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State v. Wilson Clerk's Record Dckt. 45193

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IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-)	
Respondent,)	
	)	Supreme Court No. 45193-2017
-vs-)	
)	
RICHARD ALAN WILSON,)	
A.K.A.)	
RICHARD BURRELL,)	
RICHIE B. WILSON,)	
)	
Defendant-)	
Appellant.)	

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

HONORABLE JUNEAL C. KERRICK, Presiding

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

Attorney for Appellant

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

Attorney for Respondent

Felony

Date		Judge
8/25/2016	New Case Filed-Felony	Juneal C. Kerrick
	Motion To Seal Indictment Pursuant To ICR 6(e)	Juneal C. Kerrick
	Order To Seal Indictment Pursuant To ICR 6(e)	Thomas J Ryan
	Warrant Issued - Arrest Bond amount: 250000.00 Defendant: Wilson, Richard Alan	Thomas J Ryan
	Case Sealed	Thomas J Ryan
	Case Status Changed: Inactive	Thomas J Ryan
	Motion To Unseal Indictment	Juneal C. Kerrick
	Order To Unseal Indictment	Christopher S. Nye
	Warrant Returned Defendant: Wilson, Richard Alan	Thomas J Ryan
	Case Un-sealed	Thomas J Ryan
	Case Status Changed: Pending	Thomas J Ryan
	Hearing Scheduled (Arraignment (In Custody) 08/25/2016 01:30 PM)	Gregory F. Frates
	Hearing result for Arraignment (In Custody) scheduled on 08/25/2016 01:30 PM: Arraignment / First Appearance	Gregory F. Frates
	Hearing result for Arraignment (In Custody) scheduled on 08/25/2016 01:30 PM: Constitutional Rights Warning	Gregory F. Frates
	Hearing result for Arraignment (In Custody) scheduled on 08/25/2016 01:30 PM: Order Appointing Public Defender	Gregory F. Frates
	Hearing Scheduled (Arrn. - District Court 09/09/2016 09:00 AM) Motn Bnd Red	Juneal C. Kerrick
8/26/2016	Disclosure of Expert Witness Pursuant to I.C.R. 16(b)(7) and IRE 702, 703, 705	Juneal C. Kerrick
	Demand For Notice Of Defense Of Alibi	Juneal C. Kerrick
	Request For Discovery	Juneal C. Kerrick
	PA's Response and Objection to Request For Discovery	Juneal C. Kerrick
8/29/2016	Request For Discovery	Juneal C. Kerrick
8/30/2016	Motion to Produce Grand Jury Transcripts (w/order)	Juneal C. Kerrick
8/31/2016	Order to Produce Grand Jury Transcripts	Juneal C. Kerrick
9/9/2016	Hearing result for Arrn. - District Court scheduled on 09/09/2016 09:04 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 Arrn. - District Court scheduled on 09/09/2016 09:04 AM: Hearing Held	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 09/09/2016 09:04 AM: Arraignment / First Appearance	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 09/09/2016 09:04 AM: Appear & Plead Not Guilty	Gregory M Culet
	Hearing result for Arrn. - District Court scheduled on 09/09/2016 09:04 AM: Notice Of Hearing	Gregory M Culet

Felony

Date		Judge
9/9/2016	Hearing result for Arrn. - District Court scheduled on 09/09/2016 09:04 AM: Motion for Bond Reduction Withdrawn	Gregory M Culet
	Hearing Scheduled (Pre Trial 11/14/2016 09:00 AM)	Juneal C. Kerrick
	Hearing Scheduled (Jury Trial 12/13/2016 08:30 AM) STNW	James C. Morfitt
9/12/2016	PA's First Supplemental Response to Request for Discovery	Juneal C. Kerrick
10/11/2016	Transcript Filed (Grand Jury 5-11-16)	Juneal C. Kerrick
	Document sealed	
10/25/2016	Motion to Dismiss Indictment, Motion to Enlarge Time and Request for Hearing	Juneal C. Kerrick
11/1/2016	Amended Notice of Hearing	Juneal C. Kerrick
11/7/2016	Memorandum in Support of Motion to Enlarge Time to File Pretrial Motions and to Dismiss the Indictment Found	Juneal C. Kerrick
11/14/2016	Hearing result for Pre Trial scheduled on 11/14/2016 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Pre Trial scheduled on 11/14/2016 09:00 AM: Hearing Held	Juneal C. Kerrick
	Hearing result for Pre Trial scheduled on 11/14/2016 09:00 AM: Pre-trial Memorandum	Juneal C. Kerrick
	Hearing result for Pre Trial scheduled on 11/14/2016 09:00 AM: Notice Of Hearing	Juneal C. Kerrick
	Hearing Scheduled (Conference - Status 12/05/2016 01:30 PM)	Juneal C. Kerrick
	Defendant's Response to Request For Discovery	Juneal C. Kerrick
11/15/2016	Defendant's Motion to Dismiss, Motion to Exclude Witnesses, Motion re: Jury Instructions and Notice of Hearing	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 12/02/2016 10:00 AM) Mtn to Dismiss, Mtn to Exclude Witnesses, Mtn JT instruction	Juneal C. Kerrick
11/16/2016	Scheduling Order On Motion To Dismiss Indictment	Juneal C. Kerrick
12/2/2016	Hearing result for Motion Hearing scheduled on 12/02/2016 10:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing scheduled on 12/02/2016 10:00 AM: Hearing Held	Juneal C. Kerrick
	Hearing result for Motion Hearing scheduled on 12/02/2016 10:00 AM: Motion Held-Defendant's Motion to Dismiss Indictment {Ruling to be issued}	Juneal C. Kerrick
12/5/2016	Brief in Opposition of Motion to Dismiss Indictment	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 12/05/2016 01:30 PM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 12/05/2016 01:30 PM: Hearing Held	Juneal C. Kerrick

Felony

Date		Judge
12/5/2016	Hearing result for Conference - Status scheduled on 12/05/2016 01:30 PM: Continued- STNW	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 12/05/2016 01:30 PM: Notice Of Hearing	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 12/13/2016 08:30 AM: Hearing Vacated STNW	James C. Morfitt
	Hearing Scheduled (Conference - Status 01/18/2017 09:00 AM)	Juneal C. Kerrick
	Hearing Scheduled (Jury Trial 01/24/2017 08:30 AM) STNW	James C. Morfitt
1/18/2017	Hearing result for Conference - Status scheduled on 01/18/2017 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 01/18/2017 09:00 AM: Hearing Held	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 01/18/2017 09:00 AM: Motion Held- State's Oral Motion to Continue	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 01/18/2017 09:00 AM: Motion Granted- STNW	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 01/18/2017 09:00 AM: Notice Of Hearing	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 01/24/2017 08:30 AM: Hearing Vacated STNW	James C. Morfitt
	Hearing Scheduled (Conference - Status 02/22/2017 11:00 AM)	Juneal C. Kerrick
	Hearing Scheduled (Jury Trial 02/28/2017 08:30 AM) STNW	James C. Morfitt
1/26/2017	Defendant's Response to State's Brief in Opposition of Motion to Dismiss Indictment	Juneal C. Kerrick
	PA's Second Supplemental Response to Request for Discovery	Juneal C. Kerrick
1/27/2017	PA's Third Supplemental Response to Request for Discovery	Juneal C. Kerrick
2/15/2017	Memorandum Decision And Order On Defendant's Motion To Dismiss Indictment/DENIED	Juneal C. Kerrick
2/17/2017	PA Fourth Supplemental Response to Request for Discovery	Juneal C. Kerrick
2/21/2017	PA's Fifth Supplemental Response to Request for Discovery	Juneal C. Kerrick
2/22/2017	Hearing result for Conference - Status scheduled on 02/22/2017 11:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Conference - Status scheduled on 02/22/2017 11:00 AM: Hearing Held	Juneal C. Kerrick
2/23/2017	Witness List and Exhibit List	Juneal C. Kerrick
2/24/2017	PA's Sixth Supplemental Response to Request for Discovery Defendant's Proposed Jury Instructions	Juneal C. Kerrick
	Witness List - Exhibit List	Juneal C. Kerrick
2/27/2017	State's Requested Special Jury Instructions	Juneal C. Kerrick

Felony

Date		Judge
2/27/2017	Notice of Intent To Use Redacted Audio	Juneal C. Kerrick
2/28/2017	Hearing result for Jury Trial scheduled on 02/28/2017 08:30 AM: Hearing Held	James C. Morfitt
	Day 1 Jury Trial Started	James C. Morfitt
	Preliminary Jury Instructions Filed	James C. Morfitt
	District Court Hearing Held	James C. Morfitt
	Court Reporter: Leda Waddle	
	Number of Transcript Pages for this hearing estimated: More than 100 pages	
3/1/2017	States Requested Special Jury Instruction	James C. Morfitt
	Defendant's Proposed Jury Instructions	James C. Morfitt
	Final Jury Instructions Filed	James C. Morfitt
	Question from Jury	James C. Morfitt
	Verdict Filed	James C. Morfitt
	Found Guilty After Trial	James C. Morfitt
	Pre-Sentence Investigation Evaluation Ordered	James C. Morfitt
	Pre-Sentence Investigation Evaluation Ordered	James C. Morfitt
	District Court Hearing Held	James C. Morfitt
	Court Reporter: Debora Kreidler	
	Number of Transcript Pages for this hearing estimated: More than 100 pages	
	Day 2 Jury Trial Hearing Held	James C. Morfitt
	Answer to Jury Question	James C. Morfitt
	Hearing Scheduled (Sentencing 05/01/2017 11:00 AM)	Juneal C. Kerrick
5/1/2017	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: District Court Hearing Held	James C. Morfitt
	Court Reporter: Kathy Klemetson	
	Number of Transcript Pages for this hearing estimated: Less than 100	
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Hearing Held	James C. Morfitt
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Final Judgement, Order Or Decree Entered	James C. Morfitt
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Notice of Post Judgment Rights	James C. Morfitt
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Notice of Post Judgment Rights	James C. Morfitt
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Order for DNA sample and right thumbprint impression	James C. Morfitt
	Hearing result for Sentencing scheduled on 05/01/2017 11:00 AM: Commitment - PEN	James C. Morfitt
	Guilty Plea Or Admission Of Guilt (I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine)	James C. Morfitt

State of Idaho vs. Richard Alan Wilson

Felony

Date		Judge
5/1/2017	Sentenced To Incarceration (I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine) Confinement terms: Penitentiary determinate: 3 years. Penitentiary indeterminate: 7 years.	James C. Morfitt
	Sentenced To Fine And Incarceration	James C. Morfitt
	Sentenced To Pay Fine 10,785.50 charge: I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine	James C. Morfitt
	Guilty Plea Or Admission Of Guilt (I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine)	James C. Morfitt
	Sentenced To Incarceration (I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine) Confinement terms: Penitentiary determinate: 3 years. Penitentiary indeterminate: 7 years.	James C. Morfitt
	Sentenced To Fine And Incarceration	James C. Morfitt
	Case Status Changed: closed pending clerk action	James C. Morfitt
	Sentenced To Pay Fine 10,285.50 charge: I37-2732B(a)(4) Drug-Trafficking in Methamphetamine or Amphetamine	Juneal C. Kerrick
5/4/2017	Lab Restitution Order And Judgment	James C. Morfitt
	Restitution Ordered 200.00 victim # 1	Juneal C. Kerrick
	Judgment and Commitment	James C. Morfitt
6/13/2017	Motion For Appointment of State Appellate Public Defender (w/ order)	Juneal C. Kerrick
	Notice of Appeal	Juneal C. Kerrick
	Appealed To The Supreme Court	Juneal C. Kerrick
6/14/2017	Order Appointing State Appellate Public Defender	Gene A Petty
	Order Appointing State Appellate Public Defender	Gene A Petty

AUG 25 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

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.

RICHARD ALAN WILSON
aka RICHARD BURRELL,
[REDACTED] [REDACTED]

Defendant.

CASE NO. 16-14841C

INDICTMENT

for the crime of:

**COUNT I - TRAFFICKING IN
METHAMPHETAMINE AND/OR
AMPHETAMINE**

Felony, I.C. §18-204 and 37-2732B(a)(4)

**COUNT II - TRAFFICKING IN
METHAMPHETAMINE AND/OR
AMPHETAMINE**

Felony, I.C. §18-204 and 37-2732B(a)(4)

RICHARD ALAN WILSON is accused by the Grand Jury of Canyon County of the crime of TRAFFICKING IN METHAMPHETAMINE AND/OR AMPHETAMINE (2 COUNTS), a felony, Idaho Code Section 18-204 and 37-2732B(a)(4), committed as follows:

COUNT I

That the Defendant, Richard Alan Wilson, on or about the 7th day of April, 2016, in the County of Canyon, State of Idaho, did aid, abet, facilitate, encourage and/or assist Regina L. Jones, who did deliver twenty-eight (28) grams or more, to wit: a quantity represented as "two



ounces” of methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of methamphetamine to Mike Phillips.

All of which is contrary to **Idaho Code**, Section 18-204 and 37-2732B(a)(4) and against the power, peace and dignity of the State of Idaho.

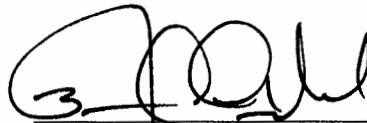
COUNT II

That the Defendant, Richard Alan Wilson, on or about the 27th day of April, 2016, in the County of Canyon, State of Idaho, did aid, abet, facilitate, encourage and/or assist Regina L. Jones, who did deliver twenty-eight (28) grams or more, to wit: a quantity represented as “one ounce” of methamphetamine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of methamphetamine to Mike Phillips.

All of which is contrary to **Idaho Code**, Section 18-20437-2732B(a)(4) and against the power, peace and dignity of the State of Idaho.


A TRUE BILL

Presented in Open Court this 11 day of MAY, 2016.



Foreman of the Grand Jury of
Canyon County, State of Idaho

NAMES OF WITNESSES EXAMINED BEFORE THE GRAND JURY

- Mike Phillips
- Shane Huston
- Jacob Peper
- ~~Angela Jolley~~ 
- Chris Davenport

AUG 25 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

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.

RICHARD ALAN WILSON,

Defendant.

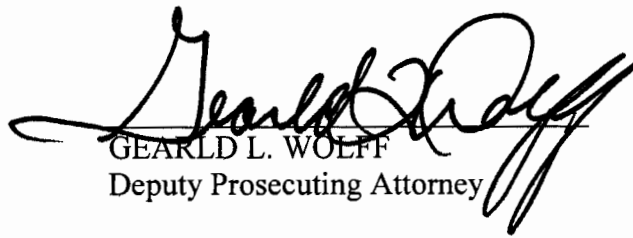
CASE NO. 16-14841C

**MOTION TO SEAL INDICTMENT
PURSUANT TO ICR 6(e)**

The State respectfully moves the Court pursuant to Rule 6(e) of the Idaho Criminal Rules to order and direct that the Indictment returned by the Grand Jury on the 11th day of May, 2016, charging the above named Defendant with the violation of TRAFFICKING IN METHAMPHETAMINE AND/OR AMPHETAMINE (2 counts), be kept secret until the Defendant named in that Indictment is either in custody or has given bail; and further order that until such time as the Defendant is in custody or has given bail, that no person shall disclose the finding of the Indictment or any Warrant issued pursuant thereto except when necessary for the issuance and execution of the Warrant.

MOTION TO SEAL INDICTMENT
PURSUANT TO ICR 6(e)

Dated this 11th day of May, 2016.


GERALD L. WOLFF
Deputy Prosecuting Attorney

FILED
A.M. P.M.

AUG 25 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

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.

RICHARD ALAN WILSON,

Defendant.

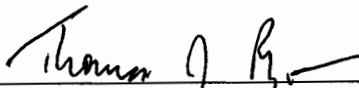
CASE NO. 110-14841C

**ORDER TO SEAL INDICTMENT
PURSUANT TO ICR 6(e)**

A motion having been filed by the State pursuant to Idaho Criminal Rule 6(e) and good cause therefore, IT IS HEREBY ORDERED and DIRECTED that the Indictment returned by the Grand Jury on the 11th day of May, 2016, charging the above named Defendant with the violation of TRAFFICKING IN METHAMPHETAMINE AND/OR AMPHETAMINE (2 counts), be kept secret until the Defendant named in that Indictment is either in custody or has given bail, that no person shall disclose the finding of the Indictment or any Warrant issued pursuant thereto, except when necessary for the issuance and execution of the Warrant.

ORDER TO SEAL INDICTMENT
PURSUANT TO ICR 6(e)

Dated this 1st day of May, 2016.



DISTRICT JUDGE

ORDER TO SEAL INDICTMENT
PURSUANT TO ICR 6(e)

2

FILED
A.M. P.M.

AUG 25 2016

**CANYON COUNTY CLERK
S MEHIEL, DEPUTY**

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.

RICHARD ALAN WILSON,

Defendant.

CASE NO. 16-14841C

**MOTION TO UNSEAL
INDICTMENT**

COMES NOW, Matthew Bever, Deputy Prosecuting Attorney for

Canyon County, State of Idaho, and moves the Court for an Order to unseal the indictment.

This Motion is based on the applicable rule(s), statute(s), and instant case file. This Motion is further on the reasons for unsealing the said indictment as delineated in the affixed Order.

Oral argument is not requested.

Dated this 26th day of August, 2016.

Matthew Bever
Deputy Prosecuting Attorney

MOTION TO UNSEAL
INDICTMENT

FILED
A.M. P.M.

AUG 25 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

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.

RICHARD ALAN WILSON,

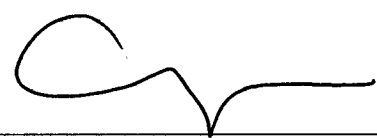
Defendant.

CASE NO. 16-14841C

**ORDER TO UNSEAL
INDICTMENT**

The Indictment in this case having been sealed by Order of this Court pursuant to Rule 6(e) of the Idaho Criminal Rules, and it appearing that the Defendant above named is now in custody so that it is necessary for the Indictment to be unsealed;

IT IS HEREBY ORDERED this 25 day of August, 2016, that the Indictment be unsealed and made public record.



DISTRICT JUDGE

ORDER TO UNSEAL
INDICTMENT

dm

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

FILED
A.M. P.M.

AUG 25 2016

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

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.

RICHARD ALAN WILSON,

Defendant.

CASE NO. 16-14841C

WARRANT OF ARREST

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR POLICEMAN
IN THE STATE OF IDAHO:

AN INDICTMENT having been found on the 14th day of May, 2016, in the
District Court of the Third Judicial District, in and for the County of Canyon, State of Idaho,
charging RICHARD ALAN WILSON with the crime of TRAFFICKING IN
METHAMPHETAMINE AND/OR AMPHETAMINE, a felony, Idaho Code Section 18-204 and
37-2732B(a)(4);

YOU ARE THEREFORE COMMANDED to immediately arrest the Defendant above
named and to bring him before the District Court in the County of Canyon, or in case of my
absence or inability to act before the nearest or most accessible District Judge in Canyon County.

WARRANT OF ARREST

1

May be served:

_____ Daytime only
 Daytime or night time

Bond: \$ 250,000⁰⁰

NO CONTACT ORDER

If checked, Defendant is not to be released on bond until the following No Contact Order is served on, or signed by, the Defendant:

As a condition of Bond, YOU, THE DEFENDANT IN THE ABOVE CAPTIONED CASE, ARE HEREBY ORDERED TO HAVE NO CONTACT DIRECTLY OR INDIRECTLY WITH THE ALLEGED VICTIM(S):

You shall not harass, follow, contact, attempt to contact, communicate with in any form, or knowingly remain within 300 feet of the alleged victim(s) or his/her property, residence, work or school.

THIS ORDER WILL EXPIRE AT 11:59 ON THE _____ DAY OF _____, 20____, OR UPON DISMISSAL OF THE CASE.

VIOLATION OF THIS ORDER MAY BE PROSECUTED AS A SEPARATE CRIME UNDER Idaho Code section 18-920 for which no bail will be set until you appear before a judge and is subject to a penalty of up to one (1) year in jail or up to a one thousand dollar (\$1,000) fine, or both.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WHEN MORE THAN ONE DOMESTIC VIOLENCE PROTECTION ORDER (Title 39, Chapter 62 of Idaho Code) IS IN PLACE THE MOST RESTRICTIVE PROVISION WILL CONTROL ANY CONFLICTING TERMS OF ANY OTHER CIVIL OR CRIMINAL PROTECTION ORDER.

The clerk shall immediately give written notification to the records department of the Canyon County Sheriff's Office of the issuance of this order. THIS INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM. This order is entered pursuant to Idaho Code section 18-920, and Idaho Criminal Rule 46.2 (for felonies) or Idaho Misdemeanor Criminal Rule 13 (for misdemeanors).

DATED this 14th day of May, 20 16.

Thomas J. Ky
DISTRICT JUDGE

RACE: WAM	HAIR: Brown	EYES: Brown
HEIGHT: 6'04"	WEIGHT: 180	■■■■■■■■■■
■■■■■■■■■■	CR#: 16022161	AGENCY: NPD
Officer: Huston	Badge #:	

Last Known address: 1520 Sunset Ave Caldwell, ID 83605

NCIC ENTRY: (Additional Levels Inclusive)
_____ Local
_____ Statewide
_____ Surrounding States
_____ Western United States
_____ Nationwide

By: _____
Dated: _____

RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into Court his _____ day of _____, 20 ____.

Deputy Sheriff/City Policeman/
State Policeman

DATED this 11th day of May, 20 16.

Thomas J. By
DISTRICT JUDGE

RACE: WAM	HAIR: Brown	EYES: Brown
HEIGHT: 6'04"	WEIGHT: 180	■■■■ ■■■■
■■■■ ■■■■	CR#: 16022161	AGENCY: NPD
Officer: Huston	Badge #:	

Last Known address: 1520 Sunset Ave Caldwell, ID 83605

NCIC ENTRY: (Additional Levels Inclusive)

- Local
- Statewide
- Surrounding States
- Western United States
- Nationwide

By: _____

Dated: _____

RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into Court his 24th day of August, 2016.

C. [Signature] 5383 82446
Deputy Sheriff/City Policeman/
State Policeman

GRAND JURY INDICTMENT

WARRANT WORK SHEET

DEFENDANT: Richard Wilson

PROSECUTING ATTORNEY: Geard Wolf

AGENCY: NPD CR# _____

INVESTIGATOR: Shane Huston

DATE: 5/11/2016

CONTACT INVESTIGATOR FOR SERVICE

SERVE IMMEDIATELY (NO VOLUNTARY APPEARANCE)
(ENTER IN NCIC/ILETS)

HOLD WARRANT UNTIL CLEARED BY

GEARLD L. WOLFF

MONICA MORRISON

ELEONORA SOMOZA

ERICA KALLIN

MATT BEVER

JUSTIN PASKETT

CCNU

NPD SIU

OTHER

Geard Wolf
DEPUTY PROSECUTING ATTORNEY

**PROCESS WARRANT AS YOU NORMALLY WOULD
UNLESS A HOLD HAS BEEN REQUESTED**

THIRD JUDICIAL DISTRICT, STATE OF IDAHO
COUNTY OF CANYON

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

STATE OF IDAHO,)
) Plaintiff) Case No. CR2016-14841-C
-vs-) Date: 8/25/2016
RICHARD A. WILSON)
) Defendant.) Judge: FRATES
 True Name)
Corrected Name:) Recording: MAG 7(246-248)

APPEARANCES:

- Defendant
- Defendant's Attorney Marc Bybee
- Prosecutor Josh Vanswearingen
- Interpreter

ADVISEMENT OF RIGHTS: Defendant

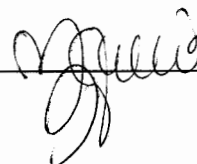
- was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.
- requested court appointed counsel.
- Indigency hearing held.
- Court appointed public defender.
- waived right to counsel.
- Court denied court-appointed counsel.

DISTRICT COURT ARRN: September 9, 2016 at 9:00 am before Judge Kerrick

BAIL:

- 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 to remain as previously set at \$250,000.
- Cases consolidated
- Defendant to Report to Pretrial Release Services upon posting bond.

OTHER: The Court noted that the defense may argue bond at the Preliminary Hearing.

_____ , Deputy Clerk

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 8-25-10 AT 248.M.
CLERK OF THE DISTRICT COURT
BY [Signature], Deputy

THE STATE OF IDAHO/or)

Richard A. Wilson)
_____)

Case No. CR10-14841-C
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 Richard A Wilson

THE MATTER IS SET FOR DCA 9-09-10 @ 9am
before Judge Kerrick

THE MATTER SHALL BE SET FOR _____
before Judge _____

Dated: 8-25-10

Signed: [Signature]
Judge

In Custody -- Bond \$ 250,000.
 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.

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

ORDER APPOINTING PUBLIC DEFENDER

AUG 30 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

ALH
David J. Smethers, Deputy Public Defender, ISB #4711
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: dsmethers@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.

RICHARD ALAN WILSON

Defendant.

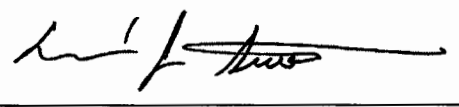
Case No. CR-2016-14841

MOTION TO PRODUCE GRAND JURY
TRANSCRIPT

COMES NOW, the Defendant, by and through Defendant's attorneys of record the Canyon County Public Defender's Office, hereby move and request this Honorable Court for an Order to produce the record of the Grand Jury Proceedings on leading to an Indictment of the above named defendant in this matter.

THIS MOTION is made pursuant to the provisions of Idaho Rules of Criminals Procedures 6(b), 6(c) and 6(e).

DATED this 30th day of August, 2016.



David Smethers, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

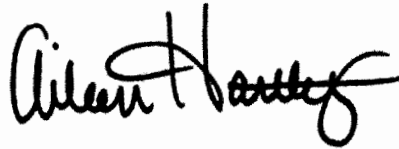
I certify that on this 30th day of August, 2016, a copy of the foregoing MOTION TO PRODUCE GRAND JURY TRANSCRIPT was served on the following named persons at the addresses shown and in the manner indicated.

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

U.S. Mail
 Facsimile
 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
 Hand Delivery
 Electronic Mail



Canyon County Public Defender's Office

David J. Smethers, Deputy Public Defender, ISB #4711
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
Canyon County Administration Building
111 N. 11th Street, Suite 120
Caldwell, ID 83605
Telephone: 208-649-1818
Facsimile: 208-649-1819
Email: dsmethers@canyonco.org

F I L E D
A.M. *USS* P.M.
AUG 31 2016
CANYON COUNTY CLERK
E BULLON, DEPUTY

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.

RICHARD ALAN WILSON

Defendant.

Case No. CR-2016-14841

ORDER TO PRODUCE GRAND JURY
TRANSCRIPTS

The above named defendant having filed a Motion for an Order to produce the record of the Grand Jury proceeding leading to the Indictment of the above named defendant which was held on or about August 25, 2016 and good cause appearing therefore;

IT IS FURTHER ORDERED AND THIS DOES ORDER that a transcript of the Grand Jury proceedings held on or about August 25, 2016 be prepared within forty-two (42) days of the date of this order.

IT IS FURTHER ORDERED, that:

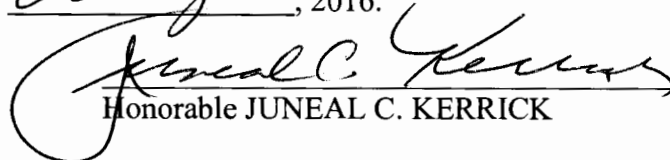
1. Upon receipt of the transcripts, the Court Clerk will lodge and certify delivery of one copy to the Prosecuting Attorney. The Prosecuting Attorney shall have five (5) working days to review the transcript and file any objection the Court will review the

transcript in Camera and make any necessary deletions. Such record will be sealed for review by an appellate court.

2. In the absence of an objection by the Prosecuting Attorney to the completed transcript within the five (5) working days, the Court Clerk is to file a copy with the Court and certify delivery of a copy of the transcript to the defendant's attorney.
3. The transcript shall be furnished to defendant's attorney as soon as possible, but it shall be furnished no later than ten (10) days before trial.
4. The above named defendant is represented by the Canyon County Public Defender and said transcript is to be provided at the expense of the County.
5. All copies of the Grand Jury Transcript are to be returned to the Clerk for sealing.
6. Defendant is represented by Canyon County Public Defender's Office and the cost of such Transcripts shall be at county expense.

IT IS FURTHER ORDERED, that all such transcripts of Grand Jury testimony are to be used exclusively by the said attorneys in preparation for the defense of said case. None of the material may be copied or disclosed to any person other than the attorneys, their deputies, assistants, associates or witnesses, without specific authorization by the Court. Counsel may discuss the contents of the transcript with their client or witnesses; but may not release the transcripts themselves.

DATED this 31st day of August, 2016.


Honorable JUNEAL C. KERRICK

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of August, 2016, I served a true and correct copy of the foregoing document, ORDER TO PRODUCE GRAND JURY 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: **SEPTEMBER 9, 2016**

THE STATE OF IDAHO,

Plaintiff,

vs

RICHARD ALAN WILSON,

Defendant.

COURT MINUTES

CASE NO: **CR-2016-14841-C**

TIME: 9:00 a.m.

REPORTED BY: Kathy Klemetson

DCRT 5 (1102-1105)

This having been the time heretofore set for **arraignment** in the above entitled matter, the State was represented by Mr. Christopher Boyd, Deputy Prosecuting Attorney for Canyon County; and the defendant was present in court with counsel, Mr. Andrew Woolf.

The Court determined the defendant received and reviewed a copy of the Indictment, and his true name was charged.

The Court advised the defendant of the charges and the maximum possible penalties for the same. Further, a DNA sample and right thumbprint impression would be required, and restitution could be ordered.

The Court further advised the defendant sentences could be ordered to run consecutively and if he was not a citizen of the United States and pled guilty, or was found guilty of any criminal offense, it could have immigration consequences to include,

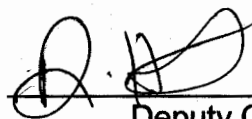
deportation from the United States, inability to obtain legal status in the United States, or denial of an application for United States citizenship.

In answer to the Courts inquiry, the defendant indicated he understood the charges and possible penalties provided by law upon a conviction.

Mr. Woolf indicated the defendant waived formal reading of the Indictment; would **stand silent** at this time, and **demand** speedy trial.

The Court directed pleas of not guilty be entered in the record and set this matter for **pretrial conference the 14th day of November, 2016 at 9:00 a.m., before the Honorable Judge Kerrick and a four (4) day jury trial to commence the 13th day of December, 2016 , at 8:30 a.m. before the Honorable Senior Judge Morfitt.**

The defendant was remanded to the custody of the Canyon County Sheriff's Office pending further proceedings or the posting of the bond, with instructions to keep in good contact with his attorney.



Deputy Clerk

OCT 25 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

ALH
David J. Smethers, Deputy Public Defender, ISB #4711
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: dsmethers@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.

RICHARD ALAN WILSON

Defendant.

Case No. CR-2016-14841

MOTION TO DISMISS INDICTMENT,
MOTION TO ENLARGE TIME AND
REQUEST FOR HEARING

COMES NOW, Defendant, Richard Alan Wilson, by and through his attorney of record, David Smethers, Canyon County Public Defender's Office, and hereby requests the time to file pretrial motions be enlarged pursuant to ICR 12(d), and that the Indictment found be dismissed pursuant to Idaho Criminal Rule 6.7. A memorandum in support will be filed by November 7, 2016. A hearing is requested.

Dated this 25th of October, 2016.



David Smethers, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

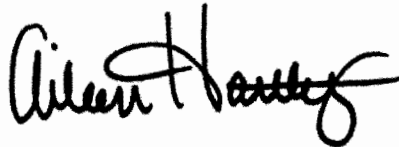
I certify that on this 25th day of October, 2016, a copy of the foregoing MOTION TO ENLARGE TIME, MOTION TO DISMISS, REQUEST FOR HEARING was served on the following named persons at the addresses shown and in the manner indicated.

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

U.S. Mail
 Facsimile
 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
 Hand Delivery
 Electronic Mail



Canyon County Public Defender's Office

NOV 07 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

ALH
David J. Smethers, Deputy Public Defender, ISB #4711
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
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Telephone: 208-649-1818
Facsimile: 208-649-1819
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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.

RICHARD WILSON

Defendant.

Case No. CR-2016-14841

MEMORANDUM IN SUPPORT OF
MOTION TO ENLARGE TIME TO FILE
PRETRIAL MOTIONS AND TO DISMISS
THE INDICTMENT FOUND

MEMORANDUM

I. STATEMENT OF THE CASE

A. Nature of the Case

Motion to enlarge, motion to dismiss the INDICTMENT found.

B. Procedural History

The defendant was charged by INDICTMENT with two counts of trafficking in methamphetamine on August 25, 2016, (all dates 2016 unless indicated otherwise). The defendant submitted a Motion and Order for a copy of the grand jury transcript on August 30th, with the Order bring signed on August 31st. The transcript was filed on October 11th, received in

the public defender's office on October 12th, (a Wednesday). Counsel did not start to review the transcript until the following Tuesday, (October 18th), at which time potential ICR motion 6.7 issues were identified. These motions to enlarge and dismiss were filed on October 25th, after counsel finished reviewing the transcript and researching the issues. This memorandum in support follows.

C. Statement of Facts

Law enforcement officers from the Nampa City Police Department conducted two purchases of a controlled substance on April 7th and April 27th. One Regina L. Jones, (hereafter "Jones"), sold methamphetamine to Officer Mike Phillips, ("Phillips") on both occasions. Defendant will utilize the information presented by the state in the grand jury proceedings for purposes of this motion. All of said information is disputed.

II. ISSUE PRESENTED FOR REVIEW

1. Should this Court grant the Motion to Enlarge time to file pretrial motions?
2. Should this Indictment be dismissed for reasons that the defendant's right to due process of law was violated by the presentation of inadmissible evidence, presentation of hearsay testimony, use of improper and leading questions, other violations of rules and statutes, and for reasons of prosecutorial misconduct?

III. ARGUMENT

A. This Court should grant the Motion to Enlarge time.

Idaho Criminal Rule mandates that pretrial motions pursuant to ICR 12(b) must be filed within 28 days after the entry of plea or 7 days before trial, whichever is earlier. The Court may shorten or enlarge time for good cause shown or excusable neglect, *State v Dice*, 126 Idaho 595. A court may not arbitrarily enlarge or shorten filing requirements of the rule. Pretrial motions

are just that, motions to be disposed of prior to trial. Bringing such motions at the last minute unfairly deprives the responding party opportunity to gather evidence to meet the merits of the movant's arguments, *State v Alanis*, 109 Idaho 884. In this case, due to the secret nature of the grand jury process, the defendant was not and could not been aware of ICR 12(b) and ICR 6.7 issues prior to receipt of the transcript. Defendant must present sufficient reason to justify this court hearing an untimely filed motion.¹ The State is not prejudiced by the untimely filing under the Alanis2 criteria.

B. This Indictment should be dismissed for reasons that the defendant's right to due process of law was violated by the presentation inadmissible evidence, presentation of hearsay testimony, use of improper and leading questions, other violations of rules and statutes, and for reasons of prosecutorial misconduct.

The defendant objects to all exhibits admitted for consideration by the grand jury based on foundation, hearsay, and prosecutorial misconduct.

The prosecuting attorney has the power and duty to present evidence to the grand jury. The grand jury process is defined and controlled by Title 19, Chapters 11, 12, and 14, of the Idaho Code, Idaho Criminal Rule, (hereafter "ICR") 6.1 et al, and the Idaho Rule of Evidence, (hereafter "IRE"). ICR 6.7. Motion to dismiss indictment, at (d), states:

IDAHO CRIMINAL RULE 6.2. "Grounds for Motion. A motion to dismiss the indictment may be granted by the district court upon any of the following grounds:

(d) That the indictment was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho."

¹ State v. Dice, 126 Idaho 595

² 109 Idaho 884.

The standards the state must meet in grand jury proceedings are set out in *State v Jones*,

125 Idaho 477:

[T]he law governing grand jury indictments derives from numerous statutes and rules. Idaho Code 19-1107 states that "the grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury." Idaho Code 19-1105 describes the type of evidence the jury may consider: {873 P.2d 128} {125 Idaho 483} In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay. Idaho Criminal Rule 6(f) states that "in the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." Section (h) states that "if it appears to the grand jury after evidence has been laid before them that there is probable cause to believe an offense has been committed and the accused committed it, the jury ought to find an indictment." I.C.R. 6(h).

State v. Martinez, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994), citing *State v. Jones*, 125 Idaho 477, 873 P.2d 122 (1994) (holding that the use of impermissible "hearsay" in the context of a grand jury proceeding is improper evidence); *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987). In the present case, important and substantial evidence was derived through inadmissible hearsay and false testimony.

State v. Edmonson, 113 Idaho 230, defines prosecutorial misconduct, and holds that an indictment should be dismissed when impermissible conduct by the prosecutor infringes on the grand jury's decision making function constituting a due process violation.

Edmonson, (supra), goes on to state, "First, we must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause." "Second, we must dismiss the indictment if, despite an adequate

finding of probable cause, the prosecutorial misconduct in submitting the illegal evidence was so egregious as to be prejudicial.” “...that an indictment should be dismissed when impermissible conduct by the prosecutor infringes on the grand jury’s decision making function constituting a due process violation.” “An Indictment will be sustained if, after excluding inadmissible evidence, there remains sufficient evidence to indict...”

Defendant argues that after excluding inadmissible hearsay evidence, the evidence remaining is insufficient for the Grand Jury to Indict. Defendant further argues prosecutorial misconduct was so egregious that it was prejudicial and infringed on the grand jury’s decision making function as follows: lack of proper foundation, use of multiple layers of hearsay, presentation and questioning of incompetent witnesses, and comments on the weight and sufficiency of the evidence. The Defendant must affirmatively show prejudice was caused by this misconduct, Edmonson, (supra).

The defendant contends he would not have been indicted but for this prosecutorial misconduct, he would not have been indicted but for the hearsay evidence, and would not have been indicted but for impermissible argument by the prosecutor. Considered in toto, defendant was denied due process at the hearing.

Here, repeated prosecutorial misconduct in submitting illegal evidence is repetitive, intentional, and egregious. The 9th Circuit has long held that “the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached.” *United States v. Basurto*, 497 F.2d 781, 785 (9th Cir. 1974). In fact, the 9th Circuit has held that “[w]henver the prosecutor learns of any perjury committed before the grand jury, he is under a duty to immediately inform the court and

opposing counsel—and, if the perjury may be material, also the grand jury—in order that appropriate action may be taken.” *Id.* at 785-86, *citing Mooney v. Holohan*, 294 U.S. 103 (1935); *Giles v. Maryland*, 386 U.S. 66 (1967), *Napue v. Illinois*, 360 U.S. 264 (1959).” The defendant argues in this case this Court should apply the same standard to evidence introduced in violation of the rules of evidence.

A grand jury proceeding is non-adversarial by nature, the defendant is not represented, (with inherent rights to confront and cross-examine witnesses, present exculpatory evidence, object to inadmissible evidence, et al), and there is no judicial oversight, (emphasis the author’s throughout). These omissions/oversights coupled with the prosecutorial misconduct standing alone mandates dismissal of the Indictment.

The defendant requests this Court to review this transcript taking into consideration how the events would have played out if a competent defense attorney had been present and had the ability to advocate for his client. The defendant will argue issues in this motion sequentially from the Grand Jury Transcript, (hereafter “GJ Tr”).³

Nampa special investigator Mike Phillips, (hereafter “Phillips”):

Page 2: Phillips testifies that he “recognizes the name Regina L. Jones”, with no foundation being established. Phillips then responds to a blatant leading question, (GJ Tr p 2, ll 17-19, in violation of IRE 611(c)), with a narrative response, (IRE 611(a), Control by the court)⁴. This narrative response

³ All page and line citations refer to the grand jury transcript, (“p X, ll YY”).

⁴ The state’s use of narrative responses by witnesses violates due process. The Idaho Rules of Evidence do not make exceptions for grand jury proceedings- and IRE 611(a) implicitly/explicitly bars narrative testimony by stating that, “... the Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation of evidence effective for ascertainment of the truth,...”. A judge is not present at the grand jury, so the state has an ethical, statutory, and constitutional duty to adhere to the rules of evidence and/or admonish the panel when the rules

MEMORANDUM IN SUPPORT OF MOTIONS Page 6 of 16

is indicative of the violation of the defendant's right to due process- this narrative response would not have been tolerated by the Court. Phillips narrative consisting of, "...I set up a deal for an ounce of methamphetamine.", (no foundation, hearsay); "On the 28th we were in communications, and she was going to – had it set up so we could do it. At the time that we went to do the purchase, she told me she hadn't been in contact with her source so she was going to sell me what she had, which was going to be an eight ball of methamphetamine." This is continued hearsay with no foundation, and the implication from this testimony is that the defendant was the "source" of the drugs. Phillips' testimony, "...so she was going to sell me what she had, which is going to be an eight ball of methamphetamine.", is hearsay, and the panel would accept this testimony that the substance is meth, (ll 25, p 3, ll1).

Page 3- The defendant is not charged with any involvement in the March 28th sale and there should not have been any testimony elicited as it is not relevant and highly prejudicial.⁵ Phillips testifies the substance is methamphetamine with no foundation, (IRE 901(a)). Phillips then testifies the

are violated. McCormick on Evidence, 5th Edition, Chapter 2, Section 5, discusses the subject of narratives. Caveats concerning narratives are as follows: "Some courts have voiced concerns about the danger that when asked to tell his story, the witness will mention hearsay or other incompetent testimony; but a proper caution by the court or counsel, on the adversary's request, will usually prevent this."; "It is true that if a witness blurts out an improper statement, the only remedy is striking that part of the evidence and giving the jury a curative instruction to disregard the stricken testimony."; "Whenever circumstances makes narrative testimony feasible, its use is likely to be in the interest of both the examining party and the accurate disclosure of the truth. Its use is seldom curbed by enlightened judges, *except, perhaps, in criminal trials when it entails the risk that it will expose the jury to constitutionally inadmissible testimony.*", (emphasis added). Once again, a defendant is denied due process if the rules of evidence are violated at a grand jury proceeding as there is no advocate for the defendant to make objections and a record, and no judge to make rulings.

⁵ Due to the secret nature of grand jury proceedings, the defendant cannot determine if this hearing was also utilized to indict Jones. If it was, the defendant was denied due process as the panel should be instructed on the defendant's actions only. The state did not instruct the jury that Jones' actions could not be attributed to the defendant. If Jones was being indicted at this hearing, her statements arguably were not hearsay, (party opponent exception), and this violates
MEMORANDUM IN SUPPORT OF MOTIONS Page 7 of 16

substance was meth and presumptive positive per the NIK test. The state did not elicit any foundation for the reliability of NIK tests, and did not establish any foundation as to Phillips experience and training with NIK tests. Further, the defendant contends NIK⁶ tests are presumptive and do not meet the foundational criteria for consideration by the panel. A presumptive test must be confirmed using instrumental analysis, (See Attachment "A", (consisting of two pages), an explanation for Presumptive and Confirmatory Testing for Drugs issued by the National Forensic Science Technology Center under a cooperative agreement from the Bureau of Justice Assistance.⁷ The state had to present testimony from a witness from a certified lab. Black's Law, 6th Edition, defines Presumptive evidence as follows:

"Prima facie evidence or evidence which is not conclusive and admits of explanation or contradiction; evidence which must be received and treated as true and sufficient until and unless rebutted by other evidence, *i.e.*, evidence which a statute says shall be presumptive of another fact unless rebutted."

Use of presumptive evidence at a grand jury proceeding violates the Idaho and US constitutions as the defendant is precluded from rebutting any presumption due to the secret nature of the proceedings.

Page 4- Phillips relates another hearsay conversation between him and Jones about buying two ounces of meth, (ll 19-24).

Page 6- Phillips testifies about receiving meth, (foundation, see arguments above), and "...should have been an ounce each in one of them.", (ll 9-11), (foundation as to weight), and the "ounce in each one" is the amount that suffices for the trafficking charge.

due process as the panel could have used them against the defendant.

6 Narcotics Identifications System

7 Attachment A is proffered in this memorandum under four distinct and separate theories: The defendant requests the Court take judicial notice under IRE 201; IRE 902(5), Official publications.; IRE 803(18), Learned treatises; and/or IRE 803(24), Other exceptions.

MEMORANDUM IN SUPPORT OF MOTIONS Page 8 of 16

-Phillips testifies he saw a male at the scene of the buy, but he did not know who the male was, (ll 20-25).

Page 7- Philipps then testifies that the male was the defendant with no foundation established, (IRE 901(a), 602), and implications of hearsay.

-Improper testimony that the substance was meth, (ll 15, foundation, hearsay), and further testimony about weight and positive result for meth, (see arguments above ad nauseum).

Page 8- Improper testimony about weight, (ll 6-10).

-The following question asked by the state is indicative of the tone and tenor of this proceeding:

Q. Now, my understanding is for the next couple of weeks trying to identify where Ms. Jones gets substances, who's involved with her, that type of thing. And it's during that point in time you start identifying people like Mr. Wilson as being associated with her, correct?"

A. That's correct., (ll 13-18). "...start identifying people like Mr. Wilson...", is improper argument and leading.

Any question ending with, "correct?", is leading by nature, (IRE 611(c)). The prosecutor is testifying and asking the witness to agree. The phrase, "...for the next couple of weeks trying to identify where Ms. Jones gets substances, who's involved with her...", implicates hearsay with no foundation, improper argument, (IRE 611(a)), not relevant, and highly prejudicial as it implicates involvement in the drug trade which is not the concern of this panel. The panel's job is to decide probable cause as to this defendant based on the facts presented at this hearing.

Page 9- Improper hearsay testimony concerning a deal to buy meth from Jones, (ll 1-2). Phillips again improperly testifies that the defendant got out of the vehicle, (ll 14),- the defendant has not heretofore been identified by competent evidence.

-The state then asks a series of leading questions about the hood up being a signal, another question ending in “correct?” about a male observing the transaction, (ll 19-25).

Page 10- Phillips then speculates with insufficient foundation that this male is “watching out”, making sure that Jones did not get “ripped off”, (ll 4-6). The prosecuting attorney responds in the form of a question in the guise of an argument:

Q. So basically involved but not actively involved in handing you the drugs?, (ll 7-8)

This improper leading question inappropriately argues the state’s case and supplies the elements of aiding and abetting for which the defendant is charged. Once again, the prosecutor argues the facts and asks the witness to agree. This evidence needs to come from a witness testifying, the prosecutor is directing the hearing, so authoritative pronouncements establishing the elements violates due process.

-Phillips testifies the substance received from Jones was meth and, “was the approximate size to be an ounce.”, (ll 15-17), (no foundation for the identity or the weight of the substance). It is also significant that, “approximate size to be an ounce.”, does not suffice to be competent evidence for a count of trafficking with mandatory minimums, (IC 37-2732B(a)(4)(A)). If the substance was under an ounce, there is no mandatory minimum.

-All of Jones’ statements about getting another ounce are hearsay, (ll 25, through P 11, 1-4).

Page 11- Jones’ statement, (in response to a leading question), that she agreed to sell an ounce is hearsay, (ll 12-13).

-Phillips’ testimony about the identity and weight of the substance was without proper foundation, (arguments, supra). Even if the weight of the substance was elicited by competent evidence, 27.4 grams is less than ounce. Count II is trafficking, and requires over 28 grams, (IC 37-2732B(a)(4)(A)). The statute allows a conviction for a greater weight if the person delivering or

selling represents the amount to be higher than the actual weight, (IC 37-2732B(c)). In this case, the defendant did not make any representations about the weight. The state cannot attribute statements about weight purportedly made by Jones to the defendant solely based on the fact he is charged with aiding and abetting. That is, the only evidence presented by the state as to weight, (disputed), in Count II does not amount to trafficking.

Page 12 and 13- Phillips testified that Jones told him that the defendant had to meet with his PO, (ll 2-6). This testimony is hearsay, not relevant, and highly prejudicial. Implicit with having a PO is having been found guilty of a crime. The prosecutor should have admonished the panel to ignore this entire statement.

-Another blatant leading question:

Q. Now during the course of these three transactions, 28th of March, 7th of April, 27th of April, you did the hands-to-hand directly with Ms. Jones?

The defendant is only charged in two counts, the March 28th date is not relevant and prejudicial, implying the defendant was involved in another drug deal.

-The remainder of Page 12 and page 13 consist of leading questions by the prosecutor and monosyllabic answers by the witness agreeing with the prosecutor's "testimony" about the events.

-The witness again testifies the defendant is on probation for other stuff, (p 13, ll 21-22), and the prosecutor's admonition, "Wait, wait. Don't get too in-depth. We have Peper and Davenport for that.", (ll 23-24), does not remedy the problem of irrelevant and prejudicial testimony.

Page 14- Phillips testifies about money taken at the traffic stop, brought in from Mr. Wilson,, "...that they took from him...", "...because there was some evidence of some drug transactions."

And the most damaging statement, "And it was the money that I had given Jones for the methamphetamine.", (ll 4-10). There is no foundation and the testimony is all hearsay. Even if the

MEMORANDUM IN SUPPORT OF MOTIONS Page 11 of 16

state later establishes some of these facts through competent evidence, the panel should not be hearing this testimony from an incompetent witness, (foundation, hearsay, cumulative, confusion of the issues), as it places undue emphasis on the evidence.

Page 16- School resource officer Jacob Peper testifies. The following question is wrong for many reasons:

Q. Okay. On the 27th of April 2016, did Detective Huston and Detective Phillips ask you to assist with some surveillance and a potential traffic stop on a vehicle that they knew contained Regina Jones and Richard Wilson?

Once again Jones and the defendant are identified to the panel by a leading question from the prosecutor implication foundation and hearsay.

In the following exchange, the prosecutor improperly testifies by using questions in the form of argument and tells the panel that, "...they just did a drug deal...", (ll 15-25):

Q. Let's be real direct with these guys., (improper bolstering).

A. Okay.

Q. It really doesn't matter if they were speeding in a school zone because they just did a drug deal with an officer; right?, (leading, facts not in evidence, hearsay, foundation, argumentative).

A. Okay, yeah.

Q. You have probable cause to arrest them let alone stop them?, (leading, misstatement of law and facts, hearsay, foundation).

A. Okay.

Q. Right?

A. Yes.

MEMORANDUM IN SUPPORT OF MOTIONS Page 12 of 16

Page 17- The defendant objects to identification of the defendant and Jones, (arguments supra).

Page 19- Hearsay concerning Officer Hein asking the witness to search the defendant's person, (ll 12-23).

Page 20- A. I was instructed by Officer Huston that the money is concerning to them., (Hearsay, foundation),

Q. Why is it concerning to them? We'll talk to him in a minute, but.--, (Once again, the panel should not be hearing cumulative evidence from an incompetent witness).

A. Well I was told it was money that they had used to purchase drugs through their drug buys., (Who is "they"? Which "drug buys"- there are two counts in this case? And the state has elicited evidence about a third buy).

Page 21- The testimony is in response to leading/argumentative/questions.

Page 22- Detective Davenport testifies.

Page 23- Identity of the defendant and Jones is leading, without foundation, hearsay, (ll 17-19).

Page 24- Information that the defendant was on parole and had a no contact order with a female, not relevant, highly prejudicial, no foundation, and hearsay.

Page 25- Davenport's testimony about receiving a plastic bag from Officer Jolley and Officer Huston which they had retrieved from the female is hearsay without foundation or chain of custody being established. The fact that the substance was meth and the weight of the substance is without proper foundation, (see arguments, supra), (ll 7-17).

Page 26, 27- Philips is recalled. The prosecutor's comment, "I finally have enough room to go there. So you gave Regina Jones \$600?" is argumentative and without foundation as to Jones' identity, ll 21-25).

The last line on page 26 and the dialogue on page 27 is once again indicative of the prosecutorial misconduct of arguing facts to the panel and having the witness agree:

Q. officer Phillips, I wan to take you back to the \$600. I finally have enough room to go there. So you gave Regina Jones \$600?"

A. Yes

Q. And then you're at the police station during the interview, you get the \$600 back?

A. Correct.

Q. Correct? And you now know that money came from Richard's Wilson's pocket, correct?

A. correct., (p 26, ll 21-25, page 27, ll 1-6).

.....

Q. So the \$600 you gave to Regina Jones, you now have back after the traffic stop with Richard Wilson?

A. Correct., (ll 16-18).

Page 28- Shane Huston testifies.

Page 29, 30, 31, 32- Huston identifies the defendant with no foundation:

A. Yes. At the time I did not know who he was, but I have since identified him.

Q. Okay. Now my understanding is that was kind of set up as part as the transaction by Ms.

Jones when she was meeting with Detective Phillips that day, correct?, (ll 15-23).

Once again, Joe's is not a party opponent and there is no exception to the hearsay rule allowing testimony about, "...the transaction by Ms. Jones...".

Page 30- Huston testifies about seeing the defendant opening the hood of the vehicle, (ll 12-16). The state never places any controlled substances in the defendant's possession or proximity.

MEMORANDUM IN SUPPORT OF MOTIONS Page 14 of 16

Testimony about Huston's prior investigations is improper bolstering, not relevant, and prejudicial, (p 30, ll 17-25, through p 32, ll 1-22)

Huston improperly speculates about drug transactions he has experienced, motivations for drug dealers, protection, et al, which is not relevant and prejudicial.

Huston goes on for some five pages outlining Jones' participation in drug deals. Once again, the state does not place any controlled substances in the defendant's possession or proximity.

IV. CONCLUSION

The witnesses' testimony consisted of unsubstantiated hearsay on multiple levels without the proper foundation being established. When all of the inadmissible irrelevant evidence is disregarded, there is not enough competent evidence to sustain this indictment or the search warrant. The prosecutorial misconduct in the method and mode in which this case was presented to the grand jury is so egregious that the defendant has been denied due process of law. The defendant requests this Court to dismiss the indictment found for reasons stated in this memorandum.

DATED this 7th day of November, 2016.



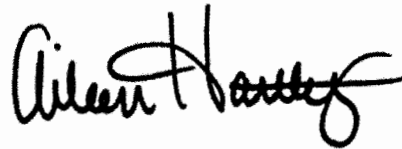
David Smethers, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 7th day of November, 2016, a copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS was served on the following named persons at the addresses shown and in the manner indicated.

Canyon County Prosecuting Attorney	<input type="checkbox"/> U.S. Mail
Canyon County Courthouse	<input type="checkbox"/> Facsimile
1115 Albany Street	<input checked="" type="checkbox"/> Hand Delivery-Court Mailbox
Caldwell, Idaho 83605	<input type="checkbox"/> Electronic Mail

Clerk of the Court-Criminal Proceeding	<input type="checkbox"/> U.S. Mail
Canyon County Courthouse	<input type="checkbox"/> Facsimile
1115 Albany Street, Rm 201	<input checked="" type="checkbox"/> Hand Delivery
Caldwell, Idaho 83605	<input type="checkbox"/> Electronic Mail



Canyon County Public Defender's Office

Presumptive & Confirmatory Testing for Drugs

There are two main types of tests used to determine whether an illegal drug is present in a substance: presumptive tests and confirmatory tests. Presumptive tests are less precise and indicate that an illegal substance may be present. Confirmatory tests provide a positive identification of the substance in question.

Presumptive testing may be conducted in the field by law enforcement officers or in the laboratory once the seized material is accepted. Confirmatory tests involve a battery of instrumental tests using techniques such as Gas Chromatograph-Mass Spectrometry (GC-MS) or infrared spectroscopy that separate individual compounds in the substance and positively identify the chemical signature of the illegal substance(s) within the material.

Presumptive testing - is usually colorimetric, meaning the test will indicate that the suspected substance is present or not present by changing color. If the substance is present, the test kit will turn one color, if not, it turns a different color. Presumptive testing by law enforcement is typically followed up with laboratory tests that confirm with certainty the presence of the suspected substance. Presumptive testing is also performed in the laboratory as part of the analysis process.

Confirmatory testing - uses instrumental analysis to positively identify the contents of submitted material. This typically requires a multi-step process to separate the individual compounds, determine the chemical characteristics of the compounds, and compare them against reference materials to make a positive identification. This is called qualitative analysis, and determines what substances are present and if one or more of those substances is illegal.

The analyst may have an idea, based on information from presumptive tests or the submitting agency, of what type of drug is contained in the sample. This information, as well as the laboratory policies in place, will determine what tests the analyst will use. A typical battery of tests will include separation techniques to separate the various compounds and spectroscopy instruments to identify the chemical characteristics.

Confirmatory tests, depending on the lab requirements, may also include quantitative analysis of the sample to determine the amount, or purity, of the illegal substance. The purity of the illegal substance is used for sentencing purposes at the federal level. For example, a sample that contains 80 percent pure dextro-methamphetamine HCl will carry a harsher sentence than a sample containing a lesser purity of the drug. High purity often indicates manufacturing or trafficking drugs in bulk quantities for further distribution. Determination of purity is most often required in Federal cases.



Color change indicates the presence of methamphetamine or MDMA (Ecstasy). (Courtesy of NFSTC)

Dru

ATTACHMENT A

145F 2

A Simplified Guide To Forensic Science

About This Project

This website was developed and designed by the National Forensic Science Technology Center (NFSTC) under a cooperative agreement from the Bureau of Justice Assistance (BJA), award #2009-D1-BX-K028. The concept for ForensicScienceSimplified.org arose from a focus group of criminal justice practitioners that met in January 2011 to identify areas where forensic science training and technical assistance were most needed. The focus group consisted of law enforcement professionals, defense and prosecuting attorneys, judges, educators, corrections officials and representatives from Federal agencies.



This group determined there was a need for additional resources providing basic forensic science education for police officers, corrections officials, officers of the court, and the general public. This website addresses this need by providing a reliable, easily accessible resource for non-scientists that covers the core concepts, capabilities and limitations of key forensic science disciplines. In addition, this effort provides an international perspective where possible; experts from several countries contributed content and resources.

NFSTC gratefully acknowledges the numerous subject matter experts and editors who created, contributed to and reviewed this project. Work continues on additional forensic science topics to expand ForensicScienceSimplified.org. BJA's support of this program is part of its efforts to provide innovative training and information to practitioners at every level for law enforcement and the criminal justice system.

This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided).

This website produced by the National Forensic Science Technology Center (<http://www.nfstc.org>). For questions about this project, please email info@nfstc.org (<mailto:info@nfstc.org>).

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

PRESIDING: **JUNEAL C. KERRICK** DATE: **NOVEMBER 14, 2016**

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2016-14841*C
)	
vs.	)	TIME: 9:00 A.M.
)	
RICHARD ALAN WILSON,	)	REPORTED BY: Kathy Klemetson
A.K.A.)	
RICHARD BURRELL)	
Defendant.	)	DCRT 3 (953-1002)

This having been the time heretofore set for **pre-trial** in the above entitled matter, the State was represented by Mr. Doug Robertson, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present with counsel, Mr. David Smethers.

The Court noted the case, parties present and noted this had been the time scheduled for pre-trial conference, acknowledging a Motion to Dismiss Indictment had been filed on behalf of the defendant.

Following clarification, the Court determined the defendant's motion had not been scheduled for hearing.

The Court reviewed pleadings filed in this matter, determined a Motion to Dismiss had been filed on October 25, 2016 and thereafter Memorandum in Support had been filed on November 7, 2016, however determined a Request for Hearing had been filed opposed to a

hearing date being secured from the Court's secretary. Therefore, determined the defendant's motion was not currently scheduled for hearing and expressed views in terms of the procedural aspect.

Mr. Robertson advised the Court a response had not been filed by Mr. Boyd and he was currently out of town, therefore requested two weeks so as to allow Mr. Boyd the opportunity to respond.

The Court expressed views relative to the scheduling and noted it would try to preserve the current trial setting.

The Court advised counsel a formal pre-trial conference would be conducted this date, noting thereafter the matter would be routed to its secretary so as to schedule hearing in connection with the defendant's motion and expressed views in terms of availability.

In answer to the Court's inquiry, each of counsel advised the Court of the potential witnesses and physical evidence in this matter.

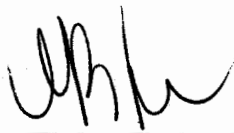
The Court noted the matter would remain on the calendar for commencement of jury trial on December 13, 2016 at 8:30 a.m. before Judge Huskey (originally Senior Judge Morfitt) and further scheduled the matter for status conference on December 5, 2016 at 1:30 p.m. before this Court.

In terms of the defendant's motion, the Court advised the parties it would try to preserve the current trial setting, however the matter would be routed back to its secretary for purposes of

scheduling, recognizing the potential for a continuance based on the preparation and posture of the motion.

A copy of the Court's Pre-trial Memorandum and Order was provided to counsel.

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



Deputy Clerk

NOV 14 2016

CANYON COUNTY CLERK
S BRITTON, DEPUTY

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-

Richard Wilson
Defendant.

Case No.

CR-2016-14841

PRETRIAL MEMORANDUM

David Amethun

Appearances
Prosecuting Attorney

Long Robertson

Attorney for Defendant

David Amethun

- Counsel revealed to each other prior to pretrial at pretrial the evidence to be offered at trial.
- Intoximeter (or other breath test) reading _____
- Video _____
- Physical evidence: on police report other _____
- Tape recording _____
- Oral statements: on police report other _____
- Plaintiffs' witnesses and addresses:

Witnesses disclosed

Alcohol

Protos

Lab reports

Alcohol controlled substance

- Defendants' witnesses and addresses:

Defendant.

Agree to file response to
discovery on or before
Nov. 17, 2016

Counsel shall reveal to each other and the Court, in writing, any additional witnesses or exhibits to the above list of the preceding evidence by When 10 days before, 20__ at __.m.

Plea negotiations:

Motion to Dismiss filed 10/25/16
Memo filed 10/7/16
Motion needs to be scheduled
for hearing,

Both counsel certify that the case is ready for trial on the date set.

Proposed jury instructions shall be submitted to the Court and opposing counsel not less than five days prior to trial.

Jury trial reset for __, 20__ at __ a.m.

Jury trial waived and case reset for court trial on __, 20__ at __ a.m.

Pretrial motions shall be filed and heard
 within __ days of this Order.

no less than 10 days prior to trial. Include motion in

no later than __, 20__ listing

Pretrial motions, timely filed, are set for hearing on __, 20__ at __.m.

Copies of Pretrial Memorandum given to both counsel.

Parties to reappear for a status conference on Dec. 5, 20__/16 at 1:30 p.m. The Defendant must be personally present. J. Terina

Other:

Jury trial remained set for
Dec 13-16 2016
8:30 am J. Husby,

So ordered
Deputy Prosecuting Attorney

Defense Attorney

Dated: Nov 17, 2016

Signed: J. Terina

Magistrate Judge

FILED
A.M. 2:30 P.M.

NOV 15 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

ALH
David J. Smethers, Deputy Public Defender, ISB #4711
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: dsmethers@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.

RICHARD ALAN WILSON

Defendant.

Case No. CR-2016-14841

DEFENDANT'S MOTION TO DISMISS,
MOTION TO EXCLUDE WITNESSES,
MOTION RE JURY INSTRUCTIONS AND
NOTICE OF HEARING
(December 2, 2016 at 10:00 a.m.)

COMES NOW, Defendant, Richard Alan Wilson, by and through his attorney of record,
David Smethers, Canyon County Public Defender's Office and submits the following motions to
the Court: Motion to Dismiss Trafficking Charges, Motion to Exclude Witnesses, Motion for
Jury to Have Full Jury Instructions at Closing and Objection to Anticipated Order of Court.

MOTION TO DISMISS TRAFFICKING CHARGES

The defendant is charged with Aiding and Abetting Trafficking in Methamphetamine,
(two counts), pursuant to IC 18-204 and IC 37-2732B(a)(4), which carries mandatory minimum
sentences of three (3) years if the amount of controlled substance is 28 grams or more. The two
ISP Lab Reports disclosed by the state to date in discovery list amounts of methamphetamine of

25.91 grams and 27.03 grams¹- which do not meet the minimum weight requirements in the statute. IC 37-2732B(c) states:

- (c) For the purposes of subsections (a) and (b) of this section the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.

In this case, the defendant made no representations as to the weight of the controlled substances, and the state cannot impute any statements allegedly made Co-Indictee Regina L. Jones for purposes satisfying the “represented” weight element of the aforementioned statute.

MOTION TO EXCLUDE WITNESSES

The defendant requests this Court to issue an Order pursuant to IRE 615 stating that all witnesses for the State be excluded from the courtroom until they are actually called to the witness stand; and that the witnesses be ordered not to discuss the case with one another; and not to talk to any witnesses who has already testified. Defendant further asks that once a witness has testified, he be ordered not to relate his testimony or to discuss what occurred in the courtroom. Defendant further asks that opposing counsel be instructed to advise his witnesses as to the purpose and effect of the Court’s Exclusion Order.

MOTION FOR JURY TO HAVE FULL SET OF POST PROOF JURY INSTRUCTIONS AT THE TIME OF CLOSING ARGUMENTS

The defendant requests this Court to have available for distribution to each juror a full set of the post proof jury instructions at the inception of closing arguments.

OBJECTION TO COURT’S ANTICIPATED ORDER FOR PRETRIAL DISCLOSURE OF POST-PROOF JURY INSTRUCTIONS

The defendant objects to the anticipated Court order for pre-trial requests for post-proof jury instructions to the extent that counsel may not be able to predict applicable instructions


¹ Identity and weights are disputed.

and/or anticipate what the state's evidence will show, counsel wishes to protect the confidential nature of his attorney work product and legal theories until after the close of evidence consistent with the Sixth Amendment Right to Counsel and the Due Process Clause, the defense is not required to alert the state as to potential defenses which may be apparent in a requested instruction, and further, the defendant may not have met his burden of presenting at least some evidence supporting his theory allowing said request to be made until after the close of evidence for the state and defense.

NOTICE OF HEARING

A hearing is scheduled on these motion(s) and objection(s) on **December 2, 2016 at 10:00 a.m.**

DATED this 14th day of November, 2016.



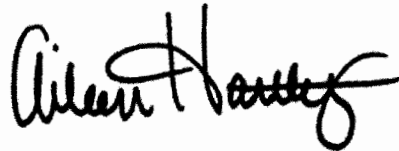
David Smethers, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 15th day of November, 2016, a copy of the foregoing MOTION TO DISMISS, MOTION TO EXCLUDE, MOTION RE JURY INSTRUCTIONS, OBJECTION TO ANTICIPATED ORDER AND NOTICE OF HEARING was served on the following named persons at the addresses shown and in the manner indicated.

Canyon County Prosecuting Attorney	<input type="checkbox"/> U.S. Mail
Canyon County Courthouse	<input type="checkbox"/> Facsimile
1115 Albany Street	<input checked="" type="checkbox"/> Hand Delivery-Court Mailbox
Caldwell, Idaho 83605	<input type="checkbox"/> Electronic Mail

Clerk of the Court-Criminal Proceeding	<input type="checkbox"/> U.S. Mail
Canyon County Courthouse	<input type="checkbox"/> Facsimile
1115 Albany Street, Rm 201	<input checked="" type="checkbox"/> Hand Delivery
Caldwell, Idaho 83605	<input type="checkbox"/> Electronic Mail



Canyon County Public Defender's Office

NOV 16 2016

CANYON COUNTY CLERK
C JIMENEZ, DEPUTY

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

STATE OF IDAHO,	)	CASE NO. CR 2016-14841*C
)	
Plaintiff,)	
	)	SCHEDULING ORDER ON
	)	MOTION TO DISMISS INDICTMENT
-vs-)	
)	
RICHARD ALAN WILSON,)	
)	
Defendant.)	
)	
)	

A Motion to Dismiss Indictment, Motion to Enlarge Time and Request for Hearing was filed by the Defendant on October 25, 2016 in the above entitled matter. On November 7, 2016, the Defendant filed a Memorandum in Support of Motion to Enlarge Time to File Pretrial Motions and to Dismiss Indictment.

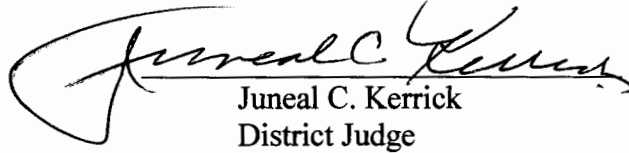
IT IS HEREBY ORDERED that the Motion to Dismiss Indictment shall be scheduled for hearing on **December 2, 2016 at 10:00 A.M.** before the Honorable Juneal C. Kerrick, District Judge, at the Canyon County Courthouse, 1115 Albany Street, Caldwell, Idaho.

IT IS FURTHER ORDERED:

- 1) The State's response brief shall be filed and served no later than 5:00 P.M. on November 28, 2016.

2) That the Defendant's reply brief shall be filed and served no later than 5:00 P.M. on November 30, 2016.

DATED this 15th day of November, 2016.


Juneal C. Kerrick
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was mailed or served upon the following persons on this 15th day of November, 2016.

Bryan F. Taylor
Canyon County Prosecuting Attorney
1115 Albany St.
Caldwell, ID 83605

Tera Harden
Canyon County Public Defender
111 N. 11TH Ave., Ste. 120
Caldwell, ID 83605

Chris Yamamoto, Clerk


By Deputy Clerk of the Court

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **JUNEAL C. KERRICK** DATE: **DECEMBER 2, 2016**

THE STATE OF IDAHO)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO: CR-2016-14841*C
)	
vs)	
	)	TIME: 10:00 A.M
RICHARD ALAN WILSON,)	
	)	REPORTED BY: Kathy Klemetson
Defendant.)	
_____	)	DCRT 3 (959-1005)

This having been the time heretofore set for **motion hearing** in the above entitled matter, the State was represented by Ms. Madison Hamby, Deputy Prosecuting attorney for Canyon County, and the defendant appeared in court with counsel, Mr. David Smethers.

The Court noted the case, parties present and noted this had been the time scheduled for hearing in connection with the **Defendant's Motion to Dismiss Indictment** filed on November 15, 2016.

Additionally, the Court noted it had entered a Scheduling Order on Defendant's Motion to Dismiss which set the matter for hearing this date and had further provided certain dates for submission of a responsive brief by the State together with a responsive brief from the defense, acknowledging the lack of submission by the State.

Ms. Hamby advised the Court Mr. Boyd was the assigned attorney and had been out of town the week of the 21st-25th and had been in trial from Tuesday-Friday of this week, therefore he had requested additional time in which to comply with the Court's Scheduling Order. Further, Ms. Hamby noted that Mr. Boyd had represented he believed he could comply by the date of the status conference.

The Court acknowledged status conference was scheduled for the following Monday, further acknowledged trial was scheduled to commence on December 13, 2016 and expressed opinions, noting it would proceed.

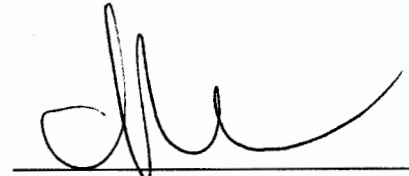
Mr. Smethers requested the Memorandum in Support of Motion to Enlarge Time to File Pretrial Motions and to Dismiss the Indictment Found be made part of the record, further noting the defendant would stand on the Memorandum and presented argument in support of the motion.

Ms. Hamby noted she was not the assigned attorney in his matter and was not prepared to argue the motion this date.

The Court expressed views, acknowledging the lack of submission by the State, noting a ruling would need to be issued, however had been uncertain whether or not the same could be completed prior to trial based on its calendar and unavailability as a result of a conference out of state.

The Court further advised the parties a ruling would not be done by the 5th(date of the status conference), and expressed opinions acknowledging speedy trial of March 9, 2017 together with the jury trial priority schedule and the potential for a continuance.

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



Deputy Clerk

FILED
1005 A.M. P.M.

DEC 05 2016

CANYON COUNTY CLERK
B DOMINGUEZ, DEPUTY

cb

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 RICAHRD ALAN WILSON)
)
 Defendant.)
 _____)

CASE NO. CR2016-14841

**BRIEF IN OPPOSITION OF MOTION
TO DISMISS INDICTMENT**

COMES NOW, CHRISTOPHER BOYD, Deputy Prosecuting Attorney of the Canyon
County Prosecuting Attorney's Office, and hereby submits this Brief in Opposition of Motion to
Dismiss Indictment.

SUMMARY OF THE CASE

Defendant Richard Wilson moves for the dismissal of an indictment charging him with two
counts of Trafficking in Methamphetamines. Because the grand jury's finding of probable cause
was supported by legally sufficient (and compelling) evidence, and because Wilson's right to due
process has not been compromised, his motion should be denied.

ORIGINAL

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On two separate occasions in April 2016, Wilson assisted Regina Jones in the sales of trafficking quantities of methamphetamines. On April 7, 2016, Regina Jones unwittingly arranged to sell methamphetamines to an undercover Nampa Police officer. In making the arrangements, Jones told the officer that the hood would be up on her vehicle in the Target parking lot. (Gr. Tr. p.5). When the undercover officer arrived to make the purchase, he observed a male present with Jones, near the open hood of the vehicle. The male, whom the officer would later identify as Richard Wilson, shut the hood on the vehicle and got into the passenger side seat, where he remained as Jones exchanged 57.4 grams of methamphetamines for \$1,200.

Jones agreed to sell more methamphetamines on a second occasion on April 27, 2016. Wilson was again present. Again the undercover officer observed Wilson lift the hood on the vehicle (the agreed upon signal) and return to the passenger seat during the transaction. In that transaction, Jones sold 27.4 grams of methamphetamines for \$600.

On May 11, 2016, a Grand Jury indicted Wilson for two counts of aiding and abetting the trafficking of methamphetamines. Wilson now alleges intentional prosecutorial misconduct and challenges the sufficiency of the finding of probable cause by the Grand Jury.

STANDARD OF REVIEW

The trial court's decision is left to its sound discretion, and the decisions before it are whether sufficient legal evidence supports finding of probable cause and whether any prosecutorial misconduct resulted in such egregious prejudice so as to nullify the independent

probable cause. *State v. Curtiss*, 138 Idaho 466, 65 P.3d 207 (Ct. App., 2002). Alleged defects in the grand jury process generally will not be reviewed on appeal at all after a defendant has been convicted in a fair trial on the merits. *State v. Grazian*, 144 Idaho 510, 517, 164 P.3d 790, 797 (2007); *State v. Smith*, 135 Idaho 712, 716-17, 23 P.3d 786, 790-91 (Ct. App. 2001); *State v. Nelson*, 131 Idaho 210, 215, 953 P.2d 650, 655 (Ct. App. 1998); *State v. Kilby*, 130 Idaho 747, 751, 947 P.2d 420, 424 (Ct. App. 1997).

ISSUES PRESENTED

1. Did the grand jury receive legally sufficient evidence supporting its finding of probable cause?
2. Did the Defendant meet his burden in showing such “extreme and outrageous” prosecutorial misconduct as to require dismissal?

ARGUMENT

A grand jury is a body of qualified persons selected and organized for the purpose of inquiring into the commission of crimes within the county from which its members are drawn, determining the probability of a particular person’s guilt, and finding indictments against supposed offenders. *U.S. v. Washington*, 431 U.S. 181, 97 S. Ct. 1814 (1977); *Beavers v. Henkel*, 194 U.S. 73, 24 S. Ct. 605 (1904).

A grand jury is not the final arbiter of guilt or innocence. The grand jury rather is an accusing body and not a trial court *State v. Edmonson*, 113 Idaho 230, 234, 743 P.2d 459, 463 (1987). Its functions are investigative and charging. *The purpose of both a grand jury proceeding and a preliminary hearing is to determine probable cause.* Any advantage that a preliminary hearing affords a defendant is purely incidental to that purpose. The independent grand jury’s function would be duplicated by requiring a subsequent preliminary hearing. (*emphasis added*), *Edmonson*, 113 Idaho at 234, 743 P.2d at 463.

Prosecutors in the State of Idaho have the ability to charge certain crimes through presentation to a grand jury rather than through a preliminary hearing procedure. The seminal decision regarding the usage of grand juries in the State of Idaho is *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

Courts conduct a two-pronged inquiry in considering the propriety of the grand jury proceeding. *State v. Marsalis*, 151 Idaho 872, 875-77, 264 P.3d 979, 982-84 (Ct. App. 2011); *State v. Martinez*, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994). First, the court must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. *Id.*; *State v. Jones*, 125 Idaho 477, 483, 873 P.2d 122, 128 (1994); *State v. Edmonson*, 113 Idaho 230, 236, 743 P.2d 459, 465 (1987). In making this determination, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment. *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995).

Second, even if such legally sufficient evidence was presented, the indictment must be dismissed if prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. *Marsalis*, 151 Idaho at 872; *Martinez*, 125 Idaho at 448, 872 P.2d at 711; *Jones*, 125 Idaho at 483, 873 P.2d at 128; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. "Prejudicial effect" means "the defendant would not have been indicted but for the misconduct." *Id.*, *Martinez*, 125 Idaho at 448, 872 P.2d at 711; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. Absent a showing of prejudice by the defendant, the Court will not second guess the grand jury. *Martinez*, 125 Idaho at 448-49, 872 P.2d at 711-12. To determine whether misconduct is so grievous as to be prejudicial and thus to require dismissal, an appellate court must balance the gravity and seriousness of the misconduct against the extent of the evidence supporting the indictment. *Id.* at

449, 872 P.2d at 712; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. The *Edmonson* Court further elaborated on the applicable balancing test:

To determine whether misconduct gives rise to a dismissal, a reviewing court will have to balance the gravity and the seriousness of this misconduct with the sufficiency of the evidence supporting the probable cause finding. At one extreme, the misconduct can be so outrageous that regardless of the extent of probable cause evidence, dismissal will be required. At the other extreme, the misconduct may be so slight, that it becomes unnecessary to question the independent judgment of the grand jury. In the middle of these extremes, the court must examine the totality of the circumstances to determine whether the indictment should be dismissed. As stated above, the burden rests with the criminal defendant to make an initial showing that the misconduct rises to the level of prejudice. Absent the showing of prejudice, a reviewing court will not second guess the grand jury. However, once the defendant does affirmatively prove prejudice, the court must dismiss.

Edmonson, 113 Idaho at 237, 743 P.2d at 466.

Generally, prosecutorial misconduct will require dismissal only if it reaches the level of a constitutional due process violation. *Id.*; *Marsalis*, 151 Idaho at 872.

I. THE GRAND JURY WAS PRESENTED WITH LEGALLY SUFFICIENT ADMISSIBLE EVIDENCE AS TO EACH ELEMENT OF THE CRIMES OF AIDING AND ABETTING TRAFFICKING IN METHAMPHETAMINES.

Wilson's challenge to the sufficiency of the evidence consists of a laundry list of no fewer than forty-three procedural and evidentiary objections his counsel would have made had he been present for the hearing. This list is found at the bottom of page 6 of Defendant's Memorandum and continues in list form until the end of the document. Of these objections, almost all are without merit. Due to the numerousness of objections, the state will address each in turn also in list format.

Objection #1: Page 2, Foundation. Defendant claims no foundation was established for the identity of Regina Jones.

Response to Objection #1 : Foundation regards whether or not a witness is a person with knowledge. The witness testified he recognized the name and had met Regina Jones.

Objection #2: Page 2, Leading. The Prosecutor asks if, starting back in March 27, 28, the witness started calling and texting Jones about setting up a transaction.

Response to Objection #2: Idaho Rule of Evidence 611 (c) reads in relevant part, “Leading questions. Leading questions should not be used on the direct examination of a witness *except as may be necessary to develop the testimony of the witness.*” (emphasis added). The question here asks for details on the already elicited preceding response, which was “I was able to call her and text message her.” The prosecutor was thus asking a question necessary to develop the testimony of the witness.

Objection #3: Page 2, Narrative response. Defendant claims that the narrative nature of the response at bottom of page 2 violated his right to due process.

Response to Objection #3: A narrative objection is designed to prevent a witness from rambling on, potentially into inadmissible fact. Here the response from the witness was only *three sentences* and thus the objection is misplaced. Defendant can provide no support for his contention that these three sentences, uttered contiguously, somehow violated his constitutional right of due process.

Objection #4: Page 2, Hearsay. Defendant claims that the witness's communications with Regina were hearsay.

Response to Objection #4: "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence *to prove the truth of the matter asserted*. I.R.E. 801 (emphasis added). These responses were not "to prove the truth of the matter asserted." The communications described how the deal was set up with Regina and do not touch upon the elements of Defendant's later aiding and abetting. Because the issue of whether the statements were true has no bearing on the elements of Defendant's own aiding and abetting, they are not offered for the truth and are thus not hearsay.

Objection #5: Page 2, Foundation. Defendant claims the same communications in objection #4 lacked foundation.

Response to Objection #5: Foundation regards whether or not a witness is a person with knowledge. The witness testified he was the one in communication on a certain date with Regina Jones.

Objection #6: Page 3, Relevance, prejudicial. Defendant claims prejudice because he is not charged with the March 28th buy.

Response to Objection #6: Defendant is charged with aiding and abetting Jones on April 7th and 27th. The Grand Jury was not instructed to consider Jones's actions on that March 28th date for the probable cause findings on his later date participation, but rather Defendant's own actions on the actual alleged dates. The prejudice here would be slight and not rising to the level requiring a dismissal as discussed below.

Objection #7: Page 3. Defendant objects to NIK test foundation.

Response to Objection #7: Notably, this objection does not regard the actual meth in question from Defendant's own charged aiding and abetting on April 7. However, as against Ms. Jones, she had already represented the methamphetamine as meth. (Grand Jury Trans. Page 2, ln 21, Page 3, ln 1). Whether this testimony had been stricken would make no effect in this case, as that buy is merely backstory, not offered necessarily for its truth in the case against this Defendant, who later aids and abets in separate purchases.

Objection #8: Page 3. Defendant claims that the state is required to present testimony from a witness from a certified lab. Defendant further claims that use of presumptive evidence at grand jury violates "the Idaho and US constitutions."

Response to Objection #8: Defendant's claim that "the state had to present testimony from a witness from a certified lab" is simply false. *State v. Mitchell*, 130 Idaho 134, 137, 937 P.2d 960, 963 (Ct. App. 1997)(holding that chemical analysis is not essential to prove the identity of a controlled substance beyond a reasonable doubt at trial). Additionally, the Defendant can provide no authority for his constitutional objections.

Objection #9: Page 4. Defendant objects and claims Hearsay.

Response to Objection #9: A "statement by a co-conspirator of a party during the course and in furtherance of the conspiracy" is not hearsay. I.R.E. 801(d)(2)(E)(note that the rule does not require that "conspiracy" be the charged crime). Conspiracy and aiding and abetting for the same act is considered the same in Idaho. *State v. Gallatin*, 106 Idaho 564, 565, 682

P.2d 105, 106 (Ct. App. 1984). The Defendant is charged with aiding and abetting trafficking, and Regina Jones is his co-conspirator. Thus her statements are party admissions under the rule and are not hearsay.

Objection #10: Page 6. Defendant objects to foundation as to weights.

Response to Objection #10: Taken in context, the response corresponds to the circumstances and deal made with Jones, which Defendant aids and abets.

Objection #11: Page 7. Defendant objects as to foundation for his identity.

Response to Objection #11: The witness described how he did not know who he was when he saw the buy but later did learn his identity. Officer Peper later testified as to Defendant's full identity.

Objection #12: Page 7. Defendant objects to foundation and hearsay for the identity of the methamphetamine.

Response to Objection #12: The witness testified she recognized the substance, which is not hearsay. Foundational issues implicate the weight rather than admissibility of her statement. Defendant continues to assert that evidence other than laboratory evidence of the identity of a substance is somehow inadmissible. This is false. *State v. Mitchell*, 130 Idaho 134, 137, 937 P.2d 960, 963 (Ct. App. 1997).

Objection #13: Page 8, Defendant objects to "improper testimony about weight."

Response to Objection #13: Again, this testimony ostensibly comes from witness observations. Additional details may have provided more weight to the statement, but do not mean it is inadmissible to the finding of probable cause.

Objection #14: Page 8. Defendant objects and claims leading.

Response to Objection #14: Defendant ignores the prior testimony here, which, taken in context, demonstrates that this was a clarifying question that was necessary to develop the testimony of the witness efficiently. Again, Idaho Rule of Evidence 611 (c) reads in relevant part, “Leading questions. Leading questions should not be used on the direct examination of a witness *except as may be necessary to develop the testimony of the witness.*” (emphasis added)

Objection #15: Page 9. Defendant objects and claims hearsay.

Response to Objection #15: The witness said she herself saw Defendant get out of the car. This is not hearsay.

Objection #16: Page 9. Defendant objects and claims leading.

Response to Objection #16: Refer to above on the repeated leading objections.

Objection #17: Page 10. Defendant objects and claims speculation.

Response to Objection #17: The witness’s explanation of the behavior of the Defendant as “watching out” during the drug deal is a reasonable inference from her observations. She is allowed to testify as to the overall nature of her observations of what Defendant was doing.

Objection #18: Page 10. Defendant objects to prosecutor's question as leading, argumentative, claims that it violates his due process rights.

Response to Objection #18: The question simply clarified the witness's testimony. This was a probable cause hearing, and the testimony had already been that Defendant had stood watch during the drug deal and had been the one to give the signal.

Objection #19: Page 10. Defendant objects to foundation regarding the weight and identity of the methamphetamines.

Response to Objection #19: The witness previously testified she recognized the substance. Foundational issues implicate the weight rather than admissibility of her statement. Defendant continues to assert that evidence other than laboratory evidence of the identity of a substance is somehow inadmissible. This is false. *State v. Mitchell*, 130 Idaho 134, 137, 937 P.2d 960, 963 (Ct. App. 1997).

Objection #20: Page 10, ln 25. Defendant objects and claims hearsay.

Response to Objection #20: A "statement by a co-conspirator of a party during the course and in furtherance of the conspiracy" is not hearsay. I.R.E. 801(d)(2)(E)(note that the rule does not require that "conspiracy" be the charged crime). Conspiracy and aiding and abetting for the same act is considered the same in Idaho. *State v. Gallatin*, 106 Idaho 564, 565, 682 P.2d 105, 106 (Ct. App. 1984). The Defendant is charged with aiding and abetting trafficking, and Regina Jones is his co-conspirator. Thus her statements are party admissions under the rule and are not hearsay.

Objection #21: Page 11, Defendant objects to foundation regarding the weight and identity of the methamphetamines.

Response to Objection #21: The witness testified she recognized the substance, which is not hearsay. Foundational issues implicate the weight rather than admissibility of her statement. Defendant continues to assert that evidence other than laboratory evidence of the identity of a substance is somehow inadmissible. This is false. *State v. Mitchell*, 130 Idaho 134, 137, 937 P.2d 960, 963 (Ct. App. 1997).

Objection #22: Page 11, Defendant argues that weight 27.4 grams is less than an ounce and his co-Defendant's representations of the amount as an ounce do not apply to himself in his aiding and abetting role.

Response to Objection #22: A "statement by a co-conspirator of a party during the course and in furtherance of the conspiracy" is not hearsay. I.R.E. 801(d)(2)(E). A representation of an ounce by a Defendant is sufficient for a conviction of that amount. *State v. Bradley*, 158 Idaho 66, 71, 343 P.3d 508, 513 (Ct. App. 2015). Whether that representation applies to an aider and abetter is an issue of first impression the state believes. However, the legislative intent of the accomplice statute is clear: an accomplice is just as liable as the other principals. Here, where the other principal represented the amount as an ounce, it follows that her accomplice is just as liable if the rule is applied as intended.

Objection #23: Page 12, 13. Defendant objects to references to Defendant being on probation.

Response to Objection #23: It is important to note that the issue of probation would arise in any case, because Officer Davenport later searched the Defendant at the probation officers request. While somewhat prejudicial, that testimony was necessary to show the reason for the search, which is *required* at probable cause hearings. Any damage here could have been cured with an instruction to the grand jury. The Defendant bears the burden in this hearing, and has not demonstrated that such an instruction was not given.

Objection #24: Page 12, 13. Defendant objects and claims leading.

Response to Objection #24: Refer to above on the repeated leading objections.

Objection #25: Page 14. Defendant objects to foundation and claims hearsay.

Response to Objection #25: A “statement by a co-conspirator of a party during the course and in furtherance of the conspiracy” is not hearsay. I.R.E. 801(d)(2)(E) Conspiracy and aiding and abetting for the same act is considered the same in Idaho. *State v. Gallatin*, 106 Idaho 564, 565, 682 P.2d 105, 106 (Ct. App. 1984). The Defendant is charged with aiding and abetting trafficking, and Regina Jones is his co-conspirator. Jones’s statements about prior deals are co-conspirator admissions and are not hearsay.

Objection #26: Page 16. Defendant objects to foundation and claims hearsay.

Response to Objection #26: This was a preliminary question designed to focus the testimony for the following questions. It again implicates the co-conspirator admission rule.

Objection #27: Page 16. Defendant objects, claiming improper bolstering by the statement “Let’s be real direct with these guys.”

Response to Objection #27: Any “bolstering” effect here is more imagined than real.

Objection #28: Page 16. Defendant objects to question about speeding not mattering and claims leading, facts not in evidence, hearsay, foundation, argumentative.

Response to Objection #28: The question went to the reason for the stop, and other witnesses had previously testified that if fact Defendant and co-conspirator had just engaged in a drug deal with an officer.

Objection #29: Page 16. Defendant objects to question about probable cause to arrest let alone stop as leading, misstating law and facts, hearsay, foundation.

Response to Objection #29: Again, the question went to the reason for the stop, and other witnesses had previously testified that if fact Defendant and co-conspirator had just engaged in a drug deal with an officer. There is no misstatement of the law. Where a person has just engaged in a drug deal with an undercover officer and then drives off, there is indeed probable cause to arrest that person.

Objection #30: Page 17. Defendant objects as to foundation for his identity.

Response to Objection #30: The witness saw the Defendant as did other witnesses in the proceeding. Under the totality of the circumstances and to a level of probable cause, Defendant’s identity was established.

Objection #31: Page 19. Defendant objects and claims hearsay about co-Defendant consenting to search.

Response to Objection #31: Because words of consent to search do not contain assertions of fact, they are not considered hearsay under I.R.E. 801(a). *State v. Salinas*, 134 Idaho 362, 365-66, 2 P.3d 747, 750-51 (Ct. App. 2000).

Objection #32: Page 20. Defendant objects to foundation and claims hearsay.

Response to Objection #32: Same arguments as above.

Objection #33: Page 20. Defendant, as best the state can discern, takes issue with vagueness of the response “Well, I was told it was money that they has used to purchase drugs through their drug buys.” Defendant claims this somehow means the State elicited evidence of a third buy.

Response to Objection #33: This is a misinterpretation of the plain meaning of the testimony.

Objection #34: Page 21. Defendant objects and claims leading, argumentative questions.

Response to Objection #34: These were clarifying questions that went only to wrapping up the story. The witness had testified to the elements previously.

Objection #35: Page 23. Defendant objects to foundation and claims hearsay and leading.

Response to Objection #35: Same arguments as above.

Objection #36: Page 24, Defendant objects to information about Defendant being on parole and having a no contact order with a female.

Response to Objection #36: The testimony about probation was necessary to show the reason for the search, which is *required* at probable cause hearings. The state would concede some error here in the unsolicited testimony about a no contact order. However, any damage could have been cured with an instruction to the grand jury. The Defendant bears the burden in this hearing, and has not demonstrated that such an instruction was not given.

Objection #37: Page 25. Defendant objects to testimony about receiving plastic bag as hearsay and lacking foundation and chain of custody.

Response to Objection #37: Witness is testifying about his own observations. Chain of custody goes to weight not admissibility. *State v. Kodesh*, 122 Idaho 756, 756, 838 P.2d 885, 885 (Ct. App. 1992).

Objection #38: Page 25. Defendant objects to foundation regarding the weight and identity of the methamphetamines.

Response to Objection #38: The witness testified to NIK testing the substance, which is not hearsay. This is a probable cause hearing. Foundational issues implicate the weight rather than admissibility of her statement. Defendant continues to assert that evidence other than laboratory evidence of the identity of a substance is somehow inadmissible. This is false. *State v. Mitchell*, 130 Idaho 134, 137, 937 P.2d 960, 963 (Ct. App. 1997).

Objection #39: Page 26, 27. Defendant objects to the question. "So you gave Regina Jones \$600?" as argumentative and lacking foundation as to Jones's identity.

Response to Objection #39: Jones's identity had previously been established. Undercover officers need not ask for a driver's license each time they conduct a buy with known persons.

Objection #40: Page 26, 27. Defendant objects broadly to claimed prosecutor misconduct in line of questioning about the \$600 coming from himself.

Response to Objection #40: This objection has no basis in fact or law.

Objection #41: Pages 29-32. Defendant objects as to foundation for his identity.

Response to Objection #41: Multiple witnesses saw the Defendant. The Defendant was later stopped in the car and fully identified.

Objection #42: Page 30. Defendant claims testimony about Huston's prior investigations are improper bolstering, not relevant, and prejudicial.

Response to Objection #42: The statements are to establish training and experience and are proper.

Objection #43: Page 30. Defendant objects to speculation.

Response to Objection #43: The motive for the crime is a relevant issue. The witness testified to his training and experience with this issue and can properly testify to what in his experience motivates a drug dealer.

II. THE STATE DID NOT CONDUCT OUTRAGEOUS AND EGREGIOUS PROSECUTORIAL MISCONDUCT THAT WOULD BE GROUNDS FOR A DISMISSAL OF THE INDICTMENT.

Once again the State refers to the opinion of the *Edmonson* court. To determine whether misconduct gives rise to a dismissal, a reviewing court will have to balance the gravity and the seriousness of this misconduct with the sufficiency of the evidence supporting the probable cause finding. At one extreme, the misconduct can be so outrageous that regardless of the extent of probable cause evidence, dismissal will be required. At the other extreme, the misconduct may be so slight, that it becomes unnecessary to question the independent judgment of the grand jury. In the middle of these extremes, the court must examine the totality of the circumstances to determine whether the indictment should be dismissed. As stated above, the burden rests with the criminal defendant to make an initial showing that the misconduct rises to the level of prejudice. Absent the showing of prejudice, a reviewing court will not second guess the grand jury. *State v. Edmonson*, 113 Idaho 230, 237, 743 P.2d 459, 466 (Idaho,1987).

The case law is quite clear that the Defendant is required to affirmatively show prejudice caused by any prosecutorial misconduct. In this case the Defendant has not done so. The Defendant merely has suggested that prosecutorial misconduct has occurred.

Even if the court deems these comments impermissible, they do not qualify as so egregious that the indictment should be dismissed. The court must keep in mind the standard of prejudicial effect when determining whether the impermissible statements caused and were designed to appeal to juror prejudice. *See State v. Bojorquez*, 111 Ariz. 549, 535 P.2d 6 (1975); *State v. Good*, 10 Ariz. 556, 460 P.2d 662 (1969); *Edmonson supra*. The Defendant has not shown that this nine sentence dialogue prejudiced the jury at all, let alone in such an egregious

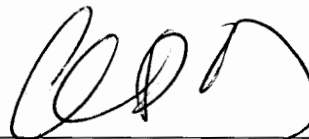
manner that they came back with an indictment only because the prosecutor corrected the juror that “semen” was never mentioned, only “spermatozoa.” The Ninth Circuit has established that unless the defendant proves that the conduct by the State is flagrant misbehavior, the indictment should not be dismissed. *United States v. Chapman*, 524 F.3d 1073, 1085 (9th Cir. 2008); *see also United States v. Kearns*, 5 F.3d 1251, 1255 (9th Cir. 1993)^[4]. What the Defendant is alleging is neither egregious nor is it a flagrant misbehavior that would provide this court with grounds for a dismissal of the indictment. Therefore, the State has not violated the Defendant’s due process rights nor has it committed prosecutorial misconduct.

CONCLUSION

The grand jury received legally sufficient evidence supporting its finding of probable cause. The State respectfully requests this Court to DENY the Defendant’s Motion to Dismiss as the State did not violate the Defendant’s due process rights nor commit prosecutorial misconduct.

DATED this 5th day of December, 2016.

BRYAN F. TAYLOR
Prosecuting Attorney
Canyon County, Idaho



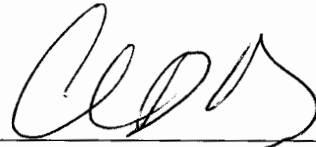
CHRISTOPHER BOYD
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 5th day of December, 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
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



CHRISTOPHER BOYD
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: **JUNEAL C. KERRICK** DATE: **DECEMBER 5, 2016**

THE STATE OF IDAHO)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO: CR-2016-14841*C
)	
vs)	
	)	TIME: 1:30 P.M
RICHARD ALAN WILSON,)	
A.K.A.)	
RICHARD BURRELL,	)	REPORTED BY: Kathy Klemetson
Defendant.)	
_____	)	DCRT 3 (223-231)

This having been the time heretofore set for **status conference** 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. David Smethers.

The Court noted the case, parties present; noting this had been the time scheduled for status conference and reviewed relevant procedural history with specific regard to the Defendant's Motion to Dismiss Indictment.

Additionally, the Court reviewed prior proceedings held on December 2, 2016 at which time the defendant's motion had been heard by the Court, however Ms. Hamby had not been prepared to argue the matter, noting subsequently thereafter a Brief in Opposition of the Motion to Dismiss Indictment had been filed by Mr. Boyd on December 5, 2016.

The Court expressed opinions, noting as a practical matter, it doubted a ruling could be issued prior to the current trial setting of December 13, 2016.

Mr. Smethers advised the Court counsel would defer to the Court in terms of a vacation/reset of the jury trial; however noted the defendant would re-assert his right to speedy trial. Additionally, the defendant would enter an objection to the Court's consideration of the brief as submitted by the State as untimely.

The Court noted the defendant's objection to the Court's consideration of the State's Brief in Opposition of Motion to Dismiss Indictment, noting it was uncertain what position it would take with respect to the same.

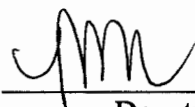
Mr. Smethers advised the Court the defendant would have no objection to a vacation and reset of the trial setting, however would request trial be rescheduled within speedy trial rights.

The Court expressed opinions, **vacated the current trial setting and reset the matter for commencement of jury trial on January 24, 2017 at 8:30 a.m. for four (4) days before Senior Judge Morfitt, recognizing the same had been within the defendant's speedy trial rights. Additionally, the Court scheduled the matter for status conference on January 18, 2017 at 9:00 a.m. before this Court.**

The Court noted in the event the motion had been granted, it would not necessarily wait until the end of January.

In answer to the Court's inquiry, the defendant indicated he understood the proceedings and the basis for the continuance.

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



Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **JUNEAL C. KERRICK** DATE: **JANUARY 18, 2017**

THE STATE OF IDAHO)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO: CR-2016-14841*C
)	
vs)	
	)	TIME: 9:00 A.M
RICHARD ALAN WILSON,)	
	)	REPORTED BY: Kathy Klemetson
Defendant.)	
_____	)	DCRT 3 (929-940)

This having been the time heretofore set for **status conference** in the above entitled matter, the State was represented by Mr. Gerald Wolff, Deputy Prosecuting attorney for Canyon County, and the defendant appeared in court with counsel, Mr. David Smethers.

The Court noted the case, parties present and noted this had been the time scheduled for status conference.

Additionally, the Court noted it owed counsel a decision on the Defendant's Motion to Dismiss Grand Jury Indictment; however there was one particular issue which needed to be reviewed. The Court further advised counsel of its intention to deny the motion, however noted a written decision would be issued.

Mr. Wolff presented argument in support of a Motion to Continue based on certain issues with the procedural process of the Nampa City Police Department, noting in the alternative the case could be dismissed and refiled at a later date with full disclosure and all charges

Mr. Smethers held discussions with the defendant.

With respect to the Motion to Dismiss, Mr. Smethers inquired as to whether or not the materials submitted by the State in violation of the Court's scheduling order had been considered wherein the Court noted it had reviewed the materials, however had conducted its own research.

Mr. Smethers requested the opportunity to respond by the end of the week so as to fully represent the defendant. Further, with respect to the current trial setting, Mr. Smethers noted the defendant would reassert his right to speedy trial, however deferred to the discretion of the Court in terms of a continuance, recognizing speedy ran March 9, 2017.

The Court advised counsel of its unavailability next week based on a scheduled conference, therefore review of any additional materials submitted by defense counsel would be delayed.

In answer to the Court's inquiry, Mr. Wolff indicated he had addressed the issues with the Nampa Police Department.

The Court addressed the defendant relative to defense counsel's request for consideration of additional authority on the Motion to Dismiss together with motion of the State and the options available to the Court.

The Court further advised the defendant the State's Motion to Continue would be granted as it was a discretionary determination, recognizing the new trial setting would be within speedy

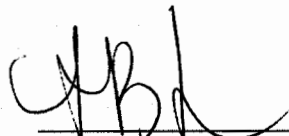
and further recognized the request of defense counsel in terms of consideration of additional authority.

The Court **granted the State's Motion to Continue, vacated the current trial setting and rescheduled the matter for commencement of jury trial on February 28, 2017 at 8:30 a.m. for four (4) days before Senior Judge Morfitt. The Court further scheduled the matter for status conference on February 22, 2017 at 11:00 a.m. before this Court.**

The Court addressed the defendant, noting it had a draft written, however there had been numerous issues raised by defense counsel which required additional time.

Mr. Wolff indicated he was taking over assignment of this matter.

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



Deputy Clerk

JAN 26 2017

CANYON COUNTY CLERK
M. NYE, DEPUTY

ALH
David J. Smethers, Deputy Public Defender, ISB #4711
Tera A. Harden, Chief Public Defender, ISB #6052
CANYON COUNTY PUBLIC DEFENDER'S OFFICE
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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.

RICHARD WILSON

Defendant.

Case No. CR-2016-14841

DEFENDANT'S RESPONSE TO
STATE'S BRIEF IN OPPOSITION OF
MOTION TO DISMISS INDICTMENT

COMES NOW, Defendant, Richard Wilson, by and through his attorney of record, David Smethers, Canyon County Public Defender's Office, and hereby submits the following Response to the State's Brief in Opposition of Motion to Dismiss Indictment.

The state's BRIEF was not submitted in a timely fashion pursuant to the Court's ORDER, the defendant objected to the Court considering the BRIEF, and this RESPONSE is submitted in the event that the Court utilizes the state's BRIEF in any fashion. The defendant continues with the aforementioned OBJECTION.

The defendant will sequentially argue information included in the state's BRIEF.

P 2:

STATEMENT OF FACTS AND PROCEDURAL HISTORY

- 1st Para- the state improperly argues in the statement of facts section that the defendant assisted Regina Jones, (hereafter "Jones"). This statement is an allegation/argument and should not be stated as a fact.

-Further, the allegations that Jones told "the officer" about the hood on a vehicle is hearsay, and hearsay from Jones was addressed in the defendant's initial memorandum.

2nd Para- the entire paragraph is hearsay, no foundation was established, and this is improper argument.

P 3:

The state argues that the grand jury is not the final arbiter of guilt, its function is that of finding probable cause. The defendant in this case has not been afforded a jury trial, a defendant accused by the state still has due process rights to a fair and meaningful hearing in the matter of probable cause, and the Idaho Rules of Evidence are in full force and effect at a grand jury proceeding.

P 5:

The state cites *State v Marasalis*, 151 Idaho 872, for the proposition prosecutorial misconduct must rise to the level of a due process violation to warrant a dismissal. The holdings in *Marasalis* establish this case should be dismissed. The *Marasalis* case alleged one act of prosecutorial misconduct,¹ and the District Judge found that the law enforcement officer and the prosecutor knew at the time of the testimony that the testimony was false/misleading, ruled that it was unclear why the testimony was not corrected, but the misconduct did not rise to a level warranting dismissal. In this present case, the defendant alleges/argues approximately eighty-five instances of

¹ At the grand jury, a law enforcement officer testified that there was not enough of a purported date rape drug to test, when in fact the test came back negative.

prosecutorial misconduct, violations of the rules of evidence, and other constitutional infirmities in the proceeding. The defendant argues that each and every instance cited in the memorandum is enough for dismissal, but the errors aggregated mandate dismissal. The panel was subjected over and over to evidence and testimony that was not presented so-as-to afford the defendant due process. The court of appeals in *Marasalis* goes on with a "but for" analysis as to the perjured testimony, and the majority holds there was ample evidence for indictment in that case, but once again- there are some eighty-five factors to be considered in the present case. If this Court considers evidence that was properly before the panel, the misconduct was prejudicial to the point of due process violations. The discerning and perceptive Dissent in *Marasalis* by Judge Gutierrez states as follows:²

"In addition, the context of the prosecutor's behavior in this instance makes it especially troubling. It is well settled that prosecutors have " the responsibility of a *minister of justice* and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." *State v. Tupis*, 112 Idaho 767, 772, 735 P.2d 1078, 1083 (Ct.App.1987) (citing Idaho Rules of Professional Conduct Rule 3.8 comment (1986)) (emphasis added).

This role is especially magnified in the context of a grand jury proceeding, the very nature of which completely excludes a defendant and an impartial judge and thus bestows the prosecutor with significant power. As the Third Circuit Court of Appeals has noted:

[T]he prosecutor operates without the check of a judge or a trained legal adversary, and virtually immune from public scrutiny. The prosecutor's abuse of his special relationship to the grand jury poses an enormous risk to defendants as well. For while in theory a trial provides the defendant with a full opportunity to contest and disprove the charges against him, in practice, the handing up of an indictment will often have a devastating personal and professional impact that a later dismissal or acquittal can never undo. *Where the potential for abuse is so great, and the consequences of a mistaken indictment [264 P.3d 988] [151 Idaho 881] so serious,*

² Not presented for precedential purposes as contained in a dissent, but for the case law and references to ethical responsibilities of the prosecutor.

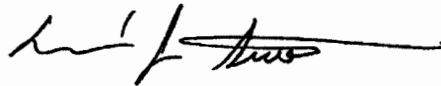
the ethical responsibilities of the prosecutor, and the obligation of the judiciary to protect against even the appearance of unfairness, are correspondingly heightened.

United States v. Serubo, 604 F.2d 807, 817 (1979) (emphasis added). *Accord United States v. Williams*, 504 U.S. 36, 62, 112 S.Ct. 1735, 1750, 118 L.Ed.2d 352, 374-75 (1992) (Stevens, J., dissenting); *State v. Jones*, 125 Idaho 477, 491-92, 873 P.2d 122, 136-37 (1994) (Bistline, J., dissenting).

In light of this imbalance and the resulting burden on the prosecution, and for the reasons above, I conclude that the indictment should have been dismissed and would reverse the district court's order denying the motion to dismiss the indictment.”

The balance of the state's Brief is responses to evidentiary objections. The Rules of Evidence speak for themselves.

DATED this 26th day of January, 2017.



David Smethers, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

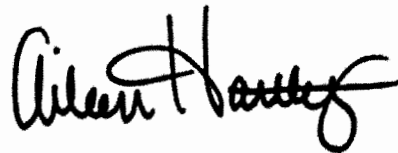
I certify that on this 26th day of January, 2017, a copy of the foregoing DEFENDANT'S RESPONSE TO STATE'S BRIEF IN OPPOSITION OF MOTION TO DISMISS INDICTMENT was served on the following named persons at the addresses shown and in the manner indicated.

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



Canyon County Public Defender's Office

FEB 15 2017

CANYON COUNTY CLERK
S MEHIEL, 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,	)	Case No. CR-2016-14841
)	
vs.	)	MEMORANDUM DECISION
	)	AND ORDER ON DEFENDANT'S
RICHARD ALLEN WILSON,	)	MOTION TO DISMISS
	)	INDICTMENT
Defendant.)	
)	

PROCEDURAL BACKGROUND

On August 25, 2016, Defendant Richard Wilson, was charged by indictment with two counts of aiding and abetting the trafficking of methamphetamine. The Defendant filed a Motion to Dismiss Indictment on November 7, 2016, together with a memorandum in support of the motion, seeking dismissal of the indictment on the grounds that his due process rights were violated. A hearing was held on December 2, 2016. The State filed a brief in opposition to the Motion to Dismiss Indictment on December 5, 2016, to which the Defendant objected based on timeliness. However, the Defendant also sought leave to submit a supplemental response, which was filed on January 26, 2017. The Court has determined that both parties have had adequate

time to address the issues raised in Defendant's motion, and the court will consider all the briefing.

DISCUSSION

I. Legal Standards

Idaho Criminal Rule 6.2 states in pertinent part that an indictment may be dismissed if “[t]he indictment was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho.” I.C.R. 6.2(d). Idaho Code Section 19-1107 states that “[t]he grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.”

Idaho Code Section 19-1105 describes the type of evidence the grand jury may consider:

In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay.

Existing case law also frequently cites a now-defunct criminal rule that stated that “the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.” *See, e.g., State v. Jones*, 125 Idaho 477, 483, 873 P.2d 122, 128 (1994); *State v. Martinez*, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994). While this rule has been removed from the Idaho Criminal Rules, no case has since overruled its contents.

In determining whether an indictment should be dismissed, the inquiry is two-fold. *Martinez* at 448, 872 P.2d at 711.

First, we must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. *State v. Jones*, 125 Idaho 477, 873 P.2d 122 (1994); *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987). Second, even if such legally sufficient evidence were presented, the indictment must be dismissed if the prosecutorial

misconduct in submitting illegal evidence was so egregious as to be prejudicial. *Jones*, 125 Idaho 477, 873 P.2d 122; *Edmonson*, 113 Idaho at 236-237, 743 P.2d at 465-466. In *Edmonson* we described “prejudicial effect” as meaning “the defendant would not have been indicted but for the misconduct.” 113 Idaho at 237, 743 P.2d at 466. Absent a showing of prejudice by the defendant, we will not second guess the grand jury. To determine whether misconduct gives rise to a dismissal, an appellate court must balance the gravity and seriousness of the misconduct with the sufficiency of the evidence supporting the indictment. *Id.* at 237, 743 P.2d at 466.

Id. at 448–49, 872 P.2d at 711–12 (1994).

Furthermore, a grand jury is not the final arbiter of guilt or innocence; its functions are investigative and charging. *See, e.g., Edmonson*, 113 Idaho at 234, 743 P.2d at 463. The purpose of both a grand jury proceeding and a preliminary hearing is to determine whether probable cause exists to support the charge(s) in question.

II. Analysis

The Defendant argues that the indictment should be dismissed because his right to due process was violated by the presentation of inadmissible evidence, presentation of hearsay testimony, use of improper and leading questions, other violations of rules and statutes, and because of prosecutorial misconduct. The Defendant contends that prosecutorial misconduct was so egregious that it was prejudicial, and that this misconduct consisted of lack of proper foundation, use of multiple layers of hearsay, presentation and questioning of incompetent witnesses, and comments on the weight and sufficiency of the evidence.

A. Sufficient Evidence to Support a Finding of Probable Cause

As explained above, this Court must first determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. *E.g. Jones*, 125 Idaho at 483, 873 P.2d at 128. Defendant argues that after

excluding inadmissible hearsay evidence, the remaining evidence is insufficient to support a finding of probable cause. *Def. Memo.* at 5.

Both Defendant and the State address the Defendant's objections to evidence presented to the grand jury in list format. This Court will therefore do the same.

1. Page 2: Foundation. Defendant argues that no foundation was established for the identity of Regina Jones. This Court agrees with the State that foundation regards whether or not the witness has personal knowledge of that to which he or she testifies. Here, the witness stated that he recognized Regina Jones' name and had met her before, which provides him with the personal knowledge required to establish foundation. This evidence is admissible.
2. Page 2: Leading. Defendant contends that the State asked a "blatant" leading question when the prosecutor said: "[s]tarting back March 27, 28, did you start calling and texting Ms. Jones to see if you could set up a transaction for some methamphetamine?" As the State notes, Idaho Rule of Evidence 611(c) allows the use of leading questions on the direct examination of a witness when those questions are "necessary to develop the testimony of the witness." The question here was a follow-up question to the witness's previous response, in which he stated that he communicated personally with Ms. Jones by calling and text messaging her. Therefore, the prosecutor was developing the testimony of the witness, and the question was not objectionable.
3. Page 2: Narrative Response. In response to the question from Objection 2, above, the witness gave a three-sentence response that explained how he set up a deal with Ms. Jones on the 27th and communicated with Ms. Jones on the 28th about setting up another deal, which Defendant argues was a narrative response. I.R.E. 611(a) states that "...the

Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation of evidence effective for ascertainment of the truth . . .” This rule is designed to prevent the witness from rambling on at length, and thereby to minimize the risk that the witness could testify to inadmissible evidence. Here, the witness’s response was relatively brief and did not venture into inadmissible fact, and is therefore admissible.

4. Page 2-3: Hearsay. Defendant argues that the witness’s statement that Regina Jones “told [him] she hadn’t been in contact with her source so she was going to sell [him] what she had, which was going to be an eight ball of methamphetamine,” constitutes continued hearsay. I.R.E. 801 defines hearsay as a statement by an out of court declarant, “offered in evidence to prove the truth of the matter asserted.” The State argues that this testimony was not offered to prove the truth of the matter asserted because it did not touch upon the Defendant or the aiding and abetting charges against the Defendant. This argument is misplaced; this statement by Ms. Jones’ was made by an out of court declarant and was offered for the truth of the matter asserted, i.e. that Ms. Jones told him the above statement. Therefore, this statement was inadmissible. The rest of the witness’s response is admissible, however, and the absence of the hearsay statement does not disturb a finding of probable cause against the defendant.
5. Page 3: Relevance and Prejudice. Defendant argues that there should not have been any testimony about the buy on March 28th because he was not charged with anything related to that buy. However, the witness was only testifying to Ms. Jones’ actions, and the grand jury certainly could have kept such facts and individuals separate. Any risk of prejudice is minimal, and this testimony was admissible.

6. Page 3: Foundation. Defendant objects to the NIK test foundation on the methamphetamine purchased on March 28th. As the State points out, this testimony is irrelevant to Defendant's charges because he was not involved with the March 28th buy, and only serves as background. Because this testimony was irrelevant to Defendant's charges, it is likely inadmissible, but its absence would not disturb the grand jury's finding of probable cause against the Defendant. Furthermore, the State was not required to present testimony from a witness from a certified lab, as Defendant asserts with no legal support. However, the State did fail to establish the witness's experience and training with NIK testing, and as such the testimony was likely inadmissible for lack of proper foundation. Again, however, testimony related to the March 28th buy has nothing to do with the Defendant, and its absence would not disturb the grand jury's finding of probable cause.
7. Page 4: Hearsay. Defendant argues that the witness's testimony of another of his conversations with Ms. Jones is inadmissible hearsay. The State incorrectly asserts that conspiracy and aiding and abetting are the same under Idaho law and that this conversation should therefore be admissible as a statement by a co-conspirator of the defendant during the course and in furtherance of the conspiracy. *State's Objection* at 8. In support, the State cites to *State v. Gallatin*, 106 Idaho 564, 565, 682 P.2d 105, 106 (Ct. App. 1984), where the Court explained that aiding and abetting and conspiracy are not treated the same because conspiracy involves an additional element, namely the agreement between conspirators. *Id.*

This Court cannot ignore the specific language of Rule 801(d)(2)(E)—it specifically references a co-conspirator rather than an accomplice, an aider and abettor, or

a co-defendant. Case law interpreting the co-conspirator exception to the hearsay rule is specific: “the scope of [the exception] is narrow, and the requirement that the co-conspirator’s statement be made during the course of and in furtherance of the conspiracy is a prerequisite to admissibility that scrupulously must be observed.” *State v. Rolon*, 146 Idaho 684, 694, 201 P.3d 657, 667 (Ct. App. 2008) (citing *State v. Harris*, 141 Idaho 721, 725, 117 P.3d 135, 139 (Ct. App. 2005)). For the exception to apply, “[t]here must also be sufficient evidence from which a trial court may reasonably infer the existence of a conspiracy.” *Id.* (internal citations omitted). As explained in *Gallatin*, the existence of a conspiracy requires proof of an element not necessary for conviction for aiding and abetting: an agreement between conspirators, prior to concerted action, to violate the law. 106 Idaho at 569, 682 P.2d at 110. “Such an agreement is not necessarily inherent in the mere joint activity common to aiding and abetting,” and proof of aiding and abetting does not require proof of an agreement. *Id.* (internal citations omitted).

The issue here is therefore whether there is sufficient evidence for this Court to infer the existence of a conspiracy. If this Court can “reasonably infer the existence of a conspiracy,” the exception would apply so long as the statement(s) at issue were made “during the course of and in furtherance” of the conspiracy, despite the fact that the Defendant was not charged with conspiracy. “Idaho law does not require contemporaneous independent proof of a conspiracy. Idaho law simply requires that there be some evidence of conspiracy or promise of its production, before the court can admit evidence of statements made in furtherance of the conspiracy under I.R.E. 801(d)(2)(E). *State v. Jones*, 125 Idaho 477, 485, 873 P.2d 122, 130 (1994). *See also State v. Smith*, Docket No. 44308-2016 (February 2, 2017) (where the evidence “clearly

showed there was a conspiracy” to deliver mushrooms to the undercover detective even where no conspiracy was charged, and statements of the “co-conspirator” were admissible under I.R.E. 801(d)(2)(E)).

If these conditions are met, Ms. Jones’ statements would be admissible as statements of a co-conspirator, despite the fact that a conspiracy was not charged. This Court notes that under Idaho law, an aider and abettor is considered a principal in the crime, I.C. § 18-204, as is a co-conspirator. I.C. § 18-1701. Thus, the legislature’s intent is to hold principals, aiders and abettors, and co-conspirators equally liable under the law.

“The essence of a conspiracy offense is proof of knowledge of and voluntary participation in an agreement to violate the law.” *Id.* (internal citations omitted). The “agreement” underlying the conspiracy “need not be formal or express but may be inferred from the circumstances.” *Id.*

Here, without considering any of the statements made by Ms. Jones, there is sufficient evidence to infer the existence of an agreement between the defendant and Ms. Jones to violate the law. The Defendant accompanied Ms. Jones to methamphetamine buys on at least two occasions. Both times, the Defendant was in or around the car with Ms. Jones when she exited that car and got into the passenger side of the undercover officer’s car to complete the buy. (G.J. Tr. p. 5, G.J. Tr. p. 9). Both times, the hood of Ms. Jones’ car was up, arguably as a signal to the undercover officer, and the officer personally witnessed the Defendant lift the hood on the April 27th buy. (G.J. Tr. p. 5; G.J. Tr. p. 9). During the first buy, the undercover officer pulled up next to the vehicle occupied by Ms. Jones and the Defendant, after which Ms. Jones immediately got out of her car and entered the passenger side of the officer’s door to complete the transaction.

(G.J. Tr. pp. 5-6). During the second buy, the officer called Ms. Jones to let her know he had arrived, after which she immediately exited her car, got into the passenger side of the officer's vehicle, completed the transaction, and then returned to the car where the Defendant was waiting. (G.J. Tr. pp. 9-10). Finally, the money the undercover officer gave to Ms. Jones in exchange for the methamphetamine was recovered from the Defendant in the ensuing traffic stop. (G.J. Tr. p. 27).

This is sufficient evidence for this Court to reasonably infer that the Defendant knew what Ms. Jones was doing and had agreed to participate. Therefore, there is sufficient proof of "knowledge of and voluntary participation in an agreement to violate the law," which establishes the existence of a conspiracy. Therefore, Ms. Jones and the Defendant are considered co-conspirators for hearsay purposes, and Ms. Jones' statements are admissible under I.R.E. 801(d)(2)(E) as statements by a co-conspirator.

8. Page 6: Foundation. Defendant objects to the witness's testimony that the Ziplock baggies containing a white crystal substance "were the size that should have been an ounce in each one of them." This testimony is admissible; the witness was testifying to what he observed based on his experience and knowledge.
9. Page 6: Foundation. Defendant objects to the witness's statement that he saw a male subject with Ms. Jones and that he did not know the male's identity at the time. This objection is completely without merit; the witness merely testified that he observed a male with Ms. Jones. A witness may testify to his personal knowledge and observations.
10. Page 7: Foundation and Hearsay. Defendant objects to the witness's response that he now knows that the male present with Ms. Jones during the April 7th buy was the defendant based on lack of foundation and "implications of hearsay." The State should have laid

more foundation about how the witness later discovered the male's identity, but another witness does just that later in the proceedings. The defendant is ultimately properly identified for the purposes of a grand jury proceeding/probable cause hearing.

11. Page 7: Foundation and Hearsay. Defendant objects to the witness identifying the white crystal substance as methamphetamine. This is not hearsay; the statement was not made by an out of court declarant, since the witness was present and testifying. The witness could properly testify to his observations as a result of his knowledge and experience as a police officer. Foundation is even further laid when the witness explains the results of the NIK test as positive for methamphetamine. Though the Defendant continues to incorrectly assert that a laboratory test presented by a laboratory technician is required to establish the identity of the substance, the NIK results are sufficient for a finding of probable cause.
12. Page 8: Improper testimony about the weight of the methamphetamines. The witness explained that he weighed the substances when he returned to the Nampa Police Department, and the results of that weighing. Although the witness did not detail the particular steps he took to weigh the substances, he testified of his own personal knowledge and based on his training as a law enforcement officer. This testimony is sufficient for the purpose of this proceeding.
13. Page 8: Improper Argument and Leading. Defendant objects to the State's statement that "Now, my understanding is for the next couple of weeks trying to identify where Ms. Jones gets substances, who's involved with her, that type of thing. And it's during that point in time you start identifying people like Mr. Wilson as being associated with her, correct?" This is a valid objection, as this statement constitutes both improper argument

and a leading question. This statement is inadmissible, but again is not essential to a finding of probable cause.

14. Page 9: Hearsay. Defendant objects to the witness's statement that he saw Richard Wilson get out of Ms. Jones' car because the Defendant had not "heretofore been identified by competent evidence." The State does not respond to this particular objection. At the time the witness saw the Defendant get out of the car, no one knew his identity. However, he was pulled over almost immediately after this interaction and identified by his driver's license. Therefore, proper foundation is ultimately laid as to his identity.
15. Page 9-10: Leading and Speculation. Defendant objects to a series of questions based on their leading nature. However, as addressed above, leading questions may be used on direct examination when "necessary to develop the testimony of the witness." I.R.E. 611(c). This exchange is therefore admissible because it was necessary to develop the witness's testimony about the role the defendant was playing in the transaction. The witness is competent to testify about his observations and the inferences he made from those observations based on his training and experience as a police officer.
16. Page 10: Foundation. Defendant again argues that there was insufficient foundation for the witness to testify to the identity and weight of the methamphetamine. Again, the witness's training and experience as a police officer makes him competent to testify to his observations. Furthermore, almost immediately after the transaction, the witness weighed and NIK tested the substance, and those weights and test results confirmed his observations.

17. Page 11: Hearsay. Defendant notes that the witness testified that the actual weight of the methamphetamine purchased on April 27, 2016, was 27.4 grams. A charge for trafficking in methamphetamines requires the sale of over 28 grams of methamphetamine. I.C. § 2732B(a)(4)(A). However, the statute allows for conviction for a greater weight if the person delivering or selling the methamphetamine represents the amount to be higher than the actual weight. I.C. § 2732B(c); *State v. Bradley*, 158 Idaho 66, 71, 343 P.3d 508, 513 (Ct. App. 2015). The State correctly notes that it is an issue of first impression whether such a representation also allows an aider and abettor to be tried for a greater weight than was actually sold. This Court agrees with the State's contention that the legislative intent of Idaho Code § 18-204 is to hold one who aids and abets a crime just as liable as the other parties. This section states that "[a]ll persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense or aid and abet in its commission . . . are principals in any crime so committed." I.C. § 18-204. Because Ms. Jones' representation about the amount of methamphetamine involved in the April 27th buy is admissible as a statement by a co-conspirator, as discussed above, that representation is sufficient to charge the defendant with trafficking in methamphetamine.

18. Page 12: Hearsay, Relevance, and Prejudice. The witness stated that Ms. Jones told him that she was in a hurry because she and the Defendant were supposed to go to a meeting with the defendant's probation officer. This is not hearsay, as a statement by a co-conspirator, but is both irrelevant and prejudicial. The witness could testify that Ms. Jones told him they were in a hurry, and should have stopped there. The rest of the statement is inadmissible. The State argues that while prejudicial, the reference to the

defendant being on probation was necessary to show the reason for the stop. There are, however, more competent witnesses that testify to that later in the proceedings, and it should not have been introduced by this witness. However, none of the stricken testimony here is relevant or necessary to a finding of probable cause and its absence will not disturb that finding.

19. Page 12-13: Relevance, Prejudice, and Leading. Defendant objects to the State's question involving "three transactions" from March 28, April 7, and April 27 because the defendant was not charged in connection to the March 28th transaction, and argues that reference to March 28th is therefore irrelevant and highly prejudicial. As discussed above, references to the March 28th buy are not necessarily or inevitably prejudicial to the defendant because he was not charged with any crime related to March 28th. The grand jury is capable of keeping dates, defendants, and charges straight and likely would not be confused by such evidence. However, such evidence is also irrelevant to the Defendant, and therefore this evidence should be stricken. Again, however, this is irrelevant to a finding of probable cause for the April 7 and April 27th transactions. Defendant also objects to the "blatant" leading questions involved in this testimony. Unlike some of the previous objections to leading questions, these do not appear to be necessary to "develop the testimony of the witness" because the witness is essentially answering "yes" or "no" to a series of questions. The witness had not previously testified about much of this evidence, and as a result these are leading questions. This series of questions and responses should be stricken. One exception, however, is the State's question regarding NIK test results, which was not a leading question and is therefore admissible.

20. Page 14: Foundation, Hearsay, Cumulative Evidence, Confusion of the Issues. Defendant objects to the witness's testimony about the money officers confiscated from the Defendant because the witness is incompetent. A later witness testifies to the same thing after proper foundation is laid, and this Court agrees with the Defendant that these statements should be stricken. Again, however, because this information comes in through a different witness later in the proceeding, its absence here does not disturb a finding of probable cause.
21. Page 16: Foundation, Leading, Facts Not in Evidence, Argumentative, Improper Bolstering, Misstatement of Law and Fact. The Court agrees with Defendant that the exchange between the prosecutor and the witness from line 15 to line 25 ("Let's be real direct with these guys" until "Yes") was improper and should be stricken. The prosecutor was essentially testifying by saying that "It doesn't really matter if they were speeding in a school zone because they just did a drug deal with an officer," and asking "You have probable cause to arrest them, let alone stop them." Furthermore, such statements could have confused the evidence and misled the jury. Again, however, the stricken testimony does not affect a finding of probable cause.
22. Page 17: Lack of Foundation as to the Defendant's identity. This Court agrees with the State's contention that under the totality of the circumstances and to the level required by probable cause, the Defendant's identity was sufficiently established. The witness here saw the Defendant and ascertained his identity during the traffic stop he initiated.
23. Page 19: Hearsay. This statement was not being offered for the truth of the matter asserted (that Officer Hein asked the witness to search the Defendant), but rather to show that the witness did in fact search the Defendant. It is therefore admissible.

24. Page 20: Hearsay, Foundation. Defendant objects to the witness's testimony stating "Well I was told it was money that they had used to purchase drugs through their drug buys." This is hearsay evidence and inadmissible. Its absence does not affect a finding of probable cause because the money recovered from the defendant is later identified as the money that had been used in the drug buys.
25. Page 21: Leading and Argumentative Questions. Defendant objects, apparently, to all of the testimony on page 21. As the State notes, however, these were merely clarifying and concluding questions that wrapped up the story, and the witness had already testified to the information contained in the questions.
26. Page 22: Defendant merely lists "Detective Davenport testifies" in his list of objections without explaining that objection.
27. Page 23: Leading, Hearsay, Foundation related to Defendant's identity. Defendant's identity was sufficiently established by the prior witness.
28. Page 24: Relevance, Prejudice, Foundation, Hearsay. Defendant objects to the testimony that he was on parole and had a no contact order with a female. The State concedes that the unsolicited testimony regarding the no contact order was improper, but that any damage could have been cured with an instruction to the grand jury, and notes that Defendant has not met his burden of showing such an instruction was not given. The State also argues that the Defendant's probation/parole was the reason for the search, and that such testimony is required at probable cause hearings. However, the State could have laid more foundation as to how the officers knew that the Defendant was on parole, or even that at some point during the traffic stop, they became aware that the Defendant was on parole. Despite the inadmissibility of such statement without foundation, the officers

still had probable cause to detain and search the Defendant because of the drug buy that had occurred almost immediately before the stop. Therefore, both the fact that the Defendant was on parole and the fact that he had a no contact order with a female at the time of the stop are inadmissible for lack of foundation and risk of prejudice, but their exclusion does not disturb a finding of probable cause.

29. Page 25: Hearsay, Foundation, Chain of Custody. Defendant objects to the witness testifying that other officers handed him a baggie that he ultimately NIK tested. As the State correctly points out, the witness was testifying to his own observations, and issues related to the chain of custody go to weight, not admissibility, of evidence. *State v. Kodesh*, 122 Idaho 756, 756, 838 P.2d 885, 885 (Ct. App. 1992). This Court has already addressed Defendant's argument that laboratory results are the only admissible evidence as to the identity of a substance, which is incorrect.
30. Page 26, 27: Argumentative, Lack of Foundation as to Ms. Jones' identity. Like the Defendant, Ms. Jones' identity was sufficiently established. Defendant contends that the State engaged in prosecutorial misconduct during this exchange, but the Court concludes that argument is not well-founded.
31. Page 29, 30, 31, 32: Foundation as to Defendant's identity. This objection has been addressed and overruled.
32. Page 30. Defendant objects to the witness's testimony about personally witnessing the Defendant opening the hood of the vehicle, noting that the State "never places any controlled substances in the Defendant's possession or proximity." *Memo. in Support of Motions* at 14. Defendant does not explain why this is objectionable, and this Court finds that is in fact entirely proper.

33. Page 30-31: Improper Bolstering, Relevance, Prejudice. Defendant objects to the witness establishing his training and experience, despite having objected to the testimony of other witnesses for their alleged failure to do so.

As explained, this Court must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. *E.g. Jones*, 125 Idaho at 483, 873 P.2d at 128. Defendant argues that after excluding inadmissible hearsay evidence, the remaining evidence is insufficient to support a finding of probable cause. *Def. Memo.* at 5. This Court disagrees. As discussed above, after all inadmissible evidence is excluded, there remains sufficient evidence to support a finding of probable cause against the Defendant.

B. Prosecutorial Misconduct

Even if the grand jury was presented with legally sufficient evidence to support a finding of probable cause, however, this Court must dismiss the indictment if any prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. *E.g. Edmonson*, 113 Idaho at 237, 734 P.2d at 466. Prosecutorial misconduct is prejudicial “when the defendant would not have been indicted but for the misconduct.” *Id.* Defendant argues that prosecutorial misconduct rose to this prejudicial level and infringed on the grand jury’s decision-making function because of lack of proper foundation, use of multiple layers of hearsay, presentation and questioning of incompetent witnesses, and comments on the weight and sufficiency of the evidence. *Def. Memo.* at 5.

Despite Defendant’s extensive list of objections, few of those objections were sustained. There remains ample evidence with which to support a finding of probable cause. A defendant seeking to dismiss an indictment because of prosecutorial misconduct bears the “heavy burden”

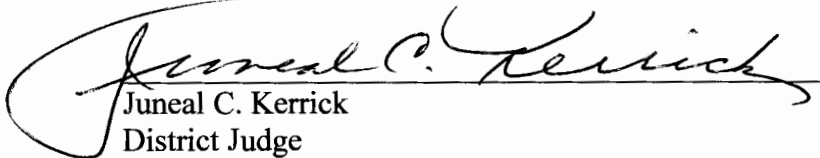
of affirmatively demonstrating prejudice caused by the alleged misconduct, as dismissal “is a drastic remedy and should be exercised only in extreme and outrageous situations.” *Edmonson at 237, 466*. The Court concludes that any mistakes made by the State during the grand jury proceedings were not so egregious or prejudicial so as to require dismissal of the indictment.

CONCLUSION

Independent of any inadmissible evidence, the grand jury in this case received ample and legally sufficient evidence to support a finding of probable cause. Additionally, Defendant was not prejudiced by any alleged prosecutorial misconduct. Therefore, Defendant’s Motion to Dismiss the indictment is denied.

IT IS SO ORDERED.

Dated this 15th day of February, 2017.


Juneal C. Kerrick
District Judge

CERTIFICATE OF SERVICE

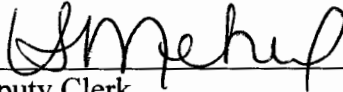
I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to the following, either by U.S. Mail, first class postage prepaid; by hand delivery; by courthouse basket; or by facsimile copy:

David Smethers
Deputy Public Defender
Canyon County Administration Building
111 North 11th Avenue, Suite 120
Caldwell, Idaho 83605

Christopher Boyd
Deputy Prosecuting Attorney
Canyon County Courthouse
1115 Albany
Caldwell, Idaho 83605

Dated this 15 day of February, 2017.

CHRIS YAMAMOTO
Clerk of the District 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: **JUNEAL C. KERRICK** DATE: **FEBRUARY 22, 2017**

THE STATE OF IDAHO)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO: CR-2016-14841*C
)	
vs)	
	)	TIME: 11:00 A.M
RICHARD ALAN WILSON,)	
A.K.A.)	
RICHARD BURRELL,	)	REPORTED BY: Kathy Klemetson
Defendant.)	
_____	)	DCRT 3(1104-1117)

This having been the time heretofore set for **status conference** 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. David Smethers.

The Court noted the case, parties present; noting this had been the time scheduled for status conference and inquired how counsel intended to proceed.

Mr. Smethers requested the matter remain on the trial calendar.

The Court noted the matter would remain on the trial calendar for commencement of jury trial on February 28, 2017 at 8:30 a.m. before senior Judge Morfitt and directed counsel to have submitted a proposed exhibit and witness list on or before February 24, 2017.

Mr. Smethers moved to exclude all witnesses at trial.

Mr. Boyd indicated the State would have no objection to the Defendant's Motion to Exclude Witnesses, however noted a case officer may be designated, therefore the same could be addressed at trial.

The Court granted the **Defendant's Motion to Exclude Witnesses** at trial and noted the exclusion would be mutual; recognizing the issue of the designation of a case officer would need to be addressed at trial.

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



Deputy Clerk

F I L E D
A.M. 1:30 P.M.
FEB 27 2017

**CANYON COUNTY CLERK
C JIMENEZ, DEPUTY**

cb

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.

RICHARD ALAN WILSON

Defendant.

CASE NO. CR2016-14841

**NOTICE OF INTENT TO
USE REDACTED AUDIO**

COMES NOW CHRISTOPHER BOYD, Deputy Prosecuting Attorney for the County of Canyon, State of Idaho, and does notify the Defendant, by and through counsel, of the State's intent to use redacted media in the Jury Trial scheduled for February 28, 2017 at 8:30 a.m.


- 1. State Exhibit #9, labeled "Buy #3" 04/27/2016

Redacted 00:00 - 1:30

Redacted 2:38 - 2:41

Redacted 4:06 - end

DATED this 27th day of February, 2017.



 CHRISTOPHER BOYD
 Deputy Prosecuting Attorney

NOTICE OF INTENT TO
USE REDACTED AUDIO

ORIGINAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 27th day of February, 2017, 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
- Placed in Court Basket
- Overnight Mail
- Facsimile
- E-Mail



CHRISTOPHER BOYD
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: **JAMES C. MORFITT** DATE: FEBRUARY 28, 2017

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2016-0014841-C
)	
vs.	)	TIME: 8:30 a.m.
)	
RICHARD ALAN WILSON,	)	REPORTED BY: Leda Waddle
)	
Defendant.	)	DCRT 1 (849-453)
_____)	

This having been the time heretofore set for **trial to a jury day one (1)** in the above-entitled matter, the State was represented by Mr. Christopher Boyd Deputy Prosecuting Attorney's for Canyon County; and the defendant was present represented by counsel, Mr. David Smethers and Mr. Scott Hagen.

The Court convened at 8:49 a.m., with each of counsel being present, and outside the presence of the prospective jury panel.

In answer to the Court's inquiry, each counsel advised that this matter would proceed to trial.

The Court explained and reviewed the jury process, jury selection and trial procedure.

The Court and counsel discussed trial issues, witness lists and jury selection

procedure to be used in this matter.

The Court inquired as to whether each of counsel wished to exclude witnesses.

Each of counsel agreed to the same.

The Court advised each of counsel and the defendant that it would first address witness exclusion procedure.

The Court ordered each of counsel to admonish their witnesses, agents and law enforcement officials to not discuss their testimony or anything that may occur in the courtroom with anyone; (including the jury panel); nor should they discuss anything in the presence of the jury panel or any other witnesses until the case had been concluded.

The Court further instructed each of counsel to admonish their witnesses not to volunteer information regarding the defendant or refers to any other acts, crimes or misconduct not charged in this case, nor mentions the words "felony" or "misdemeanor".

Each of counsel agreed to the same.

Mr. Boyd requested Detective Drinkwine be allowed to sit at counsel table.

Mr. Smethers objected to the detective being present at counsel table and cited case law in support.

The Court expressed opinions and granted the request.

The Court reviewed the witness list as previously submitted.

The Court instructed each of counsel to limit objections to just stating legal basis without argument.

Each of counsel agreed to the same.

The Court advised the defendant of his constitutional right against self-incrimination and his right to remain silent. Further, the right to testify was his choice and that if he did testify he could be cross-examined by the State within the scope of anything he testified to on direct examination. The Court further advised the defendant if chose not to testify the jury panel would be instructed that could not be held against him in their deliberations. The defendant indicated he understood his rights as explained by the Court.

In answer to the Court's inquiry, the defendant advised the Court he had no questions regarding his Fifth Amendment rights.

The Court explained and reviewed the jury process, jury selection and trial procedure.

The Court noted that it had been informed by the bailiff that not all of the prospective jurors had arrived and would need additional time.

The Court reviewed Preliminary Jury Instructions #1 through #8 individually; whereupon each of counsel indicated they had no objections to those instructions nor did they have any additional instructions they desired to be given.

The Court noted the Preliminary Jury Instructions were settled.

The Court noted that it had not received proposed jury instructions from the defendant.

The Court inquired as to any other pretrial motions to address prior to trial

Mr. Smethers advised the Court that he had additional argument in support of previously ruled on motions by Judge Kerrick. Mr. Smethers presented additional arguments and cited case law in support.

Mr. Boyd presented argument in opposition to the defendant's motion. Further, Mr. Boyd cited case law in support of his argument.

The Court reviewed the previously issued rulings by Judge Kerrick. Further, the Court expressed legal opinions, cited case law in support, noted Judge Kerrick's decisions, and made rulings on the record.

Mr. Smethers advised the Court that the defense had received an additional video provided by the State yesterday. Further, Mr. Smethers presented argument in opposition to the filing of this evidence.

Mr. Boyd presented argument in support of the recently disclosed video.

Mr. Smethers and Mr. Boyd presented extensive argument in opposition and support of the recently submitted video.

The Court made rulings for the record.

The Court recessed at 9:44 a.m.

The Court reconvened at 10:47 a.m. outside the presence of the jury.

The Court clarified its previously issued ruling in regard to the objections made as well as testimony that could be presented in trial based upon its reviewed the preliminary hearing transcript.

Mr. Smethers presented additional argument in support of his original objection in regard to the late disclosure.

The Court reviewed its previous rulings and denied the motion.

The Court recessed at 10:55 a.m.

The Court reconvened at 11:15 a.m., with each of counsel and the defendant being present. The prospective jury panel was present in the charge of the Bailiff, Mr. Matthew Burgess.

The Court explained the process of jury selection and introduced its' staff, each of counsel and the defendant to the prospective jurors. Further, the Court noted that Detective John Drinkwine would be sitting with Mr. Boyd at counsel table.

The Court advised the jury of the charges in these matters.

The Court advised the State and the defendant of their right to challenge any juror for cause or via peremptory; and that any such challenge must be made prior to the jury panel being sworn.

Under direction of the Court, the clerk called roll of the prospective jury panel; with all being present.

The prospective jury panel was sworn voir dire by the clerk at 11:25 a.m.

The Court admonished the prospective jurors as to their conduct during the trial; and read Preliminary Jury Instruction #1 to the prospective jury panel.

The clerk drew thirty-five (35) numbers, one at a time, and the following prospective jurors were seated:

#7	#250	#160	#119	#93	#241
#134	#92	#232	#140	#234	#89
#69	#110	#132	#74	#254	#228
#115	#193	#158	#153	#207	#758
#186	#177	#127	#36	#199	#143
#53	#196	#169	#191	#176	

The Court instructed the prospective jurors regarding voir dire examination.

The Court conducted general voir dire examination of the prospective jury panel as a whole.

Juror's #766, #67, #121, #797, #137, #64 were excused for cause.

The Court recessed at 12:09 p.m., with admonishment to the jury.

The Court reconvened at 12:17 p.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Juror #64 was excused for cause.

Mr. Boyd conducted individual voir dire examination of the prospective jury panel, and passed the panel for cause.

Juror #240 was excused for cause.

Mr. Smethers conducted individual voir dire examination of the prospective jury panel.

The Court explained the process of the eleven (11) peremptory challenges to the jury.

Upon instruction of the Court, each of counsel exercised their eleven (11) peremptory challenges.

The Court instructed those prospective jurors chosen to try this matter to take the appropriate seat in the jury box.

The following jurors were called and seated:

#7	#250	#93	#134	#232	#234	
#89	#254	#115	#193	#186	#177	#176

Each of counsel accepted the jury panel as seated.

The Court thanked and excused the remaining members of the prospective jury panel with instruction to report back to the Jury Commissioner.

The jurors were sworn by the clerk to well and truly try the matter at issue at 1:37 p.m.

The Court instructed the jury as to the process in which the alternate juror would be selected and that it was important they all pay close attention to the presentation of evidence and testimony.

The Court recessed the jury for lunch at 1:39 p.m. and admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.

The Court directed counsel and the defendant to be present at 2:35 p.m. to address legal issues before the jury returned from lunch.

The Court recessed at 1:39 p.m.

The Court reconvened at 2:45 p.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Under direction of the Court, the clerk read the Information to the jury; and noted the defendant's plea of not guilty to the charges.

The Court read Preliminary Jury Instructions to the jury panel.

Mr. Boyd presented the State's opening statement.

Mr. Smethers presented the defendant's opening statement.

Officer Mike Phillips was called as the State's first witness, sworn by the clerk, direct examined, cross examined and redirect examined.

State's exhibit #10 previously marked, was identified by the witness a manila envelope, inside a plastic bag, containing a pink plastic bag was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #8 previously marked, was identified by the witness dvd of an audio conversation was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

Based upon the Court's inquiry, each of counsel stipulated the Court Reporter need not take down the audio.

The Court recessed at 3:57 p.m., with admonishment to the jury.

The Court proceeded outside the presence of the jury.

Mr. Smethers presented objections in regard to evidence presented.

Mr. Boyd presented objections in opposition to the defendants motion .

The Court sustained the objection.

Mr. Smethers presented an oral motion for mistrial and provided argument in support.

Mr. Boyd presented argument in opposition to the request for mistrial.

The Court addressed first the objection in regard to evidence presented, cited case law in support and made rulings to the same. Further, the Court addressed the request for mistrial and made rulings to the same.

The jury was returned to the courtroom at 4:11 p.m.

State's exhibit #9 previously marked, was identified by the witness dvd of an audio conversation was offered and there being no objection, it was Ordered admitted into evidence and published upon request.

State's exhibit #7 previously marked, was identified by the witness as a photo of United States Currency, was offered.

Mr. Smethers objected to the admittance of State's exhibit's #7.

The objection was overruled and exhibit #7 was admitted.

State's exhibit #11 previously marked, was identified by the witness as a photo of a baggie, was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #11.

Mr. Boyd withdrew the State's request to admit.

Mike Phillips was excused but asked to remain available.

The Court excused the jury for the evening at 4:51 p.m. with instructions to

reconvene at 8:30 a.m., on the 1st day of March, 2017.

The Court admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.

The Court instructed counsel and the defendant to be present at 8:20 a.m. to address any preliminary matters prior to the arrival of the jury.

The Court adjourned for the day at 4:53 p.m.

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



Deputy Clerk

STATE OF IDAHO
CANYON COUNTY
Case Title

EXHIBIT LIST

Case No. CP-2016-0014841-C

RICHARD WILSON

Date: 2/27/2017

PH ()
CT ()
JT (X)
OSC ()

Plaintiff's Attorney

Christopher Boyd

Defendant's Attorney

David Smethers & Scott Hagen

EXHIBIT INFORMATION

No.	Description	Offered	Admitted	Denied	With-drawn	Orig. Sub.
X 10	plastic bag with manilla envelope with 2 pencil bags	X	X			
8	DVD of audio recording	X	X			
9	DVD of audio recording	X	X			
7	zerex copy of dollar bills (well as bills)	X	X			
X 1	plastic bag with manilla envelope with bag of meth inside	X	X			
X 3	plastic bag with manilla envelope with bag of meth inside	X	X			
6	witness statement	X	X			
5	DVD - video recording	X	X			
X 12	green envelope with agency	X	X			
X 13	plastic bag with green envelope w/ form	X	X			

The Court ordered all exhibits returned to the custody of the State, and the clerk delivered the exhibits to: _____ on _____ Exhibits received by: _____ Date: _____.

#1, 3, 10 and 12, 13 returned to NPD received by: Sgt John Dink 421 NID 349 Deputy Clerk John Dink

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

PRESIDING: **JAMES C. MORFITT** DATE: MARCH 1ST, 2017

THE STATE OF IDAHO,	)	COURT MINUTE
)	
Plaintiff,	)	CASE NO: CR-2016-0014841-C
)	
vs.	)	TIME: 8:30 a.m.
)	
RICHARD ALAN WILSON,	)	REPORTED BY: Debora Kreidler
)	
Defendant.	)	DCRT 1 (829-749)
)	

This having been the time heretofore set for **trial to a jury day one (2)** in the above-entitled matter, the State was represented by Mr. Christopher Boyd Deputy Prosecuting Attorney's for Canyon County; and the defendant was present represented by counsel, Mr. David Smethers and Mr. Scott Hagen.

The Court convened at 8:25 a.m., outside the presence of the jury, with counsel and the defendant being present.

Mr. Smethers advised the Court that Mr. Hagen would not be present this morning.

The Court inquired as to whether there were any issues that needed to be addressed prior to the arrival of the jury.

Mr. Smethers renewed his objection from yesterday.

The Court made rulings to the same.

Mr. Smethers presented additional argument on the objection to State's Exhibit #10 and requested a mistrial.

The Court ruled to the same.

The Court recessed at 8:35 a.m.

The Court reconvened at 8:46 a.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Corinna Owsley was called as the State's second witness, sworn by the clerk, direct examined, cross examined and redirect examined.

State's exhibit #1 previously marked, was identified by the witness as a bag with a manila envelope inside with small clear bags inside was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #1.

The Court overruled the objection and ordered that State's Exhibit #1 was conditionally admitted.

Mr. Boyd moved to publish State's exhibit #1 to the jury.

The Court so ordered.

State's exhibit #3 previously marked, was identified by the witness as a plastic bag with an envelope inside with small bags of meth inside was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #3.

The Court ordered that State's Exhibit #1 was conditionally admitted.

Mr. Boyd moved to publish State's exhibit #3 to the jury.

Mike Phillips was recalled to the stand and was reminded by the Court that he was still under oath.

Mr. Boyd moved to admit State's exhibit #1 unconditionally.

Mr. Smethers objected to the admission of State's exhibit #1.

The Court ordered that State's Exhibit #1 was unconditionally admitted.

Mr. Boyd moved to admit State's exhibit #3 unconditionally.

Mr. Smethers objected to the admission of State's exhibit #3.

The Court ordered that State's Exhibit #3 was unconditionally admitted.

Mike Phillips was excused but asked to remain available.

Jacob Peper was called as the State's third witness, sworn by the clerk, direct examined, cross examined and redirect examined.

John Drinkwine was called as the State's fourth witness, sworn by the clerk, direct examined, cross examined and redirect examined.

State's exhibit #6 previously marked, was identified by the witness as police report was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #6.

The Court overruled the objection.

Mr. Boyd moved to admit State's exhibit #6.

Mr. Smethers objected to the admission of State's Exhibit #6.

The Court overruled the objection and ordered State's exhibit 6 admitted and published upon request.

State's exhibit #5 previously marked, was identified by the witness as an audio recording was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #5.

The Court overruled the objection and ordered State's exhibit 5 admitted and published upon request.

Based upon the Court's inquiry, each of counsel stipulated the Court Reporter need not take down the audio.

The Court recessed at 10:08 a.m., with admonishment to the jury.

The Court reconvened 10:28 a.m., with each of counsel and the defendant. The jury panel was present and properly seated.

John Drinkwine resumed the stand and was reminded he was still under oath.

Shane Huston was called as the State's fifth witness, sworn by the clerk, direct examined, cross examined and redirect examined.

Christopher Davenport was called as the State's sixth witness, sworn by the clerk, direct examined, cross examined and redirect examined.

Angela Jolley was called as the State's seventh witness, sworn by the clerk, direct examined, cross examined and redirect examined.

The Court recessed at 11:03 a.m., with admonishment to the jury.

The Court noted it was proceeding in the absence of the Jury. Further, the Court

noted that the State had advised that it was closing to resting its case.

The Court advised the defendant of his Fifth Amendment right not to testify in this case. The Court advised the defendant of his constitutional right against self-incrimination and his right to remain silent. Further, the right to testify was his choice and that if he did testify he could be cross-examined by the State within the scope of anything he testified to on direct examination. The Court further advised the defendant if chose not to testify the jury panel would be instructed that could not be held against him in their deliberations. The defendant indicated he understood his rights as explained by the Court.

In answer to the Court's inquiry, the defendant advised the Court he had no questions regarding his Fifth Amendment rights.

The Court recessed at 11:08 a.m., with admonishment to the jury.

The Court reconvened 11:32 a.m., with each of counsel and the defendant. The jury panel was present and properly seated.

Christopher Davenport was recalled to the stand and reminded by the Court that he was still under oath.

Christopher Davenport was excused but asked to remain available.

Mike Phillips was recalled to the stand and reminded by the Court that he was still under oath.

State's exhibit #12 previously marked, was identified by the witness as green envelope containing United States currency was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #12.

The Court overruled the objection and State's exhibit #12 was admitted and published to the jury.

Christopher Davenport was recalled to the stand and reminded by the Court that he was still under oath.

State's exhibit #13 previously marked, was identified by the witness as green envelope containing United States currency was offered and the defendant objected.

Mr. Smethers objected to the admission of State's exhibit #13.

The Court overruled the objection and State's exhibit #13 was admitted and published to the jury.

Mr. Boyd advised the Court that the State rests.

The Court recessed at 12:03 p.m., with admonishment to the jury.

The Court noted that it was proceeding in the absence of the jury.

Mr. Smethers presented argument in support of an I.C.R. 29 motion.

Mr. Boyd presented argument in opposition to the motion.

The Court expressed legal opinions, cited case law as well as Idaho Criminal Rules in support and denied the motion.

The Court reconvened at 12:11 p.m., with each of counsel and the defendant. The

jury panel was present and properly seated.

Mr. Smethers advised the Court the defendant rested.

The Court recessed the jury for lunch at 12:13 p.m. and admonished the jury panel not to discuss this case among one another or with anyone else, not to communicate regarding this case by any form of electronic communication, not to conduct any personal investigation, and that they were not to form an opinion as to the outcome of the case until it was submitted to them for deliberation.

The Court recessed at 12:13 p.m.

The Court reconvened at 2:09 p.m., with each of counsel and the defendant being present, and outside the presence of the prospective jury panel.

The Court determined each of the parties had an opportunity to review the proposed final jury instructions.

The Court reviewed proposed Final Jury Instructions on the record.

Mr. Smethers renewed his objection to Jury Instructions #14, #15 and #17.

The Court so noted.

The Court reviewed proposed Final Jury Instructions #9 through #33 individually on the record.

The Court revised the final jury instructions and submitted final copies for either party to review and was accepted.

In answer to the Court's inquiry, each of counsel indicated they had no objection to the proposed Verdict Form.

The Court noted the States previously filed requested instructions.

The Court advised that the States two (2) proposed instructions would be refiled this date.

The Court noted the defendant's previously filed requested instructions.

The Court reviewed the proposed instructions provided by both the State and the Defendant. Further, the Court noted the accepted proposed instructions as well as the denied instructions.

The Court noted the objections.

Upon the Court's inquiry, neither counsel had issue with instructions as presented.

Upon inquiry of the Court, each of counsel indicated there were no additional jury instructions they would request to be given.

The Court deemed the Final Jury Instructions and Verdict Form to be settled.

The Court reconvened at 2:41 p.m., with all parties present. The jury panel was present and properly seated.

The Court informed the Jury that final instructions had been settled as well as the verdict form and each of counsel was prepared to present final arguments.

The Court read Final Jury Instructions to the jury.

Mr. Boyd presented closing argument on behalf of the State.

Mr. Smethers presented closing argument on behalf of the defendant.

Mr. Boyd presented final closing argument on behalf of the State.

Under direction of the Court, the clerk randomly drew juror #232 to be the alternate

juror in this matter. Upon stipulation of the parties, the Court advised the alternate juror her would be excused at this time subject to recall. The Court further advised juror #232 the Bailiff would contact her once the case was concluded, but in the interim to follow the Court's earlier admonishment not to discuss the case or form any opinions.

Oath to the Bailiff was administered by the clerk and the jury retired to deliberate its' verdict at 3:42 p.m.

Outside the presence of the jury, the Court instructed counsel to leave their contact information with the clerk and directed the defendant to readily remain available within a ten to fifteen minute time frame.

The Court recessed at 3:44 p.m. await the verdict of the jury.

The Court reconvened at 5:08 p.m., with each of counsel and the defendant being present, outside the presence of the jury.

The Court noted that it received question #1 for the jury and read it for the record. Further, the Court reviewed with each of counsel in chambers a proposed answer to the question and read it for the record.

Mr. Smethers presented argument in opposition to the proposed answer.

The Court so noted.

Based upon the Court's inquiry, each of counsel stipulated that the delivery of the answer to the jury's question could be done by way of the bailiff.

The Court recessed at 5:11p.m.

The Court reconvened at 6:47 p.m. with each of counsel and the defendant being

present, and outside the presence of the jury.

In answer to the Court's inquiry, the presiding juror indicated a verdict had been reached. The following verdict was delivered to the Court by the Bailiff and under direction of the Court, was read by the clerk:

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

COUNT I

Question No. 1: Is Richard Wilson guilty or not guilty of Aiding and Abetting Trafficking of Methamphetamine?

Not Guilty _____ **Guilty** X

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

Question No. 2: Is Richard Wilson guilty or not guilty of Aiding and Abetting the Delivery of a Controlled Substance?

Not Guilty _____ **Guilty** _____

COUNT II

Question No. 1: Is Richard Wilson guilty or not guilty of Aiding and Abetting Trafficking of Methamphetamine?

Not Guilty _____ **Guilty** X

If you unanimously answered Question No. 1 "Guilty", then you should sign and date this form. If you unanimously answered Question No. 1 "Not Guilty", then proceed to answer Question No. 2.

Question No. 2: Is Richard Wilson guilty or not guilty of Aiding and Abetting the Delivery of a Controlled Substance?

Not Guilty _____ **Guilty** _____

Dated this _____ day of March, 2017.

Presiding Juror
Juror No. # 250

In answer to the Court's inquiry, each of the jurors indicated this was their unanimous verdict.

In answer to the Court's inquiry, each of counsel waived polling of the jury.

The Court ordered the Verdict be received and filed upon the records of the Court.

The Court gave concluding instructions and the jury was excused from these proceedings at 6:51 p.m.

The Court ordered the defendant to obtain a **Presentence Investigation Report** and set this matter for sentencing the 1st day of May, 2017 at 11:00 a.m., before **Judge Juneal C. Kerrick.**

The Court advised the defendant that his right against self-incrimination carried over to the Presentence Investigation and evaluation process.

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

The Court adjourned at 6:54 p.m.


Deputy Clerk

MAR 01 2017

CANYON COUNTY CLERK
K HAWKES, 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,)
)
 Vs.)
)
 RICHARD ALAN WILSON, AKA)
 RICHARD BURRELL)
)
 Defendant.)
 _____)

CASE NO. CR-2016-14841

VERDICT FORM

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

COUNT I

QUESTION NO. 1: Is Richard Wilson guilty or not guilty of Aiding and Abetting Trafficking of Methamphetamine?

_____ **Not Guilty** X **Guilty**

If you unanimously answered Question No. 1 "Guilty", then you should

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

QUESTION NO. 2: Is Richard Wilson guilty or not guilty of Aiding and Abetting the Delivery of a Controlled Substance?

_____ **Not Guilty** _____ **Guilty**

COUNT II

QUESTION NO. 1: Is Richard Wilson guilty or not guilty of Aiding and Abetting Trafficking of Methamphetamine?

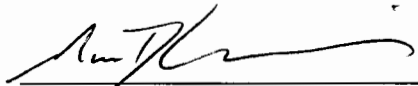
_____ **Not Guilty** X **Guilty**

If you unanimously answered Question No. 1 "Guilty", then you should sign and date this form. If you unanimously answered Question No. 1 "Not Guilty", then proceed to answer Question No. 2.

QUESTION NO. 2: Is Richard Wilson guilty or not guilty of Aiding and Abetting the Delivery of a Controlled Substance?

_____ **Not Guilty** _____ **Guilty**

Dated this 01 day of March, 2017.



Presiding Juror
Juror No. 250

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to: _____
Assigned: _____

BY K. Hawkes, DEPUTY

**Third Judicial District Court, State of Idaho
In and For the County of Canyon
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS**

STATE OF IDAHO
Plaintiff,
vs.

Case No: CR-2016-0014841-C

Richard Alan Wilson
4060 Fairview Ave; 316
Boise, ID 83706

**ORDER FOR PRE – SENTENCE INVESTIGATION
REPORT**

CHARGE(s):

137-2732B(a)(4) Drug-Trafficking in Methamphetamine or
Amphetamine

137-2732B(a)(4) Drug-Trafficking in Methamphetamine or
Amphetamine

ROA : PSIO1- Order for Presentence Investigation Report

On this Wednesday, March 1, 2017, a **Pre-sentence Investigation Report** was ordered by the Honorable James C. Morfitt to be completed for Court appearance on:

Sentencing Monday, May 1, 2017 at 11:00 AM at the above stated courthouse before the Honorable Juneal C. Kerrick.

- Behavioral Health Assessments waived by the Court
- Waiver under IC 19-2524 2 (e) allowing assessment and treatment services by the same person or facility

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

Sex Offender Domestic Violence Other _____ Evaluator: _____


DEFENSE COUNSEL: Canyon County Public Defender David Smethers

PROSECUTOR: Canyon County Prosecutor Christopher Boyd

THE DEFENDANT IS IN CUSTODY: NO YES If yes where: Canyon County

DO YOU NEED AN INTERPRETER? NO YES if yes, what is the language? _____

Date: 3/1/2017

Signature: 
District Judge

Kara Hawkes

From: Microsoft Outlook
To: 19-2524@dhw.idaho.gov; Mr. Bacon
Sent: Wednesday, March 8, 2017 09:32 AM
Subject: Relayed: Wilson 16-14841

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

19-2524@dhw.idaho.gov (19-2524@dhw.idaho.gov) <<mailto:19-2524@dhw.idaho.gov>>

Mr. Bacon (rabacon@idoc.idaho.gov) <<mailto:rabacon@idoc.idaho.gov>>

Subject: Wilson 16-14841

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: JUNEAL C. KERRICK DATE: MAY 1, 2017

THE STATE OF IDAHO,	)	COURT MINUTES
)	
Plaintiff,	)	CASE NO: CR-2016-14841*C
)	
vs.	)	TIME: 11:00 A.M
)	
RICHARD ALAN WILSON,	)	REPORTED BY: Kathy Klemetson
)	
Defendant,	)	DCRT 3 (1101-1129)
_____)	

This having been the time heretofore set for **sentencing** in the above entitled matter, the State was represented by Mr. Gregory Swanson, Deputy Prosecuting Attorney for Canyon County, and the defendant appeared in court with counsel, Mr. David Smethers.

The Court noted the case, parties present, noting this had been the time scheduled for sentencing and reviewed relevant procedural history.

Additionally, the Court noted its receipt/review of the Presentence Investigation Report and noted the factual correction/clarification it believed needed to be made to page #1 and #2 of the same. The Court further noted its receipt/review of the GAIN I, Mental Health Review, Mental Health Evaluation and several other attachments.

Mr. Swanson advised the Court the State had received/reviewed a copy of the Presentence Investigation Report together with the appended materials.

Mr. Smethers advised the Court the State had received/reviewed a copy of the Presentence Investigation together with the appended materials and addressed certain issues relative to page #1, #5 # 6 and #17 of the same. Further, should restitution be awarded in this matter, Mr. Smethers requested the same be ordered as joint and several with Regina Jones.

The Court determined counsel had no evidence and/or testimony to present.

Mr. Swanson submitted a proposed Order of Restitution wherein the Court noted it believed the same should be ordered as joint and several with the co-defendant, Regina Jones.

There being no objection, the Court amended the proposed Order of Restitution by interlineation to provide restitution as joint and several with Regina Jones.

Mr. Swanson presented statements regarding the defendant and recommended imposition of an underlying sentence of three (3) years fixed, followed by seven (7) years indeterminate, for a total unified term of ten (10) years and restitution pursuant to the Order of Restitution as submitted/amended this date.

Mr. Smethers presented statements in support of the defendant, noting the State's recommendation for imposition of an underlying sentence of three (3) years fixed, followed by seven (7) years indeterminate, for a total unified term of ten (10) years appeared to be fair and requested the same be ordered to run concurrently with any other sentence.

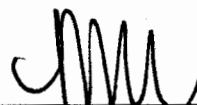
The defendant presented a statement to the Court on his own behalf.

Mr. Smethers advised the Court there was no legal cause why judgment should not be pronounced.

Based upon the verdict of the jury, the Court found the defendant to be guilty of the offense of Aid and Abet Trafficking in Methamphetamine and/or Amphetamine, a felony, as charged in Count I and Count II of the Indictment and sentenced him as reflected in the Judgement and Commitment.

In answer to the Mr. Swanson's inquiry, the Court it had not been aware of any prohibition in the statute that the mandatory minimum three (3) year fixed period could not run concurrently.

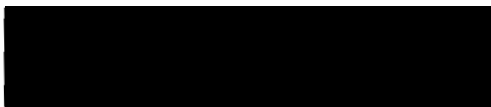
The defendant was remanded into the custody of the Canyon County Sheriff pending transport to the Idaho Department of Correction.



Deputy Clerk

FILED 5/11/2017 AT 11:24 .M.
CLERK OF THE DISTRICT COURT
BY JM, Deputy

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

STATE OF IDAHO, Plaintiff,	CASE NO. CR <u>2016-148411</u> *C
vs. <u>Richard Alan Wilson</u>  Defendant.	ORDER FOR DNA SAMPLE AND RIGHT THUMBPRINT

THIS IS A CRIMINAL MATTER. The defendant is guilty of felony,
Child Abuse Trafficking Methamphetamine K2

Accordingly, THE IDAHO DNA DATABASE ACT of 1996 (Idaho Code § 19-5501, et seq.) requires defendant to provide a deoxyribonucleic acid (DNA) sample and right thumbprint impression to the Idaho State Police.

THEREFORE, THIS ORDERS THAT:

1. The defendant shall report to the Idaho Department of Corrections **within ten (10) days** of the date of this order to provide a DNA sample and right thumbprint impression.
2. The defendant is on notice that a failure to provide the DNA sample and thumbprint ordered above is a separate felony offense and can result in a violation of probation or parole, regardless of whether a new charge is filed based upon a violation of the Act.
3. Duly authorized law enforcement and correction personnel shall employ reasonable force to collect the DNA sample and/or right thumbprint should the defendant be incarcerated and refuse or resist providing the same.

DATED this 11th day of May, 2017.

James C. Wright
District Judge

Copies: 4 Defendant

THIRD JUDICIAL DISTRICT
STATE OF IDAHO
COUNTY OF CANYON

FILED 5/1/2017 AT 11:30 AM
CLERK OF THE DISTRICT COURT
BY M, Deputy

THE STATE OF IDAHO, or

Plaintiff,

-vs-

Richard Alan Wilson

Defendant.

Case No. CR 2016-14841C

COMMITMENT

Charge: Count I: Airlabet Trafficking
of Methamphetamine
Count II Airlabet Trafficking
Methamphetamine

IT IS HEREBY ORDERED that the above-named Defendant, having been found guilty as charged, be committed to the custody of the Sheriff of Canyon County, Idaho and that this Order of Commitment shall serve as authority for continued custody.

IT IS FURTHER ORDERED that the above-named Defendant shall serve:

_____ day(s). _____ month(s). _____ year(s).

as previously Ordered on the Judgment dated _____.

credit for _____ day(s) served.

determinate 3 years indeterminate 1 year retained jurisdiction.

work search/work-out privileges granted from _____ to _____.

upon written verification. as authorized by the Sheriff of Canyon County.

Sheriff's Work Detail: _____ days in lieu of _____ days jail to be completed by _____.

If the Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff Inmate Labor Detail, then the Sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

Other: determinate 3 years indeterminate 1 year

IT IS FURTHER ORDERED that the above-named Defendant shall report to the Canyon County Sheriff on or before _____.

Dated: May 1, 2017

Signed: James C. Wolf
Judge

Jail Defendant

COMMITMENT

FILED P.M.

MAY 04 2017

CANYON COUNTY CLERK
S MEHIEL, DEPUTY

cb

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.

RICHARD ALAN WILSON,

Defendant.

CASE NO. CR2016-14841

**LAB RESTITUTION ORDER AND
JUDGMENT**

Based upon the judgment and sentence in this case, and the expenses of the victim on this matter, and pursuant to **Idaho Code**, Section 37-2732.

IT IS HEREBY ORDERED THAT THE DEFENDANT, RICHARD ALAN WILSON, pay **TWO HUNDRED DOLLARS (\$200)** in restitution and that such restitution be paid to the Court to be distributed by the Court to the following victim(s):

Idaho State Police
Forensic Services
700 S. Stratford Dr., Suite #125
Meridian, ID 83642-6202

JOINT & SEVERAL
W/TH REGINA JONES
CASE: CR 2016-12100
Jan
5/1/17

<u>Date</u>	<u>Lab Expense</u>	
5.25.16	\$100	M2016-1882
5.27.16	\$100	M2016-1884

LAB RESTITUTION ORDER AND JUDGMENT

ORIGINAL

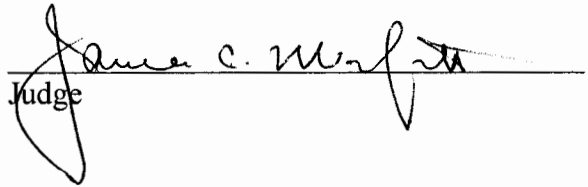
Such restitution shall be joint and several with any other Co-Defendants who are ordered to pay restitution arising from the same occurrence or event.

There are no known Co-Defendants.

In cases where there are direct and indirect victims, restitution payments will be distributed to direct victims before indirect victims.

It is **FURTHER ORDERED** that pursuant to I.C. Section 19-5305, forty-two (42) days after entry of this order, or at the conclusion of a hearing to reconsider this order, whichever occurs later, this order may be recorded as judgment and the victim(s) may execute as provided by law for civil judgments.

DATED this 1ST day of May, 2017.



Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order for Restitution was forwarded to the following persons this 24 day of May, 2017.

Prosecutor: Court Basket X

Public Defender: Court Basket X

Felony Parole & Probation: Court Basket X

Idaho State Police
700 S. Stratford Drive, Ste 125
Meridian, ID 83642 Mailed X

Dated: 5-4-17
CHRIS YAMAMOTO
Clerk of the District Court

By: [Signature]
Deputy Clerk



IDAHO STATE POLICE FORENSIC SERVICES

700 South Stratford Drive, Ste 125

Meridian, ID 83642-6202

Phone: (208) 884-7170

Fax: (208) 884-7197

FORENSIC CONTROLLED SUBSTANCE ANALYSIS REPORT

Case Agency(s): NAMPA POLICE DEPARTMENT	Agency Case No(s): N16-22161	Laboratory Case No.: M2016-1882
Date(s) of Offense: 4/27/2016	Investigating Officer(s): Michael Phillips	Report No.: 1
Date Evidence Accepted: 5/5/2016	Analyst: Corinna Owsley	
Case Name(s): Suspect - REGINA L JONES		

Lab Item #	Agency Exhibit	Description	Conclusions and Interpretations	Additional Information
1	001	25.91g crystalline material	Methamphetamine (CII)	

DISPOSITION OF EVIDENCE:

All items will be returned to the submitting agency.

REMARKS:

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

Corinna C Owsley

Corinna Owsley / Forensic Scientist

Issue Date: **05/25/2016**

Idaho State Police Drug Restitution

As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant, **REGINA L JONES** in the amount of **\$100** in association with Laboratory Case No. **M2016-1882**. This amount is based upon the testing of the sample(s) submitted to this laboratory. The amount requested reflects a portion of the cost incurred to the laboratory during the analysis of drug evidence.

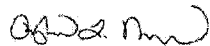
Test	Cost
Controlled Substance Analysis (1 sample(s) @ \$100 ea.)	\$100

Please present this restitution request form and a copy of the laboratory report to the court at the time of sentencing.

Please make checks payable to: Forensic Services
700 South Stratford
Meridian, Idaho 83642-6202

Thank you for your cooperation in this matter.

Sincerely,



Rylene Nowlin
Meridian Laboratory Manager
Forensic Services



IDAHO STATE POLICE FORENSIC SERVICES

700 South Stratford Drive, Ste 125

Meridian, ID 83642-6202

Phone: (208) 884-7170

Fax: (208) 884-7197

FORENSIC CONTROLLED SUBSTANCE ANALYSIS REPORT

Case Agency(s): NAMPA POLICE DEPARTMENT	Agency Case No(s): N16-22184	Laboratory Case No.: M2016-1884
Date(s) of Offense: 4/27/2016	Investigating Officer(s): Christopher Davenport	Report No.: 1
Date Evidence Accepted: 5/5/2016	Analyst: Corinna Owsley	
Case Name(s): Suspect - REGINA JONES		

Lab Item #	Agency Exhibit	Description	Conclusions and Interpretations	Additional Information
1	001	27.03g crystalline material	Methamphetamine (CII)	

DISPOSITION OF EVIDENCE:

All items will be returned to the submitting agency.

REMARKS:

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

Corinna C Owsley

Corinna Owsley / Forensic Scientist

Issue Date: **05/27/2016**

Idaho State Police
Drug Restitution

As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant, **REGINA JONES** in the amount of **\$100** in association with Laboratory Case No. **M2016-1884**. This amount is based upon the testing of the sample(s) submitted to this laboratory. The amount requested reflects a portion of the cost incurred to the laboratory during the analysis of drug evidence.

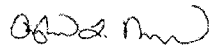
Test	Cost
Controlled Substance Analysis (1 sample(s) @ \$100 ea.)	\$100

Please present this restitution request form and a copy of the laboratory report to the court at the time of sentencing.

Please make checks payable to: Forensic Services
700 South Stratford
Meridian, Idaho 83642-6202

Thank you for your cooperation in this matter.

Sincerely,



Rylene Nowlin
Meridian Laboratory Manager
Forensic Services

MAY 04 2017

CANYON COUNTY CLERK
S BRITTON, DEPUTY

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.)
)
 RICHARD ALAN WILSON,)
 A.K.A.)
 RICHARD BURRELL,)
 RICHIE B. WILSON,)
)
)
)
)
)
)
 Defendant.)
 _____)

JUDGMENT AND COMMITMENT
CASE # CR-2016-14841*C

On this 1st day of May, 2017, personally appeared Greg Swanson, (Deputy) Prosecuting Attorney for the County of Canyon, State of Idaho, and the defendant, Richard Alan Wilson, and the defendant's attorney Dave Smethers, this being the time heretofore fixed for pronouncing judgment.

IT IS ADJUDGED that the defendant has been convicted upon the verdict of the jury finding the defendant guilty to the offense of **Aid and Abet Trafficking in Methamphetamine and/or Amphetamine**, a felony, as charged in **Count I** of the Indictment, in violation of Idaho Code Section 18-204; 37-2732B(a)(4), being committed on or about the 7th day of April, 2016 and to the offense of **Aid and Abet Trafficking in Methamphetamine and/or Amphetamine**, a felony, as charged in **Count II** of the Indictment, in violation of Idaho Code Section 18-204; 37-2732B(a)(4), being committed on or about the 27th day of April, 2016; and the Court having asked the defendant whether there was any legal cause to show why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that on **Count I and Count II** the defendant be sentenced to the custody of the Idaho State Board of Correction for a minimum period of confinement of three (3) years, and a subsequent indeterminate period of confinement not to exceed seven (7) years, for a total unified term of ten (10) years. The sentence shall run concurrently with each other as well as any other sentence the defendant may be serving.

IT IS FURTHER ORDERED that the defendant shall pay court costs and fees totaling \$285.50 in each count, restitution as joint and several pursuant to the Order of Restitution, reimbursement to Canyon County for the expense of Court appointed attorney in the sum of \$500.00 and the mandatory minimum \$10,000.00 fine in each count.

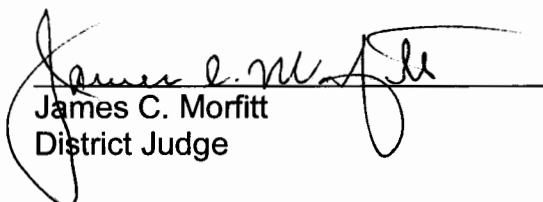
IT IS FURTHER ORDERED that the defendant be given credit for two hundred and fifty-one (251) days of incarceration prior to the entry of judgment for this offense (or included offense) pursuant to Idaho Code Section 18-309.

IT IS ORDERED that the defendant provide a DNA sample and right thumbprint impression to the Idaho State Police or its agent, pursuant to I.C. §19-5506. Said sample must be provided within 10 calendar days; failure to provide said sample within 10 days is a felony offense. **According to the Department of Correction the defendant has previously provided a DNA sample and thumbprint impression.**

IT IS ADJUDGED that the defendant be committed to the custody of the Sheriff of Canyon County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary or other facility within the State designated by the State Board of Correction.

IT IS ORDERED that the clerk deliver a copy of this Judgment and Commitment to the Director of the Idaho State Board of Correction or other qualified officer and that the copy serve as the commitment of the defendant.

DATED this 4TH day of May, 2017.


James C. Morfitt
District Judge

FILED
A.M. P.M.
JUN 13 2017

CANYON COUNTY CLERK
C JIMENEZ, DEPUTY

ALH
Scott Gatewood, Deputy Public Defender, ISB #5982
Krista Howard, Interim Chief Public Defender, ISB #5987
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: sgatewood@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.

RICHARD ALAN WILSON,

Defendant.

Case No. CR-2016-14841

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, THE STATE OF IDAHO, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, RICHARD ALAN WILSON, appeals against the above-named Respondent to the Idaho Supreme Court from the following:

A. The Court's denial of Defendant's Motion to Dismiss Indictment;

B. The Court's denial of Defendant's Motion to Dismiss Trafficking

Counts;

C. The Court's refusal to provide the jury with the requested jury instructions;

D. The Court's erroneous rulings in matters of law, procedure, and evidence;

E. Prosecutorial misconduct.

2. These matters were heard, and Orders were entered, in the Third Judicial District, in and for the County of Canyon by District Judge Juneal C. Kerrick.

3. A preliminary statement of the issues on appeal which the appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal or amending issues listed below.

A. Whether the court abused its discretion by its denial of Defendant's Motion to Dismiss Indictment, Motion to Dismiss Trafficking Counts, refusal to provide requested jury instructions to the jury and by its other erroneous ruling in matters of law, procedure and evidence.

4. Appellant has the right to appeal all final judgments of convictions in criminal proceedings pursuant to Rule 11(c)(1) of the Idaho Appellate Rules.

5. Appellant requests a transcript, in both hard copy and electronic form, of the following hearings in this matter:

A. The Pretrial Conference on or about November 14, 2016;

B. The Motion hearing on or about December 2, 2016;

C. The Status Conference on or about December 5, 2016;

D. The Status Conference on or about January 18, 2017;

- E. The Status Conference on or about February 22, 2017;
- F. Jury Trial Day 1, 2 on February 28, 2017 and March 1, 2017; and
- G. Sentencing on or about May 1, 2017.

6. In addition to the standard clerk's record on appeal, the Appellant requests the following:

A. A copy of the Memorandum Decision and Order filed on or about February 15, 2017.

7. I certify:

A. That a copy of this notice of appeal has been served on each Reporter of whom a transcript has been requested as named below at the address set out below:

Transcript Office
c/o Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

B. That the appellant is exempt from paying the estimated transcript fee because he is incarcerated with the Idaho Department of Corrections and he is indigent.

C. That the appellant is exempt from paying the estimated fee for the preparation of the clerk's record because he is incarcerated with the Federal Bureau of Prisons and he is indigent.

D. That appellant is exempt from paying the appellate filing fee because he is incarcerated with the Idaho Department of Corrections and he is indigent.

E. That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED this 13th day of June, 2017.

A handwritten signature in black ink, appearing to read "Scott Gatewood", written in a cursive style.

Scott Gatewood, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 13th day of June, 2017, a copy of the foregoing NOTICE OF APPEAL 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
 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
 Hand Delivery
 Electronic Mail

Court Reporter Assigned to Case
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

U.S. Mail
 Facsimile
 Hand Delivery-Court Mailbox
 Electronic Mail

Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, Idaho 83703

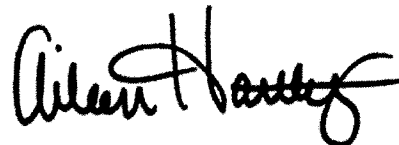
U.S. Mail
 Facsimile
 Hand Delivery
 Electronic Mail

State Appellate Public Defender
P.O. Box 2816
Boise, Idaho 83701

U.S. Mail
 Facsimile
 Hand Delivery-Court Mailbox
 Electronic Mail

Richard Alan Wilson, Defendant
Address of Defendant

U.S. Mail
 Facsimile
 Hand Delivery
 Electronic Mail



Canyon County Public Defender's Office

FILED
11:20 A.M.
JUN 13 2017
CANYON COUNTY CLERK
C JIMENEZ, DEPUTY

ALH
Scott Gatewood, Deputy Public Defender, ISB #5982
Krista Howard, Interim Chief Public Defender, ISB #5987
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: sgatewood@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.
RICHARD ALAN WILSON,
Defendant.

Case No. CR-2016-14841
MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC
DEFENDER

COMES NOW, RICHARD ALAN WILSON, by and through the his attorneys of record, the Canyon County Public Defender's Office, and hereby moves this Court for its order, pursuant to Idaho Code §19-867 et. seq., appointing the State Appellate Public Defender's Office to represent the Appellant in all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record for the purpose of appellate proceedings. This motion is brought on the grounds and for the reasons that:

1. The Appellant is currently represented by the Canyon County Public Defender;
2. The State Appellate Public Defender is authorized by statute to represent the defendant in all felony appellate proceedings; and

3. It is in the interest of justice for them to do so in this case since the defendant is indigent and any further proceedings on this case will be an appellate issue.

DATED this 13th day of June, 2017.



Scott Gatewood, Deputy Public Defender
Attorney for the Defendant

CERTIFICATE OF SERVICE

I certify that on this 13th day of April, 2017, a copy of the foregoing MOTION FOR APPOINTMENT OF 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
 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
 Hand Delivery
 Electronic Mail

Court Reporter Assigned to Case
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

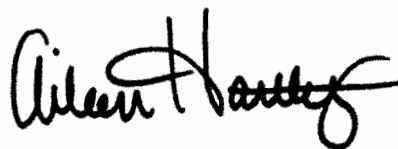
U.S. Mail
 Facsimile
 Hand Delivery-Court Mailbox
 Electronic Mail

Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, Idaho 83703

U.S. Mail
 Facsimile
 Hand Delivery
 Electronic Mail

State Appellate Public Defender
322 E. Front Street, Ste 570
Boise, Idaho 83702

U.S. Mail
 Facsimile
 Hand Delivery-Court Mailbox
 Electronic Mail



Canyon County Public Defender's Office

ALH
Scott Gatewood, Deputy Public Defender, ISB #5982
Krista Howard, Interim Chief Public Defender, ISB #5987
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: sgatewood@canyonco.org

FILED
A.M. 4:55 P.M.
JUN 14 2017
CANYON COUNTY CLERK
B HATFIELD, DEPUTY

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.

RICHARD ALAN WILSON,

Defendant.

Case No. CR-2016-14841

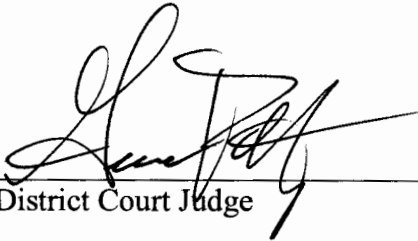
ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER

THIS MATTER having come before the Court pursuant to Defendant/Appellant's Motion for Appointment of State Appellate Public Defender; the Court having reviewed the pleadings on file and the motion, the Court being fully apprised in the matter and good cause appearing;

IT IS HEREBY ORDERED that the Canyon County Public Defender is withdrawn as counsel of record for the Defendant-Appellant and the State Appellate Public Defender is hereby appointed to represent the Defendant-Appellant, RICHARD ALAN WILSON in the above entitled matters for appellate purposes.

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

DATED this 19th day June, 2017.


District Court Judge

CERTIFICATE OF SERVICE

I certify that on this 14 day of June, 2017, a copy of the foregoing ORDER APPOINTING 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
 Hand Delivery-Court Mailbox
 Electronic Mail

Clerk of the Court-Criminal Proceeding
Canyon County Courthouse
1115 Albany Street, Rm 201
Caldwell, Idaho 83605

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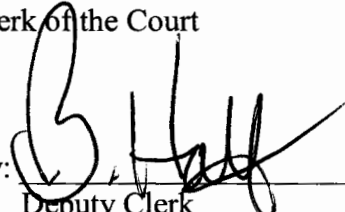
Idaho Attorney General
700 W. State Street
P.O. Box 83720
Boise, Idaho 83703

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State Appellate Public Defender
322 E. Front Street, Ste 570
Boise, Idaho 83702

U.S. Mail
 Facsimile
 Hand Delivery-Court Mailbox
 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-)	
Respondent,	)	Case No. CR-16-14841*C
)	
-vs-)	
)	
	)	CERTIFICATE OF EXHIBITS
RICHARD ALAN WILSON, etal.,)	
)	
Defendant-)	
Appellant.)	

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 were used at the Jury Trial:

State's Exhibits:

1	Envelope w/plastic bags	Admitted	Retained
3	Envelope w/plastic bags	Admitted	Retained
5	Audio	Admitted	Sent
6	Witness Statement	Admitted	Sent
7	Copy of Dollar Bills	Admitted	Sent
8 – 9	Audio	Admitted	Sent
10	Envelope w/plastic bags	Admitted	Retained
12-13	Green Envelope w/money	Admitted	Retained

CERTIFICATE OF EXHIBITS

The following are being sent as confidential exhibits:

Presentence Investigation Report

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 22nd day of September, 2017.

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 EXHIBITS

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

STATE OF IDAHO,)	
	)	Case No. CR-16-14841 *C
Plaintiff-)	
Respondent,)	
)	
-vs-	)	CERTIFICATE OF CLERK
)	
RICHARD ALAN WILSON, etal.,)	
)	
Defendant-)	
Appellant.)	

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 22nd day of September, 2017.

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: *Waldemar* Deputy

CERTIFICATE OF 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-	)	Supreme Court No. 45193-2017
Respondent,)	
	)	CERTIFICATE OF SERVICE
-vs-)	
)	
RICHARD ALAN WILSON, etal.,)	
)	
Defendant-)	
Appellant.)	

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:

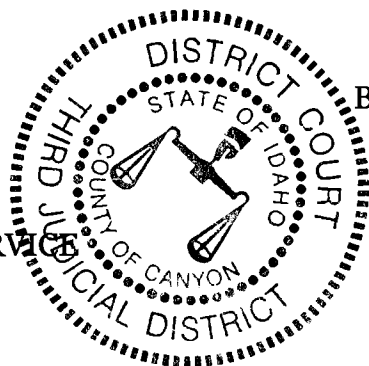
Eric D. Fredericksen, State Appellate Public Defender’s Office,
322 East Front Street, Suite 570, Boise, Idaho 83702

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 22nd day of September, 2017.

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

1 TO: Clerk of the Court
2 Idaho Supreme Court
3 451 West State Street
4 Boise, Idaho 83720
5 Fax: 334-2616

6

7

Docket No. 45193

8

9

(Res) State of Idaho

10

vs.

11

(App) Wilson, Richard Alan

12

13

NOTICE OF TRANSCRIPT LODGED

14

15

Notice is hereby given that on August 11,

16

2017, I lodged 0 & 4 transcripts of the Jury Trial

17

dated 3-1-17 of approximately 217 pages in length

18

for the above-referenced appeal with the District

19

Court Clerk of the County of Canyon in the Third

20

Judicial District.

21

Debora Ann Kreidler,

22

Court Reporter, CSR No. 754

23

Date August 11, 2017

24

25

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

DOCKET NO. 45193

(
(STATE OF IDAHO
(
(vs.
(
(RICHARD ALAN WILSON
(

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on August 29, 2017, I lodged 0 & 3 transcripts of 40 pages in length, consisting of hearings on 11/14/16, 12/2/16, 12/5/16, 1/18/17, 2/22/17, and 5/1/17, for the above-referenced appeal with the District Court Clerk of the County of Canyon in the Third Judicial District.

Katherine J. Klemetson, RPR, CSR #436

(Date)