This sequence of events indicates that the warrant was confirmed either after Officer

Phillips had asked Defendant what else he had "in there," or while Officer Phillips was asking the question.

After Officer Phillips told Defendant that the warrant had been confirmed, he finished searching Defendant. A second baggie of white crystal substance was found in Defendant's pants pocket. The substance in both baggies was positively identified as methamphetamine, and Defendant was charged with possession of a controlled substance.

ANALYSIS

Defendant has argued that the responding officers did not have reasonable suspicion to stop the Defendant; that the scope of the stop exceeded the stop's initial purpose; and that there were no intervening circumstances sufficient to purge the illegality of the stop. Thus, the Defendant argues, the methamphetamine discovered in Defendant's car should be suppressed as fruit of the poisonous tree. The State has argued that the citizen's phone call and Officer Phillips' prior knowledge of the individual to whom the Dodge truck was registered was sufficient to create reasonable suspicion. The State also argues that the second baggie of methamphetamine is admissible under the attenuation exception to the fruit of the poisonous tree doctrine.

A. The Initial Stop of Defendant Was Not Justified By Reasonable Suspicion

It appears that the State is not disputing that the initial encounter with Defendant was a stop. The Fourth Amendment of the United States Constitution and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. *State v. Cardenas*, 143 Idaho 903, 906, 155 P.3d 704, 707 (Ct. App. 2006); *see also Terry v. Ohio*, 392 U.S. 1, 19 n 16, 88 S. Ct. 1868, 1879 n. 16 (1968). But not all encounters between police and citizens implicate the Fourth Amendment. *Terry v. Ohio*, 392 U.S. at 8-9, 88 S. Ct. at 1873. A seizure does not occur simply because a police

officer approaches a person and asks him if he is willing to answer some questions. *See Cardenas* at 143 Idaho at 907, 155 P.3d at 708; *see also Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L.Ed.2d 389, 398 (1991). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen is that citizen seized. *State v. Page*, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004). Whether or not a stop has occurred depends upon whether a reasonable person in the shoes of the defendant would have felt free to ignore the police presence and go about his business. *See Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991). In this case, Officer Phillips flicked his overhead lights and flagged down the Defendant. There is no question that Defendant was stopped.

Furthermore, there is little doubt that the stop was not justified by reasonable suspicion or probable cause. Police officers may temporarily detain a person in order to investigate possible criminal behavior, even when the officer does not have enough probable cause to make an arrest. *See State v. Fry*, 122 Idaho 100, 102-104, 831 P.2d 942, 944-946 (Ct. App. 1991); *see also Terry v. Ohio*, 392 U.S. at 22, 88 S.Ct. at 1880. In order to pass constitutional muster, an investigatory seizure, or "stop," must be justified by the officer's reasonable, articulable suspicion that the person seized has committed or was about to commit a crime. *United States v. Cortez*, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 621 (1981). Whether or not an officer has reasonable suspicion to conduct an investigatory seizure depends upon the totality of the circumstances—the information known to the officer at the time of the stop must yield a particularized and objective basis for the officer's suspicion. *State v. Van Dorne*, 139 Idaho 961, 963, 88 P.3d 780, 782 (Ct. App. 2004). In determining whether or not a stop was justified, courts do not give weight to an officer's hunch or unparticularized suspicion, but instead, to specific reasonable inferences that the officer entitled to draw from the facts, based on his experience. *Terry v. Ohio*, 392 U.S. at 27, 88 S.Ct.

at 1883. The Supreme Court held in *Illinois v. Wardlow* that officers had reasonable, articulable suspicion to stop a suspect in a known narcotics trafficking area when the suspect ran upon seeing the police. 528 U.S. 119, 120 S.Ct. 690, 66 L.Ed.2d 621 (1981). The Court reasoned that the high-drug neighborhood, and the fact that the suspect actually ran from the police gave rise to the police officer's reasonable suspicion that crime was afoot. *Id.* But in *Brown v. Texas*, the Supreme Court held that an individual's presence in a high-drug neighborhood at night, in the absence of other factors, is not enough to give rise to reasonable suspicion that crime is afoot. *See Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed. 357 (1979).

Reasonable suspicion can arise from an informant's tip or from a citizen's report of suspicious activity. *See Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412 (1990); *see also Wilson v. Idaho Transp. Dept.*, 136 Idaho 270, 32 P.3d 164 (Ct. App. 2001). Whether the information provided by a citizen or an informant is sufficient to create reasonable suspicion that justifies a stop depends upon the content and the reliability of the information presented by the source, including whether the informant reveals his identity and the basis of his knowledge. *Id.* at 330, 110 S. Ct. at 2416; 136 Idaho at 275, 32 P.3d at 169.

In this case, the State has emphasized that the tip the officers received was reliable, because the caller provided his name, address, and numerous details about the circumstances he described—including the precise location, a description of the vehicles, and correct license plate numbers. This Court agrees that the information provided by the caller was plainly reliable. However, *both* content and reliability are required for a citizen's tip to create reasonable suspicion. In this case, the caller simply stated that two cars were parked alongside the road, and that two people had been sitting in one of the cars for ten minutes. The caller even stated that it could be "nothing."

In order to determine whether the officer's stop of Defendant was justified in this case, this Court has looked, as it must, to the facts known by the officer at the time of the encounter. The facts known to Officer Phillips at the time he detained the Defendant were that on a bright, sunny morning, in a subdivision full of newer-looking homes, a concerned resident reported that a car and a truck pulled up and parked on the street, and that two men sat in one of the vehicles for about ten minutes. The caller speculated that the men could be engaging in an unspecified "transaction," but also speculated that it could be "nothing." The caller did not report seeing the men doing drugs or otherwise breaking the law. The only other information that Officer Phillips had upon arriving at the scene was that the Dodge pickup (not the vehicle driven by the Defendant) had been registered to an individual (also not the Defendant) who had been involved with drugs in the past.

No matter how reliable the *source* of the tip in this case, the content of the tip and the facts available to Officer Phillips upon his arrival at the scene were simply not enough to create reasonable, articulable suspicion that Defendant had committed or was about to commit a crime. In light of the United States Supreme Court's holding in *Brown v. Texas* that a suspect's presence in a high drug neighborhood at night was not sufficient to create reasonable suspicion, this Court cannot justify finding reasonable suspicion based on Defendant's presence in a well-kept subdivision on a bright, sunny morning. While it is true that Defendant may have spent ten minutes sitting in a truck that was registered to an individual who had used drugs in the past, it is unclear whether that was even the same individual driving the truck that day. The caller did not state that he saw either man consume drugs, or that he saw money change hands. There is no indication that the area was a high-crime or high-drug neighborhood. At best, Defendant's presence in the truck could give rise to a hunch or a generalized sense of suspicion. In the

absence of any articulable facts indicating that crime was afoot, this Court has concluded that the initial stop was unlawful.

B. The First Baggie of Methamphetamine is Fruit of the Poisonous Tree and Therefore Shall Be Suppressed

1. Because the initial stop was unlawful, the first baggie will be suppressed as fruit of the poisonous tree

Having determined that the initial stop was unlawful, the Court must conclude that the first baggie of methamphetamine is inadmissible as fruit of the poisonous tree. The fruit of the poisonous tree doctrine is well-settled—evidence obtained in violation of the Fourth Amendment generally may not be used as evidence against the victim of illegal government action. *See Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416 (1963); *see also State v. Page*, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004). Because the initial stop was unlawful, and because the discovery of the first baggie of methamphetamine was the product of that unlawful stop, this Court must exclude the first baggie of methamphetamine as the fruit of the poisonous tree.[1]

2. Even if the initial stop had been lawful, a *Terry* frisk was improper, and thus, the first baggie would be suppressed as fruit of the unlawful frisk

Even if the initial stop were legal, the subsequent pat-down of Defendant would still preclude admission of the first baggie of methamphetamine. Where an officer has seized a defendant for an investigatory search, that officer may conduct a limited pat-down search of the outer layers of a person's clothing all over his body to find weapons. *Terry v. Ohio*, 392 U.S. 1, 16, 88 S. Ct. 1868, 1877 (1968). A "Terry" frisk is only permissible when, at the moment of the frisk, the officer has reason to believe that the individual he is investigating is armed and dangerous, and nothing in the initial stages of the encounter dispels the officer's belief. *Id.* at 24,

[1] In its supplemental briefing, the State urged the Court to find the first baggie of methamphetamine admissible under the inevitable discovery doctrine, an argument that would have required this Court to find the initial stop to be lawful. Because this Court found the initial stop to be unlawful, the Court will not address the State's argument on inevitable discovery.

88 S.Ct. at 1881. An officer's belief that a defendant is armed and dangerous must be objectively reasonable under the totality of the circumstances and depends upon whether a reasonably prudent person would be justified in concluding that an individual posed a risk of danger. *State v. Henage*, 143 Idaho 655, 660-61, 152 P.3d 16, 21-22 (2007). A *Terry* frisk can be justified when officers can see a bulge in a Defendant's pocket that resembles a weapon. *See State v. Holler*, 136 Idaho 287, 292, 32 P.3d 679, 684 (Ct. App. 2001). Courts may also take into account a Defendant's refusal to remove his hands from his pockets. *Id.* A *Terry* frisk must be carefully limited to the outer layer of clothing in order to discover weapons that might be used to assault the officer. *Terry*, 392 U.S. at 30-31, 88 S.Ct. at 1884-1885. Although an officer need not possess total certainty that a person is armed and dangerous, an officer's mere hunch or unparticularized suspicion will not, in itself, justify a frisk. *Terry*, 392 U.S. at 27, 88 S.Ct at 1883.

Having reviewed the police video, the Court does not believe a *Terry* frisk would have been justified even if the stop had been a lawful one. Defendant did not give any indication that he was armed or dangerous. He stopped his car when Officer Phillips flagged him down, was polite and cooperative during the encounter, told Officer Phillips he did not have weapons in his vehicle, and complied immediately when Officer Phillips asked him to step out of the car. Nothing about Defendant's demeanor, language, or appearance indicated that he was armed or dangerous. Thus, a *Terry* frisk was unreasonable and improper.

3. Even if the encounter between Officer Phillips and Defendant had been a lawful one where a *Terry* frisk was justified, Officer Phillips exceeded the scope of *Terry* by reaching into Defendant's pockets instead of confining the search to the outer layers of Defendant's clothing

Finally, even if this had been a situation where a *Terry* frisk was appropriate, Officer Phillips exceeded the scope of *Terry* by failing to limit the pat-down to the outer layers of

Defendant's clothing. As set forth above, *Terry* and its progeny make clear that a pat-down for weapons during an investigative detention must be limited to the outer layer of clothing. Here, Officer Phillips reached into Defendant's pockets. Nothing in the record indicates that Officer Phillips felt what he believed to be a weapon in the pocket as he patted down the outer lawyer of clothing, or that he could identify through the fabric what he immediately recognized as contraband. It is therefore plain to this Court that searching Defendant's pockets was improper. For all of these reasons, the first baggie of methamphetamine will be suppressed.

C. The Second "Baggie" of Methamphetamine Does Not Fall Under the Attenuation Exception and Thus Must Also Be Suppressed

The meat of the parties' dispute lies with the second baggie of methamphetamine discovered on the Defendant's person. As explained above, Officers found the second baggie *after* confirming a warrant for Defendant's arrest. This, the State argues, constitutes an attenuating circumstance that purges the encounter of its illegality. The Defendant argues that under the attenuation factors set forth by the Idaho Supreme Court, the second baggie of methamphetamine should be suppressed.

Idaho courts have addressed the application of the attenuation exception in circumstances where a valid warrant is discovered after officers initiate an unlawful encounter. In *State v. Page*, the Idaho Supreme Court explained the attenuation exception to the fruit of the poisonous tree doctrine. *See* 140 Idaho 841, 103 P.3d 454 (2004). There, an individual who was walking alone at night was approached by an officer who asked if he could speak to him for a moment. *Id.* at 843, 103 P.3d at 456. The officer asked for his identification, and ran his information through dispatch. *Id.* The officer discovered that the individual had an outstanding warrant for his arrest, and arrested him. *Id.* In the search incident to the arrest, the officer discovered drugs and paraphernalia in the individual's pocket. *Id.* The Idaho Supreme Court held that the officer's

contact with the Defendant, including the officer's request for the Defendant's driver's license, was a consensual encounter that did not violate the Fourth Amendment. *Id.* at 844, 1083 P.3d at 456. However, because the trial judge had granted the motion to suppress on the basis that the *Page* defendant was unlawfully seized, the Court evaluated the effect of an officer's discovery of a valid warrant during an unlawful encounter. *Id.* The Court explained that the discovery of a valid arrest warrant during an unlawful encounter may trigger the attenuation exception to the fruit of the poisonous tree doctrine. *Id.* at 846, 1083 P.3d at 459. The *Page* Court enumerated three factors for a court to consider when determining whether unlawful conduct has been adequately attenuated: (1) the elapsed time between the misconduct and the acquisition of the evidence, (2) whether intervening circumstances occurred, and (3) the purpose and flagrancy of the improper law enforcement action. *Id.*

The *Page* Court leaned on *United States v. Green*, a 7th Circuit case with an ultimately similar holding. *Id.* ("We find the attenuation analysis in *Green* to be persuasive."). In *Green*, police stopped a car that they believed contained a fugitive. *Id.* (citing *United States v. Green*, 111 F.3d 515 (7th Cir. 1997)). Even though officers determined that the fugitive was not in the car, the officers ran the information of the car's two occupants. *Id.* Officers discovered that one of the occupants had an outstanding warrant, and arrested the occupant. *Id.* During the search incident to the arrest, officers discovered contraband. *Id.* The *Green* Court acknowledged that the encounter was unjustified. *Id.* Nevertheless, the *Green* Court determined that the contraband was admissible because the discovery of a valid warrant constituted an attenuating factor. *Id.* In deciding *Page*, the Idaho Supreme Court looked to *Green* while applying the three factors set forth above:

> Here, there was a minimal lapse of time between the seizure of the license and the search pursuant to a valid arrest warrant. The police officer's conduct was

> certainly not flagrant, nor was his purpose improper. Clearly, once the officer discovered that there was an outstanding warrant, an intervening event under *Green*, he did not have to release Page and was justified in arresting him at that point. Once he had effectuated a lawful arrest, he was clearly justified in conducting a search incident to that arrest for the purpose of officer or public safety or to prevent concealment or destruction of evidence. Therefore, it was not unlawful for the officer to seize the drugs discovered incident to that arrest.

Id. at 846-47, 103 P.3d at 459-60. The year after the Idaho Supreme Court decided *Page*, the Idaho Court of Appeals decided *State v. Bingham*. 141 Idaho 732, 117 P.3d 146 (Ct. App. 2005). There, a patrol officer observed an individual walking down the street in a residential neighborhood at about 4:00 am. *Id.* at 433, 117 P.3d at 147. The officer testified that it was unusual for an individual to be out walking at that hour, and stated that his patrol duties in that neighborhood usually included looking for prowlers or potential auto burglars. *Id.* The officer stopped his patrol car, asked the defendant to speak to him, and requested the defendant's name. *Id.* When the defendant told the officer his name, the officer remembered that he had seen the defendant's name on a warrant list. *Id.* The officer confirmed the warrant through dispatch, arrested the defendant, and performed a search incident to the arrest. *Id.* During the search, the officer discovered methamphetamine, and the defendant was charged. *Id.* The defendant moved to suppress the methamphetamine, contending that it was the product of an illegal stop. *Id.* When the trial court denied his motion, he appealed. *Id.* The *Bingham* Court applied the attenuation test and upheld the denial of the motion to suppress. *Id.* at 735, 117 P.3d at 149. The Court reasoned that the existence of a warrant for the defendant's arrest was an intervening circumstance that weighed in favor of finding attenuation. *Id.* Though the district court had not made a factual determination as to whether or not the initial encounter between the defendant and law enforcement was a stop, the *Bingham* Court explained that even if the encounter were a stop, the officer's conduct was not so flagrant as to tip the scale in favor of the defendant. *Id.* at 735, 117

P.3d at 149. The Court noted that the encounter was relaxed, and that it was not outrageous for an officer to question a person walking down a residential street at 4:00 am. *Id.* However, the *Bingham* Court cautioned that *Page* does not stand for the proposition that discovery of a valid warrant serves as a per se validation of previous improper conduct:

> The *Page* decision provides no such comprehensive insulation of police misconduct whenever an outstanding arrest warrant is discovered. Rather, in *Page*, as in the *Green* case upon which *Page* relied, the Court applied the three-part attenuation test to the facts presented. The discovery of a warrant satisfies only the second prong by showing an intervening circumstance. The other factors, particularly "the flagrancy and purpose of the improper law enforcement action," must be weighed in every case to determine whether the taint of that misconduct is sufficiently attenuated.

141 Idaho at 734, 117 P.3d at 148. Conversely, in *State v. Padilla*, the Idaho Court of Appeals declined to apply the attenuation doctrine. There, officers initiated an illegal search of a defendant and found stolen items. 158 Idaho 184, 186, 345 P.3d 243, 244 (2014). Officers arrested the defendant and transported him to jail. *Id.* At the jail, it was discovered that there was an outstanding warrant for the defendant's arrest. *Id.* The *Padilla* defendant was found guilty of grand theft of the stolen items at trial. *Id.* The defendant filed a post-conviction claim for ineffective assistance of counsel, asserting that his attorney should have filed a motion to suppress. *Id.* The *Padilla* Court held that the attenuation doctrine did not apply, because the evidence at issue was discovered prior to the discovery of a valid warrant. *Id.* at 188, 345 P.3d 247. Turning now to the case at hand, the Court has determined that the application of the attenuation factors tips the scale in favor of the Defendant.

(1) The elapsed time between the misconduct and the acquisition of the evidence

At the time the warrant was confirmed in this case, Defendant had already been improperly arrested and officers were preparing to test the white substance in the first baggie. Officers were also in the beginning stages of conducting the search incident to that improper

arrest, asking Defendant about what else they might find in Defendant's vehicle. Because the misconduct at issue was ongoing up to the moment when the warrant was confirmed, there was virtually no time between the misconduct and the acquisition of the evidence. The Court therefore finds that this factor weighs in favor of suppressing the second baggie of methamphetamine.

(2) Whether intervening circumstances occurred

Idaho appellate courts describe the attenuation exception as applying in cases "where the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful evidence." *Padilla v. State*, 158 Idaho 184, 187, 345 P.3d 243, 246 (2014) (citing *Page*, 140 Idaho at 846, 103 P.3d at 459). Idaho appellate courts have held that the discovery of a valid arrest warrant satisfies the second prong of the attenuation test. *See State v. Bingham*, 141 Idaho 732, 734, 117 P.3d 146, 148 (Ct. App. 2005); *see generally Page*, 140 Idaho 841, 103 P.3d 454. However, a critical fact distinguishes this case from other cases where Idaho courts of appeal have applied the attenuation doctrine. In this case, the warrant was discovered *after* the Defendant had been unlawfully arrested, and officers were already preparing to search Defendant's vehicle. And, because Defendant had already been arrested, officers would have almost certainly performed a more thorough search of Defendant's person incident to that arrest.

It appears to this Court that confirmation of the warrant did not alter the likely course of the officers' conduct at all. Looking at the stream of events set forth in the record, it seems as though the officers would have almost certainly discovered the second baggie of methamphetamine with or without confirmation of the warrant from dispatch. Conversely, in the cases discussed above, the existence of a valid warrant created an attenuating circumstance that required officers to alter their course of conduct, thereby altering the causal chain.

In examining this factor, the Court gives due weight to cases where appellate courts have ruled that discovery of a valid warrant constitutes an attenuating circumstance. However, the Court also gives weight to the fact that the confirmation of the warrant in this case does not appear to have altered the "causal chain" of events, and thus did not provide the same degree of "attenuation" as in other cases. In this set of circumstances, this Court believes that the second attenuation factor is, at best, neutral.

(3) The purpose and flagrancy of the improper law enforcement action

Here, officers had neither the reasonable suspicion nor probable cause required for initiating a stop. Under the case law discussed above, this alone would not necessarily be fatal. However, officers in this case took the unlawful interaction much further than officers in other cases applying the attenuation exception, going so far as to unlawfully search Defendant's person, reach into his pockets, and ultimately effectuate an unlawful arrest of Defendant. It does not appear that officers in this case had any ill will or improper motives. Nevertheless, the Court cannot ignore the multiple procedural missteps that led to Defendant being improperly arrested prior to confirmation of a valid warrant. Thus, the flagrancy factor also cuts in favor of the Defendant.

The Court has concluded that the attenuation factors set forth by the Idaho Supreme Court weigh in favor of suppressing the second baggie of methamphetamine. Defendant's motion to suppress is therefore granted as to both the first and second baggies of methamphetamine.

CONCLUSION

For all of the foregoing reasons, the Court has determined that both baggies of methamphetamine were the fruit of an unlawful search in violation of Defendant's Fourth Amendment rights.

THUS, IT IS ORDERED THAT Defendant's motion to suppress is GRANTED.

DATED this 24 day of October, 2016.

George A. Southworth
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded to the following persons on this 24 day of October, 2016.

Ryan K. Dowell
Canyon County Public Defender
Canyon County Administration Building
111 N. 11th Ave., Suite 120
Caldwell, Idaho 83605

Dallin Creswell
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GEORGE A. SOUTHWORTH** DATE: October 31, 2016

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	COURT MINUTE CASE NO: CR2016-12011*C TIME: 1:00 P.M. REPORTED BY: Patricia Terry DCRT2 (1:04-1:06)

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Mr. Dallin Creswell, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present in court, with counsel, Mr. Ryan Dowell

The Court reviewed prior proceedings held, noted last week the Court issued a Memorandum Decision and Order Granting the Motion to Suppress and inquired if the State intended to proceed on this matter.

Mr. Creswell requested the Court vacate the jury trial and set another status conference in about a month to give the Attorney General a chance to look this case over.

The Court vacated the jury trial and set this matter for **status conference November 28, 2016 at 1:30 p.m.**

The defendant was continued released on his own recognizance to Pretrial Services.

S Maund
Deputy Clerk

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar #4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR CANYON COUNTY

STATE OF IDAHO,	District Court No. CR-2016-12011
Plaintiff-Appellant,	Supreme Court No.
vs.	NOTICE OF APPEAL
TAYLOR JAMES FAIRCHILD,	
Defendant-Respondent.	

TO: TAYLOR JAMES FAIRCHILD, THE ABOVE-NAMED RESPONDENT, RYAN K. DOWELL, CANYON COUNTY PUBLIC DEFENDER, 111 N. 11TH AVE., STE. 120, CALDWELL, IDAHO 83605 AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO SUPRESS,

entered in the above-entitled action on the 26th day of October, 2016, the Honorable George A. Southworth presiding. A copy of the judgment or order being appealed is attached to this notice; a copy of the final judgment is not attached as no final judgment has been entered.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(7), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred by concluding the discovery of an arrest warrant after the initial stop was not an intervening circumstance justifying an arrest and search incident to arrest regardless of the legality of the initial stop.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

Hearing on the motion to suppress held October 7, 2016 (Patricia Terry, court reporter; less than 100 pages estimated).

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

PATRICIA TERRY
1115 Albany St.
Caldwell, ID 83605

(b) That arrangements have been made with the Canyon County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 14th day of November, 2016.

KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 14th day of November, 2016, caused a true and correct copy of the foregoing NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE GEORGE A. SOUTHWORTH
Canyon County District Court
1115 Albany St.
Caldwell, ID 83605

BRYAN F. TAYLOR
Canyon County Prosecuting Attorney
1115 Albany St.
Caldwell, ID 83605

DALLIN J. CRESWELL
Canyon County Prosecuting Attorney's Office
1115 Albany St.
Caldwell, ID 83605

RYAN K. DOWELL
Canyon County Public Defender's Office
111 N. 11th Ave., Ste. 120
Caldwell, ID 83605

PATRICIA TERRY
1115 Albany St.
Caldwell, ID 83605

HAND DELIVERY

STEPHEN W. KENYON
CLERK OF THE COURT
IDAHO SUPREME COURT
P. O. Box 83720
Boise, ID 83720-0101

KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	
Plaintiff,	**CR-2016-12011**
-vs-	**MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS**
TAYLOR JAMES FAIRCHILD,	
Defendant.	

Defendant Taylor James Fairchild has filed a motion to suppress. For the following reasons, the Court has granted his motion.

PROCEDURAL HISTORY

Defendant has been charged with possession of a controlled substance (methamphetamine), a felony under Idaho Code section 37-2732(c)(1). On August 5, 2016, he entered a plea of not guilty. He filed a motion to suppress on September 2, 2016. The State filed an objection to Defendant's motion on September 27, 2016. A hearing was held on Defendant's motion on October 7, at which time the Court took this matter under advisement. On October 11, 2016, the State filed an affidavit prepared by Officer Eric Phillips in support of the State's objection to Defendant's motion. On October 13, 2016, the State also filed a supplement to its

objection to Defendant's motion. The same day, Defendant filed a memorandum of law in support of its motion to suppress.

STATEMENT OF FACTS

The following facts are derived from the briefing, affidavits, and evidence submitted by the parties. At about 8:30 am on July 8, 2016, Caldwell resident Layne Stark contacted the sheriff's office to report two men sitting in a truck parked near his house. When dispatch answered his call, Stark said, "I was wondering if I could have somebody sent out. I'm a little concerned about a transaction or something going down behind my house." The dispatcher asked him what was taking place, and he replied, "two cars just come up really fast and pull around and meet up and they get out and they're just both just sitting in the truck together . . . It could be nothing but too often things happen back there and the way they pulled up so fast it looks like [unintelligible]." Stark provided dispatch with the make, description, and license plate numbers of both vehicles. One was a red Dodge Ram pickup. The other was a dark-colored Hyundai. Stark stated that two individuals had been sitting in the truck for about ten minutes. In addition to providing the description and license plate numbers of the vehicles, Stark provided his home address and identified Laster Lane and Lathrop Avenue as nearby streets. Officer Eric Phillips was dispatched to the area. While en route, he ran the plate numbers provided by Stark and discovered that the Dodge pickup was registered to Philip Daniel Wietz, whom Officer Phillips knew from previous experience to be a drug user.

When Officer Phillips arrived, he noticed both vehicles driving away from the scene. The Dodge drove away from Officer Phillips in the direction of Indiana Avenue. The Hyundai—driven by Defendant—headed down Laster Lane toward Officer Phillips. As the car approached him, Officer Phillips flicked his overhead lights and stuck his hand out the patrol car window to

motion the Defendant to stop. The Defendant complied.

Officer Phillips' body camera video footage shows that Defendant stopped his car on a portion of Later Lane that runs between what appears to be a well-kept subdivision full of newer-looking homes on one side, and a field of farmland on the other. The footage also shows that it was daytime and sunny outside during the encounter.

After stopping Defendant, Officer Phillips walked toward Defendant's car and requested that Defendant provide his identification. Defendant handed Officer Phillips his driver's license, and Officer Phillips radioed Defendant's information into dispatch. He then began questioning Defendant about where Defendant was coming from, and whether he had been interacting with the driver of the red pickup truck. Defendant told Officer Phillips that he was in the area because he had spent the night at a friend's house, and denied having contact with the driver of the pickup truck.

Officer Phillips told Defendant that "[y]ou guys got called in for being parked back here . . . People were just concerned because normally people don't park back here. There was two vehicles parked next to each other." Officer Phillips continued to question Defendant about what he had been doing in the area, and Defendant continued to deny being involved with the driver of the red truck.

Officer Phillips instructed Defendant to turn off his vehicle and asked Defendant if he was on probation. Defendant replied that he was on probation "out of Pocatello Idaho" for a paraphernalia charge. Officer Phillips told Defendant to step out of the car and asked Defendant to allow him to search him. Defendant obeyed. Officer Phillips patted him down, but also reached into Defendant's pants pockets. It does not appear from Officer Phillips' video that there was any indication that Defendant was armed or dangerous. After reaching into one of

Defendant's pockets, Officer Phillips found and removed a small baggie of a white powdered substance. Officers immediately arrested Defendant, placed him in handcuffs, and read his Miranda rights.

Officer Phillips asked another officer at the scene to watch the Defendant so he could get gloves from his patrol car. Officer Phillips then walked to his patrol car, opened the trunk, and used his radio to report that he had found methamphetamine on the Defendant. Officer Phillips retrieved disposable gloves from the trunk. Officer Phillips walked back to Defendant and asked, "what else do you have in here?" Defendant replied, but his reply is unintelligible on the body camera footage. Officer Phillips then stated, "Ok so you do have a warrant . . . out of Pocatello . . . so you are under arrest for that." On the body camera footage, the audio did not pick up the precise moment when Officer Phillips received confirmation of Defendant's warrant. However, Officer Phillips' affidavit makes clear that the warrant was not confirmed until after the officers conducted the initial search, found the methamphetamine, and arrested Defendant:

> during the detention of Defendant, another officer watched Defendant while I opened the trunk of my patrol vehicle . . . subsequent to opening the trunk of my patrol vehicle, I again contacted Defendant[. D]uring the second contact with Defendant I informed him that he was under arrest for the warrant . . . by the time I informed defendant he was under arrest for the warrant, Canyon County Sheriff's Office Dispatch had confirmed that there was a warrant, and I know that is true because based on my common practice of handling warrant arrests I would not have made that statement as heard in the video unless the warrant had been confirmed . . . subsequent to informing Defendant he was under arrest for the warrant, and thus subsequent to the Canyon County Sheriff's Officer Dispatch confirming the existence of a warrant against Defendant, I discovered a second baggie of white crystal substance.

Aff. of Eric Phillips, Octf. 11 2016, pg. 2. The body camera video shows that Officer Phillips opened his trunk, retrieved disposal gloves, and put them on. After returning from his trunk with the gloves, Officer Phillips asked Defendant what else he had "in there" *before* telling him about the warrant. This sequence of events indicates that the warrant was confirmed either after Officer

Phillips had asked Defendant what else he had "in there," or while Officer Phillips was asking the question.

After Officer Phillips told Defendant that the warrant had been confirmed, he finished searching Defendant. A second baggie of white crystal substance was found in Defendant's pants pocket. The substance in both baggies was positively identified as methamphetamine, and Defendant was charged with possession of a controlled substance.

ANALYSIS

Defendant has argued that the responding officers did not have reasonable suspicion to stop the Defendant; that the scope of the stop exceeded the stop's initial purpose; and that there were no intervening circumstances sufficient to purge the illegality of the stop. Thus, the Defendant argues, the methamphetamine discovered in Defendant's car should be suppressed as fruit of the poisonous tree. The State has argued that the citizen's phone call and Officer Phillips' prior knowledge of the individual to whom the Dodge truck was registered was sufficient to create reasonable suspicion. The State also argues that the second baggie of methamphetamine is admissible under the attenuation exception to the fruit of the poisonous tree doctrine.

A. The Initial Stop of Defendant Was Not Justified By Reasonable Suspicion

It appears that the State is not disputing that the initial encounter with Defendant was a stop. The Fourth Amendment of the United States Constitution and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. *State v. Cardenas*, 143 Idaho 903, 906, 155 P.3d 704, 707 (Ct. App. 2006); *see also Terry v. Ohio*, 392 U.S. 1, 19 n 16, 88 S. Ct. 1868, 1879 n. 16 (1968). But not all encounters between police and citizens implicate the Fourth Amendment. *Terry v. Ohio*, 392 U.S. at 8-9, 88 S. Ct. at 1873. A seizure does not occur simply because a police

officer approaches a person and asks him if he is willing to answer some questions. *See Cardenas* at 143 Idaho at 907, 155 P.3d at 708; *see also Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L.Ed.2d 389, 398 (1991). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen is that citizen seized. *State v. Page*, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004). Whether or not a stop has occurred depends upon whether a reasonable person in the shoes of the defendant would have felt free to ignore the police presence and go about his business. *See Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991). In this case, Officer Phillips flicked his overhead lights and flagged down the Defendant. There is no question that Defendant was stopped.

Furthermore, there is little doubt that the stop was not justified by reasonable suspicion or probable cause. Police officers may temporarily detain a person in order to investigate possible criminal behavior, even when the officer does not have enough probable cause to make an arrest. *See State v. Fry*, 122 Idaho 100, 102-104, 831 P.2d 942, 944-946 (Ct. App. 1991); *see also Terry v. Ohio*, 392 U.S. at 22, 88 S.Ct. at 1880. In order to pass constitutional muster, an investigatory seizure, or "stop," must be justified by the officer's reasonable, articulable suspicion that the person seized has committed or was about to commit a crime. *United States v. Cortez*, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 621 (1981). Whether or not an officer has reasonable suspicion to conduct an investigatory seizure depends upon the totality of the circumstances—the information known to the officer at the time of the stop must yield a particularized and objective basis for the officer's suspicion. *State v. Van Dorne*, 139 Idaho 961, 963, 88 P.3d 780, 782 (Ct. App. 2004). In determining whether or not a stop was justified, courts do not give weight to an officer's hunch or unparticularized suspicion, but instead, to specific reasonable inferences that the officer entitled to draw from the facts, based on his experience. *Terry v. Ohio*, 392 U.S. at 27, 88 S.Ct.

at 1883. The Supreme Court held in *Illinois v. Wardlow* that officers had reasonable, articulable suspicion to stop a suspect in a known narcotics trafficking area when the suspect ran upon seeing the police. 528 U.S. 119, 120 S.Ct. 690, 66 L.Ed.2d 621 (1981). The Court reasoned that the high-drug neighborhood, and the fact that the suspect actually ran from the police gave rise to the police officer's reasonable suspicion that crime was afoot. *Id.* But in *Brown v. Texas*, the Supreme Court held that an individual's presence in a high-drug neighborhood at night, in the absence of other factors, is not enough to give rise to reasonable suspicion that crime is afoot. *See Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed. 357 (1979).

Reasonable suspicion can arise from an informant's tip or from a citizen's report of suspicious activity. *See Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412 (1990); *see also Wilson v. Idaho Transp. Dept.*, 136 Idaho 270, 32 P.3d 164 (Ct. App. 2001). Whether the information provided by a citizen or an informant is sufficient to create reasonable suspicion that justifies a stop depends upon the content and the reliability of the information presented by the source, including whether the informant reveals his identity and the basis of his knowledge. *Id.* at 330, 110 S. Ct. at 2416; 136 Idaho at 275, 32 P.3d at 169.

In this case, the State has emphasized that the tip the officers received was reliable, because the caller provided his name, address, and numerous details about the circumstances he described—including the precise location, a description of the vehicles, and correct license plate numbers. This Court agrees that the information provided by the caller was plainly reliable. However, *both* content and reliability are required for a citizen's tip to create reasonable suspicion. In this case, the caller simply stated that two cars were parked alongside the road, and that two people had been sitting in one of the cars for ten minutes. The caller even stated that it could be "nothing."

In order to determine whether the officer's stop of Defendant was justified in this case, this Court has looked, as it must, to the facts known by the officer at the time of the encounter. The facts known to Officer Phillips at the time he detained the Defendant were that on a bright, sunny morning, in a subdivision full of newer-looking homes, a concerned resident reported that a car and a truck pulled up and parked on the street, and that two men sat in one of the vehicles for about ten minutes. The caller speculated that the men could be engaging in an unspecified "transaction," but also speculated that it could be "nothing." The caller did not report seeing the men doing drugs or otherwise breaking the law. The only other information that Officer Phillips had upon arriving at the scene was that the Dodge pickup (not the vehicle driven by the Defendant) had been registered to an individual (also not the Defendant) who had been involved with drugs in the past.

No matter how reliable the *source* of the tip in this case, the content of the tip and the facts available to Officer Phillips upon his arrival at the scene were simply not enough to create reasonable, articulable suspicion that Defendant had committed or was about to commit a crime. In light of the United States Supreme Court's holding in *Brown v. Texas* that a suspect's presence in a high drug neighborhood at night was not sufficient to create reasonable suspicion, this Court cannot justify finding reasonable suspicion based on Defendant's presence in a well-kept subdivision on a bright, sunny morning. While it is true that Defendant may have spent ten minutes sitting in a truck that was registered to an individual who had used drugs in the past, it is unclear whether that was even the same individual driving the truck that day. The caller did not state that he saw either man consume drugs, or that he saw money change hands. There is no indication that the area was a high-crime or high-drug neighborhood. At best, Defendant's presence in the truck could give rise to a hunch or a generalized sense of suspicion. In the

absence of any articulable facts indicating that crime was afoot, this Court has concluded that the initial stop was unlawful.

B. The First Baggie of Methamphetamine is Fruit of the Poisonous Tree and Therefore Shall Be Suppressed

1. Because the initial stop was unlawful, the first baggie will be suppressed as fruit of the poisonous tree

Having determined that the initial stop was unlawful, the Court must conclude that the first baggie of methamphetamine is inadmissible as fruit of the poisonous tree. The fruit of the poisonous tree doctrine is well-settled—evidence obtained in violation of the Fourth Amendment generally may not be used as evidence against the victim of illegal government action. *See Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416 (1963); *see also State v. Page*, 140 Idaho 841, 846, 103 P.3d 454, 459 (2004). Because the initial stop was unlawful, and because the discovery of the first baggie of methamphetamine was the product of that unlawful stop, this Court must exclude the first baggie of methamphetamine as the fruit of the poisonous tree.[1]

2. Even if the initial stop had been lawful, a *Terry* frisk was improper, and thus, the first baggie would be suppressed as fruit of the unlawful frisk

Even if the initial stop were legal, the subsequent pat-down of Defendant would still preclude admission of the first baggie of methamphetamine. Where an officer has seized a defendant for an investigatory search, that officer may conduct a limited pat-down search of the outer layers of a person's clothing all over his body to find weapons. *Terry v. Ohio*, 392 U.S. 1, 16, 88 S. Ct. 1868, 1877 (1968). A "Terry" frisk is only permissible when, at the moment of the frisk, the officer has reason to believe that the individual he is investigating is armed and dangerous, and nothing in the initial stages of the encounter dispels the officer's belief. *Id.* at 24,

[1] In its supplemental briefing, the State urged the Court to find the first baggie of methamphetamine admissible under the inevitable discovery doctrine, an argument that would have required this Court to find the initial stop to be lawful. Because this Court found the initial stop to be unlawful, the Court will not address the State's argument on inevitable discovery.

88 S.Ct. at 1881. An officer's belief that a defendant is armed and dangerous must be objectively reasonable under the totality of the circumstances and depends upon whether a reasonably prudent person would be justified in concluding that an individual posed a risk of danger. *State v. Henage*, 143 Idaho 655, 660-61, 152 P.3d 16, 21-22 (2007). A *Terry* frisk can be justified when officers can see a bulge in a Defendant's pocket that resembles a weapon. *See State v. Holler*, 136 Idaho 287, 292, 32 P.3d 679, 684 (Ct. App. 2001). Courts may also take into account a Defendant's refusal to remove his hands from his pockets. *Id.* A *Terry* frisk must be carefully limited to the outer layer of clothing in order to discover weapons that might be used to assault the officer. *Terry*, 392 U.S. at 30-31, 88 S.Ct. at 1884-1885. Although an officer need not possess total certainty that a person is armed and dangerous, an officer's mere hunch or unparticularized suspicion will not, in itself, justify a frisk. *Terry*, 392 U.S. at 27, 88 S.Ct at 1883.

Having reviewed the police video, the Court does not believe a *Terry* frisk would have been justified even if the stop had been a lawful one. Defendant did not give any indication that he was armed or dangerous. He stopped his car when Officer Phillips flagged him down, was polite and cooperative during the encounter, told Officer Phillips he did not have weapons in his vehicle, and complied immediately when Officer Phillips asked him to step out of the car. Nothing about Defendant's demeanor, language, or appearance indicated that he was armed or dangerous. Thus, a *Terry* frisk was unreasonable and improper.

3. Even if the encounter between Officer Phillips and Defendant had been a lawful one where a *Terry* frisk was justified, Officer Phillips exceeded the scope of *Terry* by reaching into Defendant's pockets instead of confining the search to the outer layers of Defendant's clothing

Finally, even if this had been a situation where a *Terry* frisk was appropriate, Officer Phillips exceeded the scope of *Terry* by failing to limit the pat-down to the outer layers of

Defendant's clothing. As set forth above, *Terry* and its progeny make clear that a pat-down for weapons during an investigative detention must be limited to the outer layer of clothing. Here, Officer Phillips reached into Defendant's pockets. Nothing in the record indicates that Officer Phillips felt what he believed to be a weapon in the pocket as he patted down the outer lawyer of clothing, or that he could identify through the fabric what he immediately recognized as contraband. It is therefore plain to this Court that searching Defendant's pockets was improper. For all of these reasons, the first baggie of methamphetamine will be suppressed.

C. The Second "Baggie" of Methamphetamine Does Not Fall Under the Attenuation Exception and Thus Must Also Be Suppressed

The meat of the parties' dispute lies with the second baggie of methamphetamine discovered on the Defendant's person. As explained above, Officers found the second baggie *after* confirming a warrant for Defendant's arrest. This, the State argues, constitutes an attenuating circumstance that purges the encounter of its illegality. The Defendant argues that under the attenuation factors set forth by the Idaho Supreme Court, the second baggie of methamphetamine should be suppressed.

Idaho courts have addressed the application of the attenuation exception in circumstances where a valid warrant is discovered after officers initiate an unlawful encounter. In *State v. Page*, the Idaho Supreme Court explained the attenuation exception to the fruit of the poisonous tree doctrine. *See* 140 Idaho 841, 103 P.3d 454 (2004). There, an individual who was walking alone at night was approached by an officer who asked if he could speak to him for a moment. *Id.* at 843, 103 P.3d at 456. The officer asked for his identification, and ran his information through dispatch. *Id.* The officer discovered that the individual had an outstanding warrant for his arrest, and arrested him. *Id.* In the search incident to the arrest, the officer discovered drugs and paraphernalia in the individual's pocket. *Id.* The Idaho Supreme Court held that the officer's

contact with the Defendant, including the officer's request for the Defendant's driver's license, was a consensual encounter that did not violate the Fourth Amendment. *Id.* at 844, 1083 P.3d at 456. However, because the trial judge had granted the motion to suppress on the basis that the *Page* defendant was unlawfully seized, the Court evaluated the effect of an officer's discovery of a valid warrant during an unlawful encounter. *Id.* The Court explained that the discovery of a valid arrest warrant during an unlawful encounter may trigger the attenuation exception to the fruit of the poisonous tree doctrine. *Id.* at 846, 1083 P.3d at 459. The *Page* Court enumerated three factors for a court to consider when determining whether unlawful conduct has been adequately attenuated: (1) the elapsed time between the misconduct and the acquisition of the evidence, (2) whether intervening circumstances occurred, and (3) the purpose and flagrancy of the improper law enforcement action. *Id.*

The *Page* Court leaned on *United States v. Green*, a 7th Circuit case with an ultimately similar holding. *Id.* ("We find the attenuation analysis in *Green* to be persuasive."). In *Green*, police stopped a car that they believed contained a fugitive. *Id.* (citing *United States v. Green*, 111 F.3d 515 (7th Cir. 1997)). Even though officers determined that the fugitive was not in the car, the officers ran the information of the car's two occupants. *Id.* Officers discovered that one of the occupants had an outstanding warrant, and arrested the occupant. *Id.* During the search incident to the arrest, officers discovered contraband. *Id.* The *Green* Court acknowledged that the encounter was unjustified. *Id.* Nevertheless, the *Green* Court determined that the contraband was admissible because the discovery of a valid warrant constituted an attenuating factor. *Id.* In deciding *Page*, the Idaho Supreme Court looked to *Green* while applying the three factors set forth above:

> Here, there was a minimal lapse of time between the seizure of the license and the search pursuant to a valid arrest warrant. The police officer's conduct was

> certainly not flagrant, nor was his purpose improper. Clearly, once the officer discovered that there was an outstanding warrant, an intervening event under *Green*, he did not have to release Page and was justified in arresting him at that point. Once he had effectuated a lawful arrest, he was clearly justified in conducting a search incident to that arrest for the purpose of officer or public safety or to prevent concealment or destruction of evidence. Therefore, it was not unlawful for the officer to seize the drugs discovered incident to that arrest.

Id. at 846-47, 103 P.3d at 459-60. The year after the Idaho Supreme Court decided *Page*, the Idaho Court of Appeals decided *State v. Bingham*. 141 Idaho 732, 117 P.3d 146 (Ct. App. 2005). There, a patrol officer observed an individual walking down the street in a residential neighborhood at about 4:00 am. *Id.* at 433, 117 P.3d at 147. The officer testified that it was unusual for an individual to be out walking at that hour, and stated that his patrol duties in that neighborhood usually included looking for prowlers or potential auto burglars. *Id.* The officer stopped his patrol car, asked the defendant to speak to him, and requested the defendant's name. *Id.* When the defendant told the officer his name, the officer remembered that he had seen the defendant's name on a warrant list. *Id.* The officer confirmed the warrant through dispatch, arrested the defendant, and performed a search incident to the arrest. *Id.* During the search, the officer discovered methamphetamine, and the defendant was charged. *Id.* The defendant moved to suppress the methamphetamine, contending that it was the product of an illegal stop. *Id.* When the trial court denied his motion, he appealed. *Id.* The *Bingham* Court applied the attenuation test and upheld the denial of the motion to suppress. *Id.* at 735, 117 P.3d at 149. The Court reasoned that the existence of a warrant for the defendant's arrest was an intervening circumstance that weighed in favor of finding attenuation. *Id.* Though the district court had not made a factual determination as to whether or not the initial encounter between the defendant and law enforcement was a stop, the *Bingham* Court explained that even if the encounter were a stop, the officer's conduct was not so flagrant as to tip the scale in favor of the defendant. *Id.* at 735, 117

P.3d at 149. The Court noted that the encounter was relaxed, and that it was not outrageous for an officer to question a person walking down a residential street at 4:00 am. *Id.* However, the *Bingham* Court cautioned that *Page* does not stand for the proposition that discovery of a valid warrant serves as a per se validation of previous improper conduct:

> The *Page* decision provides no such comprehensive insulation of police misconduct whenever an outstanding arrest warrant is discovered. Rather, in *Page*, as in the *Green* case upon which *Page* relied, the Court applied the three-part attenuation test to the facts presented. The discovery of a warrant satisfies only the second prong by showing an intervening circumstance. The other factors, particularly "the flagrancy and purpose of the improper law enforcement action," must be weighed in every case to determine whether the taint of that misconduct is sufficiently attenuated.

141 Idaho at 734, 117 P.3d at 148. Conversely, in *State v. Padilla*, the Idaho Court of Appeals declined to apply the attenuation doctrine. There, officers initiated an illegal search of a defendant and found stolen items. 158 Idaho 184, 186, 345 P.3d 243, 244 (2014). Officers arrested the defendant and transported him to jail. *Id.* At the jail, it was discovered that there was an outstanding warrant for the defendant's arrest. *Id.* The *Padilla* defendant was found guilty of grand theft of the stolen items at trial. *Id.* The defendant filed a post-conviction claim for ineffective assistance of counsel, asserting that his attorney should have filed a motion to suppress. *Id.* The *Padilla* Court held that the attenuation doctrine did not apply, because the evidence at issue was discovered prior to the discovery of a valid warrant. *Id.* at 188, 345 P.3d 247. Turning now to the case at hand, the Court has determined that the application of the attenuation factors tips the scale in favor of the Defendant.

(1) The elapsed time between the misconduct and the acquisition of the evidence

At the time the warrant was confirmed in this case, Defendant had already been improperly arrested and officers were preparing to test the white substance in the first baggie. Officers were also in the beginning stages of conducting the search incident to that improper

arrest, asking Defendant about what else they might find in Defendant's vehicle. Because the misconduct at issue was ongoing up to the moment when the warrant was confirmed, there was virtually no time between the misconduct and the acquisition of the evidence. The Court therefore finds that this factor weighs in favor of suppressing the second baggie of methamphetamine.

(2) Whether intervening circumstances occurred

Idaho appellate courts describe the attenuation exception as applying in cases "where the causal chain has been sufficiently attenuated to dissipate the taint of the unlawful evidence." *Padilla v. State*, 158 Idaho 184, 187, 345 P.3d 243, 246 (2014) (citing *Page*, 140 Idaho at 846, 103 P.3d at 459). Idaho appellate courts have held that the discovery of a valid arrest warrant satisfies the second prong of the attenuation test. *See State v. Bingham*, 141 Idaho 732, 734, 117 P.3d 146, 148 (Ct. App. 2005); *see generally Page*, 140 Idaho 841, 103 P.3d 454. However, a critical fact distinguishes this case from other cases where Idaho courts of appeal have applied the attenuation doctrine. In this case, the warrant was discovered *after* the Defendant had been unlawfully arrested, and officers were already preparing to search Defendant's vehicle. And, because Defendant had already been arrested, officers would have almost certainly performed a more thorough search of Defendant's person incident to that arrest.

It appears to this Court that confirmation of the warrant did not alter the likely course of the officers' conduct at all. Looking at the stream of events set forth in the record, it seems as though the officers would have almost certainly discovered the second baggie of methamphetamine with or without confirmation of the warrant from dispatch. Conversely, in the cases discussed above, the existence of a valid warrant created an attenuating circumstance that required officers to alter their course of conduct, thereby altering the causal chain.

In examining this factor, the Court gives due weight to cases where appellate courts have ruled that discovery of a valid warrant constitutes an attenuating circumstance. However, the Court also gives weight to the fact that the confirmation of the warrant in this case does not appear to have altered the "causal chain" of events, and thus did not provide the same degree of "attenuation" as in other cases. In this set of circumstances, this Court believes that the second attenuation factor is, at best, neutral.

(3) The purpose and flagrancy of the improper law enforcement action

Here, officers had neither the reasonable suspicion nor probable cause required for initiating a stop. Under the case law discussed above, this alone would not necessarily be fatal. However, officers in this case took the unlawful interaction much further than officers in other cases applying the attenuation exception, going so far as to unlawfully search Defendant's person, reach into his pockets, and ultimately effectuate an unlawful arrest of Defendant. It does not appear that officers in this case had any ill will or improper motives. Nevertheless, the Court cannot ignore the multiple procedural missteps that led to Defendant being improperly arrested prior to confirmation of a valid warrant. Thus, the flagrancy factor also cuts in favor of the Defendant.

The Court has concluded that the attenuation factors set forth by the Idaho Supreme Court weigh in favor of suppressing the second baggie of methamphetamine. Defendant's motion to suppress is therefore granted as to both the first and second baggies of methamphetamine.

CONCLUSION

For all of the foregoing reasons, the Court has determined that both baggies of methamphetamine were the fruit of an unlawful search in violation of Defendant's Fourth Amendment rights.

THUS, IT IS ORDERED THAT Defendant's motion to suppress is GRANTED.

DATED this 24 day of October, 2016.

George A. Southworth
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was forwarded to the following persons on this 26 day of October, 2016.

Ryan K. Dowell
Canyon County Public Defender
Canyon County Administration Building
111 N. 11th Ave., Suite 120
Caldwell, Idaho 83605

Dallin Creswell
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

B. Dominguez
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **GEORGE A. SOUTHWORTH** DATE: November 28, 2016

THE STATE OF IDAHO, Plaintiff, vs. TAYLOR JAMES FAIRCHILD, Defendant.	COURT MINUTE CASE NO: CR2016-12011*C TIME: 1:30 P.M. REPORTED BY: Patricia Terry DCRT2 (144-147)

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Mr. Dallin Creswell, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present in court, represented by counsel, Mr. Ryan Dowell.

The Court called the case, noted the State had filed a notice of appeal on the Court's decision suppressing evidence and this matter would be stayed pending results of the appeal.

Mr. Dowell requested the Court removed the defendant from Pretrial Services and presented argument in support.

Mr. Creswell advised the Court the State had no objection.

The Court granted releasing the defendant from Pretrial Services.

The defendant was released on his own recognizance.

---- Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 11/28/16 AT 1:32 p.M.
CLERK OF THE DISTRICT COURT
BY _____, DEPUTY

STATE OF IDAHO,
Plaintiff,
-vs-
Taylor Fairchild
Defendant,

Case No. CR-16-2011-C

ORDER FOR

~~☒ Conditional Release/Pretrial Services~~
☒ Release on Own Recognizance
☐ Commitment on Bond

IT IS HEREBY ORDERED the defendant abide by the following conditions of release:

☒ Defendant is Ordered released

☒ On own recognizance ☐ Placed on probation ☐ Case Dismissed

☐ Bond having been set in the sum of $ _____ ☐ Total Bond

☐ Bond having been ☐ increased ☐ reduced to the sum of $ _____ ☐ Total Bond

☐ Upon posting bond, defendant must report to the Canyon County Pretrial Services office as stated below:

☐ Defendant shall report to the Canyon County Pretrial Services Office and follow the standard reporting conditions:

☐ Comply with a curfew designated by the Court or standard curfew set by Pretrial Services _____.

☐ Not consume or possess alcoholic beverages or mood altering substances without a valid prescription.

☐ Submit to evidentiary testing for alcohol and/or drugs as requested by Pretrial Services at defendant's expense.

☐ Not operate or be in the driver's position of any motor vehicle.

☐ Abide by any No Contact Order and its conditions.

☐ Submit to ☐ GPS ☐ Alcohol monitoring as directed by Pretrial Services.
Defendants Ordered to submit to GPS or alcohol monitoring shall make arrangements with a provider approved by Pretrial Services, prior to release.

OTHER: _____.

Failure by defendant to comply with the rules and/or reporting conditions and/or requirements of release as Ordered by the Court may result in the revocation of release and return to the custody of the Sheriff.

Dated: 11-28-2016 Signed: _____
Judge

☒ White - Court ☒ Yellow – Jail/Pretrial Services email ☒ Pink – Defendant 10/11

Cindy Robinson

From:	Microsoft Outlook
To:	Pre Trial
Sent:	Monday, November 28, 2016 02:18 PM
Subject:	Delivered: FW: Scanned from a Xerox Multifunction Printer: Fairchild

Your message has been delivered to the following recipients:

Pre Trial (PTrial@canyonco.org)

Subject: FW: Scanned from a Xerox Multifunction Printer: Fairchild

NS

Ryan K. Dowell, Deputy Public Defender, ISB #7796
Marc Bybee, Deputy Public Defender, ISB #9245
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
Canyon County Administration Building
111 N. 11th Ave, Suite 120
Caldwell, ID 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Email: rdowell@canyonco.org
Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO Plaintiff, vs. TAYLOR JAMES FAIRCHILD Defendant.	Case No. CR-2016-12011 MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER

COMES NOW, TAYLOR JAMES FAIRCHILD, the above-named Defendant, by and through counsel of the Canyon County Public Defender's Office, Ryan K. Dowell, and moves this Court pursuant to I.C. 19-870(1)(a) to appoint the State Appellate Public Defender's Office to represent Defendant on all matters pertaining to the direct appeal filed in this case on November 14, 2016, as he is indigent as evidenced by previous representation by the Canyon County Public Defender's Office

Dated this 1st of December, 2016.

Ryan K Dowell

Ryan Dowell, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 1st day of December, 2016, a copy of the foregoing MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER was served on the following named persons at the addresses shown and in the manner indicated.

Canyon County Prosecuting Attorney Canyon County Courthouse 1115 Albany Street Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery-Court Mailbox [ ] Electronic Mail
Clerk of the Court-Criminal Proceeding Canyon County Courthouse 1115 Albany Street, Rm 201 Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery [ ] Electronic Mail
Idaho State Appellate Public Defender 322 E. Front St Suite 570 Boise, Idaho 83702	[x] U.S. Mail [ ] Facsimile [ ] Hand Delivery-Court Mailbox [ ] Electronic Mail
State of Idaho Attorney General Criminal Proceedings 700 W. Jefferson St. Boise, Idaho 83720	[x] U.S. Mail [ ] Facsimile [ ] Hand Delivery [ ] Electronic Mail

DATED this First day of December, 2016.

Canyon County Public Defender's Office

NS
Ryan K. Dowell, Deputy Public Defender, ISB #7796
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
Canyon County Administration Building
111 N. 11th Ave, Suite 120
Caldwell, ID 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Email: rdowell@canyonco.org

Attorneys for the Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO Plaintiff, vs. TAYLOR JAMES FAIRCHILD Defendant.	Case No. CR-2016-12011 ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER

WHEREAS, the State of Idaho has elected to pursue direct appeal in the above named matter. Defendant being indigent and having heretofore been represented by the Canyon County Public Defender's Office in the district court, this court finds that, under these circumstances, appointment of appellate counsel is justified. Pursuant to Idaho Code 19-870(1)(a), the Idaho State Appellate Public Defender shall be appointed to represent the above-named defendant in all matter pertaining to the appeal filed in this matter.

6 day of December, 2016.

Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of December 2016, I served a true and correct copy of the foregoing document, ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER upon the individual(s) named below in the manner noted:

Canyon County Prosecuting Attorney Canyon County Courthouse 1115 Albany Street Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery-Court Mailbox [ ] Electronic Mail
Clerk of the Court-Criminal Proceeding Canyon County Courthouse 1115 Albany Street, Rm 201 Caldwell, Idaho 83605	[ ] U.S. Mail [ ] Facsimile [x] Hand Delivery [ ] Electronic Mail
Idaho State Appellate Public Defender 322 E. Front St Suite 570 Boise, Idaho 83702	[x] U.S. Mail [ ] Facsimile [ ] Hand Delivery-Court Mailbox [ ] Electronic Mail
State of Idaho Attorney General Criminal Proceedings 700 W. Jefferson St. Boise, Idaho 83720	[x] U.S. Mail [ ] Facsimile [ ] Hand Delivery [ ] Electronic Mail

CHRIS YAMAMOTO
Clerk of the Court

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Case No. CR-16-12011*C
	)	
-vs-	)	
	)	CERTIFICATE OF EXHIBITS
TAYLOR JAMES FAIRCHILD,	)	
	)	
Defendant-Respondent.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify the following exhibits used at the Preliminary Hearing:

State's Exhibits:

1	**Copy of ISP Analysis Report**	**Admitted**	**Sent**

The following exhibits were used at the Motion to Suppress Hearing:

State's Exhibits:

1	**CCSO Call Detail Report**	**Admitted**	**Sent**
2	**CD**	**Admitted**	**Sent**
3	**DVD**	**Admitted**	**Sent**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 21st day of December, 2016.

DISTRICT COURT STATE OF IDAHO THIRD JUDICIAL DISTRICT COUNTY OF CANYON

CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By: K Waldemer Deputy

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO, Plaintiff- Appellant, -vs- TAYLOR JAMES FAIRCHILD, Defendant- Respondent.	)	Case No. CR-16-12011 *C CERTIFICATE OF CLERK

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled case was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including all documents lodged or filed as requested in the Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 21th day of December, 2016.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.
By: K Waldemer Deputy

CERTIFICATE OF CLERK

DISTRICT COURT
STATE OF IDAHO
COUNTY OF CANYON
THIRD JUDICIAL DISTRICT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Supreme Court No. 44617-2016
	)	
	)	CERTIFICATE OF SERVICE
-vs-	)	
	)	
TAYLOR JAMES FAIRCHILD	)	
	)	
Defendant-Respondent.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcripts to the attorney of record to each party as follows:

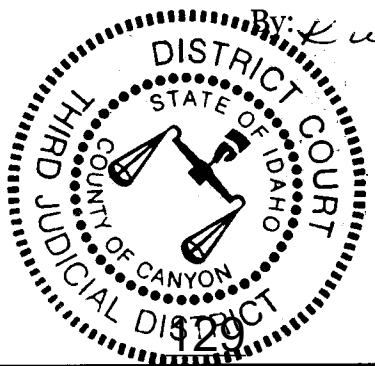
Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

Eric D. Fredericksen, State Appellate Public Defender's Office,
322 East Front Street, Suite 570, Boise, Idaho 83702

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 21st day of December, 2016.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho
in and for the County of Canyon.
By: K Waldemer Deputy

CERTIFICATE OF SERVICE



TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720

Fax: 334-2616

Docket No. 44617-2016

(Res) State of Idaho
vs.
(App) Taylor James Fairchild

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 20, 2016, I lodged 0 & 3 transcripts of the Motion to Suppress Hearing dated 10-7-16 of 57 pages in length for the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Patricia J. Terry,
Court Reporter, CSR No. 653
Registered Diplomate Reporter
Certified Realtime Reporter

December 20, 2016

Date