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State v. Alley Clerk's Record Dckt. 40428

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant-Appellant.

Supreme Court Case No. 40428

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

RYAN L. HOLDAWAY

ATTORNEY FOR APPELLANT

LOGAN, UTAH

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

State of Idaho vs. Morgan Christopher Alley

Date	Code	User	Judge
9/30/2011	NCRF	PRSCHOKF	New Case Filed - Felony
	PROS	PRSCHOKF	Prosecutor assigned Heather Reilly
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 09/30/2011 01:30 PM)
	MOTN	TCMCCOSL	Motion to Consol
	ORDR	TCMCCOSL	Order to Consol W/ FE-11-15480, FE-11-15481, and FE-11-15483
	ARRN	TCCHENKH	Hearing result for Video Arraignment scheduled on 09/30/2011 01:30 PM: Arraignment / First Appearance
	CHGA	TCCHENKH	Judge Change: Administrative
	HRSC	TCCHENKH	Hearing Scheduled (Preliminary 10/14/2011 08:30 AM)
	BSET	TCCHENKH	BOND SET: at 500000.00 - (I37-2732(A)(1)(A)-DEL {CY} Controlled Substance-Conspiracy to Deliver)
10/3/2011		MADAVISM	Notice of Hearing [file stamped 10/03/2011]
	NOAP	TCTONGES	Notice Of Appearance/Leroy
	RQDD	TCTONGES	Defendant's Request for Discovery
	NOPE	TCPRESCS	Notification of Penalties for Escape
10/6/2011	BNDS	TCWADAMC	Bond Posted - Surety (Amount 500000.00)
	APNG	TCTONGES	Appear & Plead Not Guilty/Holdaway
	NOTC	TCTONGES	Notice of Service
	APNG	TCOLSOMC	Appear & Plead Not Guilty / Holdaway [duplicate entry]
10/11/2011	NOSV	TCOLSOMC	Notice Of Service [duplicate entry]
	INDT	TCMCCOSL	Indictment
	MOTN	TCMCCOSL	Motion to Consol
	ORDR	TCMCCOSL	Order to Consol W/ FE-11-15480, FE-11-15481, FE-11-15483, FE-11-16247, FE-11-16248, and FE-11-16249
10/12/2011	HRVC	TCMCCOSL	Hearing result for Preliminary scheduled on 10/14/2011 08:30 AM: Hearing Vacated
	HRSC	TCMCCOSL	Hearing Scheduled (Arraignment 10/18/2011 09:00 AM)
	CHGA	TCMCCOSL	Judge Change: Administrative
10/13/2011	STIP	TCOLSOMC	Stipulation for Substitution of Counsel / Sallaz
10/18/2011	DCHH	TCJOHNKA	Hearing result for Arraignment scheduled on 10/18/2011 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages

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State of Idaho vs. Morgan Christopher Alley

Date	Code	User	Judge
10/18/2011	HRSC	TCJOHNKA	Hearing Scheduled (Entry of Plea 11/08/2011 09:00 AM)
10/31/2011	MOTN	TCLANGAJ	Motion for Leave to File Information Part II
11/7/2011	STIP	TCOLSOMC	Stipulation for Substitution of Counsel / Roark
	RQDD	TCOLSOMC	Defendant's Request for Discovery
11/8/2011	NOSV	TCLANGAJ	Notice Of Service
	INFO	TCJOHNKA	Information Part II
11/14/2011	DCHH	TCJOHNKA	Hearing result for Entry of Plea scheduled on 11/08/2011 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 02/14/2012 11:00 AM)
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 03/05/2012 09:00 AM) 2 weeks
	HRSC	TCJOHNKA	Hearing Scheduled (Status 01/24/2012 11:00 AM)
11/21/2011	ORDR	TCJOHNKA	Scheduling Order
12/13/2011	HRSC	TCLANGAJ	Hearing Scheduled (Hearing Scheduled 12/20/2011 09:00 AM) Motion to Remove Electronic Monitor
12/14/2011	HRVC	TCJOHNKA	Hearing result for Hearing Scheduled scheduled on 12/20/2011 09:00 AM: Hearing Vacated Motion to Remove Electronic Monitor
1/9/2012	RQDS	TCOLSOMC	State/City Request for Discovery
1/19/2012	NOHG	TCOLSOMC	Notice Of Hearing
	MOTN	TCOLSOMC	Motion to Extend Time for Filing Motions
	AFFD	TCOLSOMC	Affidavit of Keith Roark in Support of Motion to Extend Time for Filing Motions
1/20/2012	CERT	TCOLSOMC	Certificate Of Mailing [file stamped 01/19/2012]
	RSDS	TCLANGAJ	State/City Response to Discovery
1/24/2012	DCHH	TCJOHNKA	Hearing result for Status scheduled on 01/24/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages
	DCHH	TCJOHNKA	Hearing result for Status scheduled on 01/24/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages

State of Idaho vs. Morgan Christopher Alley

Date	Code	User	Judge
1/24/2012	DCHH	TCJOHNKA	Hearing result for Status scheduled on 01/24/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood
	DCHH	TCJOHNKA	Hearing result for Status scheduled on 01/24/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood
	HRVC	TCJOHNKA	Hearing result for Jury Trial scheduled on 03/05/2012 09:00 AM: Hearing Vacated 2 weeks Richard D. Greenwood
	HRVC	TCJOHNKA	Hearing result for Pretrial Conference scheduled on 02/14/2012 11:00 AM: Hearing Vacated Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 04/24/2012 11:00 AM) Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 05/14/2012 09:00 AM) 2 weeks Richard D. Greenwood
2/6/2012	MDIS	TCTONGES	Motion To Dismiss and Notice of Intent to Call Witnesses Richard D. Greenwood
	MEMO	TCTONGES	Memorandum in Support of Defendant's Motion to Dismiss Richard D. Greenwood
	AFFD	TCTONGES	Affidavit of Ryan L. Holdaway RE: Support of Defendant's Motion to Dismiss Richard D. Greenwood
2/13/2012	ORDR	TCJOHNKA	Scheduling Order Richard D. Greenwood
2/23/2012	ORDR	TCJOHNKA	Order for Preparation of Grand Jury Proceedings Richard D. Greenwood
2/28/2012	AFFD	TCTONGES	Second Affidavit of Ryan L. Holdaway RE: Support of Defendant's Motion to Dismiss Richard D. Greenwood
3/1/2012	RSDS	TCLANGAJ	State/City Response to Discovery/Addendum Richard D. Greenwood
3/6/2012	NOTH	TCJOHNKA	Notice Of Hearing Richard D. Greenwood
3/7/2012	AFFD	DCTYLENI	Affidavit of Heather Reilly in Support of State's Memorandum in Response and Opposition to Defendant's Motion to Dismiss Richard D. Greenwood
	MEMO	TCLANGAJ	State's Memorandum in Response and Opposition to Defendant's Motion to Dismiss Richard D. Greenwood
3/8/2012	HRSC	TCJOHNKA	Hearing Scheduled (Motion 03/12/2012 09:00 AM) Motion to dismiss Richard D. Greenwood
3/9/2012	ORDR	TCJOHNKA	Amended and Supplemental Order for Grand Jury Transcript Richard D. Greenwood
3/12/2012	DCHH	TCJOHNKA	Hearing result for Motion scheduled on 03/12/2012 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 200 pages Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Motion to Dismiss 03/14/2012 08:30 AM) Richard D. Greenwood

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State of Idaho vs. Morgan Christopher Alley

Date	Code	User	Judge
3/14/2012	DCHH	TCJOHNKA	Hearing result for Motion to Dismiss scheduled on 03/14/2012 08:30 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 200 pages
4/6/2012	DEOP	DCTYLENI	Memorandum Decision and Order Re: Motion to Dismiss
4/9/2012	MISC	DCTYLENI	Corrected Memorandum Decision and Order Re: Motion to Dismiss
4/11/2012	MOTE	TCTONGES	Motion to Enlarge Time
4/19/2012	MOVA	TCTONGES	Motion To Vacate and Reset Trial Date
	AFFD	TCTONGES	Affidavit of R. Keith Roark in Support of Motion To Vacate and Reset Trial Date
4/24/2012	DCHH	TCJOHNKA	Hearing result for Pretrial Conference scheduled on 04/24/2012 11:00 AM: District Court Hearing Held Court Reporter: S Wolf Number of Transcript Pages for this hearing estimated: less than 50 pages
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 06/26/2012 01:30 PM)
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 07/18/2012 09:00 AM)
	HRVC	TCJOHNKA	Hearing result for Jury Trial scheduled on 05/14/2012 09:00 AM: Hearing Vacated 2 weeks
4/30/2012	ORDR	TCJOHNKA	Scheduling Order
5/2/2012	HRSC	TCLANGAJ	Hearing Scheduled (Hearing Scheduled 05/15/2012 09:00 AM)
5/4/2012	MOTN	TCTONGES	Motion to Reconsider
	MEMO	TCTONGES	Memorandum in Support of Defendant's Motion to Reconsider
	AFFD	TCTONGES	Affidavit of Ryan L. Holdaway RE: Support of Motion to Reconsider
	AFFD	TCTONGES	Affidavit of Karl de Jesus RE: Motion to Reconsider
	AFFD	TCTONGES	Affidavit of Owen McDougal RE: Motion to Reconsider
5/15/2012	DCHH	CCTHERTL	Hearing result for Hearing Scheduled scheduled on 05/15/2012 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 100
5/18/2012	HRSC	TCTONGES	Hearing Scheduled (Hearing Scheduled 06/12/2012 11:00 AM)

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State of Idaho vs. Morgan Christopher Alley

Date	Code	User		Judge
5/18/2012	NOTH	TCWEGEKE	Notice Of Hearing Re: Motion to Reconsider	Richard D. Greenwood
6/7/2012	OBJE	TCBROWJM	State's Objection and response to Defendant's Motion to Reconsider	Richard D. Greenwood
6/12/2012	DCHH	TCJOHNKA	Hearing result for Hearing Scheduled scheduled on 06/12/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
	MINL	TCTONGES	State's Motion in Limine and Requested Jury Instruction	Richard D. Greenwood
6/13/2012	HRSC	TCTONGES	Hearing Scheduled (Hearing Scheduled 06/21/2012 01:30 PM)	Richard D. Greenwood
	NOHG	TCTONGES	Notice Of Hearing	Richard D. Greenwood
	NITU	TCTONGES	Notice of Intent to Use Evidence Pursuant to I.R.E. 404(b) and I.C.R. 16(a)	Richard D. Greenwood
	NOTH	TCWEGEKE	Notice Of Hearing	Richard D. Greenwood
6/15/2012	MOVA	TCTONGES	Motion To Vacate and Reset the State's Motion in Limine, Request Jury Instructions and Notice of Intent to Use Evidence Pursuant to IRE 404(b) and ICR 16(a)	Richard D. Greenwood
	RSDS	TCTONGES	State/City Response to Discovery/ Second Addendum	Richard D. Greenwood
6/18/2012	CONT	TCJOHNKA	Continued (Pretrial Conference 06/26/2012 09:30 AM)	Richard D. Greenwood
	NOTH	TCJOHNKA	Amended Notice of Hearing	Richard D. Greenwood
6/21/2012	MOTN	TCTONGES	State's Motion for Leave to File Exhibit List	Richard D. Greenwood
6/22/2012	MOTN	TCTONGES	Motion to Sever Count III of the Indictment Pursuant to Rule	Richard D. Greenwood
	MEMO	TCTONGES	Memorandum in Support of Motion to Sever Count III of the Indictment Pursuant to Rule	Richard D. Greenwood
	OBJE	TCTONGES	Joinder Objection to State's Motion in Limine and Requested Jury Instruction	Richard D. Greenwood
6/25/2012	OBJE	TCTONGES	State's Objection to Defendant's Motion to Sever	Richard D. Greenwood
6/26/2012	DCHH	TCJOHNKA	Hearing result for Pretrial Conference scheduled on 06/26/2012 09:30 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 100 pages	Richard D. Greenwood
6/27/2012	JUIP	TCJOHNKA	Jury Instructions/plaintiff	Richard D. Greenwood
	WITN	TCJOHNKA	State's List of Potential Trial Witnesses	Richard D. Greenwood
7/3/2012	NOHG	TCBROWJM	Notice Of Hearing	Richard D. Greenwood
	HRSC	TCBROWJM	Hearing Scheduled (Hearing Scheduled 07/10/2012 02:00 PM)	Richard D. Greenwood

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State of Idaho vs. Morgan Christopher Alley

Date	Code	User		Judge
7/5/2012	RSDS	TCTONGES	State/City Response to Discovery/ Third Addendum	Richard D. Greenwood
	NITU	TCTONGES	Notice of Intent to Designate Case Officer as State's Representative Pursuant to I.R.E. 615 (a)(2)	Richard D. Greenwood
7/9/2012	RSDS	TCBROWJM	State/City Response to Discovery / Fourth Addendum	Richard D. Greenwood
7/10/2012	PLEA	TCJOHNKA	A Plea is entered for charge: - GT (I37-2732(A)(1)(A)-MFG Controlled Substance-Manufacture)	Richard D. Greenwood
	PLEA	TCJOHNKA	A Plea is entered for charge: - GT (I37-2734B Drug Paraphernalia-Deliver, Possess or Manufacture Violations)	Richard D. Greenwood
	DISM	TCJOHNKA	Dismissed on Motion of the Prosecutor (I18-3316(1) Weapon-Unlawful Possession by Convicted Felon)	Richard D. Greenwood
	DISM	TCJOHNKA	Dismissed on Motion of the Prosecutor (I37-2732C {M} Controlled Substance-Use or Under the Influence)	Richard D. Greenwood
	DISM	TCJOHNKA	Dismissed on Motion of the Prosecutor (I37-2734A(1) Drug Paraphernalia-Use or Possess With Intent to Use)	Richard D. Greenwood
7/11/2012	DCHH	TCJOHNKA	Hearing result for Hearing Scheduled scheduled on 07/10/2012 02:00 PM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Sentencing 09/11/2012 09:00 AM)	Richard D. Greenwood
	MISC	TCJOHNKA	Conditional Plea of Guilty	Richard D. Greenwood
	INFO	TCJOHNKA	Amended Information	Richard D. Greenwood
	REDU	TCJOHNKA	Charge Reduced Or Amended (I37-2732(A)(1)(A)-MFG Controlled Substance-Manufacture)	Richard D. Greenwood
	HRVC	TCJOHNKA	Hearing result for Jury Trial scheduled on 07/18/2012 09:00 AM: Hearing Vacated 2 weeks	Richard D. Greenwood
	GPA	TCJOHNKA	Guilty Plea Advisory	Richard D. Greenwood
	PSSA1	TCJOHNKA	Order for Presentence Investigation Report and Substance Abuse Assessment	Richard D. Greenwood
7/13/2012	RSDS	TCBROWJM	State/City Response to Discovery / Fifth Addendum	Richard D. Greenwood
7/16/2012	RSDS	TCTONGES	State/City Response to Discovery/ Sixth Addendum	Richard D. Greenwood
7/18/2012	RSDS	TCBROWJM	State/City Response to Discovery / Seventh Addendum	Richard D. Greenwood

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State of Idaho vs. Morgan Christopher Alley

Date	Code	User		Judge
7/26/2012	RSDS	TCBROWJM	State/City Response to Discovery / Eighth Addendum	Richard D. Greenwood
9/11/2012	DCHH	TCJOHNKA	Hearing result for Sentencing scheduled on 09/11/2012 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Sentencing 10/09/2012 09:00 AM)	Richard D. Greenwood
9/12/2012	PSIO1	TCJOHNKA	Pre-Sentence Investigation Evaluation Ordered - Reset	Richard D. Greenwood
10/9/2012	DCHH	TCJOHNKA	Hearing result for Sentencing scheduled on 10/09/2012 09:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 100 pages	Richard D. Greenwood
	FIGT	TCJOHNKA	Finding of Guilty (I37-2732(A)(1)(A)-MFG Controlled Substance-Manufacture)	Richard D. Greenwood
	FIGT	TCJOHNKA	Finding of Guilty (I37-2734B Drug Paraphernalia-Deliver, Possess or Manufacture Violations)	Richard D. Greenwood
	STAT	TCJOHNKA	STATUS CHANGED: closed pending clerk action	Richard D. Greenwood
	JAIL	TCJOHNKA	Sentenced to Jail or Detention (I37-2732(A)(1)(A)-MFG Controlled Substance-Manufacture) Confinement terms: Credited time: 3 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 8 years.	Richard D. Greenwood
	JAIL	TCJOHNKA	Sentenced to Jail or Detention (I37-2734B Drug Paraphernalia-Deliver, Possess or Manufacture Violations) Confinement terms: Credited time: 3 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 8 years.	Richard D. Greenwood
	JAIL	TCJOHNKA	Sentenced to Jail or Detention (I37-2734B Drug Paraphernalia-Deliver, Possess or Manufacture Violations) Confinement terms: Credited time: 3 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 8 years.	Richard D. Greenwood
	SNPF	TCJOHNKA	Sentenced To Pay Fine 265.50 charge: I37-2732(A)(1)(A)-MFG Controlled Substance-Manufacture	Richard D. Greenwood
	SNPF	TCJOHNKA	Sentenced To Pay Fine 265.50 charge: I37-2734B Drug Paraphernalia-Deliver, Possess or Manufacture Violations	Richard D. Greenwood
10/12/2012	MEMO	TCJOHNKA	Defendant's Sentencing Memorandum	Richard D. Greenwood
	JCOC	TCJOHNKA	Judgment Of Conviction & Order Of Commitment	Richard D. Greenwood
	BNDE	DCTAYLME	Surety Bond Exonerated (Amount 500,000.00)	Richard D. Greenwood
10/22/2012	APSC	CCTHIEBJ	Appealed To The Supreme Court	Richard D. Greenwood
	NOTA	CCTHIEBJ	NOTICE OF APPEAL	Richard D. Greenwood

State of Idaho vs. Morgan Christopher Alley

Date	Code	User		Judge
11/13/2012	MOTN	TCCHRIKE	Motion for Appeal Bail	Richard D. Greenwood
	MEMO	TCCHRIKE	Memorandum in Support of Defendant's Motion for Appeal Bail	Richard D. Greenwood
	NOHG	TCCHRIKE	Notice Of Hearing RE: Motion for Appeal Bail	Richard D. Greenwood
	HRSC	TCCHRIKE	Hearing Scheduled (Hearing Scheduled 12/04/2012 03:30 PM)	Richard D. Greenwood
	STAT	TCCHRIKE	STATUS CHANGED: Reopened	Richard D. Greenwood
12/3/2012	ORDR	TCJOHNKA	Order to Transport	Richard D. Greenwood
12/4/2012	DCHH	TCJOHNKA	Hearing result for Hearing Scheduled scheduled on 12/04/2012 03:30 PM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
12/10/2012	MOTN	TCCHRIKE	Motion for Transport Order for Defendant to Attend Hearing on Motion for Appeal Bond	Richard D. Greenwood
12/20/2012	NOTC	CCTHIEBJ	Notice of Transcript Lodged - Supreme Court Docket No. 40428	Richard D. Greenwood

SEP 30 2011

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

DR # 11-123716

GREG H. BOWER

Ada County Prosecuting Attorney

Heather Reilly

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-0015482

COMPLAINT

Alley's DOB: [REDACTED]

Alley's SSN: [REDACTED]

PERSONALLY APPEARED Before me this 30th day of September 2011, Heather Reilly, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that MORGAN CHRISTOPHER ALLEY, on or between March 2011 and September 2011, in the County of Ada, State of Idaho, did commit the crimes of: I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), §18-1701; 37-2732(f) II. CONSPIRACY TO DELIVER OR POSSESS WITH INTENT TO DELIVER DRUG PARAPHERNALIA, FELONY, I.C. §37-2734B, §18-1701 III. UNLAWFUL POSSESSION OF A FIREARM, FELONY, I.C. §18-3316 IV. **COMPLAINT (ALLEY)**, Page 1

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POSSESSION OF A CONTROLLED SUBSTANCE, MISDEMEANOR, I.C. §37-2732(c) and V. POSSESSION OF DRUG PARAPHERNALIA, MISDEMEANOR, I.C. §37-2734A as follows:

COUNT I

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or between March 2011 and September 2011, both dates being approximate and inclusive, within Ada County, State of Idaho, and elsewhere, the Defendants Morgan Christopher Alley, Tashina Alley, Charlynda L. Goggin, together with Cadee Peterson and other unnamed or unknown people did willfully and knowingly combine, conspire, confederate and agree to manufacture, deliver and/or possess with intent to deliver a controlled substance, to wit: tetrahydrocannabinols and/or synthetic equivalents to the substances contained in the Cannabis plant, resinous extractives of Cannabis synthetics, derivatives, and their isomers with similar chemical structure and/or synthetic drugs, Schedule I controlled substances, or of any mixture or substance containing a detectable amount of the Schedule I controlled substance.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts among others, were committed within Ada County and elsewhere.

1. In January 2011, Morgan Alley and/or Tashina Alley rented a warehouse located at 7544 Lemhi Street #9 in Boise, Ada County, Idaho, and/or
2. Morgan Alley and/or Tashina Alley made payments on the rent for the warehouse from January 2011 through September 2011; and/or
3. On or between March 2011 and September 2011, Morgan Alley and/or others purchased and/or obtained materials necessary to manufacture a Schedule I Controlled Substance, and/or,
4. On or between March 10, 2011 through September 2011, Morgan Alley and/or others manufactured a Schedule I Controlled Substance by production, preparation, compounding, conversion, processing, extracting, and/or by a combination of extraction and chemical synthesis, to wit: by processing plant

material, acetone, and tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as tetrahydrocannabinols and/or synthetic drugs; by mixing acetone, flavoring and tetrahydrocannabinols, and/or synthetic equivalents and/or synthetic drugs and soaking/spraying plant material with said mixture and then drying the plant material, and/or,

5. On or between March 10, 2011 through September 2011, Morgan Alley and/or Tashina Alley hired others to assist in the production, preparation, packaging, re-packaging and/or labeling of a container for a Schedule I Controlled Substance, and/or,
6. On or between March 10, 2011 through September 2011, Morgan Alley and/or Tashina Alley supervised others who were involved in the production, preparation, packaging, re-packaging and/or labeling of a container for a Schedule I Controlled Substance, and/or,
7. On or between March 10, 2011 through September 11, 2011, Charlynda Goggin, Cadee Peterson, and other unnamed individuals weighed substances containing a Schedule I Controlled Substance, placed the substances in containers, fastened the lids, affixed identifying stickers to the lids and/or placed the containers in boxes; and/or
8. On or about September 22, 2011, Morgan Alley and/or Tashina Alley opened a store called the "Red Eye Hut Smoke Shop" located at 2613 W. Camas Street in Boise, Ada County, and/or
9. On or during the month of September, Morgan Alley, Tashina Alley and/or others stocked the Red Eye Hut with products including products containing a Schedule I Controlled Substance; and/or
10. On or about September 22, 2011, Morgan Alley and/or Tashina Alley hired others to work at the Red Eye Hut store, and/or

11. On or during September 2011, Morgan Alley and/or Tashina Alley supervised the employees of the Red Eye Hut store; and/or
12. On September 26, 2011, Charlynda Goggin delivered a Schedule I controlled Substance to an under cover detective at the Red Eye Hut store; and/or
13. On September 26, 2011, an employee/agent of the Red Eye Hut store delivered a Schedule I controlled substance to an under cover detective at the Red Eye Hut store; and/or
14. On September 26, 2011, employees/agents of the Red Eye Hut took United States Currency in exchange for a Schedule I Controlled Substance; and/or
15. On or during the month of September 2011, Morgan Alley, Tashina Alley, and/or others possessed a Schedule I controlled with the intent to deliver.

COUNT II

That the Defendant, MORGAN CHRISTOPHER ALLEY, On or during the month of September 2011, within Ada County, State of Idaho, and elsewhere, the Defendants Morgan Christopher Alley, Tashina Alley, together with Charlynda L. Goggin, and other unnamed or unknown people did willfully and knowingly combine, conspire, confederate and agree to deliver and/or possess with intent to deliver drug paraphernalia, to wit: glass and metal pipes; bongs; scales; and/or a variety of containers; knowing, or under circumstances where one reasonably should know, that said paraphernalia would be used to pack, repack, store, contain; conceal; ingest; inhale; or otherwise introduce into the human body a controlled substance.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts among others, were committed within Ada County and elsewhere.

1. Morgan Alley and/or Tashina Alley rented/leased and/or otherwise obtained property for use as a storefront; and/or
2. On or about September 22, 2011, Morgan Alley and/or Tashina Alley opened a store called the "Red Eye Hut Smoke Shop" located at 2613 W. Camas Street in Boise, Ada County, and/or

3. On or during the month of September, Morgan Alley, Tashina Alley and/or others stocked the Red Eye Hut with products including drug paraphernalia; and/or
4. On or about September 22, 2011, Morgan Alley and/or Tashina Alley hired others to work at the Red Eye Hut store, and/or
5. On or during September 2011, Morgan Alley and/or Tashina Alley supervised the employees of the Red Eye Hut store; and/or
6. On September 26, 2011, Charlynda Goggin delivered drug paraphernalia to an under cover detective at the Red Eye Hut store; and/or
7. On September 26, 2011, Charlynda Goggin took United States Currency in exchange for drug paraphernalia; and/or
8. On or during the month of September 2011, Morgan Alley, Tashina Alley, Charlynda Goggin and/or others possessed drug paraphernalia with the intent to deliver.

COUNT III

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did possess and/or have under his custody and/or control, a firearm, to-wit: a Winchester 20 gauge shotgun, knowing that he has been convicted in 2006 of Delivery of a Controlled Substance, a felony crime.

COUNT IV

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance.

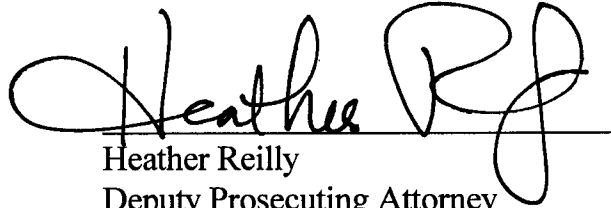
COUNT V

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did use and/or possess with the intent to use drug paraphernalia, to-wit: a glass jar, grinder, glass bong, and/or glass pipes, used to store, analyze and/or inhale a controlled substance.

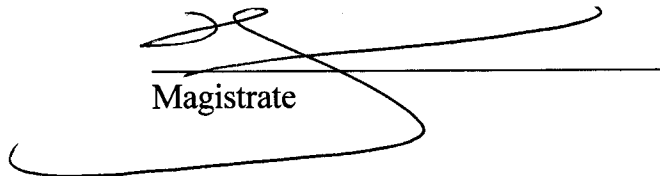
9-30-11
000043
I, II, III, IV, V
[Signature]

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

GREG H. BOWER
Ada County Prosecutor


Heather Reilly
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 30th day of September 2011.


Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

vs.

Morgan C. Alley

PROSECUTOR H. Reilly

COMPLAINING WITNESS _____

CASE NO. TE 2011- 19482

CLERK H. MANLEY

DATE 9 / 30 / 2011 TIME 1134

TOXIMETER _____

CASE ID. Gardnia 093011 BEG. 115445

END 122726

JUDGE

- | | |
|--|---|
| <input type="checkbox"/> BEREZ | <input type="checkbox"/> MacGREGOR-IRBY |
| <input type="checkbox"/> BIETER | <input type="checkbox"/> MANWEILER |
| <input type="checkbox"/> CAWTHON | <input type="checkbox"/> McDANIEL |
| <input type="checkbox"/> COMSTOCK | <input type="checkbox"/> MINDER |
| <input type="checkbox"/> DAY | <input type="checkbox"/> OTHS |
| <input checked="" type="checkbox"/> GARDUNIA | <input type="checkbox"/> REARDON |
| <input type="checkbox"/> HARRIGFELD | <input type="checkbox"/> STECKEL |
| <input type="checkbox"/> HAWLEY | <input type="checkbox"/> SWAIN |
| <input type="checkbox"/> HICKS | <input type="checkbox"/> WATKINS |
| <input type="checkbox"/> _____ | |
| <input type="checkbox"/> _____ | |

STATUS

- ☒ STATE SWORN
☒ PC FOUND 1-5
☒ COMPLAINT SIGNED
☐ AMENDED COMPLAINT SIGNED
☐ AFFIDAVIT SIGNED
☐ NO PC FOUND _____
☐ EXONERATE BOND
☐ SUMMONS TO BE ISSUED
☐ WARRANT ISSUED
☐ BOND SET \$ _____
☐ NO CONTACT

D.R. # _____

☐ DISMISS CASE

☒ IN CUSTODY

COMMENTS

() AGENT'S WARRANT

() RULE 5(b)

() FUGITIVE

Motion / order to Coordinate

ADA COUNTY MAGISTRATE MINUTES

Morgan Christopher Alley CR-FE-2011-0015482

DOB: [REDACTED]

Scheduled Event: **Video Arraignment** Friday, September 30, 2011 01:30 PM

Judge: **Daniel L Steckel**

Clerk: Ke

Interpreter: _____

Prosecuting Agency: ✓ BC EA GC MC

Pros: B. Judd / H. Reilly

PD / Attorney: B. Barrera for

D. Leroy

- 1 I37-2732(A)(1)(A)-DEL CY Controlled Substance-Conspiracy to Deliver F
- 2 I37-2732(A)(1)(A)-DEL CY Controlled Substance-Conspiracy to Deliver F
- 3 I18-3316(1) Weapon-Unlawful Possession by Convicted Felon F
- 4 I37-2732C M Controlled Substance-Use or Under the Influence M
- 5 I37-2734A(1) Drug Paraphernalia-Use or Possess With Intent to Use M

014353 Case Called Defendant: ✓ Present Not Present ✓ In Custody

✓ Advised of Rights Waived Rights PD Appointed Waived Attorney

 Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

✓ Bond \$ 500,000.00 ROR Pay / Stay Payment Agreement

 In Chambers PT Memo Written Guilty Plea No Contact Order

Advised of Charges

PH: 10/14/11 @ 830am w/ Hawley

Finish () Release Defendant

000017

SEP 30 2011

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Douglas R. Varie
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA


THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015480
	)	CR-FE-2011-0015481
vs.	)	CR-FE-2011-0015482
	)	CR-FE-2011-0015483
CHARLYNDA LYNN GOGGIN,)	
CADEE JO PETERSON,	)	MOTION TO CONSOLIDATE
MORGAN CHRISTOPHER ALLEY, and)	
TASHINA M. ALLEY)	
)	
Defendants.)	
_____)	

COMES NOW, Douglas R. Varie, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby moves this Honorable Court in the above entitled matter for an Order pursuant to Rule 13 of the Idaho Criminal Rules of Practice and Procedure consolidating criminal case CR-FE-2011-0015480 with criminal cases CR-FE-2011-0015481, CR-FE-2011-0015482, and CR-FE-2011-0015483 on the grounds and for the reasons that the facts, evidence and witnesses are the same in each case. An Order of

consolidation would save witness and jury time and the expense for a separate and later trial.

DATED this 30 day of September, 2011.

GREG H. BOWER
Ada County Prosecuting Attorney



Douglas R. Varie
Deputy Prosecuting Attorney

SEP 30 2011

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Douglas R. Varie
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

CHARLYNDA LYNN GOGGIN,)
CADEE JO PETERSON,)
MORGAN CHRISTOPHER ALLEY, and)
TASHINA M. ALLEY)

Defendants.)
_____)

Case No. **CR-FE-2011-0015480**
CR-FE-2011-0015481
CR-FE-2011-0015482
CR-FE-2011-0015483

ORDER TO CONSOLIDATE

This Motion for Consolidation having come before me and good cause being shown,
IT IS HEREBY ORDERED AND THIS DOES ORDER that the Motion to
Consolidate be granted.

DATED this 30th day of September, 2011.



Judge

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

OCT 03 2011

200 W. Front Street, Boise, Idaho 83702

CHRISTOPHER D. RICH, Clerk
By CORRINE PRESLEY
DEPUTY

STATE OF IDAHO,
Plaintiff.

vs.

Morgan Christopher Alley
3001 S. Roosavelt St #18
Boise, ID 83705

Defendant.

Case No: CR-FE-2011-0015482

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Preliminary ...Friday, October 14, 2011...08:30 AM
Judge: John Hawley Jr.

I HEREBY CERTIFY that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows:

Defendant: Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

David H Leroy
P.O. Box 193
Boise ID 83701
Private Counsel:

Mailed X Hand Delivered _____ Signature _____
Clerk CSR Date 10/03 Phone () _____

Prosecutor: Interdepartmental Mail X ☒ Ada ☐ Boise ☐ Eagle ☐ G.C. ☐ Meridian
Clerk CSR Date 10/03

Public Defender: Interdepartmental Mail _____
Clerk _____ Date _____

Other: _____

Mailed _____ Hand Delivered X Signature Christopher D. Rich
Clerk _____ Date _____ Phone () 9-307

Dated: 9/30/2011

CHRISTOPHER D. RICH
Clerk of the Court

By: Corrine S. Presley
Deputy Clerk

000021

202
PH
10/14
8:30

NO. 1050
A.M. FILED P.M.

OCT 03 2011

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

DAVID H. LEROY
Attorney at Law
1130 E. State Street
Boise, Idaho 83712
Telephone: (208) 342-0000
Facsimile: (208) 342-4200


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STATE OF IDAHO,	)	Case No. CR FE 2011 0015482
)	
Plaintiff,	)	NOTICE OF APPEARANCE
vs.)	
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	

TO: The State of Idaho, the Plaintiff, in the above matter, and to the Clerk of the above entitled Court:

NOTICE IS HEREBY GIVEN that Morgan Christopher Alley, the Defendant in the above entitled matter, has retained David H. Leroy, 1130 E. State Street, Boise, Idaho, 83712, to represent him in said action. Said attorney requests that all documents and notices in said matter be forwarded hereafter to the address listed above.

DATED This 3rd day of October, 2011.




David H. Leroy, Attorney for the Defendant

NOTICE OF APPEARANCE - 1

CERTIFICATE OF SERVICE

On this 3rd day of October, 2011, I caused a true and correct copy of the foregoing Notice of Appearance, and Request for Discovery to be sent by Facsimile to the following:

Ada County Prosecutors Office
200 Front Street
Boise, Idaho 83702
Facsimile: (208) 287-7709



Davalee Davis, Executive Assistant

NOTICE OF APPEARANCE - 2

Oct 3 2011 10:30am P003/005

000023

OCT 03 2011

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

DAVID H. LEROY
Attorney at Law
1130 East State Street
Boise, Idaho 83712
Telephone: (208) 342-0000
Facsimile: (208) 342-4200

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR FE 2011- 0015482

REQUEST FOR DISCOVERY

To: Plaintiff in the above named action and the Ada County Prosecutors Office:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence and materials:

1. All statements of the defendant as defined by Rule 16(b)(1) and any co-defendant statements as defined by Rule 16 (b) (2).
2. Defendant's prior record as defined by Rule 16 (b) (3).
3. Documents and tangible things as defined by Rule 16 (b) (4).
4. Reports of examinations and tests as defined by Rule 16 (b) (5).
5. State witnesses as defined by Rule 16 (b) (6).
6. Police reports as defined by Rule 16 (b) (7), including the front and back of the booking sheet and the original citation.
7. All tape and video recordings or photographs of the Defendant or related to the

REQUEST FOR DISCOVERY P-1

scene or the alleged crime, and including all video tapes of the Defendant being detained or interviewed and all audio recordings available through the Dispatch center or 911 center.

8. The criminal history of the alleged victim in this case.

9. Any and all manufacturer's or other source operations manuals, descriptions, or instructions related to the alcohol field testing device employed in this case.

10. Any and all Idaho State Police, Meridian City Police or Boise City Police or other applicable law enforcement instruction manuals or protocols related to the use and proper procedures to be employed.

11. Any print out, read out or other preserved evidence of the results obtained on the alcohol device used in this case.


12. Photographs of or the right to inspect the actual alcohol device used in this case.

13. Any and all other items of evidence or items which may lead to evidence, either inculpatory or exculpatory in nature, known to or in the possession of the Prosecutor, police or other agents of the state.

This discovery request shall be deemed and is continuing in nature.

The undersigned further requests that said documents, information, evidence and materials be furnished by October 16th, 2011.

DATED This 3rd day of October, 2011.



David H. Leroy, Attorney for the Defendant

REQUEST FOR DISCOVERY P-2

FILED 10/10/11 AT 11:40A.M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY [Signature]
 Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 STATE OF IDAHO, ADA COUNTY

STATE OF IDAHO,

Plaintiff,

vs.

Alley

Defendant.

SSN: XXX-XX-

CASE NO. FE-11-15182

NOTIFICATION OF CONSEQUENCES AND
 PENALTIES FOR ESCAPE PURSUANT TO
 I.C. §§ 18-2505, 2506

TO: THE ABOVE-NAMED DEFENDANT, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I.C. § 18-2505 (1) Every prisoner charged with, convicted of, or on probation for a **felony** who is confined in any correctional facility, as defined in section 18-101A, Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a **felony**, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. **A felony is punishable by fine not exceeding fifty thousand dollars (\$50,000.00) or imprisonment in the state prison not to exceed five (5) years or both.**

I.C. § 18-2506 (1)(a) Every prisoner charged with or convicted of a **misdemeanor** who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a **misdemeanor**. **A misdemeanor is punishable by fine not exceeding \$1000.00 or by imprisonment in the county jail not to exceed one (1) year or both.**

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a **felony**.

Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking, monitoring and detention or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care.

I ACKNOWLEDGE RECEIPT OF THIS WRITTEN NOTICE.

[Signature]
 DEFENDANT

7-30-11
 DATE

000026

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA.

THE STATE OF IDAHO,
Plaintiff,

vs.

ALLEY MORGAN CHRISTOPHER
Defendant

NOTICE OF COURT DATE
AND
BOND RECEIPT

YOU ARE HEREBY NOTIFIED that you must appear in Court No. _____
on 14 October 2011 at 08:30AM hrs, at the: A.M. 9 P.M. _____

OCT 03 2011

Ada County Courthouse
200 West Front Street
Boise, 83702

CHRISTOPHER D. RICH, Clerk
By CHERYL WADAMS
DEPUTY

If you have been arrested for a Citation, This Notice of Court Date Supersedes any other Court Date for this case. If you have been given a date by the court you must keep those appearances, failing to do so will cause a warrant for arrest and forfeiture of bond.

You are further notified that if you fail to appear as specified herein, your bond will be forfeited and a Warrant of Arrest will be issued against you.

BOND RECEIPT No: 602718

Charge: 37-2732(a) {F} CONTROLLED SUBSTANCE-DELIVERY/INTENT TO
Bond Amount: \$ 500,000.00
Case # CRFE20110015482
Bond # DN500-2664673
Bond Type: Surety
Warrant #:
Agency: Aladdin/Anytime
Insurance: Danielson National Insurance Co
Bondsman: MUSICK SUNSHINE
Address: 80 N COLE RD
Boise, ID 83704

This is to certify that I have received a copy of this NOTICE TO APPEAR.
I understand that I am being released on the conditions of posting bail and
my promise to appear in the court at the time, date, and place described in this notice.

DATED: 10/1/2011

X
DEFENDANT

000027

NO. _____
 A.M. _____ FILED 4:00 P.M.

OCT 06 2011

CHRISTOPHER D. RICH, Clerk
 By ELAINE TONG
 DEPUTY

202
 PH
 10/14
 8:30

Ryan L. Holdaway, ISB #8289
 Diane Pitcher, ISB # 8340
PITCHER & HOLDAWAY, PLLC
 40 W. Cache Valley Blvd Ste # 3B
 Logan, UT 84341
 Telephone: (435) 787-1200
 Facsimile: (208) 852-2266
 Email: rlholdaway@gmail.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

MORGAN CHRISTOPHER ALLEY,


Defendant.

) Case No. CR FE 11-15482

) **NOTICE OF APPEARANCE AND**
) **ASSOCIATION, ENTRY OF NOT**
) **GUILTY PLEA AND DEMAND FOR**
) **SPEEDY JURY TRIAL**

Ryan L. Holdaway and Diane Pitcher of the firm, Pitcher & Holdaway, PLLC, hereby enters their Notice of Appearance and Association on behalf of the Defendant, Morgan Christopher Alley. The Defendant enters a plea of not guilty, and the Defendant also requests a speedy Jury Trial. Ryan L. Holdaway and Diane Pitcher will be associating in on this case with David Leroy.

DATED this 6th day of October, 2011.


 Ryan L. Holdaway
 Attorney for Defendant

NOTICE OF APPEARANCE, ENTRY OF NOT
GUILTY PLEA AND DEMAND FOR SPEEDY JURY TRIAL - 1

000028

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 6th day of October, 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Fax: (208) 287-7709

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

David H. Leroy
PO Box 193
Boise, Idaho 83701
Facsimile: (208) 342-4200

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile


~~Rebecca Griffith~~

**NOTICE OF APPEARANCE, ENTRY OF NOT
GUILTY PLEA AND DEMAND FOR SPEEDY JURY TRIAL - 2**

OCT 06 2011

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway ISB #8289
Diane Pitcher ISB #8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (208) 852-2266
Email: ryan@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR FE 11-15482
v.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	NOTICE OF SERVICE
)	
Defendants.)	
)	

NOTICE IS HEREBY GIVEN that on the 6th day of October, 2011, the Defendant, Morgan Christopher Alley, by and through his attorneys of record, Diane Pitcher and Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, served a true and correct copy of the Defendant's First Discovery Requests to Ada County Prosecutor's Office and David H. Leroy along with a copy of this notice, to:

Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Fax: (208) 287-7709

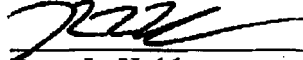
David H. Leroy
P.O.Box 193
Boise, ID 83701

NOTICE OF SERVICE - 1

000030

Fax: (208) 342-4200

DATED this ____ day of October, 2011.



Ryan L. Holdaway
Attorney for Plaintiff

CERTIFICATE OF SERVICE

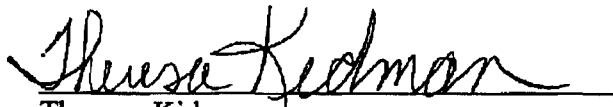
I HEREBY CERTIFY that on this 6th day of October, 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Fax: (208) 287-7709

☐ Via U.S. Mail
☒ Via Facsimile
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via email

David H. Leroy
P.O. Box 193
Boise, ID 83701

☐ Via U.S. Mail
☒ Via Facsimile
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via email



Theresa. Kidman

NOTICE OF SERVICE - 2

000031

NO. _____ FILED _____
A.M. _____ P.M. 2:28

OCT 11 2011

CHRISTOPHER D. RICH, Clerk
By DIANE OATMAN
Deputy

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

Grand Jury No. 11-103
Case No. CR-FE-2011-0015482

I N D I C T M E N T

Defendant's DOB: [REDACTED]
Defendant's SSN: [REDACTED]

MORGAN CHRISTOPHER ALLEY is accused by the Grand Jury of Ada County by this Indictment, of the crimes of: I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), §18-1701; 37-2732(f) II. CONSPIRACY TO DELIVER OR POSSESS WITH INTENT TO DELIVER DRUG PARAPHERNALIA, FELONY, I.C. §37-2734B, §18-1701 III. UNLAWFUL POSSESSION OF A FIREARM, FELONY, I.C. §18-3316 IV. POSSESSION OF A CONTROLLED SUBSTANCE, MISDEMEANOR, I.C. §37-2732(c) and V. POSSESSION OF DRUG PARAPHERNALIA, MISDEMEANOR, I.C. §37-2734A committed as follows:

COUNT I

On or between March 2011 and September 2011, both dates being approximate and inclusive, within Ada County, State of Idaho, and elsewhere, the Defendants Morgan Christopher Alley, Tashina Alley, Charlynda L. Goggin, Cadee Peterson, Hieu Phan, Matthew Taylor, together with Tonya Williams and other unnamed or unknown people did willfully and knowingly combine, conspire, confederate and agree to manufacture, deliver and/or possess with intent to deliver a controlled substance, to wit: tetrahydrocannabinols and/or synthetic equivalents to the substances contained in the Cannabis plant, resinous extractives of Cannabis synthetics, derivatives, and their isomers with similar chemical structure and/or synthetic drugs, Schedule I controlled substances, or of any mixture or substance containing a detectable amount of the Schedule I controlled substance.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts among others, were committed within Ada County and elsewhere.

1. In January 2011, Morgan Alley and/or Tashina Alley rented a warehouse located at 7544 Lemhi Street #9 in Boise, Ada County, Idaho, and/or
2. Morgan Alley and/or Tashina Alley made payments on the rent for the warehouse from January 2011 through September 2011; and/or
3. On or between March 2011 and September 2011, Morgan Alley and/or others purchased and/or obtained materials necessary to manufacture a Schedule I Controlled Substance, and/or,
4. On or between March 10, 2011 through September 2011, Morgan Alley and/or others manufactured a Schedule I Controlled Substance by production, preparation, compounding, conversion, processing, extracting, and/or by a combination of extraction and chemical synthesis, to wit: by processing plant material, acetone, and tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as tetrahydrocannabinols and/or synthetic drugs; by mixing acetone, flavoring and tetrahydrocannabinols,

- and/or synthetic equivalents and/or synthetic drugs and soaking/spraying plant material with said mixture and then drying the plant material, and/or,
5. On or between March 10, 2011 through September 2011, Morgan Alley and/or Tashina Alley hired others to assist in the production, preparation, packaging, re-packaging and/or labeling of a container for a Schedule I Controlled Substance, and/or,
 6. On or between March 10, 2011 through September 2011, Morgan Alley and/or Tashina Alley supervised others who were involved in the production, preparation, packaging, re-packaging and/or labeling of a container for a Schedule I Controlled Substance, and/or,
 7. On or between March 10, 2011 through September 11, 2011, Charlynda Goggin, Cadee Peterson, Hieu Phan, Tonya Williams and other unnamed individuals weighed substances containing a Schedule I Controlled Substance, placed the substances in containers, fastened the lids, affixed identifying stickers to the lids and/or placed the containers in boxes; and/or
 8. On or about September 22, 2011, Morgan Alley and/or Tashina Alley opened a store called the "Red Eye Hut Smoke Shop" located at 2613 W. Camas Street in Boise, Ada County, and/or
 9. On or during the month of September 2011, Morgan Alley, Tashina Alley and/or others stocked the Red Eye Hut with products including products containing a Schedule I Controlled Substance; and/or
 10. On or about September 22, 2011, Morgan Alley and/or Tashina Alley hired others to work at the Red Eye Hut store, and/or
 11. On or during September 2011, Morgan Alley and/or Tashina Alley supervised the employees of the Red Eye Hut store; and/or
 12. On September 26, 2011, Charlynda Goggin delivered a Schedule I controlled Substance to an under cover detective at the Red Eye Hut store; and/or
 13. On September 26, 2011, Matthew Taylor delivered a Schedule I controlled substance to an under cover detective at the Red Eye Hut store; and/or

14. On September 26, 2011, Matthew Taylor and/or Charlynda Goggin of the Red Eye Hut took United States Currency in exchange for a Schedule I Controlled Substance; and/or
15. On or during the month of September 2011, Morgan Alley, Tashina Alley, Charlynda Goggin, Matthew Taylor and/or others possessed a Schedule I controlled with the intent to deliver.

COUNT II

On or during the month of September 2011, within Ada County, State of Idaho, and elsewhere, the Defendants Morgan Christopher Alley, Tashina Alley, together with Charlynda L. Goggin, Matthew Taylor and other unnamed or unknown people did willfully and knowingly combine, conspire, confederate and agree to deliver and/or possess with intent to deliver drug paraphernalia, to wit: glass and metal pipes; bongs; scales; and/or a variety of containers; knowing, or under circumstances where one reasonably should know, that said paraphernalia would be used to pack, repack, store, contain; conceal; ingest; inhale; or otherwise introduce into the human body a controlled substance.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts among others, were committed within Ada County and elsewhere.

1. Morgan Alley and/or Tashina Alley rented/leased and/or otherwise obtained property for use as a storefront; and/or
2. On or about September 22, 2011, Morgan Alley and/or Tashina Alley opened a store called the "Red Eye Hut Smoke Shop" located at 2613 W. Camas Street in Boise, Ada County, and/or
3. On or during the month of September, Morgan Alley, Tashina Alley and/or others stocked the Red Eye Hut with products including drug paraphernalia; and/or
4. On or about September 22, 2011, Morgan Alley and/or Tashina Alley hired others to work at the Red Eye Hut store, and/or
5. On or during September 2011, Morgan Alley and/or Tashina Alley supervised the employees of the Red Eye Hut store; and/or

6. On September 26, 2011, Charlynda Goggin delivered drug paraphernalia to an undercover detective at the Red Eye Hut store; and/or
7. On September 26, 2011, Charlynda Goggin took United States Currency in exchange for drug paraphernalia; and/or
8. On or during the month of September 2011, Morgan Alley, Tashina Alley, Charlynda Goggin, Matthew Taylor and/or others possessed drug paraphernalia with the intent to deliver.

COUNT III

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did possess and/or have under his custody and/or control, a firearm, to-wit: a Winchester 20 gauge shotgun, knowing that he has been convicted in 2006 of Delivery of a Controlled Substance, a felony crime.

COUNT IV

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana and/or synthetic cannabinoids, a Schedule I controlled substances.

COUNT V

That the Defendant, MORGAN CHRISTOPHER ALLEY, on or about the 29th day of September, 2011, in the County of Ada, State of Idaho, did use and/or possess with the intent to use drug paraphernalia, to-wit: a glass jar, grinder, glass bong, and/or glass pipes, used to store, analyze and/or inhale a controlled substance.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

A TRUE BILL

Presented in open Court this 11th day of October, 2011.

Francis L. Henry
Presiding Juror of the Grand Jury of
Ada County, State of Idaho.

OCT 11 2011

CHRISTOPHER D. RICH, Clerk
By DIANE OATMAN
Deputy

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLYNDA LYNN GOGGIN, CADEE)
JO PETERSON, MORGAN)
CHRISTOPHER ALLEY, TASHINA M.)
ALLEY, HIEU NGOC PHAN,)
MATTHEW STEVEN TAYLOR and)
TONYA LAWAN WILLIAMS,)
)
Defendants.)
_____)

Case No. CR-FE-2011-0015480
CR-FE-2011-0015481
CR-FE-2011-0015482
CR-FE-2011-0015483
CR-FE-2011-0016248
CR-FE-2011-0016247
CR-FE-2011-0016249

MOTION TO CONSOLIDATE

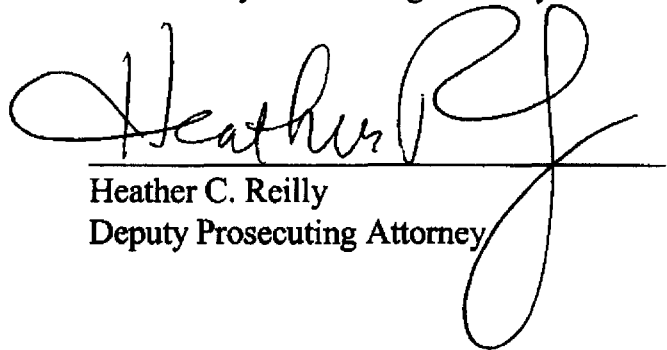
COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby moves this Honorable Court in the above entitled matter for an Order pursuant to Rule 13 of the Idaho Criminal Rules of Practice and Procedure consolidating criminal case CR-FE-2011-0015480 with criminal cases CR-FE-

HR
10-11-11

2011-0015481, CR-FE-2011-0015482, CR-FE-2011-0015483, CR-FE-2011-00
CR-FE-2011-00 , and CR-FE-2011-00 on the grounds
and for the reasons that the facts, evidence and witnesses are the same in each case. An
Order of consolidation would save witness and jury time and the expense for a separate and
later trial.

DATED this 11th day of October, 2011

GREG H. BOWER
Ada County Prosecuting Attorney



Heather C. Reilly
Deputy Prosecuting Attorney

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

7:30
OCT 11 2011
CHRISTOPHER D. RICH, Clerk
By DIANE OATMAN
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

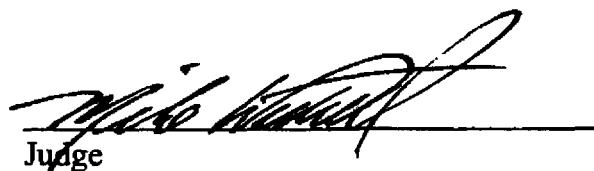
THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLYNDA LYNN GOGGIN, CADEE)
JO PETERSON, MORGAN)
CHRISTOPHER ALLEY, TASHINA M.)
ALLEY, HIEU NGOC PHAN,)
MATTHEW STEVEN TAYLOR and)
TONYA LAWAN WILLIAMS,)
)
)
Defendants.)
_____)

Case No. CR-FE-2011-0015480
CR-FE-2011-0015481
CR-FE-2011-0015482
CR-FE-2011-0015483
CR-FE-2011-0016248
CR-FE-2011-0016247
CR-FE-2011-0016249

ORDER TO CONSOLIDATE

This Motion for Consolidation having come before me and good cause being shown,
IT IS HEREBY ORDERED AND THIS DOES ORDER that the Motion to
Consolidate be granted.

DATED this 11 day of October, 2011


Judge

ORDER TO CONSOLIDATE (GOGGIN, PETERSON, ALLEY, ALLEY, PHAN,
TAYLOR and WILLIAMS)) Page 1

He
10-11-11

cc: ADA PA

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DENNIS J. SALLAZ, ISB No. 1053
G. SCOTT GATEWOOD, ISB No. 5982
DAVID J. SMETHERS, ISB No. 4711
SALLAZ & GATEWOOD, PLLC
Attorneys at Law
P.O. Box 8956
Boise, Idaho 83707
Telephone: (208) 336-1145
Facsimile: (208) 336-1263

NO. _____
A.M. _____ FILED P.M. 330

OCT 13 2011

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

-vs-

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CRFE-2011-0015482

STIPULATION FOR SUBSTITUTION
OF COUNSEL

COME NOW, Sallaz & Gatewood, PLLC, by and through Dennis J. Sallaz, and David H. Leroy, and do hereby stipulate and agree that the firm of Sallaz & Gatewood, PLLC shall substitute in as counsel for the above-named Defendant in the above-entitled matter.

Sallaz & Gatewood, PLLC hereby requests that all further pleadings and/or communications pertaining to this matter be directed to the above-captioned address.

DATED this 12th Day of October, 2011.


Dennis J. Sallaz
SALLAZ & GATEWOOD, PLLC


David H. Leroy

STIPULATION FOR SUBSTITUTION OF COUNSEL, Page 1

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this ~~13~~²⁴ Day of October, 2011, I caused a true and correct copy of the foregoing *STIPULATION FOR SUBSTITUTION OF COUNSEL* to be served upon the following by the method indicated below:

Ada County Prosecutor's Office
200 W. Front Street, Rm. 3191
Boise, ID 83702

☐ United States Mail
☒ Hand Delivery
☐ Facsimile:


Sallaz & Gatewood, PLLC

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:07:02 AM</u>		Arraignment Rights.
<u>9:07:07 AM</u>	Court	Takes roll. Advises the deft of their arraignment rights.
<u>9:12:41 AM</u>	End.	

Time	Speaker	Note
<u>9:38:09 AM</u>		CRFE11.15482 State v. Morgan Alley
<u>9:38:11 AM</u>	Court	Calls case deft present on bond with counsel Gatewood. State's atty Heather Reilly.
<u>9:39:29 AM</u>	Defendant	Waives formal reading. True name spelled correctly.
<u>9:40:06 AM</u>	Court	Advises the deft of the charges and the possible penalties.
<u>9:41:21 AM</u>	Defendant	Understands his right and the possible penalties.
<u>9:41:28 AM</u>	Personal Attorney	Set over - 3 weeks.
<u>9:41:36 AM</u>	Court	EOP November 8, 2011 at 9:00 am.
<u>9:41:51 AM</u>	State Attorney	Information Part II on this case at that time.
<u>9:42:09 AM</u>	End.	

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Entry of Plea
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NO. _____
A.M. _____ FILED P.M. 328

OCT 31 2011

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	MOTION FOR LEAVE TO
	)	FILE INFORMATION
Defendant.	)	PART II
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho and moves this Court for leave to file an Information, Part II, in the above-entitled matter based on the fact that the Defendant, MORGAN CHRISTOPHER ALLEY, was convicted of the felony crime of DELIVERY OF A CONTROLLED SUBSTANCE, in Ada County Case No. H0500944, on or about February 23, 2006.

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Therefore, the Defendant, MORGAN CHRISTOPHER ALLEY, having been previously convicted of DELIVERY OF CONTROLLED SUBSTANCE, pursuant to I.C. §37-2732(a), subjects Defendant to the enhanced penalties of I.C. §37-2739 and §37-2739A as follows:

I.

The said Defendant, having been convicted previously of a violation of I.C. Title 37 Chapter 27 should be sentenced accordingly pursuant to Idaho Code §37-2739, upon conviction of the charges contained in Count I and/or Count II of the Indictment as follow: *Any person convicted of a second or subsequent offense under this act, who is not subject to a fixed minimum term under section 37-2739B Idaho Code, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that is otherwise authorized, or both. I.C. §37-3739 (a).*

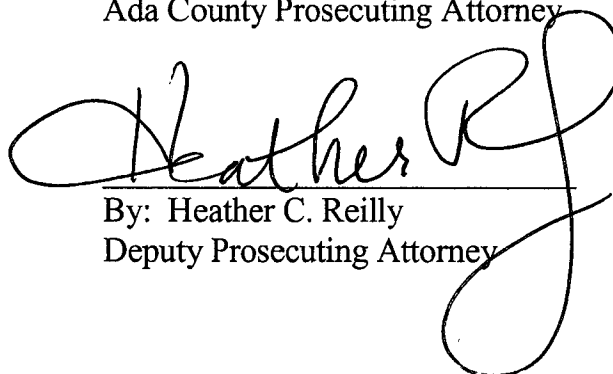
II.

The said Defendant, having been convicted within the past ten (10) years in a court in Ada County, Idaho, of the felony offense of dealing or selling a controlled substance, to-wit: Delivery of a Controlled Substance, pursuant to I.C. §37-2732(a), upon conviction of Count I in the Indictment, the Defendant should be sentenced accordingly pursuant to I.C. §37-2739A, as follow: *MANDATORY MINIMUM PENALTY. Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2729B, Idaho Code, and who has previously been convicted within the past ten (10) years in a court of the United States....of one or more felony offenses of dealing, selling, or trafficking in controlled substances...shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time of not less than three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. I.C. §37-2739A.*

RESPECTFULLY SUBMITTED this 31st day of October, 2011.

GREG H. BOWER

Ada County Prosecuting Attorney



By: Heather C. Reilly

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2011, I caused to be served, a true and correct copy of the foregoing Motion for Leave to File Information Part II upon the individual(s) named below in the manner noted:

Name and address: Dennis Sallaz, 1000 S Roosevelt, Boise, ID 83705

☒ By depositing copies of the same in the United States mail, postage prepaid, first class.

☐ By depositing copies of the same in the Interdepartmental Mail.

☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.

☒ By faxing copies of the same to said attorney(s) at the facsimile number: 336-1263



Legal Assistant

TIME RECEIVED
November 7, 2011 4:13:39 PM MST

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FAX No. 208 788 3918

P.002/002

FILED
P.M.

NOV - 7 2011

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83393
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FB-2011-15482

STIPULATION FOR SUBSTITUTION
OF COUNSEL

COMES NOW R. KEITH ROARK of The Roark Law Firm, LLP, and Dennis Sallaz of
Sallaz & Gatewood, PLLC, and hereby STIPULATE and AGREE that Mr. Roark shall be
substituted in as attorney of record for Defendant in the above-entitled action and Mr. Sallaz has
withdrawn. All future notices and correspondence should be sent to:

R. Keith Roark
The Roark Law Firm, LLP
409 North Main Street
Hailey, Idaho 83333

THE ROARK LAW FIRM

DATED this 7th day of November, 2011.

R. KEITH ROARK

SALLAZ & GATEWOOD, PLLC

DATED this 7th day of November, 2011.

DENNIS SALLAZ

STIPULATION FOR SUBSTITUTION OF COUNSEL - 1

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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 22 day of November, 2011, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

 J By hand delivering copies of the same to the office of the attorney(s) at his office.

 J By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

R. KEITH ROARK, ISBN 2230
 THE ROARK LAW FIRM, LLP
 409 North Main Street
 Hailey, Idaho 83333
 TEL: 208/788-2427
 FAX: 208/788-3918

Attorneys for Defendant.

NO. _____
 A.M. _____ P.M. _____
 FILED
NOV - 7 2011
 CHRISTOPHER D. RICH, Clerk
 By MAURA OLSON
 DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR-FE-2011-15482
Plaintiff,)	
	)	REQUEST FOR DISCOVERY
vs.)	
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	

TO: ADA COUNTY PROSECUTING ATTORNEY:

PLEASE TAKE NOTICE that the undersigned pursuant to Rule 16 of the Idaho Criminal Rules requests discovery and inspection of the following information, evidence and materials:

1. **Exculpatory or *Brady v. Maryland* Material.** Any material or information within the prosecuting attorney's possession or control, or which hereafter comes into the prosecuting attorney's possession or control, which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore. The obligations under this paragraph extend to material and information in the possession or control of members of prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or with reference to the particular case have reported, to the office of the prosecuting attorney.

2. **Rule 404(b) Evidence.** The general nature of evidence of other crimes,

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wrongs, or acts, the State intends to introduce at trial in accordance with the provisions of Rule 404(b) of the Idaho Rules of Evidence.

3. **Statements of defendant.** Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.

4. **Statement of a co-defendant.** Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.

5. **Defendant's prior record.** A full and complete copy of the defendant's prior criminal record, if any, as is or may become available to the prosecuting attorney.

6. **Documents and tangible objects.** Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody or control of the prosecuting attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtained from or belonging to the defendant.

7. **Reports of examinations and tests.** Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with this case, or copies thereof, within the possession, custody or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.

8. **State witnesses.** A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial,

together with any record of prior felony convictions of any such person which is within the knowledge of the prosecuting attorney and copies of any statements made by the prosecution witnesses or prospective prosecuting witnesses to the prosecuting attorney's agents or to any official involved in the investigatory process of the case unless a protective order is issued as provided in Rule 16(k). This request includes oral statements not otherwise written or recorded and includes as well notes made of such statements by any peace officer, prosecutor or agent of the prosecuting attorney.

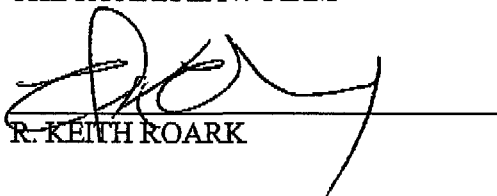
9. **Expert witnesses.** A written summary or report of any testimony that the state intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications. Disclosure of expert opinions regarding mental health shall also comply with the requirements of I.C. §18-207.

10. **Police reports.** All reports and memoranda which were made by a police officer or investigator in connection with the investigation or prosecution of the case.

NOTICE IS HEREBY GIVEN that this REQUEST is made pursuant to Rule 16 of the Idaho Criminal Rules and the Defendant objects to any so-called "informal response" to this request and demands that a full and formal response be filed in accordance with the before referenced Rule 16, I.C.R.

DATED this 8th day of November, 2011.

THE ROARK LAW FIRM


R. KEITH ROARK

CERTIFICATE OF SERVICE

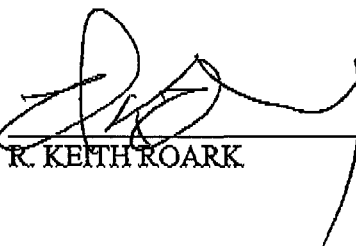
I HEREBY CERTIFY that on the 2nd day of November, 2011, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

✓ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

Time	Speaker	Note
<u>9:35:27 AM</u>		CRFE11.16247 State v. Matthew Taylor
<u>9:35:30 AM</u>	Court	Calls case deft present on bond with John Meienhofer. State's atty Heather Reilly.
<u>9:37:07 AM</u>	Personal Attorney	Not guilty.
<u>9:37:26 AM</u>	State Attorney	At least a week.
<u>9:38:20 AM</u>	Court	2 weeks.
<u>9:38:51 AM</u>	End.	
<u>9:38:54 AM</u>		CRFE11.16248 State v. Hieu Phan
<u>9:38:55 AM</u>	Court	Calls case deft present on bond with counsel Mr. DeAngelo.
<u>9:39:07 AM</u>	Personal Attorney	Stands silent.
<u>9:39:12 AM</u>	Court	Not guilty lea will be entered on his behalf.
<u>9:39:28 AM</u>	End.	
<u>9:39:31 AM</u>		CRFE11.15480 State v. Charlynda Goggin
<u>9:39:32 AM</u>	Court	Calls case deft present on bond with counsel Mr. Longeteig. Mr. Lewis is going to be sutstituting in and Mr. Lewis is now attorney of record for the deft.
<u>9:40:09 AM</u>	Personal Attorney	Not guilty.
<u>9:40:16 AM</u>	Personal Attorney	Would like to argue bond as soon as possible.
<u>9:40:30 AM</u>	State Attorney	Bond was previously argued.
<u>9:40:43 AM</u>	Court	Addresses counsel.
<u>9:41:00 AM</u>	End.	
<u>9:41:03 AM</u>		CRFE11.15481 State v. Cadee Peterson
<u>9:41:06 AM</u>	Court	Calls case deft present in custody with counsel Mr. Longeteig. State's atty Heather Reilly.
<u>9:41:46 AM</u>	Defendant	Paul Taver was supposed to be appointed today.
<u>9:42:17 AM</u>	Other	Eric Rolfsen - commented regarding the deft's statements.
<u>9:42:39 AM</u>	State Attorney	Statement regarding paperwork regarding her counsel.
<u>9:43:09 AM</u>	Court	Addresses Mr. Longeteig.
<u>9:43:34 AM</u>	Personal Attorney	Response.
<u>9:43:41 AM</u>	Defendant	Not guilty.
<u>9:43:51 AM</u>	Personal Attorney	Concur on that decision.
<u>9:44:00 AM</u>	Court	Not guilty.
<u>9:44:31 AM</u>	Court	The deft is sworn and examined on her own behalf for PD appointment.
<u>9:46:54 AM</u>	Court	Mr. Longeteig is released.

<u>9:47:08 AM</u>	Public Defender	Mr. Rolfsen is present with the deft.
<u>9:47:26 AM</u>	Public Defender	Not prepared to set for trial.
<u>9:48:29 AM</u>	Court	Addresses counsel regarding the consolidated cases.
<u>9:48:49 AM</u>	End.	
<u>9:49:06 AM</u>		CRFE11.15483 State v. Tashina Alley
<u>9:49:18 AM</u>	Court	Calls case deft present on bond with counsel Jim Ball.
<u>9:49:30 AM</u>	Personal Attorney	Stand silent.
<u>9:49:34 AM</u>	Court	Not guilty plea will be entered on her behalf.
<u>9:49:46 AM</u>	Court	Grand jury transcript - needs another order prepare regarding the language of the order.
<u>9:50:09 AM</u>	Court	Will enter the order upon receiving the appropriate order.
<u>9:50:36 AM</u>	Court	All counsel request a copy of the grand jury transcripts.
<u>9:51:19 AM</u>	End.	
<u>9:51:24 AM</u>		CRFE11.15482 State v. Morgan Alley
<u>9:51:26 AM</u>	Court	Calls case deft present on bond with counsel Ms. Elliott. State's counsel Heather Reilly.
<u>9:51:43 AM</u>	State Attorney	Statement regarding the motion to file an Information Part II. Provided to the Court.
<u>9:52:00 AM</u>	Personal Attorney	File a responsive pleading for the Information Part II. And plead not guilty.
<u>9:52:20 AM</u>	State Attorney	Requests that the deft be arraigned on the Information Part II.
<u>9:53:02 AM</u>	Court	Authorize the filing of the Information Part II.
<u>9:53:20 AM</u>	Defendant	Waives formal reading.
<u>9:53:26 AM</u>	Court	Advises the deft the possible penalties of the Information Part II.
<u>9:53:55 AM</u>	State Attorney	Response regarding the Information Part II.
<u>9:54:15 AM</u>	Court	Advises the deft of the charges and the possible penalties.
<u>9:57:03 AM</u>	Defendant	Understands the penalties.
<u>9:57:08 AM</u>	Personal Attorney	Not guilty and will object to the filing of the Information Part II.
<u>9:57:26 AM</u>	Court	Addresses counsel regarding scheduling a time for that.
<u>9:57:47 AM</u>	End.	
<u>9:57:47 AM</u>	Court	Will all counsel together - talk about a trial date.
<u>9:58:10 AM</u>	Court	Cut off date for motion practice.
<u>9:58:16 AM</u>	State Attorney	Response regarding discovery that has been provided.
<u>10:00:23 AM</u>	State Attorney	March trial date - perhaps April.
<u>10:02:02 AM</u>	Court	JT March 5, 2012 at 9:00 - all counsel agree to that date.
<u>10:02:27 AM</u>	Court	PT February 14, 2012 at 11:00 am.

<u>10:04:16 AM</u>	Court	All counsel agree to that day and time.
<u>10:04:35 AM</u>	Court	Cut off date for motions - pre-trial motions to be filed by January 20, 2012 - no objection by counsel. Status conference on January 24, 2012 at 11:00 to discuss hearings if needed.
<u>10:06:38 AM</u>	Mr. Meienhofer	Mr. Taylor - statement regarding cancer treatments that would be done out of state.
<u>10:07:13 AM</u>	Court	Addresses counsel.
<u>10:07:19 AM</u>	Court	Stipulate and then the Court would look at it.
<u>10:07:36 AM</u>	End.	

NOV - 8 2011

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

107
Entry of Plea
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Ryan L. Holdaway ISB #8289
Diane Pitcher ISB #8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (208) 852-2266
Email: ryan@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR FE 11-15482
v.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	NOTICE OF SERVICE
)	
Defendants.)	
)	

NOTICE IS HEREBY GIVEN that on the 7th day of November, 2011, the Defendant, Morgan Christopher Alley, by and through his attorneys of record, Diane Pitcher and Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, served a true and correct copy of the Defendant's First Supplemental Discovery Requests to Ada County Prosecutor's Office and Thomas Dominic along with a copy of this notice, to:

Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Fax: (208) 287-7709

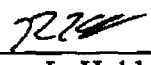
Thomas Dominic
Dominic Law Offices
500 W. Bannock

NOTICE OF SERVICE - 1

000056

Boise, ID 83706
Facsimile: (208) 342-6553

DATED this 7th day of November, 2011.



Ryan L. Holdaway
Attorney for Plaintiff

CERTIFICATE OF SERVICE

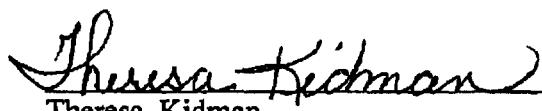
I HEREBY CERTIFY that on this 7th day of November, 2011, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

☐ Via U.S. Mail
☒ Via Facsimile
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via email

Thomas Dominic
Dominic Law Offices
500 W. Bannock
Boise, ID 83706
Facsimile: (208) 342-6553

☐ Via U.S. Mail
☒ Via Facsimile
☐ Via Overnight Mail
☐ Via Hand Delivery
☐ Via email



Theresa Kidman

NOTICE OF SERVICE - 2

000057

NOV 08 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
)	
vs.	)	I N F O R M A T I O N
)	
MORGAN CHRISTOPHER ALLEY,	)	P A R T I I
)	
Defendant.)	
)	

GREG H. BOWER, Prosecuting Attorney in and for the County of Ada, State of Idaho, who, in the name of and by the authority of said State, prosecutes in its behalf, in proper person, comes now before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and given the Court to understand and to be further informed that, as PART II of the Information on file herein, the Defendant, MORGAN CHRISTOPHER ALLEY, heretofore has been convicted of the following violation of I.C. Title 37 Chapter 27, Uniform Controlled Substance Act, to-wit:

Delivery of a Controlled Substance, I.C. 37-2732(a), which conviction subjects Defendant to the enhanced penalties of I.C. §37-2739 and §37-2739A.

I.

That the said Defendant, MORGAN CHRISTOPHER ALLEY, was convicted of the crime of Delivery of a Controlled Substance, I.C. §37-2732(a), a Felony, in the County of Ada, State of Idaho, by virtue of that certain Judgment of Conviction made and entered by Honorable Mike Wetherell in Case No. H0500944. Wherefore, the said Defendant, having been convicted previously of a violation of I.C. Title 37 Chapter 27 and should be sentenced accordingly pursuant to Idaho Code §37-2739, upon conviction of the charge contained in Count I and/or Count II of the Indictment.

II.

That the said Defendant, MORGAN CHRISTOPHER ALLEY, was convicted of the crime of Delivery of a Controlled Substance, I.C. §37-2732(a), a Felony, in the County of Ada, State of Idaho, by virtue of that certain Judgment of Conviction made and entered by Honorable Mike Wetherell in Case No. H0500944. Wherefore, the said Defendant, having been convicted within the past ten (10) years in a court in Ada County, Idaho, of the felony offense of dealing or selling a controlled substance, to-wit: Delivery of a Controlled Substance, pursuant to I.C. §37-2732(a), upon conviction of Count I in the Indictment, the Defendant should be sentenced accordingly pursuant to I.C. §37-2739A.



GREG H. BOWER
Ada County Prosecuting Attorney

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS NOV 21 2011

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-0015482

SCHEDULING ORDER

This matter came before the court on Tuesday, November 8, 2011 for entry of plea and with the defendant pleading not guilty the Court set this matter for Tuesday, February 14, 2012 at 11:00 AM for a Pretrial Conference and Monday, March 05, 2012 at 09:00 AM for a Jury Trial of the above named Defendant, MORGAN CHRISTOPHER ALLEY. The Court also set this matter for Status Conference on January 24, 2012 at 11:00 AM. The attorneys present were:

For the State: Heather Reilly

For the Defendant: R Keith Roark

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The 2 week day jury trial of this action shall commence before this court on **March 5, 2012**, at 9:00 a.m.
- 2) Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Dennis Goff
Hon. Daniel C. Hurlbutt, Jr.
Hon. James Judd
Hon. Peter McDermott
Hon. Duff McKee
Hon. Daniel Meehl
Hon. George R. Reinhart, III

Justice Gerald Schroeder
Hon. Kathryn A. Sticklen
Justice Linda Copple Trout
Hon. Darla Williamson
Hon. Barry Wood
Hon. W. H. Woodland

All Sitting Fourth District Judges

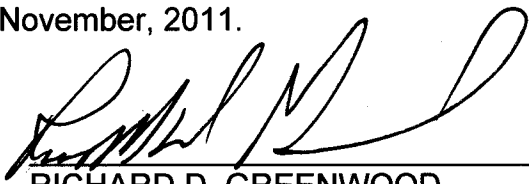
Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **February 14, 2012**, at 11:00 a.m. for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Exhibit and witness lists shall also be submitted to the Court via email at kajohnson@adaweb.net.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at DCTYLENI@adaweb.net. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 14 day of November, 2011.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of November, 2011, I mailed (served) a

true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

R KEITH ROARK
ATTORNEY AT LAW
409 NORTH MAIN STREET
HAILEY ID 83333
MAILED

CHRISTOPHER D. RICH
Clerk of the District Court

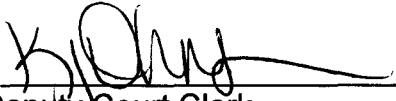
By 
Deputy Court Clerk

EXHIBIT LIST

The Plaintiff's are assigned NUMERICAL 1 – 100 and the defendant's are assigned ALPHABETICAL A-Z, AA, AAA etc. Please contact the clerk if multiple parties are involved, or if there are other problems.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Fran Morris, COURT REPORTER

CASE NO: **CR-FE-2011-0015482**

DATE(S): _____

STATE OF IDAHO

vs.

MORGAN CHRISTOPHER ALLEY

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
1						
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3						
A						
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C						

Exhibit 1

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NO. _____
A.M. _____ P.M. _____

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JAN 09 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Heather C. Reilly

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Id. 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-0015482

REQUEST FOR DISCOVERY

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are

REQUEST FOR DISCOVERY (ALLEY), Page 1

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within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

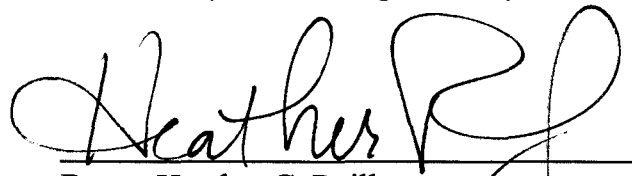
(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

(4) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 9th day of January, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney

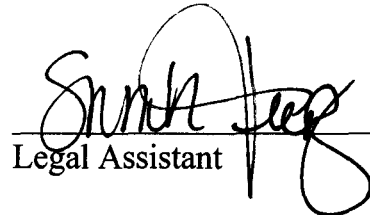

By: Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2012, I caused to be served, a true and correct copy of the foregoing Request for Discovery upon the individual(s) named below in the manner noted:

Name and address: R. Keith Roark, 409 N Main St., Hailey, ID 83333

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☒ By faxing copies of the same to said attorney(s) at the facsimile number: (208) 788-3918


Legal Assistant

107
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JAN 19 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

NOTICE OF HEARING

TO: CLERK OF THE COURT

YOU WILL PLEASE TAKE NOTICE that on the 24th day of January, 2012, at 11:00 o'clock a.m. of said day, or as soon thereafter as counsel can be heard, at the above named court at the Ada County Courthouse, in the City of Boise, County of Ada, State of Idaho, the above named Defendant will call up his Motion to Extend Time for Filing Motions.

DATED this 19th day of January, 2012.

THE ROARK LAW FIRM

R. KEITH ROARK

MO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of January, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

✓ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.


R. KEITH ROARK

JAN 19 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**MOTION TO EXTEND TIME
FOR FILING MOTIONS**

COMES NOW the Defendant in the above entitled action, Morgan Alley, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court for its ORDER amending the Pre-Trial Order previously filed in this action to permit an additional 30 days for the Defendants to file substantive motions in this case. This motion is based upon and supported by the AFFIDVIT OF R. KEITH ROARK filed contemporaneously herewith.

DATED this 19th day of January, 2012.

THE ROARK LAW FIRM


R. KEITH ROARK

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 19th day of January, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

☒ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

NO. _____ FILED _____
A.M. _____ P.M. _____

JAN 19 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FB-2011-15482

**AFFIDAVIT OF R. KEITH ROARK
IN SUPPORT OF MOTION TO EXTEND
TIME FOR FILING MOTIONS**

STATE OF IDAHO,

County of Blaine.

)
) ss.
)

R. KEITH ROARK, being sworn upon oath, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Idaho and represent the Defendant in the above entitled action.

2. I make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

3. On the January 10th, 2012 I received the State's SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY which, for the first time, contained a substantive disclosure of the materials requested pursuant to my REQUEST FOR DISCOVERY which was served on or about the 8th day of November, 2011.

4. There are several matters of substance in this action that may require the filing and disposition of pre-trial motions and the amount of discovery which has recently been

AFFIDAVIT OF R. KEITH ROARK IN SUPPORT OF MOTION TO EXTEND TIME FOR
FILING MOTIONS - 1

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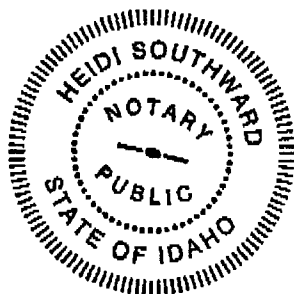
served upon the Defendant makes it simply impossible to respond with adequate preparation prior to the date previously set for filing of motions in this case, that being January 20, 2012.

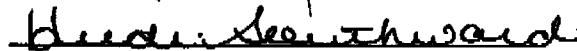
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 19th day of January, 2012.


R. KEITH ROARK

SUBSCRIBED AND SWORN to before me this 19 day of January, 2012.




NOTARY PUBLIC FOR IDAHO
Residing at: Hailey
Commission expires: 1-18-17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of January, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

☒ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

TIME RECEIVED
January 19, 2012 4:54:14 PM MST

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JAN 19 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 19th day of January, 2012, I served a true and correct copy of the NOTICE OF HEARING, MOTION TO EXTEND TIME FOR FILING MOTIONS and AFFIDAVIT OF R. KEITH ROARK IN SUPPORT OF MOTION TO EXTEND TIME FOR FILING MOTIONS upon the attorney(s) named below in the manner noted:

James Ball
Fax: (208) 424-3100

Paul Taber
Fax: (208) 429-1100

Rob S. Lewis
Fax: (208) 338-1273

Marco DeAngelo
Fax: (208) 608-5061

John Meienhofer
Fax: (208) 338-7808

DATED this 19 day of January, 2012.

THE ROARK LAW FIRM


Heidi Southward, Legal Assistant

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(ND)

NO. 10:35 AM
A.M.

JAN 20 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

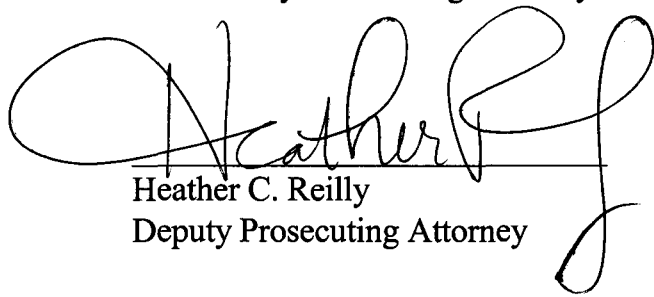
Case No. CR-FE-2011-0015482

**DISCOVERY
RESPONSE TO COURT**

COMES NOW, Heather C. Reilly Deputy Prosecuting Attorney, in and for the
County of Ada, State of Idaho, and informs the Court that the State has complied with the
Defendant's Request for Discovery.

RESPECTFULLY SUBMITTED this 19th day of January, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

Ar

Time	Speaker	Note
<u>11:02:19 AM</u>		CRFE11.15480 State v. Charlynda Goggin/CRFE11.15481/State v. Cadee Peterson/CRFE11.15482 State v. Morgan Alley/CRFE11.15483 State v. Tashina Alley/CRFE11.16247 State v. Matthew Taylor/CRFE11.16248 State v. Hieu Phan
<u>11:02:33 AM</u>	Court	Calls case. Counsel present with deft. Roark for M Alley, Meienhofer for Taylor, Ball for T Alley, Simmons for Peterson, DeAngelo for Phan, Lewis for Goggin. State's atty Heather Reilly.
<u>11:02:55 AM</u>	Mr. Keith Roark	Statement.
<u>11:03:52 AM</u>	Mr. Meienhofer	Argument on motion to continue of the trial.
<u>11:05:06 AM</u>	Mr. Ball	No objection to continue the trial.
<u>11:05:17 AM</u>	Mr. DeAngelo	No objection to the continuance.
<u>11:05:30 AM</u>	Ms. Simmons	Objects doesn't want to waive speedy trial. No objection to the continuance within her speedy time.
<u>11:06:18 AM</u>	Mr. Lewis	No objection to continue the trial.
<u>11:06:34 AM</u>	State Attorney	Argument regarding the motion to continue.
<u>11:08:04 AM</u>	Ms Simmons	Date from when the Informaton was filed.
<u>11:08:19 AM</u>	State Attorney	Response.
<u>11:11:54 AM</u>	Court	19-3501(3) - addresses counsel 6 months from arraignment of the Indictment.
<u>11:13:56 AM</u>	State Attorney	Response.
<u>11:14:08 AM</u>	Court	Addresses counsel regarding discovery and the lateness of it.
<u>11:14:27 AM</u>	State Attorney	Response to the discovery.
<u>11:16:06 AM</u>	Public Defender	Statement regarding the deft's bond amt.
<u>11:16:19 AM</u>	Court	Addresses the deft and counsel.
<u>11:17:17 AM</u>	State Attorney	Response.
<u>11:17:43 AM</u>	Court	Addresses counsel.
<u>11:18:12 AM</u>	Mr. Lewis	Response regarding the bond amount and is agreeable to the continuance.
<u>11:19:14 AM</u>	Court	Addresses counsel.
<u>11:19:23 AM</u>	Mr. Lewis	Request a continuance.
<u>11:19:26 AM</u>	Mr. Roark	Request a continuance.
<u>11:19:33 AM</u>	Mr. Ball	Request a continuance.
<u>11:19:35 AM</u>	Mr. DeAngelo	Request a continuance.
<u>11:21:34 AM</u>	Court	Addresses counsel regarding a potential date.
<u>11:22:07 AM</u>	Court	Response from counsel regarding the potential date.
<u>11:23:12 AM</u>	Public Defender	If Ms. Peterson is out f custody then would waive speedy trial.
<u>11:23:34 AM</u>	State Attorney	Addresses counsel.

11:23:39 AM	State Attorney	Response - not ROR bond reduction to which each deft can make. Ms. Peterson and Ms. Goggin bond reduction not ROR. Peterson \$25,000.00 and Goggin something similar to that.
11:26:33 AM	Court	Addresses each deft regarding their speedy trial rights.
11:29:16 AM	Mr. Taylor	Waives speedy trial.
11:29:29 AM	Ms. Goggin	Waives speedy trial.
11:29:47 AM	Ms Peterson	Will not waive speedy trial if remains in custody.
11:30:51 AM	Court	If trial is conitnued her bond will e reduced to \$25,000.00.
11:31:11 AM	Public Defender	Response - if reduced to \$25,000.00 then Ms. Peterson would waive speedy trial.
11:31:30 AM	Court	Addresses counsel.
11:31:34 AM	Court	Addresses the deft.
11:31:39 AM	Ms. Peterson	Will waive if bonded out.
11:31:46 AM	Mr. Alley	Waives speedy trial.
11:31:55 AM	Ms. Alley	Waives speedy trial.
11:32:11 AM	Mr. Phan	Waives speedy trial.
11:32:20 AM	Mr. DeAngelo	Requests that his bond be reduced so the payments are smaller.
11:32:48 AM	Court	Addresses counsel regarding reducing the bond.
11:33:06 AM	Court	Will decline reducing the deft's bond.
11:33:14 AM	Mr. Phan	Still will waive his speedy trial.
11:33:22 AM	Court	All defts have waived their speedy trial.
11:33:30 AM	Court	Charlynda Goggin will be reduced to \$25,000.00.
11:33:41 AM	Court	Cadee Peterson will be reduced to \$25,000.00.
11:33:53 AM	Court	JT May 14, 2012 and PT April 24, 2012 at 11:00 am.
11:35:07 AM	Court	Addresses counsel regarding deadlines.
11:35:15 AM	State Attorney	Response.
11:35:20 AM	Mr. Roark	Additional 21 days for discovery.
11:35:35 AM	Court	February 24, 2012.to have motions filed. Depending if needing hearings then heard by March 30, 2012 - do the best to hear by that date. Briefing to be filed with the motions per the local rules and briefs to be within 14 days March 9, 2012 and one week for any reply. Try to set hearings in weeks of March 19 and March 26.
11:37:38 AM	Court	Addresses counsel regarding 9 -2 schedule.
11:38:08 AM	Court	Addresses counsel regarding the transcript.
11:38:58 AM	Mr. Ball	Response.
11:39:26 AM	Court	Addresses counsel.
11:39:34 AM	End.	

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NO. 9
A.M. 9 FILED P.M.

FEB - 6 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 11-15482
)	
v.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	MOTION TO DISMISS AND NOTICE
	)	OF INTENT TO CALL WITNESSES
)	
Defendant.)	
_____)	

The Defendant, Morgan Alley, by and through his attorneys of record, Ryan L. Holdaway, of Pitcher & Holdaway, PLLC, and Keith Roark, of Roark Law Firm , LLP, hereby submits to this Court his Motion to Dismiss and Notice of Intent to Call Witnesses. This motion is supported by memorandum and affidavit filed concurrently herewith.

Mr. Alley intends to call the following witnesses as expert witnesses at the hearing:


1. Dr. Richard Parent;
2. Dr. Karl De Jesus; and
3. Dr. Owen McDougal.

MOTION TO DISMISS AND NOTICE OF INTENT TO CALL WITNESSES - 1

000079

The opinions of the identified experts have been attached to the Affidavit of Ryan L. Holdaway as exhibits 'G', 'H', and 'I'.

DATED this 1st of February, 2012



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 1st day of February, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather C. Reilly
Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

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Theresa Kidman

FEB - 6 2012

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 11-15482
)	
v.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION TO
Defendant.	)	DISMISS
)	
_____)	

The Defendant, Morgan Alley, by and through his attorneys of record, Ryan L. Holdaway, of Pitcher & Holdaway, PLLC, and Keith Roark, of Roark Law Firm , LLP, hereby submits to this Court his Memorandum in Support of Defendant's Motion to Dismiss. This memorandum is supported by affidavit filed concurrently herewith.

STATEMENT OF FACTS

Mr. Alley has been accused of, and charged with the manufacturing and distribution of a controlled substance, to wit: spice and/or potpourri. Indictment (Oct. 11, 2011). It is alleged that Mr. Alley's manufacturing and distribution ran from November 2011 through September 2011.

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS - 1

000081

E

Id. and Aff. Ryan L. Holdaway, Ex. 'J', (Affidavit for Search Warrant) (February 1, 2012) (hereinafter "Aff. Holdaway"). During the time that Mr. Alley was engaged in the practice of manufacturing and selling spice the law in Idaho was in flux. *See* Aff. Holdaway at Ex. 'A', 'B', and 'C'.

On October 15, 2010 Governor Otter signed into law a rule promulgated by the Idaho Board of Pharmacy in the previous month. Aff. Holdaway at Ex. 'A' and 'B'. The rule made it illegal to possess, manufacture, and/or distribute some chemicals that had been used to make spice products. *Id.* Those chemicals were CP 47,497, HU-210, JWH-018, JWH-073, JWH-200, JWH-081, and JWH-250. *Id.* The Board of Pharmacy rule remained in effect until March 10, 2011 when House Bill 139 was signed into law by Governor Otter and took immediate effect. *Id.* at Ex. 'C'. Whereas the Board of Pharmacy Rule prohibited chemicals by name the HB 139 prohibited substances by describing groups of chemicals and further prohibited certain chemical alterations to the prohibited chemicals. *Compare id.* at Ex. 'A' and 'K'.

In between the time the Board of Pharmacy promulgated its rule and the time HB 139 was signed into law many in the spice industry began looking for chemicals that would be compliant with Idaho law. Aff. Holdaway at 2, ¶¶3-7 and Ex. 'D'. The language of HB 139 was available and prior to its passage that language was passed along to Dr. Richard Parent along with a list of potential chemical candidates for use in spice. *Id.* After comparing the language of the bill with the chemical structures of the list provided to him, Dr. Parent was able to determine that some chemicals were not covered by the language of HB 139. *Id.* Specifically, Dr. Parent concluded that AM-2201 was not covered by the language. *Id.*

This information soon became common knowledge throughout Idaho and many spice products began using AM-2201 even before March 10, 2011.¹ To ensure compliance with the law many manufacturers and distributors would get their base chemicals tested to ensure that they were not "dirty" (i.e. containing chemicals covered under HB 139). *See id.* at Ex. 'E'. This had to be done since one cannot tell by simply looking at the chemical what the chemical is just as one cannot look at the final spice product and know what chemical(s) has been used in its production. As with many others in the industry Mr. Alley was actively engaged in the practice of testing chemicals shipped to him to ensure those chemicals did not contain prohibited substances *Id.* at Ex. 'J', p.7.

It appears from the State's discovery responses that Mr. Alley is not accused of possessing and/or distributing anything illegal prior to the implementation of HB 139. *See generally* Indictment and Aff. Holdaway at Ex. 'J'. It appears further that the primary instances of distribution the State is relying on in its case are samples of product taken and/or purchased at various times throughout September 2011. *Id.* The products at the heart of the investigation and State's case is a line of spice called Twizted Potpourri. *See generally* Aff. Holdaway at Ex. 'J'.

It seems the State ultimately came into possession of three different products from the Twizted Potpourri line: Fire, Ultra Hypnotic, and Blueberry. *Id.* at p.28. Those samples were obtained through dumpster diving and controlled buys. *Id.* at p.17-22 and 28.

Of the samples tested a total of three different chemicals have been identified by the State as being alleged controlled substances. *Id.* at p.21-22 and 33. On September 13, 2011 some

¹ In another case a defendant was charged for possession of spice in Pocatello, Idaho. *See State v. Austin*, Case No. CR 11-2313 MD, Bannock County. That spice contained AM-2201. The arrest and charge occurred five days prior to the passage and signing of HB 139. The case was ultimately dismissed. The presence of AM-2201 in spice prior to the passage of HB 139 demonstrates that AM-2201 was already in use by that time.

product was taken from a dumpster and some of it was tested. *Id.* at p.19-20. It appears the seized product was potentially a part of the Twizted Potpourri line but it is not clear which sub-product it was intended to be (i.e. Fire, Ultra-hypnotic, or Blueberry). *See id.* That sample was sent in for testing on September 14, 2011 and found to contain AM-2201 and JWH-210. *Id.* at p.23. Another sample obtained via dumpster diving on September 12, 2011 was ultimately found to contain only AM-2201. *Id.* at p.15-18 and 22. That product was identified as Fire Twizted Potpourri. *Id.*

Finally, on September 26, 2011 a controlled buy was made in which the State took control of one sample each of Fire, Ultra-hypnotic, and Blueberry. *Id.* at p.26-29 Each sample was tested. *Id.* at p.34. Fire was confirmed to contain only AM-2201 as was Blueberry. *Id.* Ultra Hypnotic was tested and came up as having JWH-019. *Id.* The end result is that it appears from the State's evidence that only two samples have ever come up with anything other than AM-2201. One sample showed JWH-210 and the other JWH-019 while all other samples came up with only AM-2201.

The State believes that AM-2201 is a controlled substance and makes no distinction between AM-2201 and other prohibited substances. The Defendant disagrees and has filed his motion to dismiss in contention that AM-2201 is legal in the State in of Idaho.

ARGUMENT

Mr. Alley has been charged on multiple counts for allegedly violating I.C. §§ 37-2732(a), 37-2732(f), 37-2734B, 37-2732(c), and 37-2734A. Indictment. All of those counts can only be sustained if the substance that is allegedly illegal is prohibited under I.C. § 37-2705 which defines what substances are Schedule I controlled substances. Consequently, if a substance is not listed under I.C. § 37-2705 it cannot be a crime under the other statutes identified above. AM-

2201 is not a Schedule I substance under I.C. § 37-2705 and is therefore not illegal. Furthermore, the language in I.C. § 37-2705 is unconstitutional for vagueness and is therefore unenforceable against Mr. Alley.

A. THE CHEMICAL AM2201 IS NOT COVERED OR PROHIBITED BY IDAHO CODE § 37-2705(d)(30)(ii) AND THEREFORE IS NOT ILLEGAL TO MANUFACTURE, DISTRIBUTE, AND/OR POSSESS.

As noted in the Statement of Facts section the language added to I.C. § 37-2705 via HB 139 describes chemical groups and further prohibits those groups of chemicals in specific various forms. Consequently, the language is highly technical and difficult to interpret or understand without relying on individuals with education, experience, and skills in the field of chemistry. For that reason Mr. Alley has retained the services of Dr. Richard Parent, Dr. Karl De Jesus, and Dr. Owen McDougal to assist in comparing the chemical structure of AM-2201 to those prohibited under I.C. § 37-2705. *Aff. Holdaway* at Ex. 'G', 'H', and 'I'. Each expert was hired independent of the other and no expert was provided with the opinions of the other in an effort to assist them in taking a neutral approach to their determinations and conclusions. *Id.* at 2, ¶13. The Defendant made every effort to avoid alerting the doctors from what conclusions the Defendant was hoping for. *Id.* Considering that disparate and conflicting opinions would only bolster the Defendant's argument of vagueness the Defendant really was not concerned with the ultimate conclusions of the doctors.

Each doctor/expert has returned his opinion to the Defendant. *Id.* at Ex. 'G', 'H', and 'I'. The experts have unanimously, though independently, concluded that in fact AM-2201 is not covered by the language of I.C. § 37-2705. *Id.* The reasons for the experts conclusions are detailed in their reports that have been provided to this Court. *Id.* To avoid simply regurgitating

their explanations Mr. Alley simply incorporates those opinions into this memorandum by reference.

The message is clear, AM-2201 is a unique chemical that contains a structure that is not identified nor prohibited under I.C. § 37-2705. As such Mr. Alley cannot be prosecuted for manufacturing, distributing, and/or possessing AM-2201 or products containing AM-2201. All aspects of the State's case that rely on and assert Mr. Alley was breaking the law by virtue of AM-2201 must be dismissed. The result is that the State may only proceed on its case on the one sample taken from the dumpster on September 13, 2011 that showed the presence of JWH-210 as well as the one controlled buy sample showing JWH-019.

However, the State's case regarding the JWH-210 and JWH-019 should also potentially fail should Mr. Alley succeed in showing the language of I.C. § 37-2705 is unconstitutionally vague. Should Mr. Alley prevail on those grounds there is no law in at the State level prohibiting JWH-210 and JWH-019. Therefore the State's case would have to be dismissed in its entirety.

B. IDAHO CODE § 37-2705(d)(30)(ii) IS UNCONSTITUTIONALLY VAGUE BECAUSE A PERSON OF COMMON INTELLIGENCE CANNOT DETERMINE WHAT CONDUCT IS BEING PROHIBITED AND AMBIGUITIES EXISTS THAT OPEN THE DOOR TO ARBITRARY AND DISCRIMINATORY ENFORCEMENT OF THE LAW.

Mr. Alley has presented this Court with the conclusions of a highly qualified experts in the field of chemistry and toxicology. Aff. Holdaway at Ex. 'G', 'H', and 'I'. Dr. Parent, Dr. De Jesus, and Dr. McDougal have found that AM-2201 is not covered by I.C. § 37-2705 as alleged by the State. *Id.* Mr. Alley assumes at this point that the State intends to rebut the conclusions of his experts. However, in doing so the State provides this Court with the very proof the Defendant needs to demonstrate the vagueness of HB 139 as codified in I.C. § 37-2705.

Vague statutes violate the due process rights of an individual under the federal constitution as applied through the Fourteenth Amendment and also violates the due process rights of Idahoans under the Idaho Constitution. *Grayned v. City of Rockford*, 408 U.S. 104 (1972) and *City of Lewiston v. Mathewson*, 78 Idaho 347 (1956). Typically a statute that “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning, and differ as to its application” is unconstitutionally vague. *Capital Care Center v. Idaho Department of Health and Welfare*, 129 Idaho 773, 776, (1997)(internal citations omitted). In the case of a criminal statute there is less tolerance for vague language than what might otherwise be permitted under a “civil or non-criminal statute.” *Id.* (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 716 (1990)). Indeed, when analyzing a civil or non-criminal statute the language is not vague so long as “persons of ordinary intelligence can derive ‘core meaning’ from them.” *Kolar v. Cassia County Idaho*, 142 Idaho 346, 354 (2005). Perhaps this is because it has long been recognized that “in most English words and phrases there lurk uncertainties.” *State v. Bitt*, 118 Idaho 584, 585 (1990)(citing *Rose v. Locke*, 423 U.S. 48, 50 (1975)).

However, noticeably absent from the vagueness test for criminal statutes is the “core meaning” element. Compare *Capital Care Center*, 129 Idaho at 776 and *Kolar*, 142 Idaho at 354. Therein lay the distinction between the tolerance level in vagueness between the two types of statutes. It is not enough in the criminal context that the party accused of a criminal act should have understood the “core meaning” of the statute. Rather, the language must be sufficiently clear that the accused should have known the precise conduct being prohibited or mandated. Therefore, when it comes to criminal statutes there can be little tolerance of the “uncertainties” that “lurk” in “word and phrases” of the English language.

This is particularly true where the nature of the words being used are of a scientific nature and describe chemical families and groups. In the context of HB 139 as codified the language of the statute must necessarily be of a highly technical nature and therefore very specific as to its meaning and applicability. It is substantially different from other standards commonly used but inherently ambiguous such as “reasonable.” Where a highly technical statute fails to account for certain aspects of the behavior or thing described, or if it creates contradictions in its descriptions, it necessarily creates confusion as even those trained in the area being described struggle to understand the technical language as used.

In the present case there can be little doubt that the language as employed by the Idaho legislature creates confusion and uncertainty as to its meaning. Dr. Parent noted that numerous chemicals could or could not be covered by the statute depending on the interpretation of a very specific section of the bill language that he identified as “1c” which the Defendant understands to be to I.C. § 37-2705(d)(30)(i)(c). Aff. Holdaway at Ex. 'D'. Each expert provided a written opinion detailing the reasons he believes AM-2201 is not covered by I.C. § 37-2705 yet the State apparently disagrees as it has yet to dismiss the charges against the Defendant. If even trained and experienced chemists cannot come to agreement as to what is and what is not covered under this law certainly a person of “common intelligence” cannot be expected to know. Furthermore, the very nature of the disagreement demonstrates that “men of common intelligence must necessarily...differ as to its application.” That is by definition vague.

Naturally Mr. Alley does not mean to suggest that all a defendant needs to do to strike down a law as vague is simply provide an alternate definition and thereby create confusion. If such were the case no criminal law would be left standing. However, in the present case the Defendant is not simply creating confusion or torturing the language to find a contradiction. Mr.

Alley's experts are not hired guns paid to find a flaw in the law. To the contrary, so far every expert retained by Mr. Alley has universally concluded that AM-2201 is not covered.

Dr. Parent's services were initially obtained prior to the present law ever taking effect for the purpose of finding a way to remain compliant with the law. Aff. Holdaway at Ex. 'D' and 'E'. For that purpose Dr. Parent was provided with a host of different chemicals to analyze in the context of HB 139. *Id.* It was only because Dr. Parent concluded that AM-2201 was not covered that the manufacturers and retailers switched to that chemical in the first place. Consequently, this case is not an issue of a defendant trying to stir up contradictions and vagueness after the fact. Rather it is one in which the Defendant was attempting to be compliant with the law but the vagueness of the law left him open to prosecution.

It is also not sufficient for the State to assert that there is no reasonable alternative to the language of HB 139. Other states have likewise taken a stab at banning forms of spice but in a manner different from Idaho. *See* Utah Code Annotated § 58-37-4.2 as amended by House Bill 23. For instance, at the same time Idaho was passing its law Utah was passing its own. *Id.* There the legislature named numerous chemicals that were banned. *Id.* Idaho did the same thing the first time it addressed this issue when the Board of Pharmacy promulgated its rule. Aff. Holdaway at Ex. 'A'.

The difference between describing a chemical and naming it is significant. AM-2201 is a good example of that. There is only one chemical that is AM-2201. Any variation is by definition no longer AM-2201. Consequently, one need only ban AM-2201 by the name of AM-2201 to effectively make it illegal. A description of a chemical is significantly different. I.C. § 37-2705(d)(30)(ii)(a) states, "any compound structurally derived from 3 – (1 – naphthoyl) indole or 1H – indole – 3- yl – (1 – naphthyl) methane by substitution at the nitrogen atom of the indole

ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2 – (4 – morpholinyl) ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.” Such a description intentionally covers thousands of potential chemicals but creates confusion as to which chemicals are actually intended to be covered--the present case is an on point example.

Mr. Alley’s Counsel has no training in chemistry. But even Counsel and Mr. Alley can understand that if something has AM-2201 in it, and that substance has been criminalized by name, then any product containing AM-2201 is illegal. However, neither Counsel, nor Mr. Alley, nor most people in the U.S. population, can understand if a product they are possessing contains a chemical potentially covered by I.C. § 37-2705(d)(30)(ii)(a) without first seeking professional input such as what Dr. Parent has done in the present case. That is because the individual would always have to work backwards by first discovering what chemical is in the spice and then asking a chemist to determine if such a chemical is covered in the description. Even then a vagueness issue may not arise until there is a situation such as the present one where even the chemists cannot agree on whether a specific chemical falls under the purview of the description or not.

The result is that the State is in an unenviable dichotomy. If it elects to legislate the chemicals by name it will likely never be able to make the list long enough to capture all of the potential chemicals that can be used. If it goes with a description in an attempt to regulate the chemicals it runs into vagueness issues such as the present one and very possibly is overbroad as many of the thousands of chemicals being described are unintentionally criminalized. While such a position is understandably frustrating for the State, the American values and jurisprudence in the constitutional law of this nation will not permit a State to promulgate criminal laws that

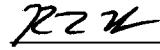
affect one's liberty in a manner that is vague or overbroad even when the alternative may seem unsatisfactory to the State. The freedoms and rights of the individuals must be paramount over the State's interest in creating sweeping legislation to avoid having to address similar issues in future legislative sessions. In short, the burden of legislating spice chemicals by name may be a heavy one for the legislature but that is the role, duty, and obligation of the legislature. When it chooses to circumvent its duties through legislation such as HB 139 it should anticipate and even expect that the likely outcome is a law that is unconstitutional under doctrines of vagueness and overbreadth. The legislature cannot pass that burden on to its citizens in a way that threatens their liberties and rights through vague legislation such as HB 139. But it has, and now the liberty and rights of Mr. Alley are being threatened by the State even when Mr. Alley had every reason to believe he was conforming his conduct to the law. This should not be permitted to happen.

CONCLUSION

Stated simply, AM-2201 is a chemical that is not prohibited under I.C. § 37-2705. Furthermore, I.C. § 37-2705(d)(30) is unconstitutionally vague. It is unconstitutionally vague because a person of common intelligence cannot determine from its language what is being prohibited. It is unconstitutionally vague because it permits the arbitrary and/or discriminatory enforcement of its provisions as to those chemicals which are at the periphery of the described chemicals in the statute. Those chemicals where it is not clear whether they are covered or not would then be determined by the officers, prosecutors, courts, and juries to be either illegal or legal based upon their own interpretations of the statute. Consequently, the clarification to the law would be done at the expense of the defendants in both their money and their liberty. Such a vague statute cannot be permitted to stand under the U.S. Constitution or the Idaho Constitution.

For that reason Mr. Alley respectfully request that the case against him be dismissed, or at a minimum that all charges relating to AM-2201 be dismissed and that this Court find that AM-2201 is not illegal in the State of Idaho.

DATED this 1st of February, 2012



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 1st day of February, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather C. Reilly
Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

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Theresa Kidman

FEB - 6 2012

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 11-15482
)	
v.)	
	)	AFFIDAVIT OF RYAN L.
MORGAN CHRISTOPHER ALLEY,	)	HOLDAWAY RE: SUPPORT OF
	)	DEFENDANT'S MOTION TO
Defendant.	)	DISMISS
_____)	

STATE OF UTAH)
) ss.
County of Cache)

Ryan L. Holdaway, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.

AFFIDAVIT OF RYAN L. HOLDAWAY RE: SUPPORT OF DEFENDANT'S MOTION TO DISMISS - 1

000093

2. I am the attorney of record for Mr. Alley and as such have personal knowledge regarding the facts of this case.

3. In addition to Mr. Alley my firm and I have represented a number of spice related clients and issues over the last 2½ years that has provided me with personal knowledge concerning some spice issues relevant to the present case.

4. Following October 15, 2010 and prior to March 10, 2011 a number of spice clients requested that my firm locate and retain an expert who could compare a list of chemicals with the proposed language of HB 139.

5. Pursuant to that request our firm located and retained Dr. Richard Parent.

6. Our firm also sent to Dr. Parent the proposed list along with the language of HB 139.

7. Dr. Parent reviewed the proposed chemicals and language of HB 139 and sent back a list of the proposed chemicals along with his conclusions.

8. Dr. Parent concluded that AM-2201 was not covered by HB 139.

9. Shortly thereafter, and prior to March 10, 2011, many individuals in the spice industry known to your affiant began using AM-2201 in place of other chemicals in their products.

10. In order to ensure that the chemicals being received were not dirty many in the spice industry seek independent testing of their products.

11. One cannot tell from simply looking at the base chemical what the chemical is.

12. One cannot tell from simply looking at spice and/or potpourri products what chemical has been used in the product.

13. In hiring the experts for the present case none of them were provided with the findings and conclusions of the others in an effort to maintain the neutral and independent nature of the experts.

AFFIDAVIT OF RYAN L. HOLDAWAY RE: SUPPORT OF DEFENDANT'S MOTION TO DISMISS - 2

000094

14. Attached to this affidavit are true and accurate copies of the following:

- a) A printout from the Board of Pharmacy website detailing the substances to be added to the controlled substances list as Exhibit 'A';
- b) A printout from the Board of Pharmacy website containing a press release from the Board of Pharmacy showing Governor Otter signed into law the new rule on October 15, 2010 as Exhibit 'B';
- c) A printout from the Idaho Legislature website showing the legislative showing the voting and passage history of HB 139 as Exhibit 'C';
- d) A copy of the list of chemicals provided to Dr. Parent for review and his conclusions as to those chemicals under HB 139 as Exhibit 'D';
- e) A copy of a letter generated by Dr. Parent at the request of some clients to verify that certain products were compliant with the language of HB 139 as Exhibit 'E';
- f) A copy of Dr. Parent's opinion regarding the legality of spice under HB 139 and/or I.C. § 37-2705 as Exhibit 'F';
- g) A copy of Dr. Parent's curriculum vitae as Exhibit 'G';
- h) A copy of Dr. McDougal's opinion letter as Exhibit 'H';
- i) A copy of Dr. De Jesus's opinion letter as Exhibit 'I';
- j) A copy of the Affidavit for Search Warrant as Exhibit 'J'; and
- k) A copy of HB 139 as Exhibit 'K'.

Further your affiant sayeth naught.

DATED this 1st day of February, 2012

R L
Ryan L. Holdaway

SUBSCRIBED AND SWORN to before me this 1st day of February, 2012



Theresa Kidman
Notary Public for _____
Residing at: _____
My Commission Expires: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

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Theresa Kidman
Theresa Kidman

EXHIBIT A

000097

IDAPA 27
TITLE 01
CHAPTER 01

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

434. SCHEDULED CONTROLLED SUBSTANCES

01. Article II, Schedule I. Unless specifically excepted or unless listed in another schedule, the following substances, their derivatives, salts, isomers, and salts of isomers with similar chemical structure and pharmacological activity, shall be listed in Schedule I, under Article II, Title 37, Chapter 27, Idaho Code. (9-30-10)T

a. CP 47,497 and homologues: 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol. (9-30-10)T

b. HU-210: [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol]. also known as 6aR-trans-3-(1,1-Dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol. (9-30-10)T

c. JWH-018: 1-pentyl-3-(1-naphthoyl)indole, also known as Naphthalen-1-yl-(1-pentylindol-3-yl)methanone. (9-30-10)T

d. JWH-073: 1-butyl-3-(1-naphthoyl)indole, also known as Naphthalen-1-yl-(1-butylindol-3-yl)methanone. (9-30-10)T

e. JWH-200: 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole. (9-30-10)T

f. JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone. (9-30-10)T

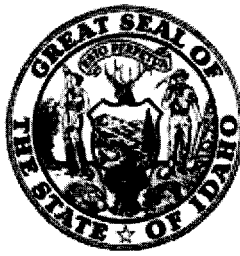
g. JWH-250: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone. (9-30-10)T

02. ARTICLE II, SCHEDULE II. Unless specifically excepted or unless listed in another schedule, any injectable liquid that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers, shall be listed in Schedule II, under Article II, Title 37, Chapter 27, Idaho Code.

~~(7-1-93)~~(9-30-10)T

EXHIBIT B

000099



C.L. "BUTCH" OTTER
GOVERNOR

NEWS RELEASE

FOR IMMEDIATE RELEASE

October 15, 2010

10:073

CONTACT: Jon Hanian
(208) 334-2100

GOVERNOR APPROVES SPICE RULE, APPLAUDS LOCAL MEASURES

(BOISE) – After providing an opportunity for the public and retailers to take the appropriate actions, Governor C.L. "Butch" Otter today approved a temporary rule proposed by the State Board of Pharmacy adding chemicals commonly found in a substance known as "Spice" to the list of controlled substances in Idaho.

The 2011 Legislature will consider permanently adding the chemicals in Spice, which mimic the active ingredient in marijuana, to Idaho's list of controlled substances. But with growing community concerns, the Governor said it was important to be aggressive in addressing the problem.

"I appreciate the local communities that already have acted to impose their own restrictions on Spice. Along with the Board of Pharmacy and the State Office of Drug Policy, our local units of government and law enforcement agencies are working together to get this dangerous substance off our streets," Governor Otter said. "We are the 14th state to take action like this, and I'm confident we won't be the last. No doubt producers will try to skirt the ban, but I encourage all Idahoans to join me in protecting the health and safety of our citizens."

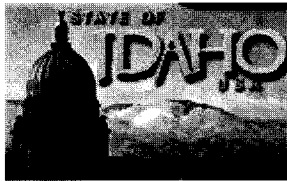
Spice is an herbal plant mixture soaked in chemical compounds. The compounds were developed to mimic the active ingredient in marijuana – tetrahydrocannabinol (THC). One chemical under the proposed rule – HU-210 – is considered a controlled substance by the U.S. Drug Enforcement Administration (DEA). The other compounds commonly found in Spice are either listed as chemicals of concern by the DEA and are in the process of being temporarily listed under the Federal Controlled Substance Act or are analogues of such compounds.

Spice also is packaged as K2, Genie, Ultra, Summit, Blonde, Yucatan Gold, Bombay Blue, Black Mamba and many other names.

A survey of Idaho hospitals between February and August reported more than 80 emergency room visits in that six-month period. Spice is sold as an incense and "not for human consumption" as a means to avoid legal requirements and regulations.

EXHIBIT C

000101



LEGISLATURE

Home • State of Idaho • Site
Map

Search Site

Legislation, Statutes & Constitution



Statutes & Rules • Publications • Prior Sessions • Related Links

HOUSE BILL 139

[Printer Friendly Version](#)

[Full Bill Information](#)

Individual Links:

[Bill Text](#)

[Statement of Purpose / Fiscal Note](#)

[Legislative Co-sponsors](#)

H0139 by JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

UNIFORM CONTROLLED SUBSTANCES - Amends existing law relating to Uniform Controlled Substances to identify additional substances to be classified in Schedule I.

02/10House intro - 1st rdg - to printing

02/11Rpt prt - to Jud

02/16Rpt out - rec d/p - to 2nd rdg

02/172nd rdg - to 3rd rdg

02/213rd rdg - **PASSED - 69-0-1**

AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bayer, Bedke, Bell, Bilbao, Black, Block, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon(Chadderdon), Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs(Wheeler), Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Higgins, Jaquet, Killen, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan, Moyle, Nessel, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith(30), Smith(24), Stevenson, Takasugi(Batt), Thayn, Thompson, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- None

Absent and excused -- McGeachin

Floor Sponsor - Luker

Title apvd - to Senate

02/22Senate intro - 1st rdg - to Jud

03/03Rpt out - rec d/p - to 2nd rdg - to 3rd rdg

03/043rd rdg - **PASSED - 35-0-0**

AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis,

000102

Fulcher, Goedde, Hammond, Heider, Hill, Keough,
LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie,
Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser,
Stegner, Stennett, Tippets, Toryanski, Vick, Werk,
Winder

NAYS -- None

Absent and excused -- None

Floor Sponsor - Davis

Title apvd - to House

03/07To enrol

03/08Rpt enrol - Sp signed

Pres signed

To Governor

03/09Delivered to Governor on 03/08

03/10Governor signed

Session Law Chapter 47

Effective: 03/10/11

Legislative Services Office • P.O. Box 83720 • Boise, ID • 83720-0054
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EXHIBIT D

000104

L11-189 NOTES.1 - ONLY LOOKED AT UNDELINE SECTION OF THE
LEGISLATION

HB 139 PROPOSED LEGISLATION - Appears to be copied from UK Misuse of Drugs
Act but fails to list the JWH numbers as indicated in the UK document

CURRENTLY IN USE

- AM-2201 cas 335161-24-5; a naphthoyl indole with N-alkyl fluoro group
\$ by virtue of the fluoro group, AM-2201 does not appear to be covered by
 the HB 139 proposed legislation
\$ marketed as Bonsai fertilizer root stimulator
 http://www.isell.com/chantilly_va-rs4359/home.garden-c1242/lawn.garden-c1262/gardening.plants-c1265/ad166827.html
\$ herbal incense[<http://www.ioffer.com/si/spice+incense?price=5>]
JWH-210 cas 824959-81-1(JWH-210) and cas 619294-47-2; a naphthoyl indole
\$ illegal in Sweden
\$ this is covered by the HB 139 proposed legislation
\$ has been shown to have beneficial effects preventing amyloid beta proteins
 involved in Alzheimer's Disease and preventing cognitive impairment and
 loss of neuronal markers[Ramírez, B.; Blázquez, C.; Gómez Del Pulgar, T.;
 Guzmán, M.; De Ceballos, M. (2005). "Prevention of Alzheimer's disease
 pathology by cannabinoids: neuroprotection mediated by blockade of
 microglial activation". The Journal of neuroscience : the official journal of
 the Society for Neuroscience 25 (8): 1904–1913.
 doi:10.1523/JNEUROSCI.4540-04.2005. PMID 15728830.]
\$ marketed as home fragrance [<http://www.ioffer.com/c/Home-Fragrances-1014506?page=1>]
\$ marketed as incense [<http://www.ioffer.com/si/spice+incense?price=5>]

CONSIDERED FOR FUTURE USE

- CP-55,940 cas 83002-04-4; a phenol derivative
\$ this is covered by the HB 139 proposed legislation
\$ used for plants; sold as herbal incense; studied for its effect on Alzheimers
 <http://abouttesting.testcountry.com/2011/01/cp-55940-what-it-is-and-drug-testing.html>
\$ suggested use in suntan lotions and skin lotion moisturizers; herbal body
 lotion
AM-905 no cas number; a chromenol derivative like HU-210
\$ this is not covered by the HB 139 proposed legislation but there is language
 in 1c of HB 139 that needs clarification
\$ nothing much in terms of use in other products
AM-906 no cas number; a chromenol derivative like HU-210
\$ this is not covered by the HB 139 proposed legislation but there is language

in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

AMG-36 no cas, a chromenol derivative

\$ not covered by HB 139 but there is language in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

O-2545 cas 874745-42-3; a chromenol derivative; dibenzopyranol derivative

\$ not covered by the HB 139 proposed legislation but there is language in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

AM-411 no cas, a chromenol derivative

\$ not covered by the HB 139 proposed legislation but there is language in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

JWH-051 no cas, a chromenol deriv; HU-210 without phenol group

\$ not covered by the HB 139 proposed legislation but there is language in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

AM-694 cas 335161-03-0; a benzoyl indole derivative

\$ not covered by the HB 139 proposed legislation based only on the presence of a fluorene on the nitrogen alkyl group

\$ sold as a bonsai fertilizer and in incense and bath salts

O-1057 no cas; a cannabinal; chromenol derivative

\$ not covered by HB 139 proposed legislation based on presence of a nitrile group on the alkyl chain attached at position 3 but there is language in 1d of HB 139 that needs clarification

\$ nothing on other products which contain this compound

JWH-398 no cas number; a naphthoyl indole

\$ this is covered by the HB 139 proposed legislation

\$ sold as herbal incense

AM-938 no cas number; a chromenol derivative

\$ not covered by HB 139 by virtue of the substitution at the 6 position but there is language in 1c of HB 139 that needs clarification

\$ nothing on other products which contain this compound

AM-4030 no cas number; a chromenol derivative

\$ not covered by HB 139 by virtue of the substitution at the 6 position but there is language in 1c of HB 139 that needs clarification

§ nothing on other products which contain this compound

PROPOSED BILL HB 119 - error in structure of Cathinone - nomenclature

4 MECno cas number; 4-methyletheathinone;

§ covered by the HB 119 proposed legislation

§ sold as plant food - plant growth stimulant

4 FMCcas 7589-35-7; a methylamino propanone derivative(cathinone deriv)

§ covered by the HP 119 proposed legislation

§ nothing on other products which contain this compound

ZX-1 cas 687603-66-3; methylenedioxyprovalerone(MDPV)

§ covered by the HP 119 proposed legislation

§ sold as herbal incense

PROBLEM - These materials may be in lotions and soaps but they don't advertise the fact that their products contain the compounds.

SPICE LOTIONS

§ hemp seed oil in a body lotion [<http://www.beautyofasite.com/p-16352-hempz-treats-pumpkin-spice-latte-lotion.a.spx>]

§ hemp oil shown to relieve symptoms of eczema(atopic dermatitis); [Callaway, JC, Schwab U, Harvima I, Halonen P, Mykkänen O, Hyvönen P & Järvinen T (2005). Efficacy of dietary hempseed oil in patients with atopic dermatitis. Journal of Dermatological Treatment 16: 87-94.]

§ hemp oil can contain as much as 4.66ug/g delta-9-THC

[<http://www.hempreport.com/issues/16/docs/labanalysis.pdf>]

§ possibly used in perfumes, hand and body lotions, candles, bath salts

§ Blue Water Lilly lotion

§ K2 lotion [http://www.getcanadiandrugs.com/view_product.php?ProductID=2828]

EXHIBIT E

000108



CONSULTANTS IN TOXICOLOGY

April 28, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway, PLLC
1191 East Iron Eagle Drive
Eagle ID 83616

Dear Mr. Holdaway:

Re: Ciccarello, et al. (Spice)
Our File: L11-789

You have requested my evaluation of a naphthoyl indole compound to determine if it would be restricted by the legislation proposed in the State of Idaho, specifically House Bill No. 139 entitled "An Act Relating to Uniform Controlled Substances; Amending Section 37-2705, Idaho Code, to Identify Additional Substances to be Classified in Schedule I; and Declaring an Emergency". The specific naphthoyl indole which is of interest to you is one that contains a fluoride on the sixth position of a linear hexane group (an alkyl group) attached to the N-position of a naphthoyl indole.

House Bill No.139 contains the following verbiage relating to naphthoyl indoles.

"ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by **alkyl**, **alkenyl**, **cycloalkylmethyl**, **cycloalkylethyl** or **2-(4-morpholinyl)ethyl**, whether or not further substituted in the indole ring to any extent , whether or not substituted in the naphthyl ring to any extent."

The particular portion of this paragraph that is pertinent to your case is that which refers to "alkyl" substitution on the nitrogen atom of the indole. This refers to any alkyl group but does not include a substituted alkyl group such as a fluorine group or any other substitution. You could interpret "alkyl" as being any alkyl group with any substitutes, but these additional possibilities are not obviously included in the bill. Thus, interpreting the bill as written, indicating an alkyl group but not a substituted alkyl group, I would assume that the fluoro-alkyl compound of interest to you is not covered in this bill.

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NEW ORLEANS, LA 70151
PHONE 504 529 - 7500
FAX 225 926 - 0638

000109

Mr. Ryan L. Holdaway

April 28, 2011

Page 2

You have provided me with a list of products containing this naphthoyl indole including the following: Strawnana, Passion, Train Wreck, Blueberry, Bubblegum, Hawaiian, 420, Tropical, and Strawberry. You have analyzed these materials as Batch/Lot Number HZ-HB139032511, sample date 4/1/2011 at Research Triangle Park Laboratories in Raleigh, North Carolina, (File: A&J Dist 11-447-1) and found that the material analyzed does not contain the following compounds at levels of 0.05% or more: JWH-018(AM-678), JWH-073, JWH-200, CP 47,497, CP 47 497-C8, HU-210/211, Delta-THC, JWH-015, JWH-019, JWH-081, JWH-122, JWH-203, JWH-210, JWH-250, CP-55,940, WIN-48098, WIN-5512-2, HU-308, HU-331, AM-694, RCS-4, RCS-8(BTW-9, SR-18). Testing was conducted according to FDA cGMP for Dietary Supplements Final Rule, June 25, 2007, by this DEA Registered Analytical Laboratory. I assume that this analysis was carried out in order to demonstrate the purity of the previously named products containing the naphthoyl indole compound and the finding that they do not contain any substances which are regulated under House Bill No 139.

I hope that this information is helpful to your client.

Sincerely,



Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp

Z:\SECRET\ACT-DEG\411-789 Holdaway\Holdaway 411-789 rpt ltr 2011.001

000110

EXHIBIT F

000111



June 9, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway, PLLC
1191 East Iron Eagle Drive
Eagle ID 83616

Dear Mr. Holdaway:

Re: Austin (Spice)
Our File: L11-789

You have requested that I describe in graphic form why AM 2201 is not covered by the Idaho House Bill No. 139, Section I, 37-2705, Schedule I(d)30(ii)[a]. For your convenience, I have attached the scanned section of the bill in question (Attachment I), including the chemical structures of AM 2201, naphthalene and indole. Note that each of the positions on naphthalene and indole rings are numbered both on the individual compounds and on the AM 2201. The portion of the AM 2201 in question here is the five carbon hydrocarbon with a terminal fluorine atom all attached to the nitrogen of the indole ring at position 1. The bill cited above covers various groups attached to the indole nitrogen at position 1, but does not cover compounds containing the attached fluorine entity. Consider the terminology in the cited bill which reads, "... by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent."

Focusing on the substitution on the indole nitrogen, all substituents cited are hydrocarbons with the exception of the 2-(4-morpholinyl) ethyl group. Other than that specific entity, no other functionalized hydrocarbon is claimed. By citing the morpholinylethyl group as a substituent, one can infer that this is a specific substituent which differs from the other hydrocarbon substituents cited in the bill and that it is an exception to the cited hydrocarbons. Thus, the 5-fluoropental substituent, which is attached to the indole nitrogen of AM 2201, is also an exception; is not specifically cited; and is therefore not covered by this legislation.

Additional language in the cited bill "whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent" tends

Mr. Ryan L. Holdaway
June 9, 2011
Page 2

to be overly broad and encompassing thousands of compounds with various patterns of substitution by various groups in the seven available positions on the naphthalene ring and the five positions on the indole ring. Considering all possible substitution patterns and the vast number of varied substituents, it would not be difficult to describe many thousands of compounds that are claimed by this bill. Attachment II will provide you with some examples of the various groups that could be attached in various mono-, di- and poly-substitution patterns of both the naphthalene and indole rings, thereby resulting in many thousands of compounds being covered by this bill.

I hope that this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'RAP', with a stylized flourish at the end.

Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp

Attachments

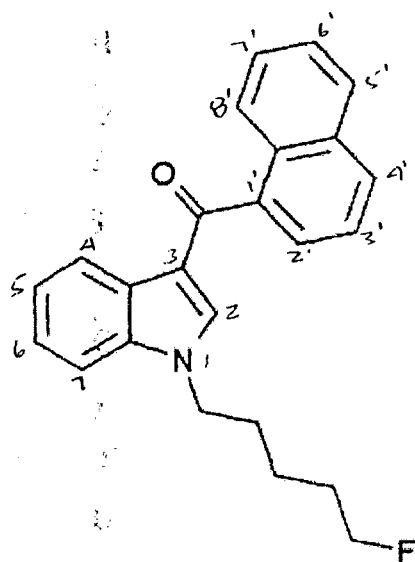
Z:\SECRET\ACCT-LEGAL\11-789 Holdaway\Holdaway 111-789 ltr 2011.001

ATTACHMENT I

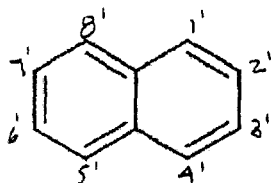
ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

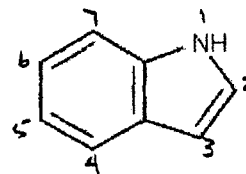
AM 2201



NAPHTHALENE



INDOLE RING



ATTACHMENT II

[0008] R_6 signifies, halogen, cyano, nitro, C_1 - C_6 -alkyl, C_3 - C_6 -cycloalkyl, C_2 - C_6 -alkenyl, C_2 - C_6 -alkynyl, halo- C_1 - C_6 -alkyl, halo- C_3 - C_6 -cycloalkyl, halo- C_2 - C_6 -alkenyl, halo- C_2 - C_6 -alkynyl, hydroxy, C_1 - C_6 -alkoxy, C_2 - C_6 -alkenyloxy, C_2 - C_6 -alkynyloxy, C_3 - C_6 -cycloalkyloxy, halo- C_1 - C_6 -alkoxy, halo- C_2 - C_6 -alkenyloxy, halo- C_2 - C_6 -alkynyloxy, halo- C_3 - C_6 -cycloalkyloxy, SH, C_1 - C_6 -alkylthio, C_3 - C_6 -cycloalkylthio, halo- C_1 - C_6 -alkylthio, halo- C_3 - C_6 -cycloalkylthio, C_1 - C_6 -alkylsulfinyl, C_3 - C_6 -cycloalkylsulfinyl, halo- C_1 - C_6 -alkylsulfinyl, halo- C_3 - C_6 -cycloalkylsulfinyl, C_1 - C_6 -alkylsulfonyl, C_3 - C_6 -cycloalkylsulfonyl, halo- C_1 - C_6 -alkylsulfonyl, halo- C_3 - C_6 -cycloalkylsulfonyl, SO_3R_7 , $SO_2NR_7R_8$, NR_7R_8 , COR_7 , $COOR_7$, $CONR_7R_8$, SF_5 , unsubstituted or substituted aryl, unsubstituted or substituted arylalkyl, unsubstituted or substituted aryloxy, unsubstituted or substituted arylthio, unsubstituted or substituted heteroaryl, unsubstituted or substituted heteroarylalkyl, unsubstituted or substituted heteroaryloxy, or unsubstituted or substituted heteroarylthio, the aryl, arylalkyl, aryloxy, arylthio, heteroaryl, heteroarylalkyl, heteroaryloxy and heteroarylthio substituents in each case independently from each other being selected from the group consisting of halogen, nitro, cyano, hydroxy, C_1 - C_6 -alkyl, halo- C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, halo- C_1 - C_6 -alkoxy, NH_2 , C_1 - C_6 -alkylamino, di- C_1 - C_6 -alkylamino, C_1 - C_6 -alkylthio, COR_7 , $COOR_7$ and $CONR_7R_8$, whereby the signification of R_6 may be identical or different for all significations of n ;

EXHIBIT G

000116



CONSULTANTS IN TOXICOLOGY

February 17, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway
1191 E. Iron Eagle Drive, Suite 200
Eagle ID 83616

Dear Mr. Holdaway:

In accordance with our recent conversation, my curriculum vitae is enclosed for your review.

While I have been president and principal toxicologist of Consultox for the past 26 years, Consultox has offered independent consulting services providing litigation support for both the plaintiff and defense in matters related to causation. We have participated in cases involving solvents such as trichloroethylene (TCE) and benzene, welding fumes, heavy metals such as hexavalent chromium, lead, arsenic, manganese and nickel, pesticides such as methyl parathion, lindane, chlorpyrifos, and diazinon, prescription and OTC drugs such as Baycol, Vioxx, phenylpropanolamine (PPA) and other Ephedra alkaloids, Pantopaque and Fen-Phen, industrial chemicals such as creosote, PCB's, dioxins, arsenic, PVC and vinyl chloride monomer, irritant gases such as chlorine, ammonia, and sulfur dioxide, hazardous waste sites, alcohol (DUI), illicit drugs, tobacco smoke and breast implants, among others. We have been involved heavily in health/exposure assessment surveys of large populations including sampling of blood, urine, and hair and have organized efforts and experts to address the complex problems of mass tort litigation. Additional information can be found on our web site (www.consultox.com).

My hourly rates are \$500 for case preparation and travel time and \$600 for testimony, both deposition and trial. Initial case work is charged against a \$3,000 nonrefundable retainer which is required to open a file; thereafter, time is billed monthly. Should travel to your location be required, there will be no charge for travel time.

Thank you for your interest in our services. I welcome the opportunity to be of assistance to you.

Sincerely,

Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp
Enclosure

Z:\SECRET\MKT-LEG 2011\Holdaway.id.PF

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000117

Richard A. Parent, PhD, DABT, FATS, RAC, ERT

Consultant in Toxicology

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CURRICULUM VITAE



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Fax (207) 563-8990

Tel (504) 529-7500
Fax (225) 926-0638
email: rparent@consulttox.com

EDUCATION:

Ph.D., Rutgers University, New Brunswick, New Jersey, 1963
M.S., Northeastern University, Boston, Massachusetts, 1959
B.S., University of Massachusetts, Amherst, Massachusetts, 1957

CERTIFICATIONS:

Board Certified, Fellow of the Academy of Toxicological Sciences, 2000 to present
Board Certified, American Board of Toxicology, 1981 to present
Board Certified, Regulatory Affairs Certification Board, 1993 to present
Registered Toxicologist in France, 1999 to present
Registered Expert Toxicologist in Europe (EUROTOX), 1999 to present
Certified Specialist - Intoxilyzer 5000, 2006

PROFESSIONAL POSITIONS:

- President, Consulttox, Limited, Damariscotta, Maine, and New Orleans, Louisiana, 1984-present
- Member, Board of Directors, CCA Associates, Baton Rouge, Louisiana, 1984-1989
- Director, Life Sciences Division, Gulf South Research Institute, New Iberia, Louisiana, 1982-1984
- Vice President & Director, Food & Drug Research Laboratories, Inc., Waverly, New York, 1979-1982
- Consultant Toxicologist, International Union of Airline Flight Attendants, 1977-1979
- Staff Toxicologist, Xerox Corporation, Rochester, New York, 1969-1979
- Board of Directors & Consulting Toxicologist, Delta Laboratories, Rochester, New York, 1969-1979
- Senior Research Chemist, American Cyanamid, Bound Brook, New Jersey, 1959-1969

LANGUAGES:

- Fluent in French and English

PROFESSIONAL SOCIETIES AND HONORS:

- Fellow, Academy of Toxicological Sciences, 2000-present
- Regulatory Affairs, Certified by the Regulatory Affairs Certification Board, 1993, Re-Certified, 2004, 2007, 2009
- Diplomate, American Board of Toxicology, 1981-present (recertified 1987, 1992, 1997, 2002, 2007)
- Member, Société Française de Toxicologie, 1989-present
- Member, EUROTOX (European Society of Toxicology), 1990-present
- Regulatory Affairs Professional Society, 1992-present
- Chairman, Roundtable of Toxicology Consultants, 1985-1988, Founder 1984, member to present
- American College of Toxicology, 1978-present; Animals in Research Committee, 1988-1989
- Member, Cosmetic Toiletries & Fragrance Association (CTFA), 1995-2000
- Member, Drug Information Association, 1997-2000
- International Society of Regulatory Toxicology and Pharmacology, 1992-present
- Founding Editor, *Journal of the American College of Toxicology*, Part B, *Acute Toxicity Data*, 1989-1997
- Editorial Board, *Journal of Applied Toxicology*, 1980-2008, North American Editor, 1988-1998
- Section Editor, *Journal of the American College of Toxicology*, 1988-1999
- Editorial Board, *International Journal of Toxicology*, 1999-present
- Editorial Board, *Toxicology Methods*, 1990-2002
- Editorial Board, *Toxicology Mechanisms and Methods*, 2002-present
- Society of Toxicology, 1979-present
 - President and Founder, Specialty Section on Epidemiology, 1998-2000
 - Placement Service, Co-director 1982-1984; Director 1984-1986
 - Communications Task Group, 1983-1984
 - Vice-President, Regulatory and Safety Evaluation Specialty Section, 1993-1995
 - President, Regulatory and Safety Evaluation Specialty Section, 1995-1996
 - Carcinogenesis and Risk Assessment Specialty Section, 1984-present
 - Inhalation Toxicology Specialty Section, 1986
 - Technical Committee, 1990
 - Long Range Planning Committee, 1986-1987
 - Anniversary Committee, 1985-1986
 - Mid-Atlantic Chapter, 1981-1982
 - Northeast Chapter, 1994
 - Gulf Coast Chapter, 1982-1990
- Association for the Advancement of Medical Instrumentation, 1993-1996
- ASTM Committee F4 on Medical and Surgical Materials and Devices, Subcommittee on Biocompatibility, 1992-1994
- Member, Society for Biomaterials, 1993-1997
- ASTM Committee E-34 on Occupational Safety & Health
 - Vice Chairman, 1977-1979; Chairman, 1979-1984
 - Award for Outstanding Service, October 19, 1983
 - Member at Large, 1989-1999
- International Society for the Study of Xenobiotics, 1982-present; emeritus 2002-present
- Editorial Board, *Journal of the Society of Cosmetic Chemists*, 1975-1990

PROFESSIONAL SOCIETIES AND HONORS: (cont'd.)

- American Cyanamid Educational Award, 1962-1963
- American Men & Women of Science
- Who's Who in the East, 1982
- 49th Edition of Who's Who, 1995
- National Science Foundation Fellow, 1958-1959, 1960-1961
- New York Academy of Sciences, AAAS
- Sigma Xi, Phi Lambda Upsilon, ACS
- Who's Who in Science and Engineering, 1996
- Who's Who in Executives & Professionals, 1997
- Who's Who in the World, 1998

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:

- Invited Lecture, "Toxicological Consequences of the Gulf Oil Spill on Workers and Residents of the Coast", Presented at the 61st Annual Toxicology Roundtable, Elkhart Lake, Wisconsin, September 27, 2010.
- Chairperson, Informational Session, "Recent Advances in Pulmonary Surfactant Toxicology Assessment and Therapeutics", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 9, 2010.
- Session Chairman and Organizer of Continuing Education Course, "Comparative Biology of the Lung", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 7, 2010.
- Invited Speaker, "Chinese Drywall - Toxicity, Risk and Causation," Chinese Drywall HB Litigation Conference, New Orleans, Louisiana, November 11, 2009.
- Invited Speaker, Continuing Education Course, "Consulting in Toxicology Expert Testimony" 30th Annual Meeting, American College of Toxicology, Palm Springs, California, November 1, 2009.
- Session Chairman and Organizer of Continuing Education Course, "Epidemiology for Toxicologists," 47th Annual Meeting, Society of Toxicology, Seattle, Washington, March 16, 2008.
- Session Chairman, Toxicology in the Courtroom: Establishing Causation, A Roundtable Discussion, Richard A. Parent, Bernard Goldstein and David Eaton, Society of Toxicology Meeting, San Diego, California, March 6, 2006.
- Invited Speaker, 230th National American Chemical Society Meeting, Washington, DC. "Where Toxicology Meets the Law, Focus on Dioxin" Mock Trial, August 31, 2005.
- Invited Speaker, Roundtable of Toxicology Consultants, Summer Meeting, "Structuring an Expert Report", Gaithersburg, Maryland, August, 27, 2005.
- Toxic Torts: Toxicologists in the Courtroom, Co-chair and presenter; platform session, Society of Toxicology Meeting, New Orleans Louisiana, March 8, 2005
- Invited Lecture, "Causation, the Bedrock of Toxic Tort Litigation", Roundtable of Toxicology Consultants, Williamsburg, Virginia, October 16, 2003.
- Invited Lecture, "Causation, the Bedrock of Toxic Tort Litigation", Connecticut Defense Lawyers Association, Quinnipiac University School of Law, Hamden, Connecticut, March 28, 2003.
- Co-Chairman and Organizer of Continuing Education Course, "Environmental Epidemiology and Toxicology: the Interface and the Interactions" 39th Annual Meeting of the Society of Toxicology, Philadelphia, Pennsylvania, March 19, 2000.
- Invited Lecturer, "Mealy Publications Conference on Fen-Phen", St. Regis Hotel, Philadelphia, Pennsylvania, October 18-19, 1999.
- Organized "Electromagnetic Fields: Toxicology, Epidemiology and N.I.E.H.S.", 38th Annual Meeting of the Society of Toxicology, New Orleans, Louisiana, March 17, 1999.
- Co-Chairman and Organizer of Continuing Education Course "Epidemiology for Toxicologists: II. Methodology", 36th Annual Meeting of the Society of Toxicology, Cincinnati, Ohio, March 9, 1997.
- Co-Chairman and Organizer of Continuing Education Course "Epidemiology for Toxicologists", 35th Annual Meeting of the Society of Toxicology, Anaheim, California, March 10, 1996.
- Faculty member, Short Course "Safety Evaluation of Medical Devices: Testing, Materials and Biocompatibility", Center for Professional Advancement, East Brunswick, New Jersey, July 21-23, 1993; Amsterdam, The Netherlands, September 12-16, 1993.
- Member ASTM F4 Committee on Medical and Surgical Materials and Devices, Subcommittee on Biocompatibility, 1992-present
- Chairman of Symposium, "Opening the Doors to the Agencies", Eleventh Annual Meeting, American College of Toxicology, Orlando, Florida, October 31, 1990.
- Invited Paper "Problems in and Approaches to Getting Acute Toxicity Data Into the Literature", Meeting, American College of Toxicology, Williamsburg, Virginia, October 30, 1989.
- Invited Paper "The Role of the Toxicologist", Environmental and Toxic Tort Litigation Section, American Trial Lawyers Association Convention, Seattle, Washington, July 24, 1984.
- Contributed to and co-authored "Abandoned Waste Site Cleanup Cost Allocation Model", Copyright 1983 by G&E Engineering, November, 1983.
My part in the structuring of this model involved setting up criteria by which one could assess the relative hazard and toxicity of the chemicals present at the dumpsite. As a result of my efforts, I was called as an expert witness for one of the defendants in hazardous waste site case (USA versus Petroleum Processors of Louisiana, et. al.).
- Invited Presentation "Career Planning in Toxicology", 27th Annual Meeting of the Society of Toxicology, Dallas, Texas, February, 15-19, 1988.
- Invited Paper "Toxicology and the Material Safety Data Sheet", Symposium, Hazard Communication II, American Society of Testing and Materials (ASTM), Williamsburg, Virginia, March 16-18, 1988.
- Invited Paper "Career Options in Toxicology", University of Mississippi, Medical Center, Jackson, Mississippi, April 25, 1988.
- Member of the following groups within ASTM Committee E34 on Occupational Safety and Health.
 - E34.2 Sub-Committee on Toxicology and Medicine, 1976, chairman, 1977-1979.
 - Elected Member at Large, 1989.
 - Task Group E34.02 on Carbon Disulfide, 1979-1981 (ASTM E752-81 Issued).
 - Task Group E34.05 on Insoluble Chromates, 1978-present (ASTM E848-82 Issued).
 - Task Group E34.06 on Methoxy Ethanol, 1978-1982.
 - Task Group E34.08 on Asbestos, 1978-1985 (ASTM E849-82 Issued).

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES: (cont'd.)

Task Group E34.10 on Ozone, 1978-1980 (ASTM E591-80 Issued).

Task Group E34.13 on Styrene, 1978-1985.

Task Group E34.15 on Core Physical Exam, 1980-1985.

Task Group E34.16 on Amorphous Silica, 1980-1985.

Task Group E34.17 on Material Safety Data Sheets, 1981-1983.

E34.4 Subcommittee on Hazard Communications, 1983-1985.

My membership in all of these task groups and the sub-committee involved the assessment of toxicological effects of the chemicals for the purpose of assigning levels of exposure that would be considered safe within the occupational environment. I contributed to the content and interpretation of the toxicology literature and participated extensively in discussions leading to the setting of occupational exposure limits for each chemical.

- Invited Paper, "The Toxicology of Ozone", presented at the Conference on Air Quality, Meteorology, and Atmospheric Ozone, University of Colorado, Boulder, Colorado, August 5, 1977.

CONTINUING EDUCATION:

- 2010 . . "Leachables and Extractables: Best Practices to Identify and Qualify Leachables in Drug Products", Annual Meeting, American College of Toxicology, Continuing Education Course, Baltimore, Maryland, November 7, 2010.
- 2010 . . "ICH Initiatives for Conducting Pharmaceutical Preclinical Safety Studies: New and Revised Guidelines and Challenges", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 7, 2010.
- 2009 . . "Study Monitoring at CRO," 30th Annual Meeting, American College of Toxicology, Palm Springs, California, November 1, 2009.
- 2009 . . "Topics in Ethics: Conflicts of Interest - Real or Imagined? - PBDEs As a Case Study", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2009 . . "Immunotoxicology for Toxicologists", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2009 . . "New Frontier in Metal Toxicology: Genetic Susceptibility, Early Diagnosis, and Related Biological Indices", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2007 . . "REACH: A New Framework for the Regulation of Chemicals", 46th Annual Meeting of the Society of Toxicology, Charlotte, North Carolina, March 25, 2007.
- 2007 . . "Genomics: From Novice to Expert, From Challenges To Promises", 46th Annual Meeting of the Society of Toxicology, Charlotte, North Carolina, March 25, 2007.
- 2006 . . "Intoxilyzer Breath Alcohol Testing for Lawyers", Industrial Training & Design, Limited, Portland, Maine, October 29-31, 2006.
- 2006 . . "Reproductive Toxicity Testing: Study Design, Evaluation, Interpretation and Risk Assessment", Society of Toxicology, San Diego, California, March 6, 2006.
- 2005 . . "Clinical Pathology - The Granddaddy of Biomarkers", Society of Toxicology, New Orleans, Louisiana, March 6, 2005.
- 2003 . . "Practical Application of Genomic and Proteomic Technologies to Drug Safety Evaluation", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "The Human Genome and Toxicology", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "Molecular Epidemiology and Biomarkers", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "Database and Information Research" given by J Kittleston-Hart at the Roundtable of Toxicology Consultants Seminar Series on October 17, 2003 in Williamsburg, Virginia.
- 2003 . . "Safety Pharmacology Studies for Human Pharmaceuticals" given by Dr. C. B. Spainhour at the Roundtable of Toxicology Consultants Seminar Series, Williamsburg, Virginia, October 17, 2003.
- 2003 . . "Fundamentals of Risk Assessment and Applications of Recent Methodologies to Difficult Problems", Society of Toxicology, 42nd Annual Meeting, Salt Lake City, Utah, March 9, 2003.
- 2002 . . "A Practical Approach to Blood and Lymphoid Tissues (BLT) in Toxicological Assessments", Society of Toxicology, 41st Annual Meeting, Nashville, Tennessee, March 17, 2002.
- 2001 . . "Web Resources for Toxicologists," 40th Annual Meeting, Society of Toxicology, San Francisco, CA, March 25, 2001.
- 1999 . . "Target Organ Toxicology: Respiratory Tract Dosimetry and Response to Inhaled Toxicants" and "Application of Transgenic Models in Toxicology," 38th Annual Meeting of the Society of Toxicology, New Orleans, Louisiana, March 14, 1999.
- 1998 . . "Making the Transition: Converting to PubMed and Internet GratefulMed to Search N.L.M. Databases," Brown University, Providence, Rhode Island, March 7, 1998.
- 1997 . . "Epidemiology for Toxicologists: II. Methodology", 36th Annual Meeting of the Society of Toxicology, Cincinnati, Ohio, March 9, 1997.
- 1997 . . "The Mechanics of Preparing INDs & NDAs & FDA Regulations", Institute for Applied Pharmaceutical Sciences, Boca Raton, Florida, October 20-22, 1997.
- 1996 . . "Epidemiology for Toxicologists", 35th Annual Meeting of the Society of Toxicology, Anaheim, California, March 10, 1996.
- 1995 . . "Cytokines and Growth Factors in Toxicity" and "Advances in Risk Extrapolation: Dose response assessment", 34th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 5, 1995.
- 1994 . . "Sensory System Toxicology," 33rd Annual Meeting of the Society of Toxicology, Dallas, Texas, March 13, 1994.
- 1992 . . "Basic and Applied Hematology" and "Case Studies in Risk Assessment: Emphasis on Exposure," 31st Annual Meeting of the Society of Toxicology, Seattle, Washington, February 23, 1992.
- 1992 . . "Medical Device Regulation, . . . Europe and North America", Boston, Massachusetts, September 10, 11, 1992.
- 1991 . . "Risk Communications: Problems, Perceptions and Practice" and "Novel Techniques in Inhalation Toxicology", Continuing Education Courses, 30th Annual Meeting of the Society of Toxicology, Dallas, Texas, February 25-March 1, 1991.
- 1990 . . "Concepts in Cell Biology" and "Carcinogen Risk Assessment", Continuing Education Courses, 29th Annual Meeting, Society of Toxicology, Miami, Florida, February 12-16, 1990.
- 1989 . . "Concepts in Molecular Biology", Continuing Education Course, 28th Annual Meeting, Society of Toxicology, Atlanta, Georgia, February 27-March 3, 1989.

CONTINUING EDUCATION: (cont'd.)

- 1988 . . "Respiratory Tract Toxicology by Classes of Agents" and "Immunotoxicology", Continuing Education Courses, 27th Annual Meeting, Society of Toxicology, Dallas, Texas, February 15-19, 1988.
- 1987 . . "Clinical Chemistry of Laboratory Animals", Continuing Education Course, 26th Annual Meeting, Society of Toxicology, Washington, DC, February 2, 1987.
- 1986 . . "Developmental Toxicology" and "Hematological Laboratory Animals", Continuing Education Courses, 25th Annual Society of Toxicology Meeting, New Orleans, Louisiana, March 3-7, 1986.
- 1985 . . "Inhalation Toxicology" and "Renal Toxicology", Continuing Education Courses, 24th Annual Society of Toxicology Meeting, San Diego, California, March 18-22, 1985.
- 1984 . . "Neurotoxicology Training Course" and "Current Concepts and Mechanisms of Carcinogenicity", Continuing Education Courses, 23rd Annual Society of Toxicology Meeting, Atlanta, Georgia, March 12-16, 1984.
- 1983 . . "Consensus Workshop on Formaldehyde", Little Rock, Arkansas, October 3-6, 1983.
- 1983 . . "Dermatotoxicology" and "Male Reproductive Tract Toxicology", Continuing Education Courses, 22nd Annual Meeting, Society of Toxicology, Las Vegas, Nevada, March 7-11, 1983.
- 1982 . . "Basic Concepts of Immunotoxicology", Continuing Education Course, 21st Annual Meeting, Society of Toxicology, February 22-26, 1982.
- 1981 . . "Inhalation Toxicology", A Refresher Course, 20th Annual Meeting, Society of Toxicology, San Diego, California, March 1-5, 1981.
- 1980 . . "Principles of Toxicology, Basic Kinetics", A Refresher Course, 19th Annual Meeting, Society of Toxicology, Washington, DC, March 9-13, 1980.

APPOINTMENTS AND CONSULTING ACTIVITIES:

- Consultant, Tennessee Valley Authority, TVA Coal Ash Grant Review FY 2010, January 2010.
- Consultant, National Institutes of Health, NIAID, Safety Evaluation of Anti-Infective Agents, Bethesda, Maryland, February 12, 2007.
- Consultant, National Cancer Institute, Preclinical Pharmacology & Toxicology of New Cancer Preventing Agents, Bethesda, MD, 2003.
- Elected President, Epidemiology Specialty Section, Society of Toxicology, 1999-2000.
- Appointed, Chairperson, Poster Session on Eye Toxicity, Society of Toxicology, 1997 Meeting, Cincinnati, Ohio, March 10, 1997.
- Elected President, Regulatory and Safety Evaluation Specialty Section of Society of Toxicology, 1996-1997.
- Appointed, Co-Chairman, Symposium on Clinical and Pre-clinical Evaluation of Drug Abuse Liability, American College of Toxicology Annual Meeting, Williamsburg, Virginia, October 25, 1994.
- Appointed, Co-Chairman, Poster Session on Regulatory Toxicology, Society of Toxicology, Annual Meeting, Dallas, Texas, March 15, 1994.
- Appointed, Co-Chairman, Platform Session on Risk Assessment, Society of Toxicology, Annual Meeting, Seattle, Washington, February 25, 1992.
- Appointed, Co-Chairman, Platform Session of Reproductive Toxicology, Society of Toxicology, Annual Meeting, Miami Beach, Florida, February 15, 1990.
- Appointed, Consultant to the Chemical Specialties Manufacturing Association, Washington, D.C., 1986-1987
- Appointed, Chairman Platform Session of Inhalation Toxicology, Society of Toxicology, Annual Meeting, New Orleans, Louisiana, March 9, 1986.
- Appointed, Chairman Platform Session on Inhalation Toxicology, Society of Toxicology, Annual Meeting, San Diego, California, March, 20, 1985.
- Appointed, Moderator, Information Resources, Symposium on Hazard Communication, Hyatt Regency, Houston, Texas, March 11-12, 1985.
- Appointed, Discussion Leader, Gordon Research Conferences on Toxicology and Safety Evaluations, July 30 - August 3, 1984.
- Appointed, Co-chairman Platform Session on Methods in Toxicology, Society of Toxicology, Annual Meeting, Atlanta, Georgia, March 14, 1984.
- Appointed, Chairman of the Society of Toxicology Placement Service, 1984-1986 (Co-chairman 1982-1984).
This appointment by the President of SOT involves maintaining a placement service for those seeking positions and those seeking candidates for positions. This activity is continuous during the year but peaks at the annual SOT meetings.
- Appointed as Special Advisor to American Association for Accreditation of Laboratory Animal Care (AAALAC), March 8, 1983.
This appointment involves participation in laboratory site reviews to determine if a laboratory should be certified by AAALAC or continue its AAALAC certification.
- Appointed to the Communications Task Group of the Society of Toxicology, 1983.
An appointment by the President of SOT, this committee involves the study of better ways to communicate toxicology to the general public both through the media and through educational programs.
- Appointed as Consultant to the American Welding Society and Member of Safety and Health Committee, 1982-1986.
This appointment has involved writing protocol for a complex series of studies focusing on the inhalation of various welding fumes. Protocols were then priced and a laboratory selected based on my recommendation. Experiments are now complete. During the experimental phase, I audited the studies and had sign-off authority for all protocol amendments and deviations.
- Appointed, Co-chairman, Poster Session on the Environment, Society of Toxicology Annual Meeting, Washington, D.C., February 23, 1982.
- Appointment to Expert Committee on Adverse Effects of Inflight Exposure to Atmospheric Ozone, House of Representatives sub-committee on oversight and Investigations of the Committee on Interstate and Foreign Commerce-Testimony given on July 18, 1979, on "The Toxicology of Ozone as it relates to in-Flight Exposure" and entered into the congressional record.
This forty-five minutes of testimony was requested in an effort to determine if indeed there is a hazard relating to ozone exposure on overseas flights. My testimony was sought after recognition of my extensive efforts in writing the toxicology section of ASTM's published document entitled "Standard Practice for Safety and Health Requirements Related to Occupational Exposure to Ozone", E591-80, my invited contribution and

APPOINTMENTS AND CONSULTING ACTIVITIES: (cont'd.)

subsequent publication of an extensive critical review of ozone toxicology and its implications relating to employee health. These efforts were all aimed at assessment of risk relative to ozone exposure. Lung pathology, reproductive implications, biochemical responses and chromosomal alterations were discussed relative to risk of both short term and long term health effects.

- Appointed as Consultant in Toxicology to the International Union of Airline Flight Attendants, February, 1977 to February, 1979
This effort involved assessment of risk of exposure to ozone on overseas flights and, in particular, the effect of exercise on both exposure and symptomatology observed in overseas flights. Acute respiratory distress as well as assessment of effects on reproductive parameters, and chromosomal abnormalities were considered relative to exposure and dose. As a result of these efforts, Congress has passed legislation to limit in-flight exposure to ozone, and the airlines have installed catalytic converters to limit ozone concentrations in cabin supplied air.
- Appointed to Board of Directors of Delta Laboratories, Rochester, New York. A not-for-profit environmental laboratory, February, 1969 to February, 1979
This laboratory operating at a yearly budget as high as \$100,000, investigated various consumer and environmentally related toxicological and contamination problems. Acting both on the Board of Directors and as a consulting toxicologist, I investigated and commented on a variety of toxicological problems.

PUBLICATIONS:

- Parent, R.A., Radon. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 617-620, 2005.
- Parent, R.A., Trichloroethylene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 4. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 382-386, 2005.
- Parent, R.A., Methylene Chloride. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 92-95, 2005.
- Parent, R.A. and Nordone, A.J., Furfural. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 2. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 394-397, 2005.
- Parent, R.A., Tetrachloroethylene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 4. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 150-153, 2005.
- Parent, R.A., Picloram. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 436-438, 2005.
- Parent, R.A., 3-Methyl cholanthrene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 89-91, 2005.
- Parent, R.A., A Toxicologist's Look at PPA and Stroke. Harris Martin Columns, Premier Issue Featured Article, Published 2002.
- Sharp, D.E., Berge, M.A., Paust, D.E., Talaat, R.E., Wilkes, L.C., Servatius, L.J., Loftus, M.L., Doane, R.A. and Parent, R.A., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Lactating Goats. *Journal of Agricultural and Food Chemistry*, 49(3), 1630-1638 (2001).
- Sharp, D.E., Berge, M.A., Hennes, M.G., Wilkes, L.C., Servatius, L.J., Loftus, M.L., Doane, R.A. and Parent, R.A., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Laying Hens. *Journal of Agricultural and Food Chemistry*, 49(3), 1639-1647 (2001).
- Parent, R.A., Paust, D.E., Schrimpf, M.K., Talaat, R.E., Doane, R.A., Caravello, H.E., Lee, S.J. and Sharp, D.E., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Sprague-Dawley Rats II. Identification of Urinary and Fecal Metabolites, *Toxicological Sciences*, 43, 110-120 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Tetrachloroethylene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 220-221 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Methylene Chloride. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 308-310 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Picloram. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 530-531 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., 3-Methylcholanthrene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 305-306 (1998).
- Nordone, A.J., Sharp, D.E. and Parent, R.A., Furfural. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 40-41 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Radon. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 19-20 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Hexachlorocyclopentadiene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 82-83 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Trichloroethylene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 372-374 (1998).
- Nordone, A.J., Matherly, R., Bonnavier, B., Doane, R., Caravello, H., Paakonen, S. and Parent, R.A., The Mobility and Degradation of Acrolein in Agricultural Canals Treated with Magnacide® H herbicide, *Chemosphere*, 32(5), 807-814 (1996).
- Nordone, A.J., Matherly, R., Bonnavier, B., Doane, R., Caravello, H., Pakonen, S., Winchester, W. and Parent, R.A., Effect of Magnacide® H Herbicide Residuals on Water Quality within Wildlife Refuges of the Klamath Basin, California, *Bulletin of Environmental Contamination and Toxicology*, 56(6), 964-970 (1996).
- Parent, R.A., Caravello, H.E. and Sharp, D.E., Metabolism and Distribution of ¹⁴C(2,3)Acrolein in Sprague-Dawley Rats. *Journal of Applied Toxicology*, 16(5), 449-457 (1996).
- Parent, R.A., Caravello, H.E., and San R.H.C., Mutagenic Activity of Acrolein in *S. typhimurium* and *E. coli*. *Journal of Applied Toxicology*, 16(2), 103-108 (1996).
- Parent, R.A., Caravello, H.E., Christian, M.S. and Hoberman, A.M., Developmental Toxicity of Acrolein in New Zealand White Rabbits. *Fundamental and Applied Toxicology*, 20, 248-256 (1993).
- Parent, R.A., Caravello, H.E., and Long, J.E., Two-Year Toxicity and Carcinogenicity Study of Acrolein in Rats. *Journal of Applied Toxicology*, 12(2), 131-140 (1992).

PUBLICATIONS: (cont'd.)

- Parent, R.A., Editor, A Comprehensive Treatise on Pulmonary Toxicology, in four volumes, Volume I. *Comparative Biology of the Normal Lung*, CRC Press, Boca Raton, Florida, 830 pages, February (1992).
- Parent, R.A., Caravello, H.E. and Hoberman, A.M., Reproductive Study of Acrolein on Two Generations of Rats, *Fundamental and Applied Toxicology*, **19**, 228-237 (1992).
- Parent, R.A., Caravello, H.E., Balmer, M. F., Shellenberger, T. E. and Long, J. E., One-Year Chronic Toxicity of Orally Administered Acrolein to the Beagle Dog, *Journal of Applied Toxicology*, **12**(5), 311-316 (1992).
- Parent, R.A., Caravello, H.E. and Long, J.E., Eighteen Month Oncogenicity Study of Acrolein in Mice, *Journal of the American College of Toxicology*, **10**(6), 647-659 (1992).
- Parent, R.A., Caravello, H.E. and Harbell, J.W., Gene Mutation Assay of Acrolein in the CHO/IGPRT Test System, *Journal of Applied Toxicology*, **11**(2), 91-95 (1991).
- Parent, R.A., Summary of Potential Health Effects of Nineteen Chemical Substances Involved in the Livingston Train Derailment In *Ecological, Physical, Economic, Sociological and Psychological Assessment of the Illinois Central Gulf Train Derailment*, Volume 2, Gulf South Research Institute, Baton Rouge, Louisiana, p. 2-231 to 2-339, August (1984).
- Parent, R.A., invited paper, "The LD₅₀ and Animal Utilization", presented at a Symposium entitled Development of Effective Models for Biomedical Research, Louisiana State University, Baton Rouge, Louisiana, September 19 (1983).
- Hess, F.G., Parent, R.A., Stevens, K.R., Cox, G.E. and Becci, P.J., Effects of Subchronic Feeding of Ginseng Extract G115 in Beagle Dogs, *Food and Chemical Toxicology*, **21**(1), 95-97 (1983).
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11/2010

EXHIBIT H

000126

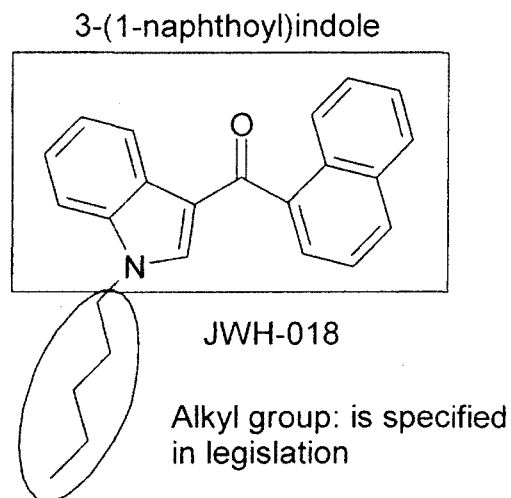
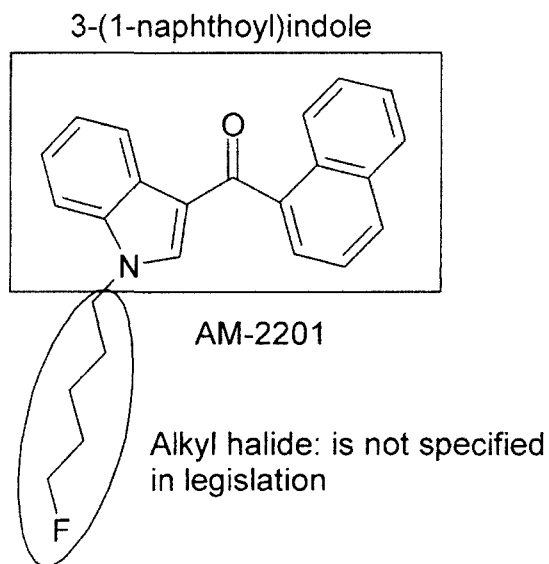
Owen M. McDougal, Ph.D.
2023 N. 18th Street
Boise, ID 83702

6 January 2012

Pitcher & Holdaway
40 W. Cache Valley Blvd. Suite 3B
Logan, UT 84321

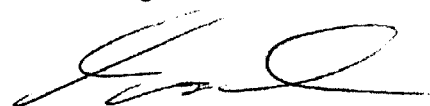
Dear Mr. Holdaway,

I have reviewed the materials regarding the case of State v. Alley, CR FE 11-15482, AM-2201 Research, and found that AM-2201 is not in violation of Idaho Code § 37-2705. The wording of the legislation does not specifically identify alkyl halides as derivatives of 3-(1-naphthoyl)indole that are in violation. Derivatives of 3-(1-naphthoyl)indole that are included "by substitution at the nitrogen atom of the indole ring" are alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl. Thus, 1-(5-fluoropentyl)-3-(1-naphthoyl)indole, i.e. AM-2201, which contains an alkyl halide attached to the nitrogen atom of the indole ring in 3-(1-naphthoyl)indole, is technically not specified as being in violation of I.C. § 37-2705. The structure of AM-2201 is shown below to indicate the alkyl halide substituent (left). To the right is the structure of JWH-018, a 3-(1-naphthoyl)indole derivative that contains an alkyl group attached to the nitrogen atom of the indole ring, and is clearly in violation of I.C. § 37-2705.



Please let me know if I can provide further assistance in this case. My research on the topic turned up a variety of interesting data, but the essence of the case seems to reside in the wording of the derivatives of 3-(1-naphthoyl)indole that are in violation of the law. As written, AM-2201 is not in violation.

Kindest regards,



Owen M. McDougal, Ph.D.

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EXHIBIT I

000129

November 14, 2011

Mr. Ryan Holdaway
Pitcher & Holdaway, PLLC
40 W. Cache Valley Blvd.
Suite 3B
Logan, UT 84321

Dear Mr. Holdaway,

This report details research performed on AM-2201 as it pertains to Idaho House Bill 139. The bill's Section 37-2705, Schedule I.d.30.ii.a, is most closely associated with the compound in question, AM-2201. The documents provided in the packet you sent seems to place the question in broader terms and highlighted the entire Schedule I.d.30.ii.a-i. A closer look at the structures implied by Schedule I.d.30.ii.b-i, show AM-2201 does not fit into any of these.

AM-2201 contains both an indole and a naphthoyl group. What follows summarizes where these do or do not fit in ii.a-i:

- a. Contains both groups.
- b. A pyrrole is substituted for the indole group.
- c. An indene is substituted for the indole group and the carbonyl group of the naphthoyl group has been removed leaving only a naphthyl group.
- d. A 3-phenylacetyl group is substituted for the naphthoyl group.
- e. Hydroxycyclohexyl and phenol groups are substituted for both component groups.
- f. A benzoyl is substituted for the naphthoyl group.
- g. A pyrrolo group has been substituted for the indole group and a naphthalenyl group for the naphthoyl group.
- h. The cannabinol structure has been substituted for both the indole and naphthoyl groups.
- i. Phenylpentanyloxy and octahydrophenanthridin groups are substituted for both the indole and naphthoyl groups.

Following this analysis only Schedule I.d.30.ii.a fits the structural description of AM-2201. House Bill 139 states the following in this section:

“Any compound structurally derived from 3-(1-naph-thoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by

alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent , whether or not substituted in the naphthyl ring to any extent.”

Herein is where some confusion may arise in interpreting the law for AM-2201. This compound is, indeed, a nitrogen derivative of 3-(1-naph-thoyl)indole. As a matter of fact, if I had the parent compound in hand, I would be able to synthesize AM-2201 in one step by adding the 5-fluoropentyl group in much the same fashion as I would add a pentyl group to the parent compound to prepare JWH-018. The fluoro group at the end of the pentyl group in AM-2201 is at the crux of the debate. While JWH-18 is absolutely a nitrogen substituted alkyl derivative of 3-(1-naph-thoyl)indole, AM-2201 is not strictly a nitrogen alkyl substituted derivative when the narrowest definition of alkyl is used.

Strictly speaking, an alkyl group contains only hydrogens and carbons. Therefore, any pentyl group isomer, such as that found in JWH-018, would be covered by the present language. The nitrogen group on AM-2201 is a **fluoro-substituted alkyl** group. One would have to use a looser definition of alkyl to include this compound since it contains elements other than hydrogen and carbon. In the field of Organic Chemistry, a clear distinction is made between hydrocarbons and halogenated hydrocarbons or alkyl halides. The reason: their chemical properties are different. By extension the same could be said of the alkyl and fluoro alkyl groups that could be prepared from these.

What complicates the issue further is the method of preparation. In both preparations of JWH-18 and AM-2201 the reaction to attach the pentyl and 5-fluoropentyl groups, respectively, would be referred to as an alkylation reaction by most practicing synthetic chemists. Therefore, the State might argue that a looser definition of alky groups was meant - to include all groups that could be introduced by an alkylation reaction. If that was the case, however, I would have to question why the State made more specific additions such as cycloalkylmethyl or cycloalkylethyl, which are very restrictive and tend to imply lawmakers had a much narrower view of the system. In the end, my main question would be this: if this were a patent with the language above, would a fluoroalkyl compound not be covered? Given the explosion of new fluorinated drugs in the last 20 years, my guess is that the patent literature is replete with examples of fluorinated compounds that were deemed to come outside the original patents.

I submit this as my final report on the issue. Strictly speaking, it is not really a complicated one. It is only made complicated by the intent of lawmakers, who having a limited knowledge of chemistry, tried to make it broader and in doing so, restricted its breadth. Had they simply stated “any compound structurally derived from 3-(1-naph-thoyl)indole or 1H-indol-3- yl-(1-naphthyl)methane by substitution at the nitrogen atom

of the indole ring whether or not further substituted in the indole ring to any extent , whether or not substituted in the naphthyl ring to any extent..." would have had greater breadth of coverage and also included AM-2201.

Given that you provided me with a structure of naphthalene, indole, and AM-2201, I will forego sending those to you in this report. I obtained the structure of JWH-18 online (Wikipedia). Everything else was just based on my 35 years of experience in the field.

Please let me know if this report format is sufficient

Respectfully submitted,

Karl De Jesus, Ph.D.

EXHIBIT J

000133

NO. 8:15 FILED
A.M. 8:15 P.M.

SEP 29 2011

CHRISTOPHER D. RICH, Clerk
By DEIRDRE FINNEGAN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE
APPLICATION FOR SEARCH
WARRANT

AFFIDAVIT FOR SEARCH WARRANT

STATE OF IDAHO)
) ss:
County of Ada)

Officer Joe Andreoli of the Boise Police Department, being first duly sworn, deposes and says: that he is a duly appointed, qualified, and acting peace officer within the County of Ada, State of Idaho and that he has reason to believe that certain evidence of the offenses of Conspiracy to Manufacture or Deliver a Controlled Substance, I.C. 37-2732, 37-2732(f); 18-1701, Manufacture a Controlled Substance, I.C. 37-2732; Possession of a Controlled Substance, I.C. 37-2732; Possession of a Controlled Substance with the Intent to Deliver, I.C. 37-2732; and Possession of Drug Paraphernalia, I.C. 37-2734 to-wit:

controlled substances, including tetrahydrocannabinols and/or synthetic equivalents to the substances contained in the Cannabis plant, resinous extractives of Cannabis synthetics,

derivatives, and their isomers with similar chemical structure and/or synthetic drugs, materials and products associated with the manufacturing, buying, selling, and or use of controlled substances including but not limited to tetrahydrocannabinols, the synthetic equivalents and/or synthetic drugs, including but not limited to smoking devices such as glass or metal smoking pipes, metal screens for pipes, rolling papers, sifters, grinders, and/or bongs, packaging materials including plastic bags or other packaging materials in a variety of sizes, including plastic jar type containers and lids, as well as sealing devices, concealment objects or containers including safes and/or lockboxes, foliage leaves, stems and/or other plant materials, acetone or similar solvents, measuring beakers, mixing bowls, baking dishes, spray bottles, flavoring, stickers/labels, empty sticker pages, scales, United States currency, electronic money transfer documentation or receipts, bank records, ledgers, pay/owe sheets, which electronic money transfer documents, bank records, ledgers or pay/owe sheets may be located as data within any personal computers or storage media including floppy discs, zip-type drives, flash drives, "smart-phones" and/or printers found on the premises, personal books, records, documents and financial records associated with drug distribution, acquiring/ordering materials associated with manufacturing controlled substances, and/or rental agreements and/or receipts for payment towards rent/lease, or other records related to conspiratorial relationships, including but not limited to evidence of employment, contact or communications between co-conspirators, evidence of income or items/products being received from any source or exchanged between conspirators and/or customers, documentary evidence of personal and business expenditures, address books, telephone records, receipts and statements for residential, business and cellular telephone service, associate lists, cellular telephones (both activated and non-activated), any cellular telephone(s) and/or computers or storage media including floppy discs, zip-type drives, flash drives, and/or printers seized to be accessed, memory and data storage device to be downloaded, stored and analyzed for content which may contain forensic data (which may be any evidence of the described crimes contained in the memory or call history of the cell phones, including any names, phone numbers, addresses, contact information, outbound and inbound call detail stored in memory, names and phone numbers stored in the phone's directory, names and phone numbers stored within a speed dialing feature, data/calls stored in memory, text messages stored in memory, all verbal messages stored in memory, all email stored in memory, all multimedia files stored in memory, contained within the device or stored within the cellular phone memory data, text, messages, images, photographs or other information, contained in any address book, speed dial, calendar, call history, or other part of the cell phone, SIM card or its memory), and any other information stored within the cellular phone memory; cell phones to be forensically examined at a later time by the person or persons designated to examine said cellular phone(s); any and all computers, including IPAD and/or computer data stored in magnetic disks, magnetic tapes, or main computer storage, hard drives, zip drives or thumb drives to be forensically examined at a later time by the person or persons designated to examine said computer and associated storage media; surveillance equipment including video cameras and associated recordings, indicia of possession, occupancy or ownership, including utility bills, other bills, mail, contracts and/or rental agreements, financial records, photographs including video images, state identification cards, employment identification cards, social security cards, clothing of the suspects, forensic evidence including fingerprint evidence and/or keys to the residence/premises, is located in the following described premises/motor vehicle, to-wit:

PREMISES: 7544 Lemhi Street #9 in Boise, Ada County, Idaho 83704. This is a warehouse type building that sits on the north side of Lemhi Street, west of Cole Road and is marked with the numbers 7544 in black lettering on the east facing exterior wall near the south east corner. The building is tan in color with a red stripe running horizontally across the building approximately four feet from the top. Warehouse #9 is the northern most unit in a row of five similar warehouses. The number "9" is printed on the top portion of the door directly above a small window. An unknown material from the inside of the warehouse covers this window. The door handle and dead bolt are gold in color and are located on the right side of the door when facing it. Directly to the north of this door is a large recessed bay door, which appears to rise up.

PREMISES: 2613 W. Camas Street in Boise, Ada County, Idaho 83704. This is a brick building located on W. Camas Street between Vista and Opal. This business is located on the south side of the road with the main entrance facing north. The front of the building consists of red brick and has a small overhang approximately three feet from the top of the building. The upper three feet of the north facing outer wall is green in color. The main entrance is located on the north facing wall and faces Camas Street. This main entrance is a glass door with a metal frame. The address "2613 W. Camas" is located on the top of the glass door in red lettering. There is a large picture window directly to the east of the front door and also faces Camas Street. In this window is a green colored banner that identifies the business as the "Red Eye Hut Smoke Shop". There is also a black mailbox on the outside of the building directly to the west of the front door when facing the building. This business is the eastern most business in this building.

Persons: Any persons present at the above premises at the time of the service of any search warrant authorized in connection with this affidavit

Your affiant has probable cause to believe and is positive the same is true because of the following facts of which he has personal knowledge:

Your affiant has over nine (9) years of law enforcement experience; four (4) years with the Hamilton Police Department in Hamilton, Montana, where your affiant was assigned as Patrol Officer for approximately two (2) years and as a Narcotics Investigator for two (2) years. Your affiant is a former member of the Montana Narcotics Officer's Association.

Your affiant has been with the Boise Police Department for six (6) years assigned for over four (4) years as a Patrol Officer and one (1) year to the Community Outreach Division, Community Policing Team. Your affiant is currently assigned to the Criminal Investigation

Division as a Narcotics Detective. During each of these assignments, your affiant has investigated all types of felony and misdemeanor crimes, including numerous instances in which individuals possessing, manufacturing, and distributing illegal controlled substances were investigated. Your affiant holds a Bachelor's Degree in Criminal Justice from Jamestown College and is a graduate of the Montana Peace Officer Standards and Training Academy and currently holds an Intermediate P.O.S.T. Certificate in the State of Idaho with over 1200 of total training hours. Your affiant has received numerous hours of both formal and informal training in the area of drug detection and investigation, including an 80-hour DEA Basic Drug Investigation course.

Your affiant began an investigation into the suspected manufacture and/or delivery of the controlled substance commonly referred to as "Spice" by a male adult identified as Morgan Alley in November 2010. Your affiant knows that "Spice" is a common name for plant material and/or "potpourri" type substance that contains tetrahydrocannabinols, their synthetic equivalents and/or synthetic drugs that are Schedule I controlled substances. Further, your affiant knows that these tetrahydrocannabinols, the synthetic equivalents and/or synthetic drugs are sold/distributed under a number of different names. On November 8, 2010, after receiving complaints regarding the suspected sale of "Spice" at a business called "Urban Alleys" which was located at 2613 Camas, Boise, Ada County, Idaho, your affiant and Boise City Officer Clark responded to the business and made contact with two male adults inside. Your affiant and Officer Clark were wearing Boise City Police Uniforms and your affiant observed that immediately upon your affiant entering the store, one of the males, later identified as Colin Thomas, quickly closed the door leading from the main store to a back room in the shop.

Your affiant advised Thomas of the information received that the store was still selling the product known as "Spice", that contained recently banned chemicals. Your affiant knew that the Board of Pharmacy had recently added several of the chemicals commonly found in "Spice" to Schedule I in the Controlled Substance Act, by emergency rule. Thomas initially claimed that he was not an employee of the store, but rather was just helping out a friend. Your affiant observed several different types/flavors of "potpourri" in a glass-shelving unit, each packaged in the same manner, in a 1" diameter circular plastic container/jar with a plastic lid bearing a round sticker labeling the product. Each of the individual containers identified the product as "Twizted Potpourri" along with an individual flavor or type. Each small container was being sold for \$10 with the exception of one called "Ultra Twizted Potpourri", which according to Thomas, was more potent than the others. Each of the labels identified the substance as "not for human consumption" and stated that it does not contain "*Spice*".

Your affiant knows that Officer Clark identified the other male present as Enoch Jodea Ford. Ford had been seen exiting the back room upon our arrival. Ford was then released as he claimed he had to go to class.

Thomas informed your affiant that the business owner, Tashina Alley, had recently left the store to go to dinner and a movie. At your affiant's request, Thomas made contact with Tashina by telephone and Tashina agreed to speak with your affiant, Thomas handed the telephone to your affiant. Thereafter, your affiant engaged in a telephone conversation with a female who identified herself as Tashina Alley. Your affiant identified himself to Tashina and explained the purpose for being at her store. Tashina informed your affiant that she was currently in the state of Oregon and that she would not be back for a few days. Your affiant asked Tashina for consent to enter the back room of the store to ensure that no controlled

substances or other chemicals commonly found in "Spice" were present in the store. Tashina stated that there is nothing illegal inside the store, however, denied your affiant consent to search further.

Your affiant spoke with Thomas again. Your affiant advised Thomas that he could be charged criminally, along with the owners if the "potpourri" was found to contain the recently banned chemicals. In your affiant's presence, Thomas then made telephone contact the other owner of the store, identified as Tashina's husband, Morgan Alley. According to Thomas, Morgan Alley told him that Morgan did not have authority to grant consent. Your affiant was able to hear only one side of the conversation. Thomas explained to your affiant that Morgan continually handed the phone to Tashina during the phone call. Further, the Alley's continually hung up on Thomas and ultimately refused to speak any further. When Thomas attempted to call the Alley's back they did not answer the phone.

Thomas asked your affiant if he could grant consent to search the shop. Your affiant informed Thomas that due to the owners' denying consent, he could not grant consent. Thomas asked if he could bring the contents of the back room to the front of the store for your affiant to inspect. Your affiant advised Thomas that he was not going to direct him to do so, however, if he chose to bring the items for your affiant to see, he would not be stopped.

Thomas made several trips to the back room and emerged each time with several items. These items consisted of the following: several pounds of packaged foliage leaves that were labeled and identified, including: Damiana Leaf, Mullein Leaf, Lemon Balm Leaf, Skull Cab Herb, Marshmallow Plant, several bottles of "Tasty Puff" Tobacco flavoring (ingredients - water propylene, glycol), several spray bottles (smelling of acetone), 8 canisters of Acetone (one (1) container was a gallon sized), metal pots with white pasty substance, drying plant material

already having been sprayed with chemicals and flavoring, plastic containers, lids, and sticker labels (to be placed on the plastic containers for sale).

Your affiant inquired further of Thomas regarding the manufacturing of the "Spice" type product. Thomas informed your affiant that he is unaware of how the "spice" is made.

According to Thomas, Morgan Alley is the only one who makes the product. Thomas stated that Morgan goes into a separate room in the back of the shop and will not allow anyone to know his recipe for making the spice.

Thomas did provide your affiant with a sample of the "Ultra Twizted Potpourri" as well as purported documentation from an "independent laboratory" stating that one (1) canister of "Twizted Potpourri" had been analyzed and did not contain the banned chemicals.

Your affiant maintained custody of the canister of Ultra Twizted Potpourri and transported it to the Ada County Property Room where it was properly packaged and booked into property as evidence bearing DR#028909. Your affiant knows this substance was ultimately sent to the Idaho State Forensic Laboratory to be analyzed. On a later date, your affiant learned that this substance did not contain the synthetic chemicals that had been recently banned in the State of Idaho pursuant to the Idaho Board of Pharmacy Emergency Rule. Your affiant knows that at that time, only seven (7) specific chemicals had been added to the Controlled Substance Act by the Rule.

Thereafter, in early February of 2011, your affiant knows that Ada County Sheriff (ACSO) Detective Matt Taddicken was contacted by the Boise Home Depot Corporation loss prevention staff regarding suspicious purchases. According to Detective Taddicken, the loss prevention staff explained that suspicious purchases by a person using the name Morgan Alley had been noticed. Apparently, Alley had made numerous purchases that included acetone,

respirators, nitrile gloves, ceramic heaters, Rubbermaid style totes and a security alarm. Your affiant learned that Home Depot staff went on to tell Detective Taddicken that according to their records, Alley, had purchased over 60 containers of acetone and was attempting to special order one hundred more gallons of acetone. The amount of acetone being purchased was suspicious to staff because they normally do not sell that quantity of acetone, nor do they have people request to order such a large amount at one time. Loss prevention also explained that Alley had applied for a Home Depot business credit card using the business name of Urban Alley's LLC with an address of 2613 W. Camas Boise, Idaho, an email account of urbanalley@gmail.com and a phone number of (208) 713-5640. Alley also provided personal information for himself at 4095 E. Race Street Meridian, Idaho with the same phone number. Detective Taddicken advised staffers that the quantity of acetone was too large for that typically used for methamphetamine production but it was a potentially dangerous amount if used, stored or transported improperly. Loss prevention advised that they would track the special order and contact Detective Taddicken when and if the order was to be picked up so the individual(s) could be interviewed concerning its' use.

Your affiant is familiar with a method of manufacturing plant type material or substances commonly referred to as "Spice" that are or include tetrahydrocannabinols, their synthetic equivalents and/or synthetic drugs that are Schedule I controlled substances. The manufacturing process does include the use of Acetone as well as the other items Morgan reportedly purchased from Home Depot.

Your affiant learned that local law enforcement and public records showed that Morgan C Alley with a date of birth of 12/27/86 was on probation with the Idaho Department of Corrections. Your affiant has confirmed that Morgan Alley was convicted of Delivery of

Controlled Substance, methamphetamine, in 2006 in Ada County Case No. H0500944. Further, your affiant learned that the phone number and name on the Home Depot credit application were consistent with those listed in law enforcement records for Morgan Alley. Your affiant learned that Detective Taddicken also located a listing with the Idaho Secretary of State online business search for the corporation Urban Alley's LLC. This listing showed a Morgan Alley and Tashina Alley as corporation members listing addresses consistent with the above.

Your affiant knows that Detective Taddicken was able to contact Alley's probation officer, Derek Howell, and advise him of the situation. Howell told Taddicken that Alley had been involved in the retail sale of "Spice" at several Treasure Valley retail locations in the past. Howell went on to say that he had warned Alley to distance himself from the "Spice" business as it could be contrary to his probationary status. Howell was informed that Home Depot was going to alert Detective Taddicken if Alley arrived to pick up the acetone. Further, Howell was informed that Detective Taddicken intended interview Alley due to the safety concerns regarding the large quantities of chemicals and danger associated with the handling and use of the acetone. Howell asked that he be included in the interview.

Your affiant knows, on February 26, 2011, Detective Taddicken received a call from loss prevention personnel at the Home Depot on Federal Way, in Boise, Ada County, Idaho. Detective Taddicken learned that Morgan Alley was at the Home Depot Store located on Federal Way in Boise, Id attempting to pick up the one hundred gallons of acetone he had ordered. Detective Taddicken contacted the on-duty Probation and Parole Officer, Chad Smith, and asked for assistance in the matter. Smith agreed to assist. Detective Taddicken also requested assistance from ACSO patrol.

Your affiant knows that ACSO Deputy Brodin responded to The Home Depot store on Federal Way in Boise and located Morgan Alley near the lumber loading area at the west end of the building. A home Depot employee had loaded a large pallet with boxes into Alley's pickup license plate 1ATW743. Brodin made contact with Alley who was identified by his Idaho driver's license. According to Brodin, Alley was questioned regarding the large quantity of Acetone. Alley informed Brodin that he purchased the Acetone in the large quantity because he gets a better deal on it and it's a good business decision. Alley explained to Brodin that he wanted to start a body shop and possibly a car lot, however does not have a building or tools as of yet. Alley was released at that time.

Your affiant knows that Deputy Brodin learned that Detective Taddicken and Probation and Parole Officer Smith wanted to speak with Alley, so Brodin initiated a traffic stop on Alley's vehicle on Federal way near Broadway and again made contact with Alley. Alley was detained by Brodin until Probation and Parole Officer Smith and Detective Taddicken arrived to speak with Alley.

Once Detective Taddicken and Probation and Parole Officer Smith arrived on scene Patrol Deputy Brodin and Sgt. DeLeon were requested to search Alley's vehicle by Probation and Parole Officer Smith. During this search, your affiant learned that Sgt. DeLeon located the following items: several large empty plastic containers (one of which had a very small quantity of a green plant like substance), a bank envelope with a ledger with initials and amounts next to them, filters for a professional grade painter's respirator, two digital scales with an unknown white powdery residue, and at least six paper towel rolls. Detective Taddicken made contact with Alley who was detained in the back of Brodin's patrol car. Alley began to echo the story that he had told Brodin concerning the use of the acetone for the purposes of an auto body

business or a car lot. Detective Taddicken asked Alley if he had any background in auto bodywork. Alley stated that he did not have any but that he wanted to re-do the truck he was currently driving as well as his "Chrysler". Detective Taddicken questioned Alley regarding a white powder residue that was on the two digital scales located inside his truck. Alley stated that it was nothing illegal. Alley further informed Detective Taddicken that it was probably his wives as she was on a diet and it could be flour. Detective Taddicken questioned Alley why the scales would be in the truck if they were used for a dietary reasons. Alley responded that they were his wives and that she owned the business. Alley went on to say that he had removed himself from the business as requested by his probation and parole officer and that he had documentation from the State of Idaho that he had in fact done so.

Alley was transported to the Urban Alley's store at 2613 Camas Street in Boise so that a search of his store could be conducted at the request of Probation and Parole. Your Affiant learned that once inside the store Probation and Parole Officer Smith and Detective Taddicken located the following items: green plant material in jars labeled with various trade names for potpourri, numerous sheets of labels and small empty glass jars, several empty containers of acetone, one half-face respirator, several digital scales, several three drawer plastic cabinets, numerous Rubbermaid type totes, a stainless steel pot with a green and white powder residue, plant like residue in totes and on top of tables, a Fed Ex package addressed to "morgan urban alley's at 2613 W. camas boise, ID", and one "Product Analysis Report from Research Triangle Park Laboratories. Your affiant knows that the items were photographed but ultimately returned.

Your affiant knows that Detective Taddicken then spoke with Alley pertaining to the items located inside the business. Alley started out by denying the existence of both the

respirator and the acetone. Once these items were shown to Alley, he stated that those items should not be there. Alley stated that he wasn't doing anything with the products and that no one was going to get hurt. He went on to say that the acetone in the truck was for the auto body business. When questioned about the acetone under the sink inside the business he said that was his from before and said that he gets it for other people but would not identify anyone else involved. Alley also stated that the acetone could have been left from before he moved into the shop.

Your affiant knows that ACSO Deputy J. Meyer had been requested to assist with this investigation and was requested to respond to Alley's residence of 4095 E. Race Street in Meridian, Idaho. Deputy Meyer responded to this area and parked down the street from the residence. Deputy Meyer observed a brown Chevrolet Silverado bearing Idaho license plate 1A1S270, leave the residence of 4095 E. Race Street. Deputy Meyer followed the vehicle and ultimately initiated a traffic stop near Ustick/Five Mile after noticing a broken taillight on the vehicle, which was emitting a white light to the rear of the vehicle. Deputy Meyer identified the driver of the vehicle by his Idaho driver's license as James L. Lindsey.

Your affiant learned that while Deputy Meyer was speaking with Lindsey, he observed several pint size containers of Acetone in the bed of the truck. Lindsey was detained and interviewed regarding the items at that time. Lindsey claimed no knowledge of the items in the truck. Lindsey stated that his friends Tashina (Alley) and Charlynda (Goggin) loaded bags of trash into the bed of his truck claiming that they contained empty beer cans. According to Lindsey, Tashina and Charlynda wanted to get rid of the items for fear of violating probation.

While Deputy Meyer was speaking with Lindsey, your affiant knows, Deputy Savage arrived on scene with his certified narcotics detection canine and conducted a sniff of the exterior

of the vehicle. Your affiant learned that the canine alerted to the bed of truck. A search of the contents of the bed of the truck by Deputies Savage and Meyer produced the following: approximately ten (10) Pyrex dishes, 9x13 in size, containing a crusty yellowish substance (consistent with the residue inside the stainless steel pot at the Urban Alley's store), approximately 50 empty Acetone containers, white woven bags bearing a sticker label identifying the contents as "Damiana" from www.mountainroseherbs.com.

Your affiant learned that Detective Taddicken, Sgt. De Leon and Probation and Parole Officer Smith then went Alley's home located at 4095 Race Meridian, Id. Alley was transported to the home by patrol deputies. Upon arrival at Alley's home, Detective Taddicken noticed six unopened boxes from www.mountainroseherbs.com on the front porch. The labels indicated that the boxes weighed 55 pounds each for a total of 330 pounds. The boxes were addressed to Morgan Alley at 4095 Race Street Meridian, Id. Detective Taddicken and Smith went inside the home and conducted a walk through. Located inside the garage were the following: more Mylar bags labeled as Damiana, more of the small glass jars containing plant material, some of which were housed in white grocery bags and a large glass container containing green plant material.

At the home, Detective Taddicken spoke with Morgan's wife and confirmed her identity as Tashina Alley. Detective Taddicken explained to Tashina the same concerns for safety and handling of the acetone and the potential for fire or other hazards with the use of acetone in large quantities. Tashina was equally evasive in answering questions stating that the acetone was used by Morgan for concrete work and a future auto body business. Tashina later asked if she should get a lawyer. Detective Taddicken stopped talking to Tashina shortly thereafter. That investigation, at the residence and business, was concluded at that time.

On approximately September 1, 2011 your affiant received a tip regarding suspicious activity at a warehouse located at 7544 Lemhi Street #9. The tipster, Donna Selene, identified herself as the manager for Classic Property Management for commercial properties. Selene stated that she has received two different complaints from tenants in the same area stating that there is very suspicious activity at one of her warehouses. Selene identified the warehouse by address and unit number and also described its location. Selene identified the renter of warehouse #9 as Morgan Alley with a date of birth of [REDACTED] and social security number of [REDACTED]. According to Selene, Alley drives nice cars such as a BMW or Lexus, and reported that his wife is always dressed "real flashy".

According to Selene, listed his business as "Urban Alleys" when he filled out the contract to rent the warehouse. Alley told Selene that his intent was to use the warehouse as a hobby place and possibly put a car together inside. Selene stated that Alley rented the space approximately eight months ago (January 2011 or February 2011) and it was her belief that he had been out of town since. Selene stated that Alley has recently been seen back within the last month and the suspicious activity has been happening ever since he has been back. According to Selene, many different cars and people are in and out of the warehouse at all different hours and when individuals enter/exit the door, they only open it wide enough to slide through.

Selene stated that she had to enter the warehouse in February 2011 due to a broken pipe and was surprised to see that at that time, there was nothing inside. Selene stated that the warehouse is a 1400 square foot space and it seemed odd to her that Alley was paying \$550.00 per month to store nothing.

On September 8, 2011, at approximately 2000 hours, your affiant along with Boise City Detective Bruner responded to the area of 7544 Lemhi in an effort to identify warehouse #9 related to the above report/tip.

Your affiant did locate 7544 Lemhi #9 and observed that this warehouse sits on the north side of Lemhi and is marked with the numbers 7544 in black lettering on the east wall near the south east corner. The building is tan in color with a red stripe running across the building approximately four feet from the top. Warehouse 9 is the northern most unit in a row of five similar warehouses. The number "9" is printed on the top portion of the door directly above a small window. This window is covered from the inside of the warehouse so as not to allow the inside to be viewed from the window. The door handle and dead bolt are gold in color and are located on the right side of the door when facing it. Directly to the north of this door is a large recessed bay door, which appears to lift up. There is also a man door on the west side of the building that appears to lead to the same warehouse.

On September 12, 2011, at approximately 1545 hours, your affiant along with Detectives Bruner and Clark again responded to the area of 7544 Lemhi to conduct surveillance. It should be noted that warehouse #9 can be seen from a public area, the Costco parking lot. During this surveillance, your affiant observed two vehicles present and parked directly in front of unit #9. These vehicle were (1) 1AXH550 – a 2005 gold Chevy Impala registered to Charlynda Goggin with a registered address of 4095 Race Street in Meridian, Idaho; and (2) 1AZW545 – a 1996 black Toyota Camry registered to Hieu Phan with a registered address of 2960 N. Linda Vista #15.

Throughout the next three hours of stationary surveillance, your affiant observed two males, identified as Hieu Phan, and a tall slender white male suspected to be Brad Shake. Your

affiant also observed three females, one identified as Charlynda Goggin, Morgan Alley's sister in law, and the other two (2) have not been identified at this time. Photographs were taken of each of these individuals throughout the surveillance. It should be noted that all of the individuals present at the warehouse were observed to frequently exited the man door on the east side of the building in order to smoke. They would also frequently prop this door open while they remained outside. During one of these instances where the door was left open, Detective Bruner was able to identify at least three boxes stacked up near the door. Through the use of binoculars, Detective Bruner was able to determine the writing on the boxes read the word "Taral". This is also visible in one of the photographs. Your affiant, later conducted an internet search for the word "Taral" and learned that Taral Plastics (taralplastics.com) uses the exact same logo on their website as is imprinted on the boxes observed inside warehouse #9. In further researching Taral Plastics, your affiant learned that this company is a manufacturer of plastic containers and specifically distributes the one-inch diameter plastic jars and lids commonly used to package "Spice" aka "Potpourri". Further, this company distributes plastic jars that are consistent with the jar turned over to your affiant during the November 8, 2010 visit to Urban Alleys.

Also during this surveillance, your affiant observed a gold colored Chrysler 300 passenger car arrive at the warehouse. A male, later identified as Morgan Alley, and a female, later identified as Tashina Alley exited the vehicle and entered warehouse #9. The Alley's remained inside the warehouse for approximately 5 minutes, then returned to the vehicle and left the area. Your affiant and Detective Bruner continued surveillance on the Alley's and ultimately followed them to their residence of 3001 S. Roosevelt #18 where we confirmed the vehicle had come to rest.

Your affiant and Detective Bruner then returned to surveillance on the warehouse. Throughout the remainder of the surveillance, your affiant observed three separate people approach a large blue dumpster in the driveway, raise the lid, and discard unknown items inside. Hieu Phan was observed discarding items in the dumpster as was the male believed to be Brad Shake, and Charlynda Goggin.

At approximately 1625 hours, the male believed to be Brad Shake exited the warehouse and walked into the Costco parking lot. Inside the parking lot, Shake approached a black Chrysler passenger car bearing Idaho registration 1AVC952 (registered to Tarisa C. Shake). Brad Shake entered the passenger side of the vehicle and an older female, believed to be Tarisa, drove the vehicle out of the parking lot and away from the area.

At approximately 1631 hours, the two unidentified females, Goggin, and Phan exited warehouse #9. Your affiant observed Phan close and lock the man door. Phan then entered his vehicle while the three females entered Goggin's vehicle and all left the area.

Also on September 12, 2011, at approximately 2200 hours, your affiant along with Detective Bruner responded to 7544 Lemhi in an effort to collect trash from the community dumpster related to 7544 Lemhi #9. It should be noted that this is the same dumpster that your affiant witnessed persons from warehouse #9 frequenting to discard their trash. It should be further noted that this dumpster is positioned in a common area within the parking lot of the warehouses and has public accessibility. This dumpster is positioned in the same manner as it is to be collected by the trash company.

Upon arrival at this dumpster, it appeared as if no one was present at warehouse #9. Your affiant and Detective Bruner approached the dumpster and lifted the lids. Inside the dumpster were several boxes and loose trash along with three garbage bags. Two of these bags

were large, clear plastic, and the third was a smaller white plastic bag. Inside one of the clear plastic bags, Detective Bruner and your affiant both observed numerous pages of sticker paper, some of which contained stickers. Your affiant knows based on previous experience that these stickers are used as the labels on "spice" containers. Your affiant retrieved both clear plastic bags as well as the smaller white bag.

In removing the above mentioned trash bags from the dumpster, your affiant was able to see several small plastic containers and lids consistent with the types of containers and lids your affiant knows to be used to package "spice" for sale. In entering the dumpster to retrieve these items, your affiant located a small amount of green plant material also loose in the bottom of the dumpster. This plant material is consistent in appearance with Damiana Leaf. Your affiant knows based on experience that Damiana Leaf is often used as the base plant material in making "spice" and specifically has been used by "Urban Alley's" in the production of spice. Your affiant collected all of the plastic containers and lids from the loose trash and as much of the loose plant material as possible.

Detective Bruner and your affiant returned to the BANDIT office where the contents of the three trash bags that had been retrieved from the dumpster of 7544 Lemhi were searched. Within the contents of the large clear plastic trash bag that your affiant searched, the following items were located: 37 empty plastic containers, 83 black plastic lids (some of which bore sticker labels for "Twizted Potpourri"), one plastic container containing plant material and labeled as "Fire Twizted Potpourri", 218 sticker pages (some of which still contained labels for "Twizted Potpourri", an empty box for a US-Magnum 1000XR digital scale, and 34 grams of green plant material consistent with Damiana Leaf.

Detective Bruner searched the contents of the other large clear plastic trash bag.

Detective Bruner located the following items within this bag: 42 sticker pages, four 2 ounce fingertip sprayer bottles (each of which had a unique flavorful scent), and 1 gram of green plant material consistent with Damiana Leaf.

Detective Bruner then began searching the contents of the smaller white colored trash bag. Detective Bruner pointed out that inside this trash bag was indicia showing that particular trash bag had come from warehouse #1. This trash bag and its contents were discarded.

Your affiant took possession of each of the items of evidence located and each of the items were properly secured in the BANDIT safe until they could be properly processed the following day.

On September 13, 2011, your affiant retrieved the evidence from the BANDIT safe, photographed each item of evidence, weighed the plant material, and properly packaged each item. It should be noted that the loose plant material located in the dumpster had a net weight of 5 grams.

Your affiant personally delivered the plant material to the Idaho State Forensics Lab and requested conclusive testing. Each of the other items of evidence was then transported to the Ada County Property Room where they were secured as evidence.

On September 13, 2011 at approximately 1630 hours, your affiant and Detective Clark returned to the Costco parking lot to again conduct surveillance on warehouse #9. During this surveillance, the same two vehicles were observed parked in front of the warehouse, one registered to Goggin, and the other registered to Phan. There was dramatically less activity outside the warehouse on this date. At approximately 1750 hours, Phan exited warehouse #9, entered his vehicle and left the area.

At approximately 1812 hours, a female, matching the physical description of Charlynda Goggin exited warehouse #9 carrying two large clear plastic trash bags, walked directly to the large blue dumpster, raised the lid, and discarded both bags in the trash. It should be noted that these trash bags were the same color and size as the trash bags removed from this dumpster by your affiant and Detective Bruner on September 12, 2011, that contained evidence of manufacturing "spice".

Your affiant maintained constant surveillance of this trash can as well as warehouse #9 to ensure the integrity of any possible evidence contained inside the trash bags that came from warehouse #9. At approximately 1845 hours, a white Dodge Challenger bearing a temporary registration sticker only arrived at the warehouse. Your affiant observed Tashina Alley exited warehouse #9 and enter the passenger side of this vehicle. Detective Clark maintained surveillance on this vehicle as it left the area and was ultimately able to identify the driver of the vehicle as Morgan Alley.

At approximately 1926 hours, two females exited warehouse #9. The female believed to be Goggin, closed and locked the door to this warehouse and the two then entered Goggin's vehicle and left the area. Once the vehicle was out of the area, and having maintained constant visual of the dumpster, your affiant responded directly to the dumpster, photographed its location and retrieved the two clear plastic bags containing trash that your affiant had observed being placed in the dumpster by the female from warehouse #9. It should be noted that these were the only two garbage bags located inside the dumpster at this time. The rest of the contents of the dumpster were boxes and loose trash.

Your affiant transported the trash bags to the BANDIT office where the bags and contents were photographed. Your affiant then, with the assistance of Detective Clark, searched the contents of the trash bags.

Within the contents of the bag which your affiant searched, the following items were located: four small plastic containers, 19 black plastic lids (some of which had labels for "Twizted Potpourri"), 175 empty sticker pages consistent with the labels used to identify "Twizted Potpourri", and 14 grams of green plant material consistent with Damiana Leaf which is often used as the base plant material in making "spice".

Detective Clark searched the contents of the other clear plastic trash bag and located the following: 42 empty sticker pages consistent with the labels used to identify packaged "Twizted Potpourri", a spray nozzle and cap, packaging for a Tekk 6211 paint project respirator, and 7 grams of green plant material consistent with Damiana Leaf.

All items were turned over to your affiant and were properly secured in the BANDIT safe until they could be properly processed the following day.

On September 14, 2011, your affiant retrieved the evidence from the BANDIT safe, photographed each item of evidence, weighed the plant material, and properly packaged each item. Your affiant then transported all evidence to the Ada County Property Room where it was secured as evidence. All plant material was properly packaged to be sent to the Idaho State Forensics Lab for conclusive testing.

Also on September 15, 2011, at approximately 1245 hours, your affiant responded back to the Costco parking lot to observe vehicles present and any activity occurring at warehouse #9. Upon arrival, your affiant observed a red colored Buick passenger car with no license plates parked directly in front of warehouse #9.

While conducting surveillance your affiant observed an unidentified female exit from the man door of warehouse #9 followed by a large Native American male. This male was later identified by a photograph as Colin Lewis Thomas. It should be noted that your affiant personally knows Thomas was a former employee of Morgan Alley's when running the storefront "Urban Alleys", formerly located at 2613 Camas. Your affiant spoke with Thomas on November 8, 2010 during the first visit to Urban Alleys, as previously described. Photographs were taken of the two individuals standing outside the door. Thomas and the female finished their cigarettes outside then returned inside the warehouse and closed the door.

Also on September 15, 2011 your affiant spoke with Idaho State Forensic Scientist Corinna Owsley. Owsley advised that the plant material contained inside the plastic container labeled "Fire Twizted Potpourri" had been tested and showed to contain the chemical "AM-2201", a Schedule I Controlled Substance used in making "spice". After finding this chemical present in the first sample tested, Owsley chose not to continue testing each of the other similar samples. Your affiant later obtained the Criminalist Analysis Report - Controlled Substance Analysis showing Owsley's conclusion regarding the sample tested. This analysis is related to the evidence from the trash pick conducted on September 12, 2011 as described above.

Your affiant learned that the plant material booked into Ada County Property on the previous date, September 14, 2011, had already been delivered to the Idaho State Forensic Laboratory. Your affiant again requested conclusive testing of this plant material. Owsley agreed to accommodate your affiant with this matter in an expedited fashion.

On September 20, 2011, your affiant again spoke with Owsley. Owsley advised that the plant material submitted to the Idaho State Forensic Laboratory on September 15, 2011, by your affiant, had been tested and Owsley had conclusive results. Owsley informed your affiant that

one of the samples of the green plant material contained the chemical "AM-2201, the chemical JWH-210, as well as the presence of another controlled substance unable to be confirmed. Both AM-2201 and JWH-210 are Schedule I controlled substances. Owsley did not test the remaining plant material after finding the above chemicals present in the first sample tested. Your affiant later received a copy of the Criminalist Analysis Report – Controlled Substance Analysis showing Owsley's conclusion regarding the sample tested. This analysis is related to the evidence from the trash pick conducted on September 13, 2011, as described above.

Also on September 20, 2011, at approximately 1300 hours, your affiant received information regarding a new Limited Liability Company owned by Morgan Alley. Your affiant received this information from BANDIT Administrative Assistant, Jennifer Rhead. Rhead advised that she had learned through the Idaho Secretary of State website (accessidaho.org) that Morgan Alley had filed for a new business license on May 06, 2011. According to this Idaho Secretary of State website, this filing was completed for the business name "Explicit Auto LLC" with a given address of 2498 E. Fairview Avenue in Meridian, Idaho 83642. Morgan also listed his home address on the documents as 4095 E. Race Street in Meridian, Idaho 83642. Rhead later provided your affiant copies of this documentation including the Certificate of Organization signed by Morgan Alley.

Your affiant responded to the area of 2498 E. Fairview Ave in Meridian and located the address provided on the Certificate of Organization, Limited Liability Company that was on file for this business. Your affiant located a banner directly above Suite 101 at this address. This banner read "Explicit Auto LLC 2498 Fairview Ave Suite 101, Meridian, Idaho 83642". This banner also provided a phone number of "208-713-5460" as well as "DLR#7100"

On September 20, 2011, your affiant drove through this parking lot and attempted to look inside the business. This business appeared empty other than what appeared to be empty clothing racks and trash. It did not appear as though there was any business being conducted at this location.

Your affiant then responded to the area of Roosevelt and Pasadena and positioned his vehicle where he was able to see the driveway leading the address of 3301 S. Roosevelt #18. Your affiant knows this to be a current address of Morgan and Tashina Alley as well as Tashina's sister Charlynda Goggin based the following: Morgan Alley currently has eight different vehicles registered to this address as well as a trailer; Tashina Alley obtained a new driver's license on September 12, 2011, in which she listed this as her current address; Charlynda Goggin currently has one vehicle registered to this address.

On this date, September 20, 2011, your affiant observed the garage door closed, your affiant observed that the Chrysler 300 bearing temporary registration, registered to Morgan Alley, was parked behind an older model orange colored car bearing Washington license plate 63839, and an unknown motorcycle. Both the orange colored passenger car and the motorcycle were parked under the covered parking area at this residence, and the Chrysler 300 was parked directly behind. Also present outside this residence was the grey Mercedes passenger car bearing Idaho license plate 1A1B075, registered to Morgan Alley, and the bronze colored Chevy Impala bearing Idaho license plate 1AXH550, registered to Charlynda Lynn Goggin.

At approximately 1510 hours, your affiant observed Goggin exit the residence, approach her vehicle, enter, and drive out of the area. Your affiant followed Goggin to a school located on Owyhee St then discontinued surveillance of Goggin at that time and returned to the residence of 3001 S. Roosevelt #18. At approximately 1538 hours, Goggin returned to this residence along with a small child and both entered the residence. Your affiant discontinued surveillance on this date at approximately 1600 hours.

In the evening hours on September 20, 2011, your affiant returned to the warehouse located at 7544 Lemhi Street to attempt to again obtain items of trash from the dumpster pertinent to this investigation. On this occasion, your affiant observed that there was a large amount of wood and other large items located in the trash making it difficult to retrieve any of the loose trash or garbage bags that were located under the larger items. Your affiant did observe some loose papers near the top of the trash and collected the papers. Your affiant discovered that the papers included an expired Idaho Vehicle Registration for a 2004 Mitsubishi assigning Idaho license plates 1AUH462. This document listed the registered owners of this vehicle as Morgan and Tashina Alley at the address of 3001 S. Roosevelt St #18 in Boise, Id 83705. This registration expired on 03/31/2011. Also among these papers, your affiant discovered a sales receipt from the Apple Store at Boise Towne Square. This receipt was from August 23, 2011 at 1912 hours and listed the purchaser as Morgan C. Alley. This receipt showed that Alley purchased a black "i-Pad 2 WI-FI 64 GB" as well as a green "Smart Cover" for an i-Pad. The total purchase value listed on the receipt was \$782.28 including tax. This receipt showed that Alley paid using a Visa card ending in "7682". These items were later properly packaged and booked into the Ada County Property Room as Evidence.

On September 22, 2011 at approximately 1620 hours, your affiant responded back to the address of 3001 S. Roosevelt #18 to continue with surveillance. On this date the garage was open and no vehicles were present inside. The only vehicles present at this time were the Mercedes bearing Idaho license 1A1B075, the orange passenger car with Washington license plates, and the motorcycle.

At approximately 1820 hours, your affiant observed Tashina Morgan arrive at the residence along with two small children. Tashina was driving the Chrysler 300 bearing temporary registration. Tashina parked the vehicle behind the orange passenger car and she and two children exited the vehicle and entered the residence.

At approximately 1955 hours, Charlynda Goggin arrived at the residence along with a small child. Goggin was driving her Chevy Impala. Both entered the residence.

At approximately 2015 hours, Tashina exited the residence, entered the Chrysler 300 and drove out of the area. Your affiant maintained surveillance on this vehicle in an effort to identify Tashina's destination.

Your affiant followed this vehicle directly to the address of 2613 Camas, the former location of the business "Urban Alleys". Tashina parked the vehicle directly in front of this address and exited the vehicle. Your affiant observed a sign in the north-facing window of this business, which read "Red Eye Hut Smoke Shop" as well as a neon "OPEN", sign in the east-facing window.

Your affiant watched as Tashina approached the front door of the business. Tashina opened the door, stood in the doorway with the door open and appeared to be speaking with someone on the inside. Tashina remained in this position for approximately 3 minutes but never completely entered the store. Tashina eventually back away from the door, and returned her vehicle, which was still running with the lights on. Tashina entered the driver's side of the vehicle and drove away.

Your affiant continued surveillance of this business and observed Morgan Alley along with two other males exit the store shortly after Tashina drove away. The three males, including Morgan Alley, stood outside the front door for several minutes until your affiant was forced to discontinue surveillance due to officer assistance needed on another, unrelated case.

On September 26, 2011, your affiant requested that Administrative Assistant, Jennifer Rhead research the business "Red Eye Hut Smoke Shop LLC" through the Idaho Secretary of State website (accessidaho.org). Your affiant learned from Rhead that Morgan C. Alley is the current registered agent of the business "Red Eye Hut Smoke Shop LLC" located at 2613 W. Camas Street, Boise, ID 83705. Your affiant further learned that this Certificate of Organization was filed by Morgan Alley on

September 21, 2011. Rhead provided your affiant documentation regarding these facts to include the Certificate of Organization signed by Morgan Alley.

Later on this same date, your affiant requested Boise Police Detectives Jason Harmon and Kevin Holtry respond to the Red Eye Hut Smoke Shop on Camas Street. Your affiant further requested that Detectives Harmon and Holtry enter the Red Eye Hut in an undercover capacity to gather intelligence of the business and to attempt to purchase "Twizted Potpourri" as well as a smoking device from the store. Detective Holtry was equipped with an audio/video recorder, which was fully functional. Detective Harmon was to use his undercover credit card to purchase items from the store.

Your affiant as well as Detective Bruner and ACSO Detective Taddicken arrived in the area of 2613 W. Camas Street prior to Detectives Harmon and Holtry and maintained surveillance throughout. Throughout this surveillance, Detective Taddicken observed that the white Dodge Challenger bearing temporary registration, and previously seen being driven by Morgan Alley, was already parked at the business. Detective Taddicken further observed the Chrysler 300, also previously seen being driven by Morgan and Tashina Alley, arrive at 2613 W. Camas. Morgan Alley exited the vehicle, and Tashina Alley drove the Chrysler 300 away from the business. Your affiant was able to identify both Morgan Alley and Charlynda Goggin standing in front of the store prior to the arrival of Detectives Harmon and Holtry. Your affiant also observed another unidentified male standing outside the store with Alley.

Detective Harmon and Holtry arrived and parked across the street from the Red Eye Hut Smoke Shop. Your affiant observed both Detective Harmon and Holtry enter the store followed by Morgan Alley. Your affiant had seen Goggin enter the store minutes earlier. Detectives Harmon and Holtry remained inside the Red Eye Hut for approximately six (6) minutes. They then exited the store and returned to their vehicle.

Your affiant was contacted by phone by Detective Holtry who indicated that the store has "Twizted Potpourri" on display inside the store along with various items described to your affiant by Detective Holtry as paraphernalia to include multiple various smoking devices. Your affiant learned from Detective Holtry that the Red Eye Hut Smoke Shop does not accept credit cards and they were going to need money from BANDIT buy funds in order to make a purchase from the store. I obtained \$100 cash money to be used as buy funds and met with Detectives Harmon and Holtry. I handed the money over to Detective Harmon and instructed him to purchase "Twizted Potpourri" as well as a smoking device from the Red Eye Hut. Detectives Harmon and Holtry again drove to the Red Eye Hut located at 2613 W. Camas and both entered the store. They remained inside the store for only two (2) minutes this time before exiting and returning to their truck. Your affiant again made contact with Detective Holtry who advised that Detective Harmon had purchased three containers of "Twizted Potpourri" and a smoking device from a female later identified as Charlynda Goggin.

Your affiant returned to the BANDIT office where he met with Detective Harmon. Detective Harmon advised your affiant of the following: Charlynda Goggin, who Detective Harmon recognized from a photograph, was working inside the Red Eye Hut and had waited on him. Goggin showed Detective Harmon several different types of smoking pipes that were being sold in the store and explained the features of each one. Detective Harmon observed the "Twizted Potpourri" being displayed on a small rack near the check out area and inquired about the product. Goggin informed Detective Harmon that the potpourri was brought in from out of state and advised him of the prices. Goggin quoted Detective Harmon \$15/each or three (3) for \$25.

Your affiant learned from Detective Harmon that he selected three (3) plastic containers labeled as "Twizted Potpourri", but each having a different flavor. The three flavors selected by Detective Harmon were "Fire", "Ultra Hypnotic", and "Blueberry". According to Detective Harmon, he also

selected a metal smoking pipe. After attempting to purchase the selected items with his undercover credit card, Detective Harmon learned that the store does not accept credit card purchases. Goggin advised Detective Harmon that she would hold the items for him as he retrieved cash. Your affiant learned that upon exiting the store, Detective Harmon recognized Morgan Alley who was standing outside the store.

After retrieving the cash buy funds from your affiant, Detective Harmon returned to the Red Eye Hut to complete the transaction with Goggin. Upon entering the store, Detective Harmon observed Goggin, Morgan Alley, and an unknown male all standing inside the store. According to Detective Harmon, he made contact with Goggin and advised that he now had cash. Your affiant learned that Detective Harmon completed the transaction by providing \$60 cash to Goggin and receiving \$4.64 change in return as well as the three containers of "Twizted Potpourri" and the metal smoking device.

Detective Harmon provided your affiant with the evidence purchased from the Red Eye Hut Smoke shop. Your affiant photographed and properly packaged the items. Each of the containers of "Twizted Potpourri" were individually packaged in State Lab Envelopes to be delivered to the State Lab. These items were secured in your affiant's evidence safe until the following date.

Your affiant again later on this same date returned to the Red Eye Hut along with Detective Bruner to continue surveillance. Morgan Alley was no longer at the store at this time. Throughout this surveillance, your affiant observed several persons enter and leave the store. Your affiant was able to determine that a white male adult having a shaved head, wearing blue jeans and a red t-shirt was now working as the cashier inside the store.

At approximately 2033 hours, Morgan Alley arrived at the store driving the Chrysler 300. It should be noted that based on your affiant's surveillance, no other persons were present inside the Red Eye Hut at the time of Morgan Alley's arrival besides the male who was determined to be working

there. Alley entered the store, remained inside for approximately 2 minutes then exited carrying something in his right hand. According to Detective Bruner, the item being carried in Morgan Alley's right hand was consistent in size, shape, color, and manner of carry to that of US Currency bills that had been folded in half. Morgan Alley entered the Chrysler 300 with the item in his hand and drove away from the area. I, along with Detective Christensen, and Detective Holtry maintained surveillance on Alley as he drove toward his residence. Once at the entrance to his residence, Alley continued driving southbound, bypassing the entrance and driving directly behind Detective Christensen. Detective Christensen then turned westbound on St. Andrews Drive and Alley turned eastbound on the same street. According to Detective Christensen, he drove westbound on St. Andrews until he was out of Alley's sight, waited approximately 30 seconds then returned eastbound on St. Andrews toward Roosevelt. Your affiant learned that as Detective Christensen approached the intersection of St. Andrews and Roosevelt, Alley was now stopped facing westbound at the same intersection. Detective Christensen drove past Alley and continued eastbound. Detective Christensen watched as Alley made a "u-turn" in the road and began following Detective Christensen. According to Detective Christensen, Alley followed him, turn for turn, for several minutes until Detective Christensen was ultimately able to pull away from Alley. Detective Christensen advised your affiant that he was no longer being followed by Alley. Approximately, two (2) minutes after learning Alley was no longer following Christensen, your affiant observed Alley drive twice past his own residence prior to pulling into his driveway and returning home. Your affiant knows this particular method used by Alley to be considered "counter surveillance" and is often used by persons committing unlawful acts attempting to determine if they are being followed by law enforcement. Based upon your affiants training and experience, it is obvious to your affiant that Morgan Alley was concerned about being followed to his residence by law enforcement

and was therefore conducting counter surveillance in an effort to avoid law enforcement following him and learning the location of his residence.

After observing Morgan Alley return to his residence, your affiant returned to the Red Eye Hut to assist with continued surveillance. It was also agreed amongst BANDIT Detectives that your affiant would enter the Red Eye Hut and attempt to purchase more "Twizted Potpourri" from the unknown male working at the store as well as gather more intelligence about the store.

At approximately 2112 hours, your affiant entered the Red Eye Hut with \$50 cash in narcotics buy funds. Your affiant was immediately greeted by the male employee. This male employee later introduced himself to your affiant as "Matt". Upon entering the store, your affiant observed at least three glass counters full of various smoking devices, digital scales, pipe screens, drug test kits, concealment containers, and other items. A large Bob Marley blanket was draped on one of the walls. Your affiant knows from training and experience that Bob Marley is an icon amongst marijuana users and is often used in the drug culture as a symbol of marijuana use. Your affiant also observed glass pipes with Bob Marley designs. Your affiant observed a small display containing approximately five (5) containers of each flavor of "Twizted Potpourri" that were available for sale. This display sat on top of one of the glass cases near the cash register.

Your affiant inquired as to how long the store had been open, and Matt advised that it had just recently opened. Matt referred to the Red Eye Hut Smoke Shop as a "head shop" and advised that this same location has been a "head shop" for quite some time, but had recently changed ownership as well as business name. Matt informed your affiant that he had worked for the previous owner when it was called "City of Trees" as well as the new owner under its current name. Your affiant knows, based on training and experience, that a "head shop" is a store that specializes in the sale of drug paraphernalia. Wikipedia defines a head shop as follows: "A head

shop is a retail outlet specializing in drug paraphernalia used for consumption of cannabis, other recreational drugs, legal highs, legal party powders and New Age herbs, as well as counterculture art, magazines, music, clothing, and home decor; some head shops also sell oddities, such as antique walking sticks."

Your affiant inquired about the Twizted Potpourri that was on display. Matt advised your affiant that it "used to be called 'spice'". Matt advised your affiant that the only difference between the different kinds on display inside the store is the scent. Matt allowed your affiant to smell the different scents. Matt also suggested that the "Ultra Hypnotic" is a favorite. Your affiant inquired as to the best pipe to smoke the potpourri from. Matt stated "technically it's not for human consumption", then advised your affiant in a whisper tone "we kind of have to say that." Your affiant continued to inquire about the product and Matt further advised that the "Ultra" is a good one because it has no added "flavor". Matt followed up with the statement "ya know...if you were going to do with it what they say not to." Matt then smiled at your affiant.

Your affiant inquired about the pipes being sold in the store. Matt informed your affiant that all the glass work and pipes are shipped in from out of state. Matt believed that the majority of the pipes came from the state of Washington. Matt further advised that the store doesn't buy from any local "artists" due to expense.

After further inquiry by your affiant, Matt identified that all of the "Twizted Potpourri" is made locally by the owner of the Red Eye Hut. Matt further advised your affiant that the owner whole sales this product across the country. Matt pointed to a back room and stated, "we have a bunch of boxes of this stuff in the back." Matt showed your affiant several Federal Express labels behind the counter which he stated the owner uses to ship the "Twizted Potpourri". Matt

stated that the product is not available on-line, and that it is only sold wholesale to other head shops around the country. Matt bragged that any "Twizted Potpourri" sold anywhere in the country originated from this store, referring to the Red Eye Hut located at 2613 W. Camas.

Matt pointed out a sign to your affiant which listed prices of the "Twizted Potpourri". This sign showed that the potpourri was \$15/each or three (30) for \$25. Matt further advised that he could sell your affiant the potpourri for \$10/each if he wanted only one. Your affiant selected three individual plastic containers, each labeled as "Twizted Potpourri". The three selected by your affiant were "Ultra Hypnotic", "Ultra Blueberry", and the flavorless "Ultra". Your affiant provided Matt with a \$50 bill and received \$23.50 in change. Your affiant then left the store.

It should be noted that your affiant also observed tobacco products such as cigarettes, cigars, and pipe tobacco for sale inside the store as well as soft drinks, energy drinks and snacks. Matt is yet to be positively identified. Your affiant also observed multiple signs posted inside the store stating essentially that the items are to be used for smoking tobacco only.

While inside the shop, your affiant also observed at least one (1) surveillance camera. Further, there is a sign posted outside the shop that states "no one under the age of 18 permitted!! Please have ID ready when you enter!! Smile, you're on camera."

Your affiant later transported the purchased "potpourri" to the BANDIT office where it was properly packaged and later transported to the Ada County Property Room where it was booked as evidence. All three containers are to be sent to the State Forensics Laboratory for conclusive testing.

On September 27, 2011, your affiant provided BANDIT Administrative Assistant, Jennifer Rhead with the three containers of "Twizted Potpourri" that had been purchased on the previous date by Detective Harmon. Your affiant requested that Rhead deliver the items to the Idaho State Forensics Laboratory and request conclusive testing. Your affiant learned that Rhead did deliver the evidence to the State Lab on that same date. Your affiant made contact with Idaho State Forensic Scientist Rachel Cutler and advised her of the situation. Your affiant requested expedited testing on the items delivered by Rhead. Cutler was accomodating.

On September 28, 2011, your affiant received a phone call from Cutler. Cutler advised your affiant that all three samples of "Twizted Potpourri" had been tested and each was found to contain Schedule I Controlled Substances. According to Cutler, the "Ultra Hypnotic Twizted Potpourri" contained the chemical "JWH-019" while the other two samples contained the chemical "AM-2201". This analysis is related to the first controlled purchase on September 26, 2011, by Detective Harmon at the Red Eye Hut.

Based upon your affiants training and experience your affiant believes synthetic equivalents to Tetrahydrocannabinols, plant material/foilage, packaging materials, currency, drug ledgers, business records and/or other items associated with dealing, using, and manufacturing controlled substances as described above will be located in the above described locations. Indicia items are requested to establish the connection between each premise or residence and/or contraband and specific individuals/co-conspirators.

Your affiant knows, based upon his training and experience that paraphernalia, pipes, packaging materials and scales are often located where controlled substances are manufactured, possessed and/or sold. Your affiant knows that safes and lock boxes are often used to conceal proceeds of illegal drug transactions, including currency, as well as the controlled substances.

Based upon your affiant's training and experience in dealing with illegal sales of controlled substances, your affiant knows that sellers often use drug ledgers to record their illegal transactions. Such transactions can be recorded in multiple ways, including on paper and electronically. Drug ledgers may be located as data within computers or "smart-phones". Information may be stored on moveable items such as floppy discs, zip-type drives and flash drives. Based upon your affiant's training and experience in dealing with illegal sales of controlled substances, your affiant knows that occupants of residences and businesses or other premises often leave behind indicia of occupancy including videos, digital cameras, photographs, identification cards, keys and telephone or other records. Occupants also leave behind fingerprints.

Based upon your affiant's training and experience in dealing with illegal sales of controlled substances, your affiant knows that cellular phones are often used. Those cellular phones and the contents of those cellular phones may contain forensic data with information such as names or contact information about sources of illegal controlled substances or buyers of illegal controlled substances. Cellular phones may also contain such forensic data that includes video, audio recordings and/or digital photographs.

Based upon your affiant's training and experience, your affiant knows that cell phones can contain a substantial amount of other information relevant to the investigation of a case. Criminals often use cellular phones to communicate with accomplices and will sometimes store accomplices' contact information in address books, speed dial lists or in other areas of the phone. These communications can occur through typical telephone calls or through instant messaging or text messages. To the extent that criminals use services such as instant messaging or text messages, these messages can sometimes be found on the cellular phone itself. Criminals also

use cellular phones to document criminal activities both by photographs as well as digital memos. Your affiant knows that these images and memos are also stored on the handset or SIM (Subscriber Identity Module).

Your affiant knows, based upon training and experience, that devices such as these phones can store a large number of phone numbers and call history and some mobile phones can also contain contact information and calendar information and can be linked, either by wire or wireless, with computers. Camera phones can contain images. This information can be valuable evidence in determining other participants in a criminal enterprise.

Your affiant knows that those involved in criminal enterprises sometimes use multiple phones to separate contacts with different participants or to attempt to avoid detection and monitoring by law enforcement. They also sometimes possess multiple phones to have a backup means of communication in case a phone is lost or seized by law enforcement. Likewise, your affiant knows that images in a camera can contain evidence of where a subject has been and with whom the subject has associated.

Your affiant knows that Morgan Alley has been involved in distribution of controlled substances and/or Conspiracy to manufacture or deliver controlled substance operation since at least November of 2010 according to the information corroborated by this investigation. Based upon your affiant's training and experience coupled with the investigation conducted in this case, your affiant knows that manufacturing and distribution operations, such as this operation, are continuous in nature. Further, based upon the investigation and your affiant's training and experience, your affiant knows that documents or other records exist evidencing the ordering/purchasing of materials necessary to manufacture the controlled substance. These records may also be maintained on computers. Further, your affiant knows that US Currency is

being exchanged for controlled substances and/or paraphernalia by Morgan Alley as well as those on his behalf. Your affiant knows that US Currency is commonly deposited or electronically transferred and records of said transactions are created. Therefore, based on your affiant's training and experience and based upon all the foregoing information, your affiant has probable cause to believe that said property described herein will be concealed within the above-described premises and/or persons, and therefore pray that a search warrant be issued.

THEREFORE, your affiant has probable cause and is positive that said property described herein is concealed within the above-described premises, and therefore prays that a Search Warrant be issued.

Joseph E. Odell

SUBSCRIBED AND SWORN to before me this 28 day of September, 2011.

A. Huff
Magistrate

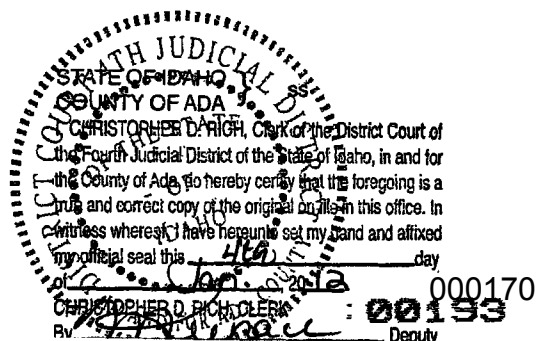


EXHIBIT K

000171

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 139

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO IDENTIFY ADDITIONAL SUBSTANCES TO BE CLASSIFIED IN SCHEDULE I; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl;

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

- 1 (25) Dipipanone;
- 2 (26) Ethylmethylthiambutene;
- 3 (27) Etonitazene;
- 4 (28) Etoxeridine;
- 5 (29) Furethidine;
- 6 (30) Hydroxypethidine;
- 7 (31) Ketobemidone;
- 8 (32) Levomoramide;
- 9 (33) Levophenacylmorphane;
- 10 (34) 3-Methylfentanyl;
- 11 (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-pip-
- 12 eridinyl]-N-phenylpropanamide);
- 13 (36) Morpheridine;
- 14 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 15 (38) Noracymethadol;
- 16 (39) Norlevorphanol;
- 17 (40) Normethadone;
- 18 (41) Norpipanone;
- 19 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-
- 20 piperidinyl] propanamide);
- 21 (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 22 (44) Phenadoxone;
- 23 (45) Phenampromide;
- 24 (46) Phenomorphan;
- 25 (47) Phenoperidine;
- 26 (48) Piritramide;
- 27 (49) Proheptazine;
- 28 (50) Properidine;
- 29 (51) Propiram;
- 30 (52) Racemoramide;
- 31 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-
- 32 propanamide);
- 33 (54) Tilidine;
- 34 (55) Trimeperidine.

35 (c) Any of the following opium derivatives, their salts, isomers and
 36 salts of isomers, unless specifically excepted, whenever the existence of
 37 these salts, isomers and salts of isomers is possible within the specific
 38 chemical designation:

- 39 (1) Acetorphine;
- 40 (2) Acetyldihydrocodeine;
- 41 (3) Benzylmorphine;
- 42 (4) Codeine methylbromide;
- 43 (5) Codeine-N-Oxide;
- 44 (6) Cyprenorphine;
- 45 (7) Desomorphine;
- 46 (8) Dihydromorphine;
- 47 (9) Drotebanol;
- 48 (10) Etorphine (except hydrochloride salt);
- 49 (11) Heroin;
- 50 (12) Hydromorphanol;

(27) N-methyl-3-piperidyl benzilate;
 (28) Psilocybin;
 (29) Psilocyn;
 (30) Tetrahydrocannabinols- or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

i. Tetrahydrocannabinols:

a. Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

b. Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.

c. $\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyl-octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and it's geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the

indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrol-o[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone (WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) - pyrrolidine, PCPy, PHP;

(33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on

1 the central nervous system, including its salts, isomers, and salts of iso-
 2 mers:

- 3 (1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-ox-
- 4 azoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- 5 (2) Cathinone (some other names: alpha-aminopropiophenone, 2-amino-
- 6 propiophenone and norephedrone);
- 7 (3) Fenethylamine;
- 8 (4) Methcathinone (some other names: 2-(methyl-amino)-propioph-
- 9 enone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-
- 10 464, AL-422, AL-463 and UR1423);
- 11 (5) (+/-)-cis-4-methylaminorex [(+/-)-cis-4,5-dihydro-4-methyl-5-
- 12 phenyl-2-oxazolamine];
- 13 (6) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- 14 (7) N-ethylamphetamine;
- 15 (8) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-ben-
- 16 zeneethanamine).
- 17 (g) Temporary listing of substances subject to emergency scheduling.

18 Any material, compound, mixture or preparation which contains any quantity
 19 of the following substances:

- 20 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl),
- 21 its optical isomers, salts and salts of isomers.
- 22 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (then-
- 23 ylfentanyl), its optical isomers, salts and salts of isomers.

24 SECTION 2. An emergency existing therefor, which emergency is hereby
 25 declared to exist, this act shall be in full force and effect on and after its
 26 passage and approval.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. 842 FILED
A.M. 8:42 P.M.

FEB 13 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-0015482

SCHEDULING ORDER

This matter came before the court on Tuesday, January 24, 2012 for a status conference and with defense counsel requesting that this be continued and the State having no objection the Court vacated the currently scheduled jury trial and reset the matter for Tuesday, April 24, 2012 at 11:00 AM for a Pretrial Conference and Monday, May 14, 2012 at 09:00 AM for a Jury Trial of the above named Defendant, CHARLYNDA LYNN GOGGIN. The attorneys present were:

For the State: Heather Reilly

For the Defendant: R. Keith Roark

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The 2 week jury trial of this action shall commence before this court on **May 14, 2012**, at 9:00 a.m.
- 2) Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Dennis Goff
Hon. Daniel C. Hurlbutt, Jr.
Hon. James Judd
Hon. Peter McDermott
Hon. Duff McKee
Hon. Daniel Meehl
Hon. George R. Reinhart, III

Justice Gerald Schroeder
Hon. Kathryn A. Sticklen
Justice Linda Copple Trout
Hon. Darla Williamson
Hon. Barry Wood
Hon. W. H. Woodland

All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **April 24, 2012**, at 11:00 a.m. for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

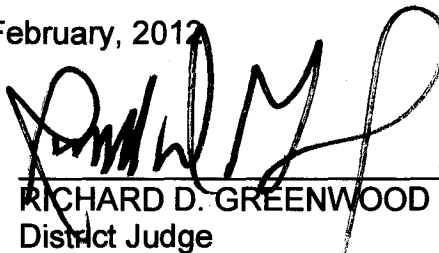
Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Exhibit and witness lists shall also be submitted to the Court via email at kajohnson@adaweb.net.

Each party will have until February 24, 2012 to file any pretrial motions and if counsel are requesting a hearing for those motions they will be heard no later than March 30, 2012. Any briefing that needs to be filed regarding the motions will be filed by March 9, 2012 and the Court will grant one week for any reply to such motions.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at DCTYLENI@adaweb.net. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.

- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 2 day of February, 2012



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of February, 2012, I mailed (served) a

true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

R. KEITH ROARK
ATTORNEY AT LAW
409 NORTH MAIN STREET
HAILEY ID 83333
MAILED

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Court Clerk

EXHIBIT LIST

The Plaintiff's are assigned NUMERICAL 1 – 100 and the defendant's are assigned ALPHABETICAL A-Z, AA, AAA etc. Please contact the clerk if multiple parties are involved, or if there are other problems.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Fran Morris, COURT REPORTER

CASE NO: **CR-FE-2011-0015482**

DATE(S): _____

STATE OF IDAHO

vs.

MORGAN CHRISTOPHER ALLEY

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
1						
2						
3						
A						
B						
C						

Exhibit 1

NO. _____
A.M. _____ P.M. 4:05

FEB 23 2012

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**ORDER FOR PREPARATION
OF GRAND JURY PROCEEDINGS**

This matter came before the court on the 8th day of November, 2011, the Honorable Richard Greenwood presiding and good cause appearing therefor;

IT IS HEREBY ORDERED that a transcript of the Grand Jury Proceedings held on the 11th day of October shall be prepared, and the cost of this transcript shall be paid for by the Defendant.

DATED this 23 day of February, 2012.


Honorable Richard Greenwood
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of February, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

R. Keith Roark
The Roark Law Firm
409 North Main Street
Hailey, Idaho 83333

Ada County Court Reporter
Via:

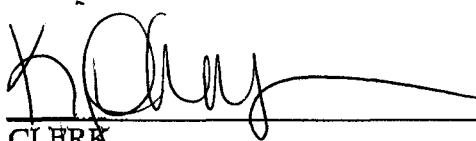
X

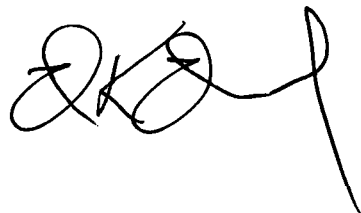
By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

X

By hand delivering copies of the same to the office of the attorney(s) at his office.

By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.


CLERK

2-27-12 

107
PTC
4/24
11A

NO 18
35-10

NO. 9
A.M. 9 FILED P.M. 9

FEB 28 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. #3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 11-15482
)	
v.	)	SECOND AFFIDAVIT OF RYAN L.
	)	HOLDAWAY RE: SUPPORT OF
MORGAN CHRISTOPHER ALLEY,	)	DEFENDANT'S MOTION TO
	)	DISMISS
Defendant.)	
_____)	

STATE OF UTAH)
) ss.
County of Cache)

Ryan L. Holdaway, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.

SECOND AFFIDAVIT OF RYAN L. HOLDAWAY RE: SUPPORT OF DEFENDANT'S MOTION TO DISMISS - 1

2. I am the attorney of record for Mr. Alley and as such have personal knowledge regarding the facts of this case.

3. Attached to this affidavit are true and accurate copies of the following:

- a. Curriculum vitae of Dr. Owen McDougal; and
- b. Curriculum vitae of Dr. Karl De Jesus.

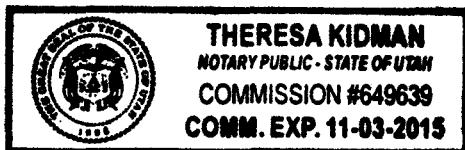
Further your affiant sayeth naught.

DATED this 23rd day of February, 2012

R L Holdaway

Ryan L. Holdaway

SUBSCRIBED AND SWORN to before me this 23rd day of February, 2012



Theresa Kidman

Notary Public for Utah
Residing at: Mendon, Cache, UT
My Commission Expires: 11-3-15

CERTIFICATE OF SERVICE

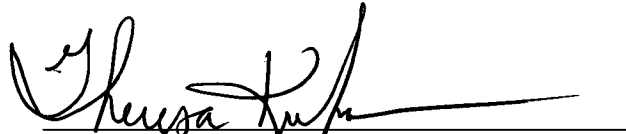
I HEREBY CERTIFY that on this 23rd day of February, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather C. Reilly
Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Facsimile: (208) 287-7709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Keith Roark
Roark Law Firm, LLP
409 N. Main St.
Hailey, ID 83333
Facsimile: (208) 788-3918

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Theresa Kidman

CURRICULUM VITAE

KARL DE JESUS

ADDRESS AND TELEPHONE

ISU Box 8023
Pocatello, ID 83209
Tel.(208)282-2673
E-mail: dejekarl@isu.edu

CURRENT POSITION Professor - Idaho State University, Pocatello, Idaho (2004 -)

EDUCATION

Ph.D., Organic Chemistry, 1979-1986
University of Wisconsin, Madison, Wisconsin
Thesis: Asymmetric Induction in the Diels-Alder Reaction
Using Chiral Dienes.
Research Advisor: Professor Barry M. Trost

B.Sc., Chemistry, 1973-1977
Texas Christian University, Fort Worth, Texas

PROFESSIONAL EXPERIENCE

Postdoctoral Research Associate
Oregon State University (1986-1988)
Synthesis of biosynthetic carbohydrate precursors; isolation
and purification of antibiotics by fermentation; structural
elucidation of microbial metabolites and synthetic
intermediates using conventional and 2-D high field NMR.

Visiting Professor
Connecticut College (1988-1990)
Courses taught: organic chemistry lecture and laboratory,
general chemistry laboratory, independent study.

Assistant Professor
Union College (1990-1993)
Courses taught: organic chemistry lecture and laboratory,
general chemistry laboratory, advanced organic chemistry
lecture and laboratory, independent study.

Associate Professor
Idaho State University (1998-2004)
Assistant Professor
Idaho State University (1994-1998)
Courses taught: organic chemistry lecture and laboratory,
general/organic/biochemistry, lecture and laboratory, advanced organic
lecture and laboratory, chemical practicum, independent study.

PUBLICATIONS

"Nucleoside Intermediates in Blasticidin S Biosynthesis Identified by the In Vivo Use of Enzyme Inhibitors," S.J. Gould*, J. Guo, K. De Jesus, A. Geitmann, Canadian Journal of Chemistry, 72(1), 6-11, 1994.

"A Problem Based Approach to Organic Chemistry," K. De Jesus, Journal of Chemical Education, 72(3), 224-226, 1995.

"The Mechanism of NaBH₄ Addition to Aldehydes - Labeling Experiment," R.K. Robinson, K. De Jesus*, Journal of Chemical Education, 75(3), 264-266,

1996.

"The Selective Monohalogenation of Dihydro and Trihydrosilanes", P.B. Gansle, B.C. Gruber, J.T. Jarvis, A. Slaitas, SenaMarie De Jesus, K. De Jesus", *Microchemical Journal*, 55, 222-234, 1997.

"Determining the Solution State Geometry of a Ti Enolate *via* Stable Isotope Labeling, NMR Spectroscopy and Modeling Studies", David B. Kimball, Ryszard Michalczyk, Eddie Moody, Morgane Ollivault-Shiflett, Karl De Jesus, Louis A. "Pete" Silks III, *J. Am. Chem. Soc.*, 2003, 125(48), 14666-14667.

"Activity-dependent Fluorescent Labeling of Bacterial Cells Expressing the TOL Pathway", Scott R. Clingenpeel, William K. Keener, Caron R. Keller, Karl De Jesus, M. Hope Howard, Mary E. Watwood, *Journal of Microbiological Methods*, 2005, 60, 41-46.

BOOKS

Contributor: Sheila Tobias and Jacqueline Raphael, *The Hidden Curriculum: Faculty-Made Tests in Science*, Part 1, Plenum Press, New York, 1997.

PRESENTATIONS

"The Synthesis of N-Bromosuccinimides", Launa M. Lynch, Colleen Carkeet, Paul B. Gansle, Jr., Karl De Jesus, March 1998, Idaho Academy of Science.

"The Synthesis of Chiral Succinimides", Launa M. Lynch, Colleen Carkeet, Paul B. Gansle, Jr. and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"Preparation of Fluorophores with Potential Affinity to Chloroalkene Metabolizing Bacteria", Evanson G. Baiya, Colleen Carkeet, and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"Synthesis of Diphenylphosphinoethylsilanes", Evanson G. Baiya and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"The Synthesis of N-Bromosuccinimides", Launa M. Lynch, Paul B. Gansle, Jr., Colleen Carkeet, Karl De Jesus, June 1998, ACS Northwest Regional Meeting, Pasco, Washington.

"Synthesis of Chiral Bromosilanes", James T. Jarvis, Brian R. Rosa, and Karl De Jesus, March 2000, Twin Falls, Idaho, Idaho Academy of Sciences.

"Synthesis of ^{13}C , ^{15}N - Labeled Thalidomide", Daniel A. Foster, Amery D. McBride, and Karl De Jesus, April 2000, Missoula, Montana, National Conference on Undergraduate Research.

"Synthesis of Chiral Bromosilanes", James T. Jarvis, Brian R. Rosa, and Karl De Jesus, June 2000, Idaho Falls, ACS Northwest Regional Meeting.

"Synthesis and Analysis of Chiral Succinimidosilanes", Travis Woodland, and Karl De Jesus, March 2003, Salt Lake City, UT, National Conference on Undergraduate Research.

"One Carbon Homologation of Ribose/Deoxyribose Precursors", Adam R. Bowman, Karl De Jesus, Rodolfo A. Martinez, and Louis A. "Pete" Silks, March 2003, Salt Lake City, UT, National Conference on Undergraduate Research.

"Synthetic Studies of Labeled Thalidomides", Karl De Jesus, September, 2000, Pocatello, Idaho, Pharmaceutical Sciences Seminar.

"Undergraduate Journeys Through the Chemical Jungle", Karl De Jesus, Keynote Address, April 2003, Idaho State University, Pocatello, ID, ISU Undergraduate Research Symposium.

"Preliminary Studies on the Synthesis of ^{13}C , ^{15}N -Labeled Thalidomide", Daniel A. Foster and Karl De Jesus, April 1999, ISU Undergraduate Symposium.

"Preparation of Diphenylphosphinoethylsilane Derivatives", D. Shane Hanson and Karl De Jesus, April 1999, ISU Undergraduate Symposium.

"Synthesis of Chiral Bromosilanes", Brian R. Rosa and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthesis of Compounds with NO Releasing Potential", James C. Williams and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Preparation of ^{13}C -Labeled Aromatic Acetylene Fluorophores", Caron R. Keller, Maribeth Watwood, and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthesis of ^{13}C , ^{15}N -Labeled -Labeled Thalidomide", Daniel A. Foster, Amery D. McBride, and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthetic Studies on Aromatic Alkyne Fluorophores", Caron R. Keller and Karl De Jesus, April 2001, ISU Undergraduate Symposium.

"Synthesis of g-Dicarbonyls and Laboratory Studies on their Atmospheric Photooxidation", Steven L. Windsor, Betsy L. Clemons, Jeff Scow, Karl De Jesus, and Lisa M. Goss, April 2001, ISU Undergraduate Symposium.

"Synthesis of Labelled Toluene for Laboratory Studies of Its Atmospheric Photooxidation", Clay D. Mortensen, Karl De Jesus, and Lisa M. Goss, April 2002, ISU Undergraduate Symposium.

"One Carbon Homologation of Ribose/Deoxyribose Precursors", Adam R. Bowman and Karl De Jesus, April 2003, ISU Undergraduate Symposium.

"Chiral Ligand Embedded Polymers for Use in Stereoselective Reactions", Jodie Hale, Joshua Pak, Rene Rodriguez, Lisa Lao, and Karl De Jesus, April 2005, ISU Undergraduate Symposium.

"Synthesis of (4R, 5S)-Glyoxyl-4-methyl-5-phenyl-2-oxazolidinone", Johnny Cairl and Karl De Jesus, April 2005, ISU Undergraduate Symposium.

"Chiral Ligand Embedded Polymers for Use in Stereoselective Reactions", J. Hale, J. Pak, R. Rodriguez, D. P. Strommen, L. Lau, and K. De Jesus, October 2005, AMIS/ISU Research Symposium.

"Preparation of Tetrahydro-1H,3H-pyrrolo[1,2-c]oxazoles for Use as Chiral Auxiliaries in Organic Reactions", Saige Schureman and Dr. Karl De Jesus, October 2005, AMIS/ISU Research Symposium.

"Synthesis of γ -(*o*-Carboxybenzamido)glutarimide", Danton Bradshaw and Karl De Jesus, March 2007, ISU Undergraduate Symposium.

"Enantioselective Deuteration of Glycals", Brandi Stephens and Karl De Jesus, March 2007, ISU Undergraduate Symposium.

"Synthesis of γ -(*o*-Carboxybenzamido)glutarimide", Danton Bradshaw and Karl De Jesus, October 2006, AMIS/ISU Research Symposium.

"Preparation of Tetrahydro-1H,3H-pyrrolo[1,2-c]oxazoles", John A. Patton, Saige Schureman, and Karl De Jesus, October 2007, AMIS/ISU Research Symposium.

"Enantioselective Deuteration of Glycals", Aaron Wilkinson, Brandi Stephens, John W. Cairl, Karl De Jesus, June 2008, ACS Norwest Regional Meeting, Park City.

AWARDS

Excellence in Teaching Award, Connecticut College, 1988.
ISU Faculty Administrative Fellow, 2000.

HONORS

Who's Who Among America's Teachers, 1996.
ISU Most Influential Professor, Masters Student, 1998.
Who's Who in Sciences Higher Education, 2004.
Who's Who Among America's Teachers, 2005.

Owen Michael McDougal, Ph.D.

Consultant in Chemistry

CURRICULUM VITAE

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EDUCATION:

Ph.D., University of Utah, Salt Lake City, Utah, 1998
B.S., State University of New York at Oswego, Oswego, New York, 1992
A.S., State University of New York at Morrisville, Morrisville, New York, 1990

PROFESSIONAL POSITIONS:

Associate Professor of Chemistry, Boise State University, Boise, Idaho, 2009-present
Assistant Professor of Chemistry, Boise State University, Boise, Idaho, 2006-2009
Associate Professor of Chemistry, Southern Oregon University, Ashland, Oregon, 2003-2006
Visiting Professor of Chemistry, University of Utah, Salt Lake City, Utah, 2004-2005
Assistant Professor of Chemistry, Southern Oregon University, Ashland, Oregon, 1998-2003
Visiting Professor of Chemistry, University of Oregon, Eugene, Oregon 2002-2005 (summer only)
Visiting Professor of Chemistry, University of Utah, Salt Lake City, Utah, 2001
Laboratory Technician, Galson Laboratories, East Syracuse, New York, 1990

PROFESSIONAL SOCIETIES AND HONORS:

Nominated for Foundation Scholars Service Award, Boise State University, 2012.

American Association for the Advancement of Science Pacific Division

Lifetime Member, 2001-present

Elected President 2012

Program Chair, 93rd Annual Meeting, Boise, Idaho, 2011-2012

Education Committee, 2011-present

Executive Committee, 2006-present

Site-selection Committee, 2006-present

Program Chair, 88th Annual Meeting, Boise, Idaho, 2006-2007

Council Member, 2001-present

Chair, Chemistry and Biochemistry Section, 2001-present

Student Awards Committee, 2001-present

American Chemical Society, Snake River Local Section, 2006-present

Elected Chair 2012

General Meeting Co-chair, 67th Annual Meeting, Boise, Idaho, 2011-2012

Local Section Activities Committee, 2009

Counselor, 2007-2009

Member, 1990-present

Idaho Academy of Sciences, Lifetime Member 2007-present

Sigma Xi, Scientific Research Society, Elected Vice President 2006

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:

Chairperson, Thesis Committee, Emily Drussel, Chemistry MS, 2011-present.

Invited Presentation "The Chemical Umbrella: Earth to Clouds", Department of Materials Science and Engineering, Boise State University, Boise, Idaho, October 2011.

Invited Presentation "Computational Solutions to Biochemical Problems", 2nd Annual Center for Advanced Energy Systems, Modeling, Simulation, and Visualization Conference, Boise, Idaho, September 2011.

Chairperson, Thesis Committee, Emma Baker, Chemistry MS, 2010-present.

Member, University Search Committee for Provost and Vice President of Academic Affairs, 2010-2011.

Member, University Committee for Technology in Teaching and Learning Committee, 2010-2011.

Member, University Committee for Alternative Academic Calendar, 2010-2011.

Member, University Search Committee for Associate Vice President for Human Resources, 2010-2011.

Member, Academic Grievance Board, 2010-2011.

Member, University Naming Committee 2010-present.

Member, University Search Committee for Associate Vice President for Information Technology, 2010.

Invited Presentation "Extracellular Matrix Modulates Cell Signaling", 8th Annual Idea Network of Biomedical Research Excellence Conference, Moscow, Idaho, August 2010.

Invited Presentation "DockoMatic: Automating Autodock for Ligand to Receptor Binding Prediction", 91st Annual American Association for the Advancement of Science Pacific Division Conference, Ashland, Oregon, June 2010.

Chairperson, Thesis Committee, Reed Jacob, Interdisciplinary MS, 2009-present.

Member, Thesis Committee, Brian Dies, Biological Sciences MS, 2009-2011.

Member, Thesis Committee, Amy Ulappa, Biological Sciences MS, 2009-2011.

Member, Graduate Council, 2009-2010.

Member, Faculty Grievance Committee, 2009-2010.

Member, Graduate Studies Committee, Department of Chemistry and Biochemistry, 2009-2011.

Invited Presentation "Finding MRSA's Kryptonite: Computational Directed Combatant Pentapeptides", 90th Annual American Association for the Advancement of Science Conference, San Francisco, California, August 2009.

Invited Presentation "Where does all the Time Go?", Idaho Idea Network of Biomedical Research Excellence Research Symposium, Boise State University, Boise, Idaho, April 2009.

Invited Presentation "Idaho INBRE Research Opportunity for Undergraduates: Peptides for Parkinson's", Brigham Young University-Idaho, Rexburg, Idaho, February 2009.

Invited Presentation "What does NMR have to do with Undergraduate Research?", 50th Annual Meeting Experimental Nuclear Magnetic Resonance Conference, Asilomar, California, April 2009.

Member, Thesis Committee, Jemima Monroe, Materials Science and Engineering MS, 2008-2010.

Member, Student Awards Committee, Department of Chemistry and Biochemistry, 2008-present

Member, Honorary Doctorate Degree Selection Committee, 2008-2011.

Invited Presentation "OSpecWeb: An On-line Educational Resource to Supplement the Instruction of Organic Spectroscopy", 236th Annual Meeting of the American Chemical Society, Philadelphia, Pennsylvania, August 2008.

Invited Presentation "From Snail Venom to Therapeutics: How Conotoxins Provide Insight into Drug Design", 89th Annual American Association for the Advancement of Science Pacific Division Conference, Waimea, Hawaii, June 2008.

Invited Presentation "Chemistry, Chemistry Everywhere: In You, On You, Around You", Capital Scholars Showcase of Learning, Boise State University, Boise, Idaho, April 2008.

Invited Presentation "Energy and Poverty in Idaho", 50th Annual Meeting of the Idaho Academy of Sciences, College of Western Idaho, Nampa, Idaho, March 2008.

Invited Presentation "Deadly Snails, NMR, and the Treasure Valley", 50th Annual Meeting of the Idaho Academy of Sciences, College of Western Idaho, Nampa, Idaho, March 2008.

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:(cont'd)

Invited Presentation "Biomass Fuel Briquettes: Composition, Compaction and Combustion", 50th

Annual Meeting of the Idaho Academy of Sciences, College of Western Idaho, Nampa, Idaho, March 2008.

Member, Faculty Senate, 2007-2011.

NSF Merit Review: Bio & Hydrogen Panel: Sustainable Energy, Washington DC, Virginia, May 2007.

Member, Public Relations and Outreach Committee, Department of Chemistry and Biochemistry, 2006.

Member, Professional Development Committee, 2000-2003.

Member, Environmental Studies Committee, 1999-2004.

CONTINUING EDUCATION:

Presidential Leadership Academy, Boise State University, Boise, Idaho, 2011.

AMIX Metabolomics NMR Software training course, Bruker Biospin Inc., Peabody, Massachusetts, August 2009.

Recipient Scientific User Access, Pacific Northwest National Laboratory-Environmental Molecular Sciences Laboratory, Richland, Washington, May 2008.

Certificate of completion, Center for Teaching and Learning, Service Learning Course Development six-week training workshop, Boise State University, Boise, Idaho, March 2007.

Chemistry Exam Writer, United States Academic Decathlon (USAD), 450 MC questions for high achieving high school students; <http://www.usad.org/>, 2009.

Office of Research Administration: "Travel Award, Scientific or Scholarly Activities" (\$500), 2006.

Professional Development Grant (SOU): "Keeping Current with Modern Technology in Organic Spectroscopy" (\$6,017) PI, 2005.

National Science Foundation Workshop Award, "NMR Fundamentals and Applications," Washington State University, Pullman, Washington, May 2003.

Carpenter II Travel Grant: Applied toward travel to the 43rd ENC, Asilomar, CA (\$350) PI, 2002.

General Education Course Development Grant, Southern Oregon University, Ashland, OR, March 1999.

Carpenter Grant: JEOL ECLIPSE NMR System Management course, Peabody, MA (\$350) PI, 1999.

Student Travel Award to the 39th Annual ENC, Asilomar, CA (\$700) PI, 1998.

APPOINTMENTS:

Elected President, American Association for the Advancement of Science Pacific Division 2012-2013.

Elected Chair, American Chemical Society, Snake River Local Section 2012-2013.

Elected President, Faculty Senate, Boise State University, Boise, Idaho, 2009-2011.

Elected Chair, Professional Development Committee, Southern Oregon University, Ashland, OR, 2003.

PUBLICATIONS:

Martin, B., Chingas, G.C., McDougal, O.M., Origin and Correction of Magnetic Field Inhomogeneity at the Interface in Biphasic NMR Samples, *J. Mag. Reson. (in press)*.

Fang, M., Jacob, R., McDougal, O., Oxford, J., Minor Fibrillar Collagens; Variable Regions, Alternative Splicing, Intrinsic Disorder, and Tyrosine Sulfation, *Protein & Cell (in press)*.

McDougal, O.M., Mallory, C., Warner, L.R., Oxford, J.T., Predicted Structure and Binding Motifs of Collagen $\alpha 1(XI)$, *Journal on BioInformatics and BioTechnology, (in press)*.

Brown, R.J., Mallory, C., McDougal, O.M., Oxford, J.T., Proteomic Analysis of Coll 1a1-Associated Protein Complexes, *Proteomics, 11(24)*, 4660-4676 (2011).

Mallory, C., McDougal, O., Oxford, J., Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions *in Silico*, *Proceedings of 2011 International Conference on Bioinformatics & Computational Biology*, BIOCOMP'11/ISBN #1-60132-172-4/CSREA, Editors: Hamid R. Arabnia and Quoc-Nam Tran, pp. 632-635, Las Vegas, USA, 2011.

PUBLICATIONS: (cont'd)

- Weires, N.A.M., Johnston, A., Warner, D.L., McCormick, M.M., Hammond, K., McDougal, O.M., Recycling of Waste Acetone by Fractional Distillation, *J. Chem. Ed.*, **88**(12), 1724-1726 (2011).
- Jacob, R.B., Bullock, C.W., Andersen, T., McDougal, O.M., DockoMatic – Automated Peptide Analog Creation for High Throughput Virtual Screening, *J. Comp. Chem.*, **32**(13), 2936-2941 (2011).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 3rd ed.; Cengage Learning: Mason, OH, ISBN: 9781133448365, 2011.
- McDougal, O.M., Eidemiller, S., Weires, N., McCormick, M.M., Biomass Briquettes: Turning Waste into Energy, *Biomass Power & Thermal*, **4**(12), 46-49 (2010).
- Bullock, C.W., Jacob, R.B., McDougal, O.M., Hampikian, G., Andersen, T., DockoMatic – Automated Ligand Creation and Docking, *BMC Research Notes*, **3**, 289-297 (2010).
- Jacob, R.B., McDougal, O.M., The M-superfamily of conotoxins: a review, *Cellular and Molecular Life Sciences*, **67**, 17-27 (2010).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 2nd ed.; Cengage Learning: Mason, OH, ISBN: 1111633673, 2010.
- Turner, M., Eidemiller, S., Martin, B., Narver, A., Marshall, J., Zemp, L., Cornell, K.A., McIntosh, J.M., McDougal, O.M., Structural Basis for α -Conotoxin Potency and Selectivity, *Bioorganic Medicinal Chemistry*, **17**(16), 5894-5899 (2009).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 1st ed.; Cengage Learning: Mason, OH, ISBN: 1111032300, 2009.
- McDougal, O.M., Turner, M.W., Ormond, A.J., Poulter, C.D., Three-Dimensional Structure of Conotoxin tx3a: An m-1 Branch Peptide of the M-Superfamily, *Biochemistry*, **47**, 2826-2832 (2008).
- Graf, C. and McDougal, O., A Practical Method for the Display of High Resolution One- and Two-Dimensional NMR Spectra on the World Wide Web, *The Chemical Educator*, **13**, 92-95 (2008).
- Corpuz, G.P., Jacobsen, R.B., Jimenez, E.C., Watkins, M., Walker, C., Colledge, C., Garrett, J.E., McDougal, O.M., Li, W., Gray, W.R., Hillyard, D.R., Rivier, J., McIntosh, J.M., Cruz, L.J., Olivera, B.M., Definition of the M-Conotoxin Superfamily: Characterization of Novel Peptides from Molluscivorous *Conus* Venoms, *Biochemistry*, **44**, 8176-8186 (2005).
- Hart, A. and McDougal, O., Spectroscopic Data Management for the Time-Strapped Educator, *The Chemical Educator*, **9**(6), 374-377 (2004).
- Buser, J. and McDougal, O., A Pedagogical Approach to the Instruction of Organic Spectroscopy, *The Chemical Educator*, **9**(4), 216-219 (2004).
- McDougal, O. and Poulter, C.D., Three-Dimensional Structure of Mini-M Conotoxin mr3a, *Biochemistry*, **43**, 425-429 (2004).
- McDougal, O., Chapter 17, *Biochemistry*, A web chapter to accompany, Basic Concepts of Chemistry, 7th Edition by L. Jack Malone, John Wiley & Sons, Inc., Hoboken, NJ, 2003.
- Holstein, S., Stanley, R., McDougal, O., Fuel Briquettes Out of Junk Mail and Yard Wastes, *Journal of Chemical Innovation*, **31**(2), 22-28 (2001).
- McDougal, O., *Essentials of General, Organic, and Biological Chemistry: Student Study and Solutions Guide*, Harcourt College Publishers, Orlando, FL, ISBN 10: 0030056527, 2000.

ABSTRACTS: (2008-present)

- Jacob, R.B. and McDougal, O.M., "DockoMatic with Relaxator: Receptor Side-Chain Flexibility", presented at the 2nd Annual CAES Idaho Modeling, Simulation, and Visualization Conference, Boise, Idaho, September 2011.
- Ambrose, R. and McDougal, O.M., "Extraction and Isolation of Cyclopamine from *Veritrum californicum*", presented at the 9th Annual INBRE Conference, Moscow, Idaho, August 2011.

ABSTRACTS: (cont'd)

- Mallory, C. and McDougal, O.M., "Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions in Silico", presented at the 9th Annual INBRE Conference, Moscow, Idaho, August 2011.
- Mallory, C., Oxford, J.T., McDougal, O.M., "Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions In Silico", presented at the 2011 International Conference on Bioinformatics and Computational Biology, Las Vegas, Nevada, July, 2011.
- McDougal, O.M., "Bridging the Experimental to Computational Divide", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Mallory, C., Oxford, J., McDougal, O.M., "Collagen XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions in Silico", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Jacob, R.B. and McDougal, O.M., "Predictive Potential Unraveled with DockoMatic", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Brasseure, T., Drussel, E., Baker, E., Hill, M., Chingas, G., McDougal, O.M., "Chemical Warfare Agent Decontamination by Surfactant Accelerated Hydrolysis as Studied by ¹H Nuclear Magnetic Resonance Spectroscopy", presented at the Undergraduate Research Conference (URC), Boise State University, Boise, Idaho, April 2011.
- Swartz, M.M., Mallory, C., McDougal, O.M., "Investigation of Parkinson's Using Peptide Probes", presented at the URC, Boise State University, Boise, Idaho, April 2011.
- McDougal, O.M. and Jacob, R., "Automatic DockOmatic: Ligand and Receptor Screening Made Easy", presented at the 240th National American Chemical Society Meeting, Boston, Massachusetts, August 2010.
- Mallory, C., McDougal, O., Oxford, J., "Computational Studies of Collagen XI $\alpha 1$ Domain", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Swartz, M.M., Eidemiller, S., Cornell, K., McDougal, O., "Metabolic Analysis of MTN Deficiency in *E. coli*", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Weires, N., Narver, A., McDougal, O., "NMR Investigation of Conotoxin pK_a", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Drussel, E., Martin, B., Luker, D., Hill, M., Chingas, G., McDougal, O., "Using NMR Techniques in a Model Biphasic System to Find Partition Coefficients", presented at the 91st Annual AAASPD Conference, Ashland, Oregon, June 2010.
- Johnston, A., McCormick, M.M., Hammond, K., Warner, D., McDougal, O.M., "Going Green in the Organic Lab", presented at the 91st Annual AAASPD Conference, Ashland, Oregon, June 2010.
- Woodbury, L., Coonse, K., McDougal, O., Oxford, J., "Determination of Sulfated Glycosaminoglycan Binding Sites within Collagen Type XI Using Surface Plasmon Resonance and Nuclear Magnetic Resonance Spectroscopy", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Drussel, E., Martin, B., Hill, M., Chingas, G., McDougal, O., "Using NMR Techniques to Find Partition Coefficients Across Biphasic Systems", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Gonzales, S. and McDougal, O., "Pentapeptide Synthesis, Cleavage, and Purification", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Mallory, C. and McDougal, O., "Bioinformatics, Homology Modeling, and Parkinson's Disease", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Narver, A. and McDougal, O., "pK_a Determination of Alpha Conotoxin MII and Analogs", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Mallory, C., Drussel, E., McDougal, O.M., " α -Conotoxin E11A Binding Activity Towards Nicotinic Acetylcholine Receptor", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.

ABSTRACTS: (cont'd)

- Woodbury, L., McDougal, O.M., Oxford, J., "Chondroitin Sulfate Glycosaminoglycan Binding Sites within Collagen Type XI", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Narver, A. and McDougal, O.M., "pK_a Determination in Alpha-Conotoxin MII and Analogs", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Luker, D. and McDougal, O.M., "Taking a Slice out of NMR – A New Method", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Johnston, A. and McDougal, O.M., "Peptide Synthesis, Cleavage and Purification", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Eidemiller, S., Cornell, K., McDougal, O., "Manipulation of E. coli: A Metabolomics Study", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Martin, B., Hill, M., McDougal, O.M., "What does NMR have to do with the Mixing of Oil and Water?", presented at the Council on Undergraduate Research Posters on the Hill, Washington DC, Virginia, May 2009.
- Johnston, A. and McDougal, O., "Going Green at Boise State University", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- Jacob, R., Walters, M., Cornell, K., McDougal, O., "Resistance is Not Futile: Computational Directed Design of Combatant Pentapeptides", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- Swartz, M. and McDougal, O., "Affordable Alternative Energy at the Community Level", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- McDougal, O.M., "Structural Basis for α -Conotoxin Potency and Selectivity", presented at the Experimental Nuclear Magnetic Resonance Conference 50th Annual Meeting, Asilomar, California, March 2009.
- Eidemiller, S. and McDougal, O., "Model Behavior: Synthetic Conotoxin Analogs for Parkinson's", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Parker, B.A., Coppola, J., Charlier, H., McDougal, O., Hill, M., "Hydrolysis of Parathion in a Liquid-Liquid Biphasic System", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Swartz, M., Gomez, A., McDougal, O.M., "Alternative Energy at Home", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Johnston, A., McCormick, M.M., McDougal, O.M., "Going Green in Idaho", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Martin, B., Hill, M., McDougal, O., "Distribution of p-Nitrophenol in a Model Biphasic System by SPS³RE NMR Spectroscopy", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Turner, M., Zemp, L., McDougal, O., "Three Dimensional Solution Structure for α -Conotoxin MII [E11A]: Structure-Function Studies in the Development of Therapeutic Approaches for Parkinson's Disease", presented at the AAASPD 89th Annual Meeting, Waimea, Hawaii, June 2008.
- Dixon, T., Hill, M., McDougal, O., "Applications of Diffusion-Ordered NMR Spectroscopy and Slice-Selection Imaging in the Study of the Interfacial Region of a Mixed Phase Solution", presented at the Council on Undergraduate Research Posters on the Hill conference, Washington, DC, Virginia, April 2008.
- Turner, M. and McDougal, O., "Three-Dimensional Solution Structure of Conotoxin tx3a: A m-l Branch Peptide of the M-Superfamily", presented at the 50th Annual Idaho Academy of Sciences Meeting, College of Western Idaho, Nampa, Idaho, March 2008.

GRANTS & AWARDS:

Higher Education Research Council, "Academic Liaison with Industry: Going from Big D Little r to Big D Big R is Good for Idaho" (\$49,600) PI, 2011.

BHS Marketing LLC, "Dissecting Detergents and Cleansers to Reformulate New Green Products" (\$13,000) Contract, 2011.

QinetiQ North America, "³¹P ssNMR Analysis of Treated Fabrics" (\$50,000) Contract, 2010.

Boise Technology Inc. Year IV, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$45,904) Contract, 2010.

BSU, Designing for Learning Success, "Expanding Organic Chemistry at BSU" (\$20,000) PI, 2010.

USAMRAA Defense Threat Reduction Agency contract number W81XWH-07-1-0004, "The DNA Safeguard Project" (Grant: \$1,069,525; McDougal portion: \$103,200) Co-PI, 2010.

NSF MRI Grant 0923535: "Acquisition of a LC-MS at Boise State University" (\$676,964) Co-PI, 2009.

Idaho State Board of Education Technology Incentive Grant Program, "Modernizing Freshman Laboratories Using State-of-the-Art Instrumentation" (\$55,700) PI, 2009.

MSTMRI grant number 6PR3382000170, "Design, Synthesis, and Biological Testing of Novel and Selective Antagonists of nAChRs." (\$7,500) PI, 2009.

NIH Grant #P20 RR016454 from the INBRE Program of the National Center for Research Resources (Grant: \$16,000,000; McDougal portion: \$100,000 est.) Co-PI, 2009.

Boise Technology Inc. Year III, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$35,000) Collaborative Contract, 2009.

USAMRAA Defense Threat Reduction Agency contract number W81XWH-07-1-0004, "The DNA Safeguard Project" (Grant: \$1,069,525; McDougal portion: \$116,728) Co-PI, 2008.

Pacific Northwest National Laboratory-Environmental Molecular Sciences Laboratory (PNNL-EMSL), "Metabolomics and Proteomics of Bacterial Signaling" (est. \$15,000) PI, 2008.

Boise Technology Inc. Year II, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$26,500) Collaborative Contract, 2008.

MSTMRI, "In Search of a Cure for Parkinson's: A Structure Activity Relationship Study" (\$5,000) PI, 2008.

Idaho State Board of Education Technology Incentive Grant Program, "Going Green: Environmental, Economic, Efficient Organic Chemistry Lab Curriculum" (\$99,700) PI, 2008.

Merck/AAAS Undergraduate Research Program (\$60,000) Co-PI, 2007.

Research Corporation grant number 6PR3381000172, "The Design, Synthesis, and Biological Testing of Novel and Selective Antagonists of Neuronal Nicotinic Acetylcholine Receptors" (\$56,000) PI, 2007.

College of Arts and Science Travel Award, "NMR at the Interface," poster presentation, Experimental Nuclear Magnetic Resonance Conference, Asilomar, CA (\$400) PI, 2007.

College of Arts and Sciences Civic Engagement Grant Program, "Establishing Community Engagement in the Chemistry Curriculum" (\$15,000) PI, 2007.

Boise Technology Inc., Year I, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$24,000) Collaborative Contract, 2007.

MSTMRI, "Electrostatic Topography Mapping of Novel and Selective Antagonists of Neuronal Nicotinic Acetylcholine Receptors" (\$5,000) PI, 2007.

NSF CRIF-MU/RUI Grant Number 0639251: "Acquisition of a 500-MHz Nuclear Magnetic Resonance Spectrometer at Boise State University" (\$500,000) Co-PI, 2006.

Professional Development Grant (SOU): "Incorporating a New 400 MHz NMR Spectrometer into the Chemistry Curriculum" (\$3,880) PI, 2003.

SOU Technology Resource Grant: "A New Printer for Chemistry" (\$1,300) PI, 2003.

Murdock Charitable Trust: "Organic Spectroscopy Laboratory and Biotechnology Evolution at Southern Oregon University." (\$213,000) Co-PI, 2003.

GRANTS & AWARDS: (cont'd)

Professional Development Grant (SOU): "Development of a spectroscopic database to be used by undergraduate students to improve their understanding of NMR, IR, and MS." (\$1,713) PI, 2002.

NSF MRI Grant Number 0116245: "Acquisition of a 400 MHz NMR Spectrometer to Broaden Research Experiences for Undergraduates at Southern Oregon University" (\$293,310) PI, 2001.

Agilent Technologies University Relations Grant: "A New GC-MS for Chemistry." (\$76,910) Co-PI, 2001.

Professional Development Grant (SOU): "Development of an advanced NMR instrumentation course for undergraduates" (\$2,350) PI, 1999.

General Education Course Development Grant (SOU): Development of general scientific coursework and laboratory experiments for non-science majors (\$4,000) PI, 1999.

Scientific Research Grant (SOU): Black tail deer tarsal gland research. (\$1,200) PI, 1998.

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11:00

NO. _____
A.M. _____ FILED P.M. 4:10

MAR 01 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

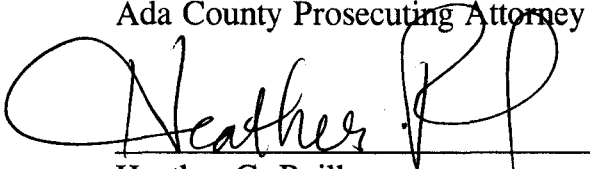
Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, ID 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
	)	Case No. CR-FE-2011-0015482
Plaintiff,)	
vs.	)	ADDENDUM TO DISCOVERY
	)	RESPONSE
MORGAN CHRISTOPHER ALLEY,	)	TO COURT
)	
Defendant.)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 16th day of March 2012.

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney

MAR 06 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

Ryan L. Holdaway ISB# 8289
Diane Pitcher ISB# 8340
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ryan@pitcherholdaway.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO

Plaintiff,

v.

MORGAN CHRISTOPHER ALLEY

Defendant.

)
)
) Case No.: CR FE 11-15482
)
) **NOTICE OF HEARING**
) **RE: MOTION TO DISMISS AND NOTICE**
) **OF INTENT TO CALL WITNESSES**
)
)
)

NOTICE IS HEREBY GIVEN that a Hearing of the above captioned matter is to be held on
the 12th day of March, 2012, at 9 a.m., at the Courthouse, 200 W Front St. Boise, ID 83702.

DATED this 17th day of February 2012.



Diane Pitcher
Attorney for Plaintiff

**NOTICE OF HEARING, MOTION TO DISMISS AND NOTICE OF INTENT TO CALL
WITNESSES- 1**

000200



MAR 07 2012

CHRISTOPHER D. RICH, Clerk
By NICOL TYLER
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Rm 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

STATE OF IDAHO,)	
)	
Plaintiff,)	
vs.	)	Case No. CR-FE-2011-0915482;
	)	CR-FE-2011-0015483 and
	)	CR-FE-2011-0015480
MORGAN C. ALLEY,)	
TASHINA ALLEY, and)	
CHARLYNDA GOGGIN,	)	AFFIDAVIT OF HEATHER
	)	REILLY IN SUPPORT OF
Defendant's.	)	STATE'S MEMORANDUM IN
	)	RESPONSE AND OPPOSITION
	)	TO DEFENDANT'S MOTION
	)	TO DISMISS

The undersigned, after being first sworn, states as follows:

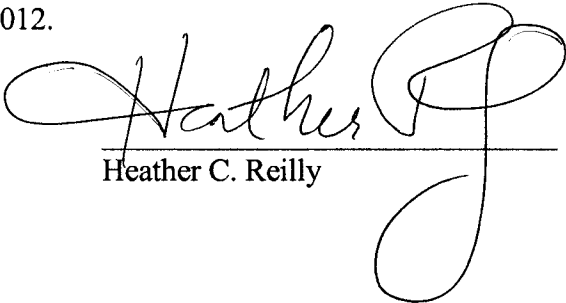
1. That your affiant, Heather Reilly, is the Deputy Ada County Prosecutor assigned to the above entitled cases;
2. Attached to this Affidavit are true and accurate copies of the following:
 - a. State's Exhibit 1, House Bill 139 Legislative history; bill text and Statement of Purpose, printed off of the Idaho Legislature website (www.legislature.idaho.gov);
 - b. State's Exhibit 2, House Bill 119 Legislative history; bill text and Statement of Purpose, printed off of the Idaho Legislature website;
 - c. State's Exhibit 3, February 15, 2011, Minutes House Judiciary, Rules & Administration Committee regarding H119 and H139, available on Idaho

Legislature webcite, signed copy obtained from Committee Chairman & Secretary;

- d. State's Exhibit 4, March 2, 2011, Minutes Senate Judiciary & Rules Committee regarding H119 and H139, available on Idaho Legislature webcite, signed copy obtained from Committee Chairman & Secretary;
- e. State's Exhibit 5, Affidavit by David Sincerbeaux and attached Curriculum Vitae marked as Exhibit 5A;
- f. State's Exhibit 6, Idaho State Police Forensic Services Criminalistic Analysis Report – Case No. M20112998, 12/6/11 Supplemental Information, by Corinna Owsley dated December 6, 2011 (attached affidavit dated 12/8/11).

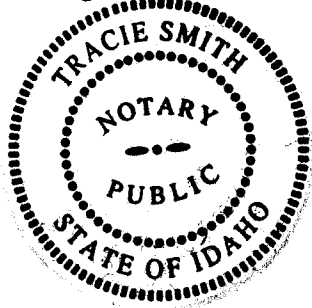
Further your affiant sayeth not.

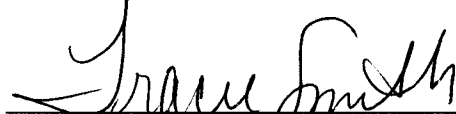
DATED, this 7th day of March, 2012.


Heather C. Reilly

STATE OF IDAHO)
) ss.
County of Ada)

On this 7th day of March, 2012, before me, a Notary Public for Idaho, appeared Heather Reilly, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.




Notary Public for the State of Idaho
Residing at: Bona, Idaho
My Commission Expires: 10/22/2014

HOUSE BILL 139

Full Bill Information

Individual Links:

Bill Text

Statement of Purpose / Fiscal Note

Legislative Co-sponsors

H0139..... by JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

UNIFORM CONTROLLED SUBSTANCES - Amends existing law relating to Uniform Controlled Substances to identify additional substances to be classified in Schedule I.

02/10House intro - 1st rdg - to printing

02/11Rpt prt - to Jud

02/16Rpt out - rec d/p - to 2nd rdg

02/172nd rdg - to 3rd rdg

02/213rd rdg - **PASSED - 69-0-1**

AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bayer, Bedke, Bell, Bilbao, Black, Block, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon(Chadderdon), Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs(Wheeler), Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Higgins, Jaquet, Killen, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan, Moyle, Nessel, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith(30), Smith(24), Stevenson, Takasugi (Batt), Thayn, Thompson, Trail, Vander Woude, Wills, Wood (27), Wood(35), Mr. Speaker

NAYS -- None

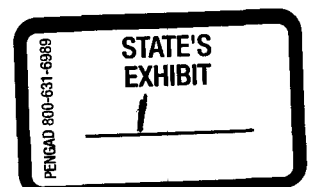
Absent and excused -- McGeachin

Floor Sponsor - Luker

Title apvd - to Senate

02/22Senate intro - 1st rdg - to Jud

03/03Rpt out - rec d/p - to 2nd rdg - to 3rd rdg



03/043rd rdg - **PASSED - 35-0-0**

AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stegner, Stennett, Tippets, Toryanski, Vick, Werk, Winder

NAYS -- None

Absent and excused -- None

Floor Sponsor - Davis

Title apvd - to House

03/07To enrol

03/08Rpt enrol - Sp signed

Pres signed

To Governor

03/09Delivered to Governor on 03/08

03/10Governor signed

Session Law Chapter 47

Effective: 03/10/11

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 139

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO IDENTIFY ADDITIONAL SUBSTANCES TO BE CLASSIFIED IN SCHEDULE I; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;

- 1 (25) Dipipanone;
- 2 (26) Ethylmethylthiambutene;
- 3 (27) Etonitazene;
- 4 (28) Etoxeridine;
- 5 (29) Furethidine;
- 6 (30) Hydroxypethidine;
- 7 (31) Ketobemidone;
- 8 (32) Levomoramide;
- 9 (33) Levophenacylmorphane;
- 10 (34) 3-Methylfentanyl;
- 11 (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-pip-
- 12 eridiny]l-N-phenylpropanamide);
- 13 (36) Morpheridine;
- 14 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 15 (38) Noracymethadol;
- 16 (39) Norlevorphanol;
- 17 (40) Normethadone;
- 18 (41) Norpipanone;
- 19 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-
- 20 piperidiny]l propanamide);
- 21 (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 22 (44) Phenadoxone;
- 23 (45) Phenampromide;
- 24 (46) Phenomorphan;
- 25 (47) Phenoperidine;
- 26 (48) Piritramide;
- 27 (49) Proheptazine;
- 28 (50) Properidine;
- 29 (51) Propiram;
- 30 (52) Racemoramide;
- 31 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]l-
- 32 propanamide);
- 33 (54) Tilidine;
- 34 (55) Trimeperidine.

35 (c) Any of the following opium derivatives, their salts, isomers and
 36 salts of isomers, unless specifically excepted, whenever the existence of
 37 these salts, isomers and salts of isomers is possible within the specific
 38 chemical designation:

- 39 (1) Acetorphine;
- 40 (2) Acetyldihydrocodeine;
- 41 (3) Benzylmorphine;
- 42 (4) Codeine methylbromide;
- 43 (5) Codeine-N-Oxide;
- 44 (6) Cyprenorphine;
- 45 (7) Desomorphine;
- 46 (8) Dihydromorphine;
- 47 (9) Drotebanol;
- 48 (10) Etorphine (except hydrochloride salt);
- 49 (11) Heroin;
- 50 (12) Hydromorphanol;

- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;
- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminoethyl) indole);
- (16) Alpha-methyltryptamine;
- (17) Bufotenine;
- (18) Diethyltryptamine (DET);
- (19) Dimethyltryptamine (DMT);
- (20) Ibogaine;
- (21) Lysergic acid diethylamide;
- (22) Marihuana;
- (23) Mescaline;
- (24) Parahexyl;
- (25) Peyote;
- (26) N-ethyl-3-piperidyl benzilate;

(27) N-methyl-3-piperidyl benzilate;
 (28) Psilocybin;
 (29) Psilocyn;
 (30) Tetrahydrocannabinols- ~~or s~~Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure ~~and pharmacological activity~~ such as the following:

i. Tetrahydrocannabinols:

a. Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

b. Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.

c. $\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyl-octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and it's geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the

indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolidino[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) - pyrrolidine, PCPy, PHP;

(33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on

1 the central nervous system, including its salts, isomers, and salts of iso-
2 mers:

- 3 (1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-ox-
4 azoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- 5 (2) Cathinone (some other names: alpha-aminopropiophenone, 2-amino-
6 propiophenone and norephedrone);
- 7 (3) Fenethylline;
- 8 (4) Methcathinone (some other names: 2-(methyl-amino)-propioph-
9 enone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-
10 464, AL-422, AL-463 and UR1423);
- 11 (5) (+/-) cis-4-methylaminorex [(+/-) cis-4,5-dihydro-4-methyl-5-
12 phenyl-2-oxazolamine];
- 13 (6) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- 14 (7) N-ethylamphetamine;
- 15 (8) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-ben-
16 zeneethanamine).
- 17 (g) Temporary listing of substances subject to emergency scheduling.
- 18 Any material, compound, mixture or preparation which contains any quantity
19 of the following substances:
- 20 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl),
21 its optical isomers, salts and salts of isomers.
- 22 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (then-
23 ylfentanyl), its optical isomers, salts and salts of isomers.

24 SECTION 2. An emergency existing therefor, which emergency is hereby
25 declared to exist, this act shall be in full force and effect on and after its
26 passage and approval.

STATEMENT OF PURPOSE

RS20305C1

The purpose of the legislation is to create safe regulations for the public concerning Tetrahydrocannabinols from synthetic drugs (Spice) that mimic the effects of Cannabis and identifying additional substances to be classified in schedule1. This legislation continues what is currently being enforced by the Board of Pharmacy. Declaring an emergency.

FISCAL NOTE

There is no additional Fiscal Impact

Contact:

Name: Representative Richard Wills

Office: House Judiciary, Rules and Administration

Phone: (208) 332-1181

Statement of Purpose / Fiscal Note

H0139

HOUSE BILL 119

Full Bill Information

Individual Links:

Bill Text

Statement of Purpose / Fiscal Note

Legislative Co-sponsors

H0119..... by JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

UNIFORM CONTROLLED SUBSTANCES - Amends and adds to existing law relating to uniform controlled substances to identify additional substances to be classified in Schedule I.

02/08House intro - 1st rdg - to printing

02/09Rpt prt - to Jud

02/16Rpt out - rec d/p - to 2nd rdg

02/172nd rdg - to 3rd rdg

02/213rd rdg - **PASSED - 69-0-1**

AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bayer, Bedke, Bell, Bilbao, Black, Block, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon(Chadderdon), Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs(Wheeler), Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Higgins, Jaquet, Killen, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan, Moyle, Nessel, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith(30), Smith(24), Stevenson, Takasugi (Batt), Thayn, Thompson, Trail, Vander Woude, Wills, Wood (27), Wood(35), Mr. Speaker

NAYS -- None

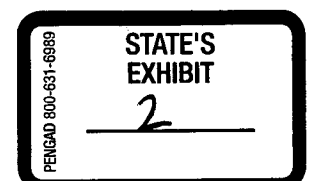
Absent and excused -- McGeachin

Floor Sponsor - Wills

Title apvd - to Senate

02/22Senate intro - 1st rdg - to Jud

03/03Rpt out - rec d/p - to 2nd rdg - to 3rd rdg



03/043rd rdg - **PASSED - 35-0-0**

AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Nuxoll, Pearce, Schmidt, Siddoway, Smyser, Stegner, Stennett, Tippetts, Toryanski, Vick, Werk, Winder

NAYS -- None

Absent and excused -- None

Floor Sponsor - Darrington

Title apvd - to House

03/07To enrol

03/08Rpt enrol - Sp signed

Pres signed

To Governor

03/09Delivered to Governor on 03/08

03/10Governor signed

Session Law Chapter 46

Effective: 03/10/11

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 119

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2705, IDAHO CODE, TO IDENTIFY ADDITIONAL SUBSTANCES TO BE CLASSIFIED IN SCHEDULE I; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl;

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

- 1 (25) Dipipanone;
- 2 (26) Ethylmethylthiambutene;
- 3 (27) Etonitazene;
- 4 (28) Etoxeridine;
- 5 (29) Furethidine;
- 6 (30) Hydroxypethidine;
- 7 (31) Ketobemidone;
- 8 (32) Levomoramide;
- 9 (33) Levophenacylmorphane;
- 10 (34) 3-Methylfentanyl;
- 11 (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-pip-
- 12 eridinyl]-N-phenylpropanamide);
- 13 (36) Morpheridine;
- 14 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 15 (38) Noracymethadol;
- 16 (39) Norlevorphanol;
- 17 (40) Normethadone;
- 18 (41) Norpipanone;
- 19 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-
- 20 piperidinyl] propanamide);
- 21 (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 22 (44) Phenadoxone;
- 23 (45) Phenampromide;
- 24 (46) Phenomorphan;
- 25 (47) Phenoperidine;
- 26 (48) Piritramide;
- 27 (49) Proheptazine;
- 28 (50) Properidine;
- 29 (51) Propiram;
- 30 (52) Racemoramide;
- 31 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-
- 32 propanamide);
- 33 (54) Tilidine;
- 34 (55) Trimeperidine.

35 (c) Any of the following opium derivatives, their salts, isomers and
 36 salts of isomers, unless specifically excepted, whenever the existence of
 37 these salts, isomers and salts of isomers is possible within the specific
 38 chemical designation:

- 39 (1) Acetorphine;
- 40 (2) Acetyldihydrocodeine;
- 41 (3) Benzylmorphine;
- 42 (4) Codeine methylbromide;
- 43 (5) Codeine-N-Oxide;
- 44 (6) Cyprenorphine;
- 45 (7) Desomorphine;
- 46 (8) Dihydromorphine;
- 47 (9) Drotebanol;
- 48 (10) Etorphine (except hydrochloride salt);
- 49 (11) Heroin;
- 50 (12) Hydromorphanol;

- 1 (13) Methyl-desorphine;
- 2 (14) Methyl-dihydromorphine;
- 3 (15) Morphine methylbromide;
- 4 (16) Morphine methylsulfonate;
- 5 (17) Morphine-N-Oxide;
- 6 (18) Myrophine;
- 7 (19) Nicocodeine;
- 8 (20) Nicomorphine;
- 9 (21) Normorphine;
- 10 (22) Pholcodine;
- 11 (23) Thebacon.

12 (d) Hallucinogenic substances. Any material, compound, mixture or
 13 preparation which contains any quantity of the following hallucinogenic
 14 substances, their salts, isomers and salts of isomers, unless specifically
 15 excepted, whenever the existence of these salts, isomers, and salts of iso-
 16 mers is possible within the specific chemical designation (for purposes of
 17 this paragraph only, the term "isomer" includes the optical, position and
 18 geometric isomers):

- 19 (1) 4-bromo-2,5-dimethoxy amphetamine;
- 20 (2) 2,5-dimethoxyamphetamine;
- 21 (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alp-
 22 ha-desmethyl DOB, 2C-B);
- 23 (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- 24 (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- 25 (6) 4-methoxyamphetamine (PMA);
- 26 (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- 27 (8) 5-methoxy-N,N-diisopropyltryptamine;
- 28 (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- 29 (10) 3,4-methylenedioxy amphetamine;
- 30 (11) 3,4-methylenedioxymethamphetamine (MDMA);
- 31 (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-et-
 32 hyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-et-
 33 hyl MDA, MDE, MDEA);
- 34 (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hyd-
 35 roxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hyd-
 36 roxy MDA);
- 37 (14) 3,4,5-trimethoxy amphetamine;
- 38 (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-am-
 39 inobutyl) indole);
- 40 (16) Alpha-methyltryptamine;
- 41 (17) Bufotenine;
- 42 (18) Diethyltryptamine (DET);
- 43 (19) Dimethyltryptamine (DMT);
- 44 (20) Ibogaine;
- 45 (21) Lysergic acid diethylamide;
- 46 (22) Marihuana;
- 47 (23) Mescaline;
- 48 (24) Parahexyl;
- 49 (25) Peyote;
- 50 (26) N-ethyl-3-piperidyl benzilate;

(27) N-methyl-3-piperidyl benzilate;

(28) Psilocybin;

(29) Psilocyn;

(30) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.

$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) - pyrrolidine, PCPy, PHP;

(33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TCP, TCP;

(34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

(3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from

1 2-aminopropan-1-one by substitution at the 1-position with either
2 phenyl, naphthyl or thiophene ring systems, whether or not the compound
3 is further modified in any of the following ways:

4 i. By substitution in the ring system to any extent with alkyl,
5 alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide sub-
6 stituents, whether or not further substituted in the ring system
7 by one (1) or more other univalent substituents;

8 ii. By substitution at the 3-position with an acyclic alkyl sub-
9 stituent;

10 iii. By substitution at the 2-amino nitrogen atom with alkyl,
11 dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the
12 2-amino nitrogen atom in a cyclic structure.

13 (4) Fenethylline;

14 (45) Methcathinone (some other names: 2-(methyl-amino)-propioph-
15 enone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-
16 464, AL-422, AL-463 and UR1423);

17 (56) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-meth-
18 yl-5-phenyl-2-oxazamine];

19 (67) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);

20 (78) N-ethylamphetamine;

21 (89) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-
22 benzeneethanamine).

23 (g) Temporary listing of substances subject to emergency scheduling.
24 Any material, compound, mixture or preparation which contains any quantity
25 of the following substances:

26 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl),
27 its optical isomers, salts and salts of isomers.

28 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (then-
29 ylfentanyl), its optical isomers, salts and salts of isomers.

30 SECTION 2. An emergency existing therefor, which emergency is hereby
31 declared to exist, this act shall be in full force and effect on and after its
32 passage and approval.

STATEMENT OF PURPOSE

RS20232C2

STATEMENT OF PURPOSE RS20232C2 The purpose of the legislation is to create safe regulations and address the emerging threat of synthetic stimulants known as (Bath Salts) that mimic the effects of amphetamine style drugs or ecstasy when consumed. This legislation bans the broad structure-based class of cathinones, which has no history of FDA approved medicinal use. The legislation also declares an emergency.

FISCAL NOTE

There is no additional Fiscal Impact to the General Fund.

Contact:

Name: Debbie Field

Office: Idaho Office of Drug Policy

Phone: (208) 854-3040

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Tuesday, February 15, 2011

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen

**ABSENT/
EXCUSED:** NONE

GUESTS: SEE ATTACHED

Chairman Wills called the meeting to order at 1:30 p.m.

MOTION: **Rep. Bolz** moved to approve the minutes of February 7; **motion carried on voice vote.**

MOTION: **Rep. Burgoyne** moved to approve the minutes of February 9; **motion carried on voice vote.**

H 119: **Debbie Field**, Office of Drug Policy Director, presented samples of aroma-therapy bath salts and the "bath salts" synthetic drug sold in smoke shops as sensuality enhancers. She explained the ingredients in each sample of the bath salts were not for human consumption. However, the small samples from the body shop were free, while the equally small container of designer drug from the smoke shop sold for \$35.

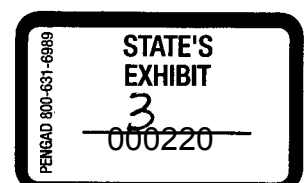
Corrina Owsley, Idaho State Police Forensic Chemist, provided the committee a chart showing the molecular structure of the compound found in the smoke shop bath salts. She explained the process used when creating the variations of the drug. Ms. Owsley stated that manufacturers simply substitute cathinones to the existing compound in order to make them hallucinogenic.

Darren Hurst, School Resource Officer for the Meridian School District, stated that he had seen the long-term and the short-term effects of the "bath salt" drug. The user exhibits a racing pulse and dilated eyes (even 24 hours after ingesting the drug). He stated the user may also show an increased aggressiveness toward others. Mr. Hurst explained that the long term effects included addiction, dropping out of high school, or becoming a ward of the state.

In response to a question on ways of using the substance, **Mr. Hurst** explained that users crush the ingredients in order to smoke it or to snort it. They also eat it. He stated that most teen users did not have the knowledge or tools to melt down the ingredients and inject with a syringe.

Diane Anderson testified before the committee in opposition to **H 119**. She stated that she preferred public education to legislating bans. She said taxpayers could not afford the costs involved with legislation and enforcement, and that instead, parents should teach their teens about personal responsibility and the consequences of personal choice.

Col. Tim Kelly, Idaho National Guard, testified before the committee in support of **H 119**. He stated that the misuse of drugs continues to be a problem within the military. He also stated that twenty five percent of applicants for the military are ineligible because of drug related problems.



Lt. Col. Don Weaver, Idaho National Guard, explained the drug related affects on members of the military and their families. He also explained that the time and the resources used by the military in helping individuals with drug-related problems had increased. He stated that stopping the wave of designer drugs by legislation assists the military in keeping those drugs out of the hands of soldiers and their families.

Helen Huff, Idaho Society of Additive Medicine, encouraged committee members to support **H 119**.

MOTION: **Rep. Nielsen** moved to send **H 119** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Chairman Wills** will sponsor the bill on the floor.

H 139: **Debbie Field**, Office of Drug Policy Director, explained that **H 139** would make permanent the ban on the designer drug "Spice."

Corrina Owsley, Idaho State Police Forensic Chemist, provided the committee a diagram which featured the molecular structure of the seven compounds which form the backbone of Spice. She stated that these combinations were originally developed by pharmaceutical companies but they never became a successful prescription drug. Ms. Owsley also explained that only one carbon made the difference in all of the substance variations.

In response to a question **Ms. Owsley** stated that the seven classes of compounds listed in **H 139** should create an umbrella covering possible chemicals that could be substituted by those wishing to make the Spice-like drug. In addition she assured the committee that future legislative action should be unnecessary.

Mark Johnston, Executive Director of the Idaho Board of Pharmacy, asked the committee to make permanent the administrative rule put into effect by the Governor on October 15, 2010. Mr. Johnston stated that the temporary rule expires in April 2011, unless the Legislature passes **H 139**.

Tammy deWeerd, Mayor of Eagle, Idaho, appeared before the committee to answer a question regarding adoption of ordinances against the sale of Spice. She stated that a handful of Idaho cities had adopted ordinances to assist their law enforcement officers who were encountering increased cases dealing with the illegal substance. She stated that other cities were waiting for this legislation.

MOTION: **Rep. Bolz** moved to send **H 139** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Luker** will sponsor the bill on the floor.

Chairman Wills turned the meeting over to **Vice Chairman Luker**.

H 121: **Rep. Burgoyne** explained to the committee that **H 121** was an effort to correct an 1881 Idaho law. He stated the bill provides for equal treatment of both husbands and wives by providing that their separate property may not be seized to satisfy the separate debts of their spouses. He stated that the proposed legislation narrows the definition of separate property in order to be consistent with current law.

MOTION: **Rep. Jaquet** moved to send **H 121** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Burgoyne** will sponsor the bill on the floor.

S 1014: **Sen. Darrington** presented **S 1014**. He explained that the legislation concerned rape by substitution.

Holly Koole, Idaho Prosecuting Attorneys Association, explained that an Ada County 4th district judge dismissed a case because of a loophole in the law regarding spousal rape. The current law states "husband", not "boyfriend" or "partner." She stated the law needed to be changed to reflect societal changes and said any rape where a partner is enticed and then deceived should be considered rape by substitution.

Sarah Scott, Attorney for the Idaho Coalition Against Sexual and Domestic Violence, and **Hannah Brass**, American Civil Liberties Union, testified in support of **S 1014**.

Diane Anderson stated that closing one loophole would open another loophole in another court case. She stated that this bill and others like it gives power to the prosecuting attorneys. She expressed concern for the huge burden on the taxpayer.

Fairy Hitchcock, Hitchcock Family Associates, also testified against the bill. She stated the bill would not help those who need it. She also stated that personal experience with the courts had given her reason to believe they do not listen to a victim of rape.

Jean Fisher, Deputy Prosecutor, testified that rape by substitution is more common than the general public might assume. She supported **S 1014**.

MOTION: **Rep. Bateman** moved to send **S 1014** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Killen** will sponsor the bill on the floor.

Vice Chairman Luker turned the meeting back to **Chairman Wills**.

S 1029: **Kevin Kempf**, Department of Correction, explained **S 1029** amends the peace officer authority statute. This change would extend peace officer status to Board-designated Idaho Department of Correction employees present during times when law enforcement needed their assistance. Mr. Kempf stated the amendment would be applicable only to those employees who have peace officer training.

MOTION: **Rep. Killen** moved to send **S 1029** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Bolz** will sponsor the bill on the floor.

S 1030: **Shane Evans**, Department of Correction, stated **S 1030** added language to existing Idaho Code, Section 20-209, to provide that the department may provide rehabilitative services to support safe management of facilities. The bill also addresses safe and effective reintegration of offenders into Idaho communities.

MOTION: **Rep. Jaquet** moved to send **S 1030** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Jaquet** will sponsor the bill on the floor.

S 1031: **Brent Reinke**, Department of Correction Director, explained that **S 1031** is a technical correction to reflect the Idaho Department of Correction's current organizational structure for exempt employees. Current law defines exempt employees in numeric detail. The amendment strikes numeric values from Idaho Code, Section 67-5303, subsection "r". Mr. Reinke stated that since the law was amended in 2002, the number of deputy administrators and administrators within the department has changed numerous times, most recently with the deletion of a deputy administrator.

MOTION: **Rep. Jaquet** moved to send **S 1031** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Perry** will sponsor the bill on the floor.

S 1008: **Michael Henderson**, Idaho Supreme Court Legal Counsel, explained that the proposed legislation would amend Idaho Code, Section 1-612. The change would make consistent the annual reports from the Administrative Director of the Courts with the reports from other state agencies by making them due at the end of the fiscal year instead of the calendar year.

MOTION: **Rep. Jaquet** moved to send **S 1008** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. McMillan** will sponsor the bill on the floor.

S 1009:

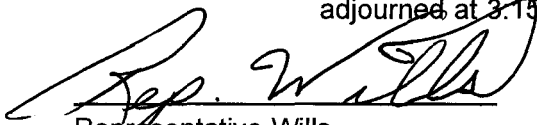
Michael Henderson, Idaho Supreme Court Legal Counsel, explained the bill was one of a series of bills submitted by the Supreme Court to correct defects in the law. It would correct an antiquated statute which states: "When a civil case is filed, each defendant must be served with a complaint and summons." Mr. Henderson continued to explain by stating the following: Section 5-508 of the Idaho Code was enacted in 1907. One of its provisions states that if a defendant is out of state, and if his address is known, the plaintiff can get an order from the court allowing the defendant to be served out of state. But in 1961, Idaho adopted a "long arm" statute. This statute, Section 5-514, states that Idaho courts have jurisdiction over a person or a company that does business in Idaho, owns property in Idaho, or does some other act that forms the basis for a lawsuit. The next statute, Section 5-515, states that the persons or companies who are subject to the jurisdiction of the courts under Section 5-514 can be served out of state. Because of the adoption of these statutes, serving a person out of state who falls within the jurisdiction of Idaho's courts no longer requires a court order. But the language of Section 5-508 still leads some people, including some lawyers, to think that a court order is necessary to serve a defendant who is out of state. Mr. Henderson concluded that **S 1009** would remove this confusion.

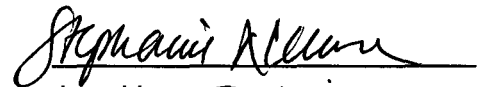
MOTION:

Rep. Luker moved to send **S 1009** to the floor with a **DO PASS** recommendation. **Motion carried on voice vote. Rep. Nielsen** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 3:15 p.m.


Representative Wills
Chair


~~Jean Vance~~ Stephanie Nemore
Secretary

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 02, 2011

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

Chairman Darrington called the meeting to order at 1:35 p.m.

MINUTES **Senator Nuxoll** made a motion to approve the minutes of **February 23, 2011** as written. **Senator McKague** seconded the motion. The motion carried by **voice vote**.

RS 20140C1 **Relating to Security for Compensation** (from the Commerce and Human Resource Committee)

MOTION: **Senator Davis** made a motion to send **RS 20140C1** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

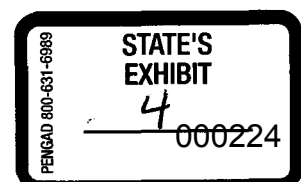
CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the reappointment of **Olivia Craven** as Executive Director of the Commission on Pardons and Parole to serve a term commencing January 3, 2011 and expiring January 5, 2015.

MOTION: **Senator Lodge** moved to send the gubernatorial reappointment of **Olivia Craven** as Executive Director of the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION **Chairman Darrington** stated the committee would vote on the recommendation to confirm the appointment of **Norman "Bud" T. Langerak II** to the Commission on Pardons and Parole to serve a term commencing February 5, 2011 and expiring January 1, 2014.

MOTION: **Senator Mortimer** moved to send the gubernatorial appointment of **Norman T. Langerak II** to the Commission on Pardons and Parole to the Senate floor with a **do confirm** recommendation. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

H 121 **Relating to Exemptions from Attachment - Representative Grant Burgoyne** explained this bill concerning Idaho Code 11-204 which relates to execution by a creditor with a judgment against a debtor. Representative Burgoyne recounted the history of I.C. 11-204, summarizing that in 2010 it was ruled unconstitutional by the Idaho Supreme Court because it was not gender neutral. He stated when it was originally written in 1888 it was to protect a wife's property from the separate debts of her husband. He explained that H 121 will correct the gender inequity of I.C. 11-204, protecting both husbands and wives from each other's separate debts.



MOTION:

Senator Bock made a motion to send **H 121** to the floor with a do pass recommendation. **Senator Davis** seconded the motion. The motion carried by voice vote.

H 119

Relating to Uniform Controlled Substances; bath salts - Debbie Field, from the Idaho Office of Drug Policy, summarized H 119 as a bill that will place the drugs termed as "bath salts" as a Section 1 Drug. Ms. Field explained the need for legislation and further clarified that bath salts are not in any way the same product sold as aromatherapy bath salts. She pointed out that the manufacturers of this designer drug are trying to circumvent the regulations on controlled substances and are sold as bath salts or fertilizers, but not intended to be used as either. Ms. Field summarized the purpose, use, labeling, availability and common ingredients. She told of Idaho citizens that have recently died or are in critical condition due to use of this product, which attacks the central nervous system. She further indicated the ability of ISP to analyze these substances in the forensic laboratory.

Vice Chairman Vick questioned concerning the name and legitimate use of "bath salts." **Ms. Field** responded indicating her research and education has revealed that this is an incredible marketing strategy. **Corrina Owsley**, Chemist for the Idaho State Police, via teleconference, indicated there are compounds in the ingredients that are already on Schedule 4 and 5 and unscheduled Bupropion that has a legitimate use requiring a prescription.

Chairman Darrington asked if anyone was present who would like to testify in opposition.

TESTIMONY

Ryan Holdaway, of Pitcher & Holdaway, PLLC, representing Herb Incense and A and J Distributing, spoke in opposition to H119 citing that if any of the ingredients do have medicinal purposes that it would not be appropriate to list them as a Schedule 1, but to list them as a Schedule 3 - 5. **Senator Bock** questioned who Mr. Holdaway represented. **Mr. Holdaway** repeated those previously mentioned indicating he represents other individuals and businesses with a possible interest that he was unwilling to name. **Senator Davis** questioned what the lawful, non-life-threatening purposes of bath salts were and whether he or any businesses in the area were using these as additives to a bath. **Mr. Holdaway** referred to Ms. Field's comments that it was a concentrated form of bath salt and that his clients try to conform with the law, by enforcing age restriction requirements. He further stated that his clients try to prevent abuse of their products and that he had never used the product nor was aware of any business that used them as additives to a bath.

Vice Chairman Vick questioned how long this product has been produced and sold in this area and more specifically how long Mr. Holdaway's clients produced them. **Mr. Holdaway** answered he did not have an exact date but that the product has gained recent popularity and that his client, Herb Incense, has been manufacturing the products since October. **Senator LeFavour** questioned the physiological effect of the product. **Ms. Owsley** answered that research on the chemicals indicate hallucinogenic properties. **Ms. Field** enumerated further side effects. **Senator Bock** questioned Ms. Owsley concerning Mr. Holdaway's testimony of the legitimate purpose of bath salts. She replied that the compounds in this synthetic drug are not normally found in traditional bath salts, have no odor and when placed in a large volume of water would have no aromatherapy effect.

TESTIMONY

Jan Sylvester of Meridian, mother of two teenage girls and **Officer Darren Hurst**, Meridian Police Department and SRO for Meridian High School spoke in support of the bill.

TESTIMONY

Mike Medoza, a concerned citizen, spoke in opposition to the bill.

Senator Davis questioned concerning Mr. Holdaway's position, client's length of time in business and other products sold by his clients. **Mr. Holdaway** answered that his client's companies had existed previously under other names and that products sold additionally were pipes and incense. **Vice Chairman Vick** questioned how long the products had been manufactured and available in Idaho. **Ms. Field** summarized the history of this product and recent appearance within the last few months. Ms. Field reiterated the purpose of the legislation was not to regulate a bath product but to regulate a drug that is hospitalizing youth and killing people who snort the product. She said that if this were to pass and be signed by the governor that it would become immediately effective and these products would be removed from the shelves.

Senator Bock questioned Ms. Field concerning FDA review of the ingredients. **Ms. Field** summarized the FDA review.

MOTION:

Senator Davis made a motion to send **H 119** to the floor with a do pass recommendation. **Senator Bock** seconded the motion. The motion carried by voice vote.

H 139

Relating to Uniform Controlled Substances; spice - Debbie Field summarized this bill as the means to put into statute existing rules of the Board of Pharmacy including one addition. Ms. Field stated that H 139 covers seven different chemical structures and that language written into this legislation specifically targets the backbone structure of the chemicals used to produce variations of "spice" so that small changes made to the compound will not avoid prosecution.

Senator LeFavour questioned the adverse side effects of "Spice". **Ms. Field** enumerated those outlined in the handout. She explained how "Spice" is created. **Ms. Owsley** clarified that these are "designer" drugs that are being marketed because they circumvent the drugs that were banned by the governor last fall. **Mr. Holdaway** indicated that H 139 is a broad piece of legislation describing whole families of chemicals in an attempt to capture a variation. He indicated his client's chemist has found the chemicals listed in H 139 could be found in candles, perfumes, body lotions, pesticides and other perfectly legitimate and legal products. His concern was that the legislation could be overreaching if these chemicals were listed as a Schedule 1 controlled substance.

Further questioning by **Chairman Darrington** ensued regarding disagreement about legitimate uses of the chemicals. **Mr. Holdaway** expressed concern for uses found in the future and the possibility of forcing the chemicals into an underground market with no control. He encouraged Idaho to allow these chemicals to be in a legal environment where regulations can be in place in reference to access and potency. **Chairman Darrington** asked Ms. Owsley to respond to Mr. Holdaway remarks. **Ms. Owsley** stated that the compounds have been researched and none have been shown to have medical value without unwanted side effects. FDA approval will be required for future compounds developed for medicinal use. She summarized that many states were adopting similar legislation to prevent legislating each new compound developed.

Senator Davis questioned concerning other products produced with the chemicals, whether his client's sold or manufactured any of the products and the name of the doctor who prepared the report for Mr. Holdaway. **Mr. Holdaway** repeated his list, answered negatively to the sale or manufacture of the products and named the doctor – Dr. Richard Parent, with Consultox Limited in Maine and New Orleans. **Senator LeFavour** questioned Ms. Owsley regarding the magnitude/potency effect of "spice" compared to alcohol. **Ms. Owsley** reviewed the research comparisons were to THC in marijuana and not alcohol; further

stating potencies vary by product. Ms. Fields concluded that these structures need to be classified as outlined in the legislation and that "spice" is abuse of synthetic chemicals.

MOTION:

Vice Chairman Vick made a motion to send **H 139** to the floor with a do pass recommendation. **Senator Nuxoll** seconded the motion. **Vice Chairman Vick** read a statement by John W. Huffman, PHD from Clemson University, who invented JWH-018 which is on the list of synthetic cannabinoids, likened the use of the drugs to "Russian Roulette". The motion carried by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
AND
DEPARTMENT
UPDATE**

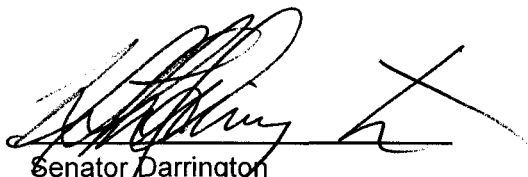
Chairman Darrington proceeded to the confirmation hearing of **Sharon Harrigfeld**, Department of Juvenile Corrections and requested Ms. Harrigfeld present an update of the department. **Sharon Harrigfeld** of Boise, Idaho was reappointed as Director of the Department of Juvenile Corrections for a term commencing January 3, 2011 and expiring January 5, 2015. **Ms. Harrigfeld** introduced **Scott Johnson** as the Administrative Services Administrator enumerating his responsibilities. Ms. Harrigfeld summarized her 30 year history of service in the Juvenile Justice System, her Masters in Counseling, and service as Director of the Juvenile Corrections Department. She reviewed current policy and procedure changes to a statewide system. She cited the opportunity juveniles in the system have to be rehabilitated and become productive, successful citizens. Ms. Harrigfeld continued to provide a department report summarizing the department's workforce and hours worked, indicating pleasure with the commitment to reduce juvenile crime in communities. She noted the partnership between counties and state that allow the adoption of a balanced approach to juvenile justice which facilitate local level hearings for juveniles.

Ms. Harrigfeld summarized the work with families of juveniles to promote success as the juveniles return home and how and where juveniles are placed in the program. She outlined her knowledge of the adolescent brain and juvenile reasoning reviewing the age of juveniles in the programs of between 10 and 17 years of age. Ms. Harrigfeld reviewed community resources and specialty courts as well as additional services statewide at the local level assisting with juveniles. She enumerated the juveniles in the program as 5,500 on probation, 200 in detention facilities and 334 in custody in a given day. She stated the recidivism rate is 25% and noted the increase in mental health problems for juveniles.

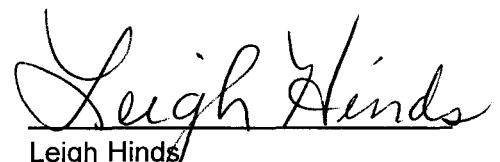
Senator LeFavour complimented Ms. Harrigfeld and her Department for their work.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 3:02 p.m.



Senator Darrington
Chairman



Leigh Hinds
Secretary

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

Case No. CR-FE-2011-0015482

**AFFIDAVIT OF DAVID
SINCERBEAUX RE: STATE'S
MEMORANDUM IN
SUPPORT OF OPPOSITION
TO MOTION TO DISMISS**

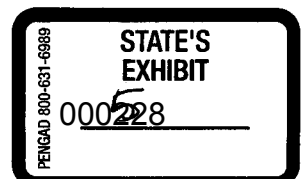
STATE OF IDAHO)
) ss.
County of Ada)

COMES NOW, David Sincerbeaux, who does swear and affirm the following:

1. I am a Forensic Scientist with the Idaho State Police Forensic Laboratory;
2. I have attached, as Exhibit A, my Curriculum Vitae describing my education, training, experience and current duties and responsibilities;

AFFIDAVIT OF DAVID SINCERBEAUX (ALLEY)

Page 1



3. I am familiar with I.C. § 37-2705, Schedule I, controlled substances; including the controlled substances so scheduled pursuant to §37-2705(d)(30)(ii);
4. During the 2011 Legislative session, I was asked to assist and did assist in the drafting of both House Bill 139 and House Bill 119;
5. I know that both pieces of legislation were passed by the Idaho Legislature and signed by Governor Otter and became effective as of March 10, 2011, adding synthetic cannabinoids/drugs, including AM2201, and substituted cathinones to Schedule I in Idaho.
6. It is my opinion that AM2201 is one of the many chemicals or compounds within Idaho's Schedule I;
7. I have had an opportunity to read the Memorandum in Support of the Motion to Dismiss, the Affidavit of Ryan Holdaway and a portion of the attached exhibits in Support of Defendant Morgan Alley's Motion to Dismiss in the above-entitled case;
8. I know, based upon my involvement in drafting the above mentioned legislation, that it was the legislative intent to include within Schedule I a broad range of compounds that could be created by substitution of the described parent structures;
9. In order to accurately include these compounds I know that the classic International Union of Pure and Applied Chemistry (IUPAC) nomenclature was used in describing the substituted groups;
10. I also know that since 1919, IUPAC has worked to standardize the nomenclature of chemistry. No matter what language is spoken, the IUPAC is the body that sets the rules for chemists around the world on how to name chemicals, essentially the IUPAC is the "bible" for chemistry nomenclature;
11. The latest publication of the IUPAC Blue book states in the introduction (section R 1.0) "Systematic naming of an organic compound generally requires

the identification and naming of a parent structure. This name may then be modified by prefixes, infixes, and, in the case of a parent hydride, suffixes, which convey precisely the structural changes required to generate the actual compound from the parent structure”;

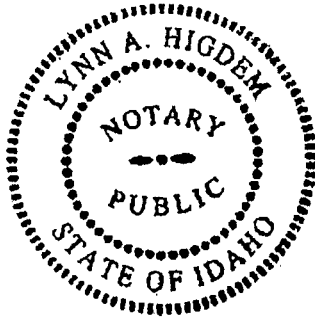
12. I also know that section R 1.2.1 on substitutive operation further states as follows: “The substitutive operation involves the exchange of one or more hydrogen atoms for another atom or group. This process is expressed by a prefix or suffix denoting the atom or group being introduced ...”;
13. Further, I know that since it was first published in 1959 “Morrison and Boyd”, has been one of the standards by which organic chemistry textbooks are judged. In a large number of universities it has been used to teach several generations of chemists the basics of organic chemistry.
14. In the beginning section on nomenclature, in regard to alkanes and thus alkyl groups “Morrison and Boyd” (at page 89 of the 5th edition) states, following the IUPAC rules, “The alkyl halides which appear so often in alkane chemistry are named as *haloalkanes*; that is, halogen is simply treated as a side chain. We first name the alkane as though no halogen were present, and then add *fluoro*, *chloro*, *bromo*, or *iodo*, together with any needed numbers and prefixes”;
15. I am familiar with another university textbook entitled Organic Chemistry written by J. McMurry (3rd edition at pg 77), “If a hydrogen atom is removed from an alkane, the part-structure that remains is called an **alkyl group**. Alkyl groups are named by replacing the -ane ending of the parent alkane with an -yl ending. For example, removal of a hydrogen from methane, CH₄, generates a *methyl group*, -CH₃, and removal of a hydrogen from ethane, CH₃CH₃, generates an *ethyl group*, -CH₂CH₃.....The combination of an alkyl group with any of the functional groups listed earlier allows us to generate and name many hundreds of thousands of compounds.”


16. I know that AM 2201 contains an alkyl group and thus is covered under the current law as written, prohibiting AM-2201 as the law was intended to do.
17. The IUPAC Blue Book; the Morrison and Boyd and the Organic Chemistry text books referenced above set out the standard for naming and classifying chemical compounds that is universally used by chemists.
18. Any chemist who has a basic understanding of these publications would understand that the chemical compound identified as AM-2201 is included within Idaho's Schedule I, as it contains an alkyl group identified in I.C. §37-2705.
19. I have had the opportunity to read the letter by Dr. Parent, dated June 9, 2011, Re: Austin, as well as the attachments to the letter, identified as Exhibit F provided with Mr. Holdaway's Affidavit, and I agree with Dr. Parent's statement that there are many thousands of possible permutations of the basic skeletal structures described in Idaho's law. Further, AM-2201 is one of these structures. It would be impossible to name every one of the permutations.
20. Further, regarding the attachment II, all of those compounds listed are indeed possible substitutions. Again, it would be impossible to individually list all possible substitutions.
21. Finally, as correctly pointed out in Mr. Holdaway's Affidavit, I know that the compounds JWH-019 and JWH-210 were also confirmed to be present during analysis of evidence submitted to the ISP Laboratory in this case, and those compounds are also Schedule I, controlled substances.

DATED this 7 day of March, 2012.


David Sincerbeaux

SUBSCRIBED AND SWORN to before me this 7th day of March 2012.




NOTARY PUBLIC, STATE OF IDAHO
RESIDING AT: _____
COMMISSION EXPIRES: 9/8/2016



Colonel G. Jerry Russell
Director

STATE OF IDAHO

IDAHO STATE POLICE



C.L. "Butch" Otter
Governor

CURRICULUM VITAE

David Sincerbeaux

615 W. Wilbur Suite B, Coeur d' Alene, ID 83815
dave.sincerbeaux@isp.idaho.gov
(208)209-8700 Office
(208)209-8612 Fax

EDUCATION

Bachelors of Science degree in Chemistry, California State University- Northridge 1984.

EXPERIENCE

April 1985 - June 1992

Analytical chemist with S.C.S Engineers. Promoted to Laboratory manager in 1988.

July 1992 - June 1995

Laboratory manager with Geotest (Long Beach, CA and Honolulu, Hi).

February 1997 - Present

Forensic Scientist III with Idaho State Police Forensic Laboratory. Duties include: drug analysis on marijuana and solid dose drugs, writing and validation of standard operating procedures, and court testimony, Clanlab and crime scene response.

CERTIFICATION/MEMBERSHIPS

Fellow- American Board of Criminalistics (ABC) – 2006 to present

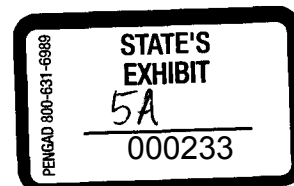
Diplomate- American Board of Criminalistics (ABC) - 2000-2006

Member- Clandestine Laboratory Investigating Chemists Association (CLIC) - 2005 to present

TRAINING

January 1999

Clandestine Lab Investigations. Meridian, Idaho.



August 1999

FBI, Quality Assurance in the Laboratory. Cheyenne, Wyoming.

September 2000

Drug Enforcement Administration Forensic Chemist Seminar. Fairfax, Virginia.

February 2001

American Academy of Forensic Sciences meeting and workshops. Seattle, Washington.

August 2003

Crime Scene Technologies 1 & 2, Coeur d' Alene, Idaho.

April 2004

Northwest Association of Forensic Scientists Spring meeting. Missoula, Montana.

September 2004

Clandestine Laboratory Investigating Chemists Training Seminar. Portland, Oregon.

September 2005

Clandestine Laboratory Investigating Chemists Training Seminar. St. Louis, Missouri.

September 2005

ASCLD/LAB-International Assessor/Auditor Training. Portland, Oregon.

May 2006

FBI Crime Laboratory Development Symposium. Atlanta, Georgia.

September 2007

Clandestine Laboratory Investigating Chemists Training Seminar. Las Vegas, Nevada

September 2008

Clandestine Laboratory Investigating Chemists Technical Training Seminar. San Antonio, Texas.

August 2011

FBI Trace Evidence Symposium. Kansas City, Missouri.

September 2011

Fire Debris Analysis. Tampa, Florida.

10/06/2011

Idaho State Police Forensic Services
700 South Stratford Drive, Ste 125 Meridian ID 83642-6202 (208)884-7170

Page 1

CL Case No.: M20112998 Agency Case No.: 2011DR123716
Agency: BDS2 - BOISE POLICE DEPARTMENT
ORI: ID0010102 Crime Date: Sep 29, 2011

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

Evidence Received Information

Evidence Received: 10/06/2011
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ANDREOLI #719
Delivered By: T JONES
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/11/2011
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: BRUNER #555
Delivered By: T JONES
Received By: JUDY PACKER ph. (208)884-7170

Evidence Received: 11/03/2011
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: ANDREOLI
Delivered By: T JONES
Received By: MICKEY HALL ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Suspect	ALLEY, MORGAN			

< 12/06/2011 Supplemental Information >

EVIDENCE DESCRIPTION AND CONCLUSION:

#6) Agency Exhibit 1A. One ziplock bag containing 250.2g of plant material. No controlled substances detected.

#7) Agency Exhibit 6A. One ziplock bag containing 249.7g of plant material. No controlled substances detected.

#8) Agency Exhibit 16A. One ziplock bag containing 251.4g of plant material. No controlled substances detected.



Page 1 of 3

000235
: 00102

CL Case No.: M20112998
Agency: BDS2 - BOISE POLICE DEPARTMENT
ORI: ID0010102

Agency Case No.: 2011DR123716

Crime Date: Sep 29, 2011

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

#9) Agency Exhibit 18A-1. One plastic container labeled "Ultra Twizted Potpourri" containing 1.13g of plant material. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a).

#10) Agency Exhibit 19A-1. One plastic container labeled "Strawberry Twizted Potpourri" containing 1.11g of plant material. The sample contains AM-2201(Schedule I, 37-2705(d)30.ii.a).

#11) Agency Exhibit 21A-1. One plastic container labeled "Ultra Blueberry Twizted Potpourri" containing 1.11g of plant material. The sample contains AM-2201(Schedule I, 37-2705(d)30.ii.a).

#12) Agency Exhibit 2-1A. One plastic container labeled "Strawberry Twizted Potpourri" containing 1.11g of plant material. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

#13) Agency Exhibit 2-2A. One plastic container labeled "Fire Twizted Potpourri" containing 0.97g of plant material. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

#14) Agency Exhibit 2-3A. One plastic container labeled "Blueberry Twizted Potpourri" containing 1.15g of plant material. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

#15) Agency Exhibit 2-4A. One plastic container labeled "Ultra Hypnotic Twizted Potpourri" containing 1.21g of plant material. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a).

#16) Agency Exhibit 2-5A. One plastic container labeled "Ultra Twizted Potpourri" containing 1.09g of plant material. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a).

#17) Agency Exhibit 2-8A. One plastic container labeled "Hypnotic Twizted Potpourri" containing 0.99g of plant material. The sample contains AM-2201(Schedule I, 37-2705(d)30.ii.a).

#18) Agency Exhibit 23A-1. One plastic container labeled "Fire Twizted Potpourri" containing 1.10g of plant material. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

CL Case No.: M20112998
Agency: BDS2 - BOISE POLICE DEPARTMENT
ORI: ID0010102

Agency Case No.: 2011DR123716
Crime Date: Sep 29, 2011

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

#19) Agency Exhibit 27A-1. One plastic container labeled "Blueberry Twizted Potpourri" containing 1.12g of plant material. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

#20) Agency Exhibit 34A-1. One plastic container labeled "Ultra Hypnotic Twizted Potpourri" containing 1.15g of plant material. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a).

#21) Agency Exhibit 38A-1. One plastic container labeled "Hypnotic Twizted Potpourri" containing 1.14g of plant material. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a).

#22) Agency Exhibit 34B. Two glass bottles with residue; analyzed one. The sample contains JWH-210 (Schedule I, 37-2705(d)30.ii.a).

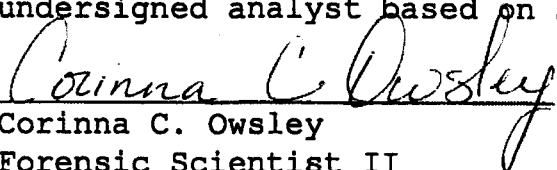
#23) Agency Exhibit 51A-1.

23.1) Two ziplock bags; analyzed one containing 6.05g of powder. The sample contains JWH-210 (Schedule I, 37-2705(d)30.ii.a).

23.2) One ziplock bag containing an open plastic bag and 5.46g of powder. The sample contains AM-2201 (Schedule I, 37-2705(d)30.ii.a).

23.3) One ziplock bag with residue. The sample contains JWH-019 (Schedule I, 37-2705(d)30.ii.a) and AM-2201 (Schedule I, 37-2705(d)30.ii.a).

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.


Corinna C. Owsley
Forensic Scientist II

Date: 12/6/11

Agency Case No.: 2011DR123716

Crime Date: Sep 29, 2011

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

A F F I D A V I T

STATE OF IDAHO }
COUNTY OF ADA } ss.

Corinna C. Owsley, being first duly sworn, deposes and says the following:

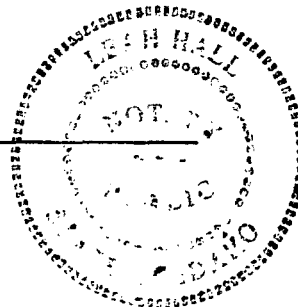
1. That I am a Forensic Scientist II with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Corinna C. Owsley
Forensic Scientist II

Date: 12/8/11

SUBSCRIBED AND SWORN TO BEFORE ME 12/8/11

Scott Hall
Notary Public, State of Idaho
Commission Expires: 6/6/13





Idaho State Police Drug Restitution



As provided in Idaho Code 37-2732(k), the Idaho State Police requests restitution from the defendant(s), Morgan Alley in the amount of \$1,700.00 in association with Laboratory Report No. M20112998. This amount is based upon the confirmation of the following drug(s) being present in 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.

Confirmed Drug/Analysis	Cost
1) JWH-019 (5 samples confirmed at \$100.00 each)	\$500.00
2) AM-2201 (9 samples confirmed at \$100.00 each)	\$900.00
3) JWH-210 (2 samples confirmed at \$100.00 each)	\$200.00
4) JWH-019 & AM-2201 (1 sample confirmed at \$100.00 each)	\$100.00
5)	
6)	

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 Drive Ste 125
Meridian, Idaho 83642-6202

Thank you for your cooperation in this matter.

Sincerely,

Natasha Wheatley
Forensic Services
Laboratory Manager

jp

Idaho State Police, Forensic Services Evidence Submission/Receipt Form



Lab Use Only	Laboratory Case Number: <u>M20112998</u>		
Date Received: <u>11-3-11</u>	By: <u>[Signature]</u>		
Received in person <input type="checkbox"/> or via: <u>T. Jones</u>	Phone #: <u>577-3050</u>		
Forwarded to: _____	By: _____	Date: _____	
Received from: _____	By: _____	Date: _____	
Lab Use Only When Returning Evidence			
Idaho State Police: _____		Date: _____	
Agency Representative: _____		Date: _____	

Submitting Agency (Do not abbreviate) BOISE POLICE DEPARTMENT		Date of Offense 9/29/2011	Agency Case Number 2011 PR 123-716
County of Offense ADA	Charge 37-2732	Court Date	
Suspect <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	ALLEY, MORGAN Name Last First	DOB [REDACTED]	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last First	DOB	State ID # (fingerprints only)
Status of Case (Mark one) New <input checked="" type="checkbox"/> Additional <input checked="" type="checkbox"/> Resubmittal <input type="checkbox"/>			
Investigating Officer ANDREOLI		Phone number 321-0588	
Agency Exhibit Number	Exhibit Description	Location Found	Type of Exam Requested (see below)
6 1A	GREEN PLANT MATERIAL	7544 LEMHI #9	CS
7 6A	GREEN PLANT MATERIAL	"	CS
8 16A	GREEN PLANT MATERIAL	"	CS
9 18A-1	(1) ULTRA TWISTED POTPOURRI	"	CS
10 19A-1	(1) STRAWBERRY TWISTED POTPOURRI	"	CS
11 21A-1	(1) ULTRA BLUEBERRY TWISTED POTPOURRI	"	CS

Type of exam: Biology (Bio), Controlled Substances (CS) or Fire Debris (FD),
Firearms/Toolmarks (F/T), Fingerprints (FP), or Shoeprint/tiretracks (S/T).

Toxicology and blood alcohol sample must use toxicology submittal form.

Agency representative: Submitting this form indicates agreement to ISP Forensic Services' terms and conditions, for analyzing this

000240

00147

Idaho State Police, Forensic Services Evidence Submission/Receipt Form



Lab Use Only	Laboratory Case Number: <u>M20112998</u>		
Date Received: <u>11-3-11</u>	By: <u>Michael Hall</u>		
Received in person <input type="checkbox"/> or via: <u>1 JORS</u>		Phone #: <u>577-3050</u>	
Forwarded to: _____	By: _____	Date: _____	
Received from: _____	By: _____	Date: _____	
Lab Use Only When Returning Evidence			
Idaho State Police: _____		Date: _____	
Agency Representative: _____		Date: _____	

Submitting Agency (Do not abbreviate) BOISE POLICE DEPARTMENT		Date of Offense 9/29/2011	Agency Case Number 2011DR123-716
County of Offense ADA	Charge 37-2732	Court Date	
Suspect <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	ALLEY, MORGAN Name Last, First	DOB [REDACTED]	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Status of Case (Mark one) New <input checked="" type="checkbox"/> Additional <input checked="" type="checkbox"/> Resubmittal <input type="checkbox"/>			
Investigating Officer ANDREOLI		Phone number 321-0588	
Agency Exhibit Number	Exhibit Description	Location Found	Type of Exam Requested (see below)
12 2-1A	(1) STRAWBERRY TWISTED POTPOURRI	2613 W CAMAS	CS
13 2-2A	(1) FIRE TWISTED POTPOURRI	"	CS
14 2-3A	(1) BLUEBERRY TWISTED POTPOURRI	"	CS
15 2-4A	(1) ULTRA HYPONOTIC TWISTED POTPOURRI	"	CS
16 2-5A	(1) ULTRA TWISTED POTPOURRI	"	CS
17 2-6A	(1) HYPONOTIC TWISTED POTPOURRI	"	CS

Type of exam: Biology (Bio), Controlled Substances (CS) or Fire Debris (FD), Firearms/Toolmarks (F/T), Fingerprints (FP), or Shoeprint/tiretracks (S/T).

Toxicology and blood alcohol sample must use toxicology submittal form.

000241

Agency representative: Submitting this form indicates agreement to ISP Forensic Services' terms and conditions, for analyzing this

Idaho State Police, Forensic Services Evidence Submission/Receipt Form



Lab Use Only	Laboratory Case Number: <u>M20112998</u>		
Date Received: <u>11-3-11</u>	By: <u>Mindy Hall</u>		
Received in person <input type="checkbox"/> or via: <u>Jones</u>	Phone #: <u>517-3050</u>		
Forwarded to: _____	By: _____	Date: _____	
Received from: _____	By: _____	Date: _____	
Lab Use Only When Returning Evidence			
Idaho State Police: _____		Date: _____	
Agency Representative: _____		Date: _____	

Submitting Agency (Do not abbreviate) BOISE POLICE DEPARTMENT		Date of Offense 9/29/2011	Agency Case Number 2011 DR 123-716
County of Offense ADA	Charge 37-2732	Court Date	
Suspect <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	ALLEY, MORGAN Name Last, First	12/27/86 DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/>	Name Last, First	DOB	State ID # (fingerprints only)
Status of Case (Mark one) New <input checked="" type="checkbox"/> Additional <input checked="" type="checkbox"/> Resubmittal <input type="checkbox"/>			
Investigating Officer ANDREOLI		Phone number 321-0588	
Agency Exhibit Number	Exhibit Description	Location Found	Type of Exam Requested (see below)
18 23A-1	(1) FIRE TWISTED POTPOURRI	7544 LEMHI #9	CS
19 27A-1	(1) BLUEBERRY TWISTED POTPOURRI	"	CS
20 34A-1	(1) ULTRA HYPNOTIC TWISTED POTPOURRI	"	CS
21 38A-1	(1) HYPNOTIC TWISTED POTPOURRI	"	CS
22 34B	(2) GLASS BOTTLES w/ RESIDUE	"	CS
23 51A-1	(4) PLASTIC BAGS w/ WHT POWDER	"	CS

Type of exam: Biology (Bio), Controlled Substances (CS) or Fire Debris (FD), Firearms/Toolmarks (F/T), Fingerprints (FP), or Shoeprint/tiretracks (S/T).

Toxicology and blood alcohol sample must use toxicology submittal form.

Agency representative: Submitting this form indicates agreement to ISP Forensic Services' terms and conditions, for analyzing this

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00149

107
PTC
4/24
11:00

NO. _____
FILED _____
A.M. _____ P.M. 4:30

MAR 07 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482;
Plaintiff,	)	CR-FE-2011-0015483 and
	)	CR-FE-2011-0015480
vs.)	
	)	STATE'S MEMORANDUM IN
MORGAN C. ALLEY,	)	RESPONSE AND
TASHINA ALLEY, and	)	OPPOSITION TO
CHARLYNDA GOGGIN,	)	DEFENDANT'S MOTION TO
	)	DISMISS
Defendants.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County,
State of Idaho, and makes the following reply to Defendant's Motion to Dismiss:

I. Procedural History

On October 11, 2011, Indictments were filed in the above-entitled cases regarding Defendants Morgan Alley, Tashina Alley, Charlynda Goggin and others. Defendant Morgan Alley was charged by Indictment as follows: I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A
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an

CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), §18-1701; 37-2732(f); II. CONSPIRACY TO DELIVER OR POSSESS WITH INTENT TO DELIVER DRUG PARAPHERNALIA, FELONY, I.C. §37-2734B, §18-1701; III. UNLAWFUL POSSESSION OF A FIREARM, FELONY, I.C. §18-3316; IV. POSSESSION OF A CONTROLLED SUBSTANCE, MISDEMEANOR, I.C. §37-2732(c) and V. POSSESSION OF DRUG PARAPHERNALIA, MISDEMEANOR, I.C. §37-2734A. Specifically, Count I. Conspiracy to Manufacture, Deliver or Possess with Intent to Deliver a Controlled Substance, to wit: a Schedule I Controlled Substance, is alleged to have occurred on or between March 2011 and September 2011. Count II is alleged to have occurred during the month of September and the remaining counts allegedly occurred on September 29, 2011.

II. Applicable Legal Principles

General Standards

The law governing grand jury indictments derives from numerous statutes and rules. Idaho Code §19-1107 states that “[t]he grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or un-contradicted, would, in their judgment, warrant a conviction by a trial jury.”

Idaho Code §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, by legal documentary evidence or by legally admissible hearsay.

III. Issues Presented for Review

- A. Is AM-2201 a controlled substance in the state of Idaho pursuant to I.C. 37-2705?
- B. Statutory Constitutionality and the Vagueness Doctrine.

While Defendant Morgan Alley, by and through Mr. Holdaway, one of Defendant’s Attorneys of Record, does not cite to a particular rule or statutes pursuant to which his Motion and Memorandum in Support of the Motion to Dismiss is based, the

state presumes by inference that Defendant Alley is essentially claiming that the Indictment was not properly found...as required...by the statutes of the State of Idaho.

Idaho Criminal Rule 6.7 Motion to Dismiss Indictment.

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.

Idaho Criminal Rule 6.6(a) Sufficiency of Evidence to Warrant Indictment states:

“If it appears to the grand jury after evidence has been presented to it that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment. Probable cause exists when the grand jury has before it such evidence as would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.”

In considering a motion to dismiss an indictment under Idaho Criminal Rule (I.C.R.) 6.6 and I.C. §19-1107, the district court sits as a reviewing court, and it is the grand jury that is the fact-finder. In a grand jury proceeding, the district court may set aside the indictment if, given the evidence before the grand jury, the court concludes that the probable cause is insufficient to lead a reasonable person to believe that the accused committed the crime. *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995) citing *State v. Jones*, 125 Idaho 477, 482-83, 873 P.2d 122, 127-28 (1994). In order for the district court to make the determination, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment. *Brandstetter*, 127 at 882, 908 at 580. See *State v. Williams*, 855 P.2d 1337, 1346 (Alaska App. 1993).

Or in the alternative, the State presumes this motion is being made pursuant to Idaho Criminal Rule 48.

Dismissal by the court. ICR 48(a) Dismissal on motion and notice.
(2) For any other reason, the court to concludes that such dismissal will serve the ends of justice and the effective administration of the court's business.

A dismissal motion under Rule 48(a) is subject to the court's discretion. *State v. Dixon*, 140 Idaho 301, 92 P.3d 551 (Ct. App. 2004).

In the context of this case, the question of whether a substance is designated in the Controlled Substance Act as a controlled substance is a question of law for the court. *State v. Hobbs*, 101 Idaho 262, 262, 611 P.2d 1047, 1048. (1980). (*See also State v. Kellogg*, 102 Idaho 628 (1981) - court takes judicial notice of prescription drug status of drug; and *State v. Bayless*, 101 Idaho 262 (1984) - court gave specific jury instruction that drug was schedule II as a matter of law.) However, the substance identification is an issue of fact to be decided by the jury. *State v. Griffith*, 130 Idaho 64, 66, 936 P.2d 707, 709 (Ct. App. 1997).

**A. AM-2201 is a controlled substance in the state of Idaho
pursuant to I.C. 37-2705**

In his Memorandum in Support of Defendant's Motion to Dismiss, Defendant appears to solely focus on Count I. as alleged in the Indictment. As previously pointed out, Defendant is also charged with two (2) additional felony counts as well as (2) two misdemeanor counts that are not at issue pursuant to the Motion to Dismiss before this Court.

ANALYSIS

In this case, this Honorable Court sits as a reviewing court, and it is the grand jury that was the fact-finder. There is no basis to set aside the indictment if, after a review of the evidence before the grand jury, probable cause was sufficiently presented to lead a reasonable person to believe that the accused committed the crime. *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995) citing *State v. Jones*, 125 Idaho 477, 482-83, 873 P.2d 122, 127-28 (1994). In this case, sufficient evidence was presented to the grand jury on each element of the felony counts presented to the grand jury. Specifically, sufficient evidence was presented to the grand jury on each element of Count I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a),

§18-1701; 37-2732(f), including the identification of the substances at issue. Further, the substances suspected to be controlled, that were seized during the course of the investigation and submitted to the Idaho State Police Forensic Laboratory for confirmatory analysis completed as of October 11, 2011, confirmed samples of said evidence contained Schedule I controlled substances, including AM-2201; JWH-019 and JWH-210. (*See Peterson GJ Transcript page 199, lines 12-25; page 200, lines 1-8; p. 201, lines 9-13; page 202, lines 8-25; page 203, lines 1-16; lines 20-25, page 204, lines 1-25; page 205, lines 1-12; page 206, lines 14-16 & page 207, lines 6-10*).

In this case, additional confirmatory analysis has been conducted on evidence seized pursuant to Search Warrants executed on the Alley's home, store and warehouse. There is very limited conduct/evidence described by Defendant in his Memorandum in Support of Motion to Dismiss. Reference is only made to the September 13, 2011, sample taken from the dumpster as well as one controlled buy, in which JWH-210 and JWH-019 were confirmed (*Defense Memorandum at page 6*). However, Defendant fails to include in his Memorandum that there was an additional controlled purchase from the Red Eye Hut on September 26, 2011, identified as BCPD DR 123-456, and reflected in ISP Lab No. M2011-2832, in which JWH-019 was also confirmed to be present (*Peterson GJ Transcript page lines 14-16 & page 207, lines 6-10 referenced above*). Further, as mentioned there was a significant amount of additional evidence, seized pursuant to the Search Warrants and submitted for testing, seventeen (17) additional samples were also confirmed to contain Schedule I, Controlled Substances. Eight of (8) of which were found to contain JWH-019 and JWH-210 (the remaining samples contained AM2201). (State's Exhibit 6, ISP Forensic Services Criminalistic Analysis Report – Controlled Substance Analysis M20112998, 12/6/2011 Supplemental Information report and analysis by Corinna Owsley dated 12/6/11). Specifically, see items: #9 Agency Exhibit 18A-1 JWH-019; #15 Agency Exhibit 2-4A JWH-019; #16 Agency Exhibit 2-5A JWH-019; #20 Agency Exhibit 34A-1 JWH-019; #21 Agency Exhibit 38A-1 JWH-019; #22 Agency Exhibit 35B JWH-210; #23 Agency Exhibit 51A-1: #23.1 JWH-210; #23.3 JWH-019.)

Defendant essentially concedes that JWH-019 and JWH-210 are controlled substances prohibited by I.C. 37-2705, and argues just AM-2201 is not covered by said statute. To support this argument, Defendant provides only an Affidavit and a Second Affidavit of Ryan L. Holdaway with multiple documents attached to each Affidavit. Defendant incorporates unsworn purported opinions of Dr. Richard Parent, Dr. Karl De Jesus, and Dr. Owen McDougal in support of his conclusion that AM-2201 is a unique chemical that contains a structure that is not identified nor prohibited under I.C. §37-2705. (*Defense Memorandum (hereinafter Def Memo)* p. 6). Contrarily, it is the state's position that AM-2201 is included and was intended to be included as a controlled substance as a result of the 2011 Amendments to I.C. §37-2705. In fact, the only admissible evidence currently before this Court on this issue is the sworn Affidavit of David Sincereaux (State's Exhibit 5).

Pursuant to an Emergency Clause, both House Bill 139 regarding Tetrahydrocannabinols, synthetic equivalents, or synthetic substances/drugs (at issue in this case, commonly referred to as "Spice") and House Bill 119 regarding substituted cathinones (commonly referred to as "Bath Salts") became effective on March 10, 2011. (State's Exhibit 1 {HB 139} and Exhibit 2 {HB 119}). On February 15, 2011, both bills came before the House Judiciary, Rules & Administration Committee for hearing. During the hearing on H 139, it is clear that the legislative intent was to "permanently ban" the designer drug "Spice". (House Committee Minutes - State's Exhibit 3). As explained to the Committee, by ISP Forensic Chemist Corinna Owsley, in order to accomplish the intended ban, wording of the proposed legislation was intended to create an "umbrella" covering possible chemicals that could be substituted by those wishing to make the "Spice-like" drug by prohibiting any variation by substitution of the listed seven (7) classes of compounds that form the backbone of "spice". Both bills were sent out of committee with a "do pass" recommendation. On February 21, 2011, both bills passed the House unanimously. (*See* pages 1 & 2 of Exhibits 1 & 2).

Thereafter, on March 2, 2011, both H119 and H139 were before the Senate Judiciary & Rules Committee for hearing. As to H139, the legislative intent was reiterated and made even more abundantly clear that the intent of language was to target the backbone structures of the chemicals used to produce variations of “spice”, so that small changes made to the compounds will not result in avoidance of prosecution. (State’s Exhibit 4 – Senate Committee Minutes, Debbie Field). Interestingly, Mr. Holdaway, who is more clearly identified during his “testimony” on H119, as Ryan Holdaway, of Pitcher & Holdaway, PLLC., indicated to the Committee that H139 was a “broad piece of legislation describing whole families of chemicals in an attempt to capture a variation.” (State’s Exhibit 4, p. 3, second paragraph under H 139). Further, Mr. Holdaway appears to identify Dr. Richard Parent, one of the Defense’s disclosed experts in this case, as the chemist of a client who found that the chemicals listed in H139 could be found in candles, perfumes, body lotions, pesticides, and other legitimate and legal products. Apparently, this statement was provided in support of Mr. Holdaway’s argument that the legislation was too broad and “overreaching”. The bills were both sent to the floor with a “do pass” recommendation. As to H 139, Vice Chairman Vick read into the record a statement by John W. Huffman, PHD from Clemson University, who invented JWH-018, which is on the list of synthetic cannabinoids, likening the use of the drugs to “Russian Roulette”. (State’s Exhibit 4, page 4, Motion).

Upon review of the letters and other documents attached as Exhibits to Mr. Holdaway’s Affidavits in this case, it appears that the Defendant’s disclosed experts form their purported opinion(s) using a very narrow definition of “alkyl group”. Essentially asserting that alkyl group **only** means carbon and hydrogen. However, the drafters of the legislation did not intend this narrow definition, utilized by the Defense, nor could it have been what the Legislature intended based upon the legislative history and clear legislative intent outlined above. It was the legislative intent to include within Schedule I a broad range of compounds that could be created by substitution of the described parent structures. In order to accurately include all of these compounds, the classic International

Union of Pure and Applied Chemistry (IUPAC) nomenclature was used in the legislation describing the substituted groups. Finally, AM 2201 contains an alkyl group and thus is covered under the current law as written. (State's Exhibit 5, Affidavit of David Sincerbeaux). Specifically, AM-2201 is included in 37-2705 (d) (ii) (a) as it has a parent structure 3-(1naphthoyl) indol and it is substituted with the alkyl group fluoropentyl at the nitrogen atom of the indol ring.

Therefore, AM-2201 is a schedule I controlled substance, and sufficient evidence was presented to the grand jury on each element of Count I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), §18-1701; 37-2732(f). The Indictment was properly found as required by the statutes of the state of Idaho. Further, there is no basis for dismissal by the court pursuant to ICR 48(a). In fact dismissal would be contrary to the ends of justice and the effective administration of the court's business. In addition, in that AM-2201, is only one (1) of three (3) schedule I controlled substances confirmed to be present after analysis of evidence related to Count I., the Motion to Dismiss pursuant to Defendant's first claim should be denied.

B. THE VAGUENESS DOCTRINE

The State has already shown that AM-2201 is prohibited by I.C. § 37-2705(d)(30)(ii). Still, the Defendant argues that even if AM-2201 falls within the structures listed in the Statute, the Defendant was unaware of this, as the provision is unconstitutionally vague.

However, a statute is not void for vagueness merely because the subject matter is technical or specialized. When dealing with control and identification of synthetic substances, Idaho Code § 37-2705(d), *et seq.* is understandable and precise, providing reasonable and adequate notice under the provision identifying the specific parent alkyl group; and broader notice under sub parenthesis (30) of tetrahydrocannabinols, synthetic equivalents of marijuana, and synthetic substances. In addition, it provides sufficient guidelines to direct law enforcement and the judiciary in enforcing and applying the laws.

STANDARD OF REVIEW

The party challenging a statute on constitutional grounds bears the burden of establishing that the statute is unconstitutional and “must overcome a strong presumption of validity.” *State v. Korsen*, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003) (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990)). The Court is “obligated to seek an interpretation of a statute that upholds its constitutionality.” *Id.* (citing *State v. Newman*, 108 Idaho 5, 13, n. 12, 696 P.2d 856, 864 n. 12 (1985)).

“Except where First Amendment rights are involved, vagueness challenges must be evaluated in the light of the facts of the case at hand.” *United States v. Fisher*, 289 F.3d 1329, 1333 (11th Cir. 2002); See *United States v. Mazurie*, 419 U.S. 544, 550, 95 S.Ct. 710, 42 L.Ed.2d 706 (1975).

ANALYSIS

The policy concerns behind a vagueness challenge involve basic procedural and substantive due process: safeguarding constitutionally protected rights, providing notice of what is considered criminal behavior, and discouraging arbitrary and discriminatory enforcement of laws. *State v. Martin*, 148 Idaho 31, 34, 218 P.3d 10, 13 (Ct. App. 2009); *State v. Korsen*, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003) (citing *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982)).

There are several variations of vagueness attacks on a statute (i.e. constitutionality, overbreadth, vagueness, both facially or as-applied), each of which requires scrutiny under separate legal standards. *State v. Pentico*, 151 Idaho 906, 265 P.3d 519, 527 (Ct. App. 2011), review denied (Jan. 5, 2012) (discussing overbreadth as-applied); *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998) (threshold question is whether the statute is being scrutinized for vagueness on its face or as applied). The Defense has failed to specifically identify which of these categories of challenges it is advocating. The State anticipates, but is not certain, that the Defendant is limiting his arguments to a vagueness as-applied challenge. Well-established rules such as due process -to which the

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State is also entitled- as well as Local Rule 8.1, contemplate that in addition to a hearing, the State will have notice of the Defendant's arguments it will be contesting. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494, 503 (1985); see also *Liponis v. Bach*, 149 Idaho 372, 374, 234 P.3d 696, 698 (2010), reh'g denied (July 26, 2010) (standing for proposition that a brief is not meant to be obscure and esoteric). The State, notes that on these grounds alone the Court could disregard the Defense's claim for relief, as it has not been properly identified. *See State v. Zichko*, 129 Idaho 259, 923 P.2d 966 (1996); *State v. Burris*, 101 Idaho 683, 684 n. 1, 619 P.2d 1136, 1137 n. 1 (1980) (the failure to properly support a claim with argument and authority is deemed a waiver of the issue).

To succeed on an "as applied" vagueness challenge where a fundamental constitutionally-protected right is not at issue, a challenger must show that, as applied to the defendant's conduct, the statute either: (1) failed to provide **fair notice** that the defendant's conduct was proscribed, or (2) failed to provide **sufficient guidelines** such that the police had unbridled discretion in determining whether to arrest him. *State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003)(emphasis added); *Kolender v. Lawson*, 461 U.S. 352, 357-58, 103 S.Ct. 1855, 1858-59, 75 L.Ed.2d 903, 908-09 (1983).

1. Fair Notice

A Statute is not unconstitutionally vague simply because the subject matter is technical or specialized. These Statutes make it clear to a person of common intelligence that the production of synthetic drugs, by any name, is illegal. Furthermore, the Defendant had actual notice that his conduct was illegal, and willful ignorance is not a defense.

When comparing the two prongs of analysis (fair notice and sufficient guidelines) it is important to note that, "[courts] have recognized recently that the more important aspect of vagueness doctrine 'is not actual notice, but the other principal element of the doctrine -the requirement that a legislature establish minimal guidelines to govern law enforcement.'" *United States v. Fisher*, 289 F.3d 1329, 1333 (11th Cir. 2002) (citing

Kolender, 461 U.S. at 357, 103 S.Ct. 1855 (quoting *Smith v. Goguen*, 415 U.S. 566, 574, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974)).

Accordingly, as between “notice” and “guidelines,” the U.S. Supreme Court “considers the latter concern the more important”, reflecting the common sense understanding that the average citizen does not read each federal, state and local statute which governs him. *United States v. Caseer*, 399 F.3d 828, 836 (6th Cir. 2005) (citing *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1105 (6th Cir. 1995).

Still, fair notice is a consideration of due process, and the higher courts of our State and Nation have noted that this requires citizens “‘be informed as to what the State commands or forbids’ and that ‘men of common intelligence’ not be forced to guess at the meaning of the criminal law.” *Korsen*, supra at 712, 132; citing *Smith v. Goguen*, 415 U.S. 566, 574, 94 S.Ct. 1242, 1248, 39 L.Ed.2d 605, 612 (1974); *State v. Laramore*, 145 Idaho 428, 430, 179 P.3d 1084, 1086 (Ct. App. 2007) (citing *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998)). Accordingly, a statute defining criminal conduct or imposing criminal sanctions should be worded with “sufficient clarity and definiteness” that ordinary people can understand what conduct is prohibited. *Burton v. State, Dept. of Transp.*, 149 Idaho 746, 748, 240 P.3d 933, 935 (Ct. App. 2010).

The Defense argues that the scientific and technical subject matter of the legislation, together with the Defense experts’ purported disagreement with the State, prove that I.C. § 37-2705(d)(30) does not meet the notice requirements of due process. This argument, if followed to its logical conclusion, would yield absurd results, invalidating all statutes involving technical, complex, or otherwise specialized areas of legislation where a defendant can locate, nationwide, an “expert” to disagree.

The Defense is mistaken. The use of scientific or technical terminology or terms of art common in a regulated field does not automatically render a statute unconstitutionally vague. *United States v. Caseer*, 399 F.3d 828, 837 (6th Cir. 2005); citing *Vill. of Hoffman Estates*, 455 U.S. at 501 n. 18, 102 S.Ct. 1186; *Hygrade Provision Co. v. Sherman*, 266 U.S. 497, 502, 45 S.Ct. 141, 69 L.Ed. 402 (1925) (“[T]he term

‘kosher’ has a meaning well enough defined to enable one engaged in the trade to correctly apply it, at least as a general thing.”); *Omaechevarria v. Idaho*, 246 U.S. 343, 348, 38 S.Ct. 323, 62 L.Ed. 763 (1918) (“Men familiar with ‘range’ conditions and desirous of observing the law will have little difficulty in determining what is prohibited by it.”). While the requirement of ‘fair notice’ emphasizes the importance of citizens understanding what conduct is and is not prohibited, courts also frequently invoke the maxim that ignorance of the law is no defense. See *Lambert v. California*, 355 U.S. 225, 228, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957) (noting that the “[t]he rule that ‘ignorance of the law will not excuse’ is deep in our law”) (quoting *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 68, 30 S.Ct. 663, 54 L.Ed. 930 (1910)); see also *Nash v. United States*, 229 U.S. 373, 377, 33 S.Ct. 780, 57 L.Ed. 1232 (1913) (“[T]he law is full of instances where a man’s fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death.”).

The Defendant understood the legislation at issue in this matter perfectly well. The Defense concedes that the description in the Statute at § 37-2705(d)(30)(ii)(a) “intentionally covers thousands of potential chemicals”. (*Def Memo p. 10*). No doubt, the Defendant and his Counsel were well aware of the highly publicized rise of synthetic drug use in Idaho and the documented harmful effects of substances such as “spice.” Indeed, it is fair to infer that the Defendant was profiting from the sale of “spice” or “potpourri” during the time the legislation was being discussed. Counsel for the Defense was present during the Committee Hearings regarding House Bills 139 and 119, the final stages of the enactment of the law, in an attempt to dissuade lawmakers from prohibiting designer drugs, including synthetic cannabinoids/drugs and substitute cathinones in the State of Idaho.

Exhibit B to Defense Counsel’s Affidavit is an October 2010 news release regarding the Governor’s approval of legislative and administrative action to control substances used in the manufacture of “spice.” Furthermore, in Defense Counsel’s own

Affidavit and admission he was intimately and personally involved in the attempt to circumvent the bill aimed at prohibiting all synthetic drugs/cannabinoids.¹ Law enforcement and the legislature's highly publicized efforts alone can give a defendant notice that a substance is illicit. *U.S. v. Desurra*, 865 F.2d 651, 653 (5th Cir. 1989); *U.S. v. Carlson*, 87 F.3d 440, 444 (11th Cir. 1996).

As previously described, the Senate Judiciary and Rules Committee Hearing Minutes from March 2, 2011, confirm that Defense Counsel Holdaway was present for and spoke to the bills at the Senate Hearing regarding HB 119 and 139. (State's Exhibit 4). To reiterate, with regard to "Spice," it was explained that the intent of the bill would make permanent the ban on the drug and all substances involved. On that date, Defense Counsel Holdaway, representing multiple parties involved in the manufacture of synthetic drugs and paraphernalia (pipes), some of whom he was unwilling to name, spoke against passage of HB 119 & 139, essentially conceding the legislation would affect his client's ability to do business (which was obviously the intent of the legislature). As mentioned, at that hearing, Counsel echoed a theme from his current Memorandum in Support of Motion to Dismiss, that the bill was a "broad piece of legislation, describing whole families of chemicals in an attempt to capture a variation." *Id.*

As previously discussed and essentially conceded by the Defense's own argument regarding AM-2201, the Legislature identified the parent structure and potential substitution with an alkyl group, which describes AM-2201. Moreover, originally the Legislature enacted I.C. § 37-2705(d)(30), which states:

Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

...

And amended the law in 2011, to include:

ii. The following synthetic drugs:

....

¹ This, in the State's view potentially makes Defense Counsel, Holdaway, a witness in his own case. See Idaho Rules of Professional Conduct 3.7(a).

Id. Thus, the Legislature was clear as to its intent that tetrahydrocannabinols, synthetic equivalents of marijuana, similar synthetic substances **and** synthetic drugs, including synthetic cannabinoids like AM-2201 are illegal in this State.²

It is clear by the language of the Statute alone -independent from the Defendant's personal familiarity and counsel's history with the Statute at issue- that these provisions are sufficient to inform a person of common intelligence that these types of synthetic substances/drugs are illegal. It is also clear that the Defense understands the legislation perfectly well. The Defendant elected to continue his activities despite the clear intent of the Legislature, knowing the risk, even perhaps going so far as to locate a chemist to recommend a substitute substance in an attempt to avoid being held accountable for his activities. The Defendant maintained a clandestine operation, attempting to avoid discovery by law enforcement and the public by covering the windows of the door to the warehouse where the manufacturing was taking place. The State anticipates additional facts regarding the Defendant's consciousness of guilt will be provided by live testimony at the hearing.

The Defendant elected to continue manufacturing and selling "spice" or "potpourri", intended for human consumption. The Defense hedged its bets for financial gain, hoping that it would be virtually impossible for the State to properly legislate against, and then prosecute, synthetic drugs. Indeed, the Defendant, through his counsel, readily admits that he seeks to circumvent the law: "[the State will] likely never be able to make the list long enough to capture all of the potential chemicals that can be used" arguing in the alternative that a statute which fails to specifically mention AM-2201 will fail for vagueness. (*Def Memo p. 10*). The Defendant clearly believed the State was in a catch-22, and was taking a risk for monetary gain; all to the detriment of society as a whole, not to mention the health of the young abusers of the Defendant's synthetic cannabinoids.

² Additional discussion regarding statutory interpretation is contained under the "guidelines" section below and, while incorporated under this section, will not be repeated here for brevity.

A defendant, such as this, who had actual notice that his conduct was unlawful cannot prevail on a vagueness challenge. *See, e.g., United States v. Washam*, 312 F.3d 926, 930 (8th Cir.2002); *United States v. Pitt-Des Moines, Inc.*, 168 F.3d 976, 990 (7th Cir.1999). The Court should reject D's brazen attempt to game the system, continuing to sell "Spice" or "potpourri", laced with Schedule I controlled substances, in this community, and find there was sufficient notice under these circumstances and by the language of this Statute.

2. Sufficient Guidelines

The statutory provisions in question provide substantial guidance to law enforcement so as to prevent arbitrary and discriminatory enforcement.

Although not mentioned by the Defense, "the more important aspect of vagueness doctrine 'is not actual notice, but the other principal element of the doctrine -the requirement that a legislature establish minimal guidelines to govern law enforcement.'" *U.S. v. Klecker*, 348 F.3d 69, 71-72 (4th Cir. 2003) (citing *Kolender*, 461 U.S. at 357, 103 S.Ct. 1855 (stating, in the context of a facial challenge, that preventing arbitrary enforcement is "the more important aspect of the vagueness doctrine), quoting *Smith v. Goguen*, 415 U.S. 566, 574, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974)); *See also U.S. v. Fisher*, 289 F.3d 1329, 1333 (11th Cir. 2002).

"A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *State v. Laramore*, 145 Idaho 428, 430, 179 P.3d 1084, 1086 (Ct. App. 2007); *Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 2299, 33 L.Ed.2d 222, 227-28 (1972) (footnote omitted).

It is under this prong of the analysis that the "core" of a targeted activity becomes relevant. In order for a statute to provide sufficient guidelines for enforcement, it must identify some core activity, so as to prevent a legislative net so large and broad that it would catch everyone, leaving the courts to decide who should be detained and who should be set free. *State v. Bitt*, 118 Idaho 584, 588, 798 P.2d 43, 47 (1990) (citing

Kolender, 461 U.S. at 358, n. 7, 103 S.Ct. at 1858, quoting *United States v. Reese*, 92 U.S. 214, 221, 23 L.Ed. 563, 566 (1876)).

For example, in *State v. Bitt*, a Pocatello City ordinance allowed officers to arrest anyone engaged in suspicious (but not necessarily illegal) activity, who was thereafter unable to provide identification and an explanation to the officer's satisfaction. *Id.* at 590, 49. The reviewing court found that this language inherently carried the potential for arbitrary enforcement, as it vested "complete discretion in the hands of the police officer to determine whether the person has provided a credible and reliable explanation." *Id.* At 589-90, 48-49.

In *U.S. v. Kleckler*, the defendant was charged with distribution of a drug commonly known as "Foxy", which while not listed specifically as a controlled substance was alleged to be covered under the broad language of a related "analogue" substance of DET, which was named. *Id.* 348 F.3d 69, 70 (4th Cir. 2003). That defendant claimed that the phrases "chemical structure" and "substantially similar" failed to provide adequate guidance to a person trying to determine whether one molecule resembles another closely enough to qualify. *Id.* at 73. As in this case, *Kleckler* presented testimony of experts to disagree with the government's description of relative chemical structures and similarities. *Id.* at 71-72. Despite the important differences, the court found the similarities between the substances was enough to put a reasonable person on notice (see notice prong, above), and provide guidance for enforcement. *Id.*

Idaho Code § 37-2705(d)(30) and the included sub-provisions are far removed from the laws involved in *Kleckler* and *Bitt*. The provisions at issue here provide ample guidance to law enforcement and the judiciary, precluding arbitrary enforcement. The law clearly targets the substances applied to "Spice", synthetic marijuana or other substances, like synthetic cannabinoids, meant to mirror the effects thereof such as the "tetrahydrocannabinols or synthetic equivalents of the substances contained in [marijuana,] or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as . . . ii. The

following synthetic drugs:...". *Id.* The list is clearly not meant to be complete and exclusive, as the definition includes potential substitutions and indicates the following provisions are only some of the specifically listed examples of prohibited substances. To reiterate, the legislature included examples of "synthetic drugs . . ." under sub-parenthesis (ii).

The aforementioned provisions are clear in their intent and limited in their scope to target a specific category of synthetic drugs. These provisions sufficiently identify these substances so as to inform and limit law enforcement and the judiciary. As shown above, the Defendant was aware of the Legislature's intent and should not be allowed to argue the contrary.

CONCLUSION

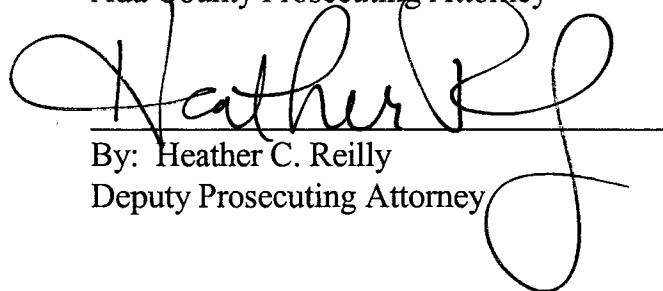
In accordance with the reasoning above, the State requests the Court find AM-2201 adequately contained within Schedule I, pursuant to I.C. §37-2705. Furthermore, the State requests the Court find I.C. § 37-2705(d)(30) and the included provisions sufficiently constitutionally sound, providing ample notice and guidelines for enforcement.

The State, for the foregoing reasons, respectfully requests this Court DENY the Defendant's motion to dismiss in its' entirety.

DATED this 7th day of March, 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Heather C. Reilly", is written over a horizontal line. The signature is fluid and cursive.

By: Heather C. Reilly

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March 2012, I caused to be served, a true and correct copy of the foregoing Motion to Increase Bond upon the individual(s) named below in the manner noted:

Name and address: Ryan Holdaway: by facsimile: (435) 787-1200 and email;
Keith Roark: by facsimile: (208) 788-3918 and email;
Jim Ball: by facsimile: 424-3100 & US Mail: P.O. Box 973, Boise,
Idaho 83701
Rob Lewis: by facsimile: 338-1273 & US Mail: P.O. Box 1061, Boise,
Idaho 83701


Legal Assistant

MAR 09 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-0015482

**AMENDED AND SUPPLEMENTAL
ORDER FOR GRAND JURY
TRANSCRIPT**

This Court inadvertently signed the previous order for preparation of the grand jury transcript without including the conditions regularly imposed by this Court. This Order is intended to correct the conditions of use of the transcript. Lest there be any mistake, when this Order references to "defense counsel" it means counsel for Defendant Morgan Christopher Alley.

Upon motion of the defendant, pursuant to the requirements of Idaho Criminal Rules 6 and 16, and for good cause appearing, this court hereby grants the Defendant Morgan Christopher Alley's MOTION FOR GRAND JURY TRANSCRIPTS.

Copies of the transcript; have been made available to both defense counsel and the prosecuting attorney by the court.

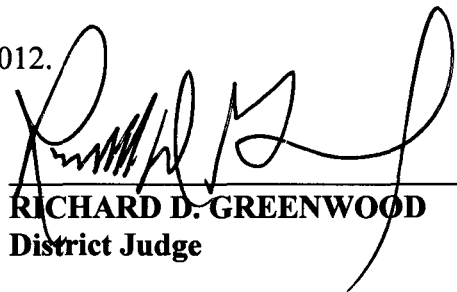
All such transcripts of grand jury testimony are to be used exclusively by the prosecutor and defense counsel in their preparation for this case, and for no other purpose. None of the material may be copied or disclosed to any other person other than the prosecutor and defense counsel without specific authorization by the court. If counsel have allowed copies of the transcript or any portion thereof to be copied except as provided in this Order, Counsel is directed to retrieve the copies and maintain them in counsel's file the as the original. However, authorization is hereby granted to permit disclosure of the transcript of grand jury testimony to associates and staff assistants to both defense counsel and the prosecuting attorney, who agree to

be bound by this order, and only in connection with the preparation of this case. Counsel may discuss the contents of the transcript with their respective clients, but may not release the transcript themselves. The defendant, defense counsel, and the prosecutor shall be allowed to review the entire grand jury transcript. In addition, a witness whose testimony was given during grand jury proceedings may review the typed portion of the transcript which contains their specific testimony only.

Violation of any provisions of this order shall be considered a contempt.

IT IS SO ORDERED.

DATED, this 9 of March, 2012.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of March, 2012, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:

R Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 83333

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

John Meienhofer
Attorney at Law
300 W. Myrtle Street, Ste. 200
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Boise, ID 83701

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290 S. 2nd East Street
Mountain Home, ID 83647-3013

☒ By United States mail
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☐ By personal delivery
☐ By overnight mail/Federal Express

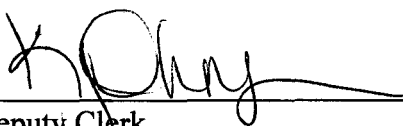
James Ball
Attorney at Law
PO Box 937
Boise, ID 83701-0937

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

Kimberly Simmons
Ada County Public Defender

☐ By United States mail
☐ By telefacsimile
☒ By personal delivery
☐ By overnight mail/Federal Express

CHRISTOPHER D. RICH
Clerk of the District Court


Deputy Clerk

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:04:47 AM</u>		CRFE11.15480 State v. Charlynda Goggin/CRFE11.15481 State v. Cadee Peterson/CRFE11.15482 State v. Morgan Alley/CRFE11.15483 State v. Tashina Alley/CRFE11.16247 State v. Matthew Taylor/CRFE11.16248 State v. Hieu Phan
<u>9:05:05 AM</u>	Court	Calls cases. State's counsel Heather Reilly and Jonathan Medema.
<u>9:06:34 AM</u>	Court	Takes roll. Addresses counsel.
<u>9:07:10 AM</u>	Court	Statements between the Court and counsel regarding the motion to dismiss and who filed the motions for joinder. Briefing from the State, Holdaway.
<u>9:08:13 AM</u>	State Attorney	Statement - witness is enroute - requests additional time for them to be there.
<u>9:09:11 AM</u>	Court	No opposition from counsel regarding the time that is requested.
<u>9:09:21 AM</u>	State Attorney	Statement regarding the how court will be run today.
<u>9:09:45 AM</u>	Court	Addresses counsel regarding the testimony and how it will be running today. Defense will call their witnesses first. Addresses counsel regarding procedure today.
<u>9:11:27 AM</u>	Mr. Roark	Mr. Holdaway will be handling the hearing today and he will have to leave no later than 1:00 due to another hearing in another county.
<u>9:12:12 AM</u>	Court	Addresses counsel regarding schedule today.
<u>9:12:30 AM</u>	Mr. Meienhofer	Present.
<u>9:12:43 AM</u>	Court	Addresses Mr. Meienhofer.
<u>9:12:57 AM</u>	Mr. Meienhofer	Response - did not file a joinder.
<u>9:13:09 AM</u>	Court	Addresses counsel regarding counsel that did not file a joinder than if they would like they can be dismissed.
<u>9:13:53 AM</u>	Court	Discussion between Court and counsel regarding possible witnesses.
<u>9:14:13 AM</u>	Ms. Simmons	Statement regarding the motion.
<u>9:15:27 AM</u>	Court	Response - will not require her to join in the motion. Addresses counsel regarding the motion.
<u>9:16:45 AM</u>	Ms. Simmons	Response. Addresses the parties.
<u>9:17:16 AM</u>	Ms. Reilly	Statement regarding deadlines of when the motions where to be heard.
<u>9:17:49 AM</u>	Court	Response.

<u>9:17:57 AM</u>	Court	Recess.
<u>9:32:51 AM</u>	Court	Back on the record.
<u>9:32:57 AM</u>	Mr. Holdaway	Ready to proceed.
<u>9:33:15 AM</u>	Court	Mr. Meienhofer and Ms. Simmons are excused from today's proceedings.
<u>9:33:30 AM</u>	Mr. Holdaway	Argument.
<u>9:34:07 AM</u>	Court	Counsel identifies themselves.
<u>9:34:14 AM</u>	Mr. Holdaway	Opening statements.
<u>9:40:06 AM</u>	State Attorney	Opening statements.
<u>9:42:21 AM</u>	Mr. Holdaway	Calls Owen McDougal.
<u>9:42:38 AM</u>	Court	Witness sworn and testifies.
<u>9:42:55 AM</u>	Mr. Holdaway	Direct examination.
<u>9:46:08 AM</u>	Mr. Medema	No objection.
<u>9:46:18 AM</u>	Court	Dr. McDougal will be considered an expert.
<u>9:46:32 AM</u>	Mr. Holdaway	Direct examination continued.
<u>9:47:19 AM</u>	Court	Deft's Exhibit 1 marked.
<u>9:47:35 AM</u>	Mr. Medema	No objection.
<u>9:47:44 AM</u>	Court	Without objection Deft's Exhibit 1 is admitted.
<u>9:49:25 AM</u>	Mr. Holdaway	Continues direct examination. Exhibit 2 marked and provided to the witness.
<u>9:50:01 AM</u>	Mr. Holdaway	Moves to admit Exhibit 2.
<u>9:50:06 AM</u>	Mr. Medema	No objection.
<u>9:50:08 AM</u>	Court	Without objection Exhibit 2 is admitted.
<u>9:50:10 AM</u>	Mr. Holdaway	Continues direct examination.
<u>9:51:57 AM</u>	Court	Moves to admit Exhibit 3 into evidence.
<u>9:52:06 AM</u>	Mr. Medema	No objection.

<u>9:52:51 AM</u>	Court	Exhibit 3 admitted without objection.
<u>9:53:03 AM</u>	Mr. Holdaway	Continues direct examination.
<u>10:01:21 AM</u>	Mr. Holdaway	Deft's Exhibit 4 marked.
<u>10:01:58 AM</u>	Mr. Holdaway	Moves to admit Exhibit 4. About.Com Chemistry
<u>10:02:24 AM</u>	Mr. Medema	No objection.
<u>10:02:32 AM</u>	Court	Without objection Exhibit 4 is admitted.
<u>10:02:42 AM</u>	Mr. Holdaway	Direct examination continued.
<u>10:10:52 AM</u>	Mr. Medema	Cross examination.
<u>10:27:37 AM</u>	Mr. Holdaway	Objection.
<u>10:27:43 AM</u>	Court	Overruled.
<u>10:27:46 AM</u>	Mr. Medema	Cross examination continued.
<u>10:56:06 AM</u>	Mr. Holdaway	Objection - hearsay on patent.
<u>10:56:15 AM</u>	Court	Overruled.
<u>10:56:16 AM</u>	Mr. Medema	Cross examination continued.
<u>10:59:03 AM</u>	Mr. Medema	State's Exhibit 100 marked.
<u>10:59:16 AM</u>	Mr. Holdaway	No objection.
<u>10:59:34 AM</u>	Court	Without objection Exhibit 100 is admitted.
<u>10:59:45 AM</u>	Court	Recess.
<u>11:16:27 AM</u>	Court	Back on the record. Dr. McDougal reminded that he's still under oath.
<u>11:16:30 AM</u>	Mr. Holdaway	Re-direct examination.
<u>11:17:29 AM</u>	Mr. Holdaway	State's Exhibit 100 provided to the witness and continues re-direct examination.
<u>11:24:00 AM</u>	Mr. Medema	Re-cross examination.

<u>11:39:41 AM</u>	Mr. Holdaway	Re-redirect examination.
<u>11:41:29 AM</u>	Court	Witness steps down and is excused.
<u>11:41:41 AM</u>	Mr. Holdaway	Calls Dr. Carl DeJesus
<u>11:41:52 AM</u>	Court	Witness sworn and testifies.
<u>11:42:18 AM</u>	Mr. Holdaway	Direct examination.
<u>11:44:27 AM</u>	Mr. Holdaway	Marks Exhibit 5. Moves to admit.
<u>11:44:43 AM</u>	Mr. Medema	No objection.
<u>11:44:45 AM</u>	Court	Without objection Exhibit 5 is admitted.
<u>11:44:47 AM</u>	Mr. Holdaway	Moves to hae the witness as an expert.
<u>11:44:49 AM</u>	Mr. Medema	Response.
<u>11:46:03 AM</u>	Mr. Holdaway	Direct examination continued.
<u>11:50:47 AM</u>	Mr. Holdaway	Exhibit 6 marked. Moves to admit.
<u>11:50:48 AM</u>	Mr. Medema	No objection.
<u>11:50:50 AM</u>	Court	Without objection Exhibit 6 is marked.
<u>11:50:51 AM</u>	Mr. Holdaway	Direct examination.
<u>12:09:31 PM</u>	Mr. Holdaway	Exhibit 7 marked.
<u>12:10:01 PM</u>	Mr. Holdaway	Direct examination continued.
<u>12:13:24 PM</u>	Mr. Holdaway	Moves to admit Exhibit 7.
<u>12:13:28 PM</u>	Mr. Medema	No objection
<u>12:13:32 PM</u>	Court	Without objection Exhibit 7 is admitted.

<u>12:13:34 PM</u>	Mr. Holdaway	Direct examination continued.
<u>12:16:26 PM</u>	Mr. Medema	Objection - asked and answered.
<u>12:16:35 PM</u>	Court	Addresses counsel.
<u>12:16:43 PM</u>	Mr. Holdaway	Direct examination continued.
<u>12:17:19 PM</u>	Mr. Medema	Cross examination.
<u>12:29:04 PM</u>	Mr. Holdaway	Re-direct examination.
<u>12:31:50 PM</u>	Mr. Medema	Nothing further.
<u>12:31:55 PM</u>	Court	Questions for the witness.
<u>12:33:57 PM</u>	Mr. Holdaway	Re-redirect examination.
<u>12:35:44 PM</u>	Mr. Medema	Re-cross examination.
<u>12:40:47 PM</u>	Court	Questions the witness.
<u>12:44:29 PM</u>	Court	Recess.
<u>12:44:36 PM</u>	Court	Back on the record.
<u>1:44:22 PM</u>	Court	Dr. DeJesus resumes the stand.
<u>1:44:32 PM</u>	Court	Addresses counsel regarding the time.
<u>1:44:54 PM</u>	Mr. Holdaway	Re-redirect examination.
<u>1:48:59 PM</u>	Mr. Medema	Re-cross examination.
<u>1:58:49 PM</u>	Court	Witness steps down and is excused.
<u>1:59:00 PM</u>	Mr. Holdaway	No further witnesses.
<u>1:59:05 PM</u>	Ms. Reilly	Dave Sincerbeau.
<u>1:59:42 PM</u>	Ms. Reilly	Direct examination.
<u>2:08:19 PM</u>	Ms. Reilly	Exhibit 101 provided to the witness and continues direct examination.
<u>2:09:24 PM</u>	Ms. Reilly	Moves to admit Exhibit 101.
<u>2:09:32 PM</u>	Ms. Pitcher	No objection.
<u>2:09:34 PM</u>	Court	Without objection State's 101 is admitted.

<u>2:10:16 PM</u>	Ms. Reilly	Direct examination continued.
<u>2:25:17 PM</u>	Court	Addresses counsel.
<u>2:26:43 PM</u>	Court	Wednesday at 8:30 am to continue this.
<u>2:28:24 PM</u>	Court	Recess.

Time	Speaker	Note
<u>8:14:08 AM</u>		CRFE11.15480 State v. Charlynda Goggin/CRFE11.15481 State v. Cadee Peterson/CRFE11.15482 State v. Morgan Alley/CRFE11.15483 State v. Tashina Alley/CRFE11.16247 State v. Matthew Taylor/ CRFE11.16248 State v. Hieu Phan
<u>8:30:22 AM</u>	Court	Calls case. State's atty Heather Reilly and Jonathan Medema. Defense counsel Ryan Holdaway.
<u>8:30:39 AM</u>	Ms. Reilly	Recalls Mr. Sensorboe.
<u>8:31:11 AM</u>	Court	Advises the witness that he's still under oath.
<u>8:31:12 AM</u>	Ms. Reilly	Direct examination.
<u>8:32:01 AM</u>	Ms. Reilly	Marks and moves to admit Exhibit 102.
<u>8:32:19 AM</u>	Ms. Pitcher	No objection.
<u>8:32:25 AM</u>	Court	Without objection Exhibit 102 is admitted.
<u>8:32:48 AM</u>	Ms. Reilly	Direct examination continued.
<u>8:36:44 AM</u>	Ms. Reilly	State's Exhibit 103 provided to the witness and continues direct examination.
<u>8:37:22 AM</u>	Ms. Reilly	Moves to admit Exhibit 103.
<u>8:37:25 AM</u>	Ms. Pitcher	Objection.
<u>8:37:38 AM</u>	Court	Overruled.
<u>8:37:43 AM</u>	Court	Exhibit 103 is admitted.
<u>8:37:49 AM</u>	Ms. Reilly	Continues direct examination.
<u>8:38:59 AM</u>	Ms. Pitcher	Objection - relevance.
<u>8:39:06 AM</u>	Court	Overruled. Addresses counsel regarding a preliminary issues.
<u>8:39:30 AM</u>	Ms. Reilly	Continues direct examination.
<u>8:49:38 AM</u>	Ms. Reilly	Exhibit 104 provided to the witness and continues direct examination.
<u>8:50:36 AM</u>	Ms. Reilly	Moves to admit.
<u>8:50:40 AM</u>	Court	State's Exhibit 104 admitted.
<u>8:50:47 AM</u>	Ms. Reilly	Continues direct examination.
<u>8:57:38 AM</u>	Ms. Reilly	Exhibit 105 provided to the witness and continues direct examination.
<u>8:59:11 AM</u>	Ms. Reilly	Moves to admit Exhibit 105.

<u>8:59:18 AM</u>	Court	State's Exhibit 105 admitted.
<u>8:59:41 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:01:20 AM</u>	Ms. Reilly	State's Exhibit 106 provided to the witness and continues direct examination.
<u>9:02:01 AM</u>	Ms. Reilly	Moves to admit Exhibit 106.
<u>9:02:02 AM</u>	Court	Exhibit 106 admitted.
<u>9:02:03 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:04:09 AM</u>	Ms. Reilly	Exhibit 107 provided to the witness and continues direct examination.
<u>9:04:40 AM</u>	Ms. Reilly	Moves to admit Exhibit 107.
<u>9:04:41 AM</u>	Court	Exhibit 107 admitted.
<u>9:04:42 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:08:41 AM</u>	Ms. Reilly	Exhibit 108 provided to the witness.
<u>9:08:45 AM</u>	Ms. Reilly	Moves to admit Exhibit 108.
<u>9:08:46 AM</u>	Court	No objection.
<u>9:08:47 AM</u>	Ms. Reilly	Direct examination.
<u>9:09:21 AM</u>	Court	Questions the witness.
<u>9:10:09 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:12:20 AM</u>	Ms. Reilly	Exhibit 109 provided to the witness and continues direct examination.
<u>9:12:43 AM</u>	Ms. Reilly	Moves to admit Exhibit 109.
<u>9:12:44 AM</u>	Court	Exhibit 109 is admitted.
<u>9:12:45 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:18:29 AM</u>	Ms. Reilly	Exhibit 110 provided to the witness and continues direct examination.
<u>9:19:05 AM</u>	Ms. Reilly	Moves to admit Exhibit 100.
<u>9:19:06 AM</u>	Court	Exhibit 110 is admitted.
<u>9:19:07 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:25:36 AM</u>	Ms. Reilly	Exhibit 111 provided to the witness and continues direct examination.
<u>9:26:18 AM</u>	Ms. Reilly	Moves to admit Exhibit 111.
<u>9:26:19 AM</u>	Court	Exhibit 111 is admitted.

<u>9:26:20 AM</u>	Ms. Reilly	Direct examination continued.
<u>9:33:47 AM</u>	Ms. Reilly	Nothing further.
<u>9:34:28 AM</u>	Ms. Pitcher	Cross examination.
<u>9:38:33 AM</u>	Ms. Pitcher	Exhibit 8 marked and provided to the witness.
<u>9:39:13 AM</u>	Ms. Pitcher	Cross examination continued.
<u>9:41:02 AM</u>	Ms. Reilly	Statement.
<u>9:41:08 AM</u>	Ms. Pitcher	Exhibit 9 marked.
<u>9:41:14 AM</u>	Court	Admitted.
<u>9:41:22 AM</u>	Ms. Pitcher	Cross examination continued.
<u>9:43:23 AM</u>	Ms. Pitcher	Exhibit 10 provided to the witness and continues cross examination.
<u>9:45:52 AM</u>	Ms. Pitcher	Exhibit 11 marked and provided to the witness.
<u>9:48:25 AM</u>	Ms. Pitcher	Nothing further.
<u>9:48:28 AM</u>	Mr. Holdaway	Statement - regarding the Dr. McDougal.
<u>9:48:44 AM</u>	Court	Dr. McDougal is excused.
<u>9:48:52 AM</u>	Ms. Reilly	Re-direct examination.
<u>9:50:29 AM</u>	Ms. Reilly	Exhibit 11 provided to the witness and continues re-direct examination.
<u>9:57:42 AM</u>	Ms. Reilly	Exhibit 112 provided to the witness and continues re-direct examination.
<u>9:58:27 AM</u>	Ms. Reilly	Moves to admit Exhibit 112.
<u>9:58:30 AM</u>	Court	Exhibit 112 is admitted.
<u>9:58:32 AM</u>	Ms. Reilly	Re-direct examination continued.
<u>10:02:35 AM</u>	Ms. Reilly	Nothing further.
<u>10:02:36 AM</u>	Ms. Pitcher	Re-cross examination.
<u>10:04:28 AM</u>	Ms. Pitcher	Nothing further.
<u>10:04:58 AM</u>	Court	Questions the witness.
<u>10:09:22 AM</u>	Mr. Holdaway	Nothing further after the Court's questions.

<u>10:09:23 AM</u>	Ms. Reilly	Re-redirect examination.
<u>10:11:34 AM</u>	Court	Questions the witness.
<u>10:12:25 AM</u>	Mr. Holdaway	Nothing further.
<u>10:12:26 AM</u>	Ms. Reilly	Nothing further.
<u>10:12:29 AM</u>	Ms. Reilly	No further witnesses.
<u>10:12:42 AM</u>	Ms. Pitcher	No further witnesses.
<u>10:12:49 AM</u>	Ms. Reilly	Take judicial notice of the grand jury transcript. Andrelio pages 1 - 35 of the transcript, Detectives Harmon pages 173 - 194.
<u>10:14:34 AM</u>	Mr. Holdaway	Take judicial notice CR12.915FE transcript.
<u>10:15:03 AM</u>	Court	Addresses counsel.
<u>10:15:11 AM</u>	Mr. Holdaway	Response to have the Court take judicial notice. Case from Pocatello. Further argument to take judicial notice.
<u>10:17:46 AM</u>	Court	Addresses counsel.
<u>10:17:59 AM</u>	Mr. Holdaway	Response - how police could enforce this law.
<u>10:18:28 AM</u>	Ms. Reilly	Objects to the preliminary hearing from another jurisdiction.
<u>10:18:46 AM</u>	Mr. Beck	Statement.
<u>10:18:55 AM</u>	Court	Addresses counsel.
<u>10:19:00 AM</u>	Mr. Beck	Response regarding taking judicial notice. Not proper. The State has not seen this and could have cross examined the witness.
<u>10:19:35 AM</u>	Ms. Reilly	Response to taking judicial notice of another county's transcript. Objects.
<u>10:20:36 AM</u>	Mr. Holdaway	Further argument regarding the transcript.
<u>10:21:06 AM</u>	Court	Addresses counsel. Will not take the transcript from Pocatello into count. Decline to include that in the record. Unfairly prejudicial to the State.
<u>10:22:08 AM</u>	Mr. Holdaway	Response - would like to do supplemental briefing and can have it done within a week.
<u>10:22:31 AM</u>	Court	Addresses counsel.
<u>10:22:54 AM</u>	Mr. Holdaway	Response.

<u>10:22:58 AM</u>	Court	Will not put that into the record.
<u>10:23:09 AM</u>	Court	Addresses counsel regarding the grand jury transcripts.
<u>10:25:36 AM</u>	Court	Recess.
<u>10:26:15 AM</u>	Mr. Holdaway	Closing argument.
<u>10:50:08 AM</u>	Court	Addresses counsel regarding the scopt of the record and affidavit.
<u>10:50:40 AM</u>	Mr. Holdaway	Response.
<u>10:50:41 AM</u>	Court	Addresses counsel.
<u>10:50:53 AM</u>	Mr. Holdaway	Response.
<u>10:51:00 AM</u>	Court	Affidavit will not be considered for this motion.
<u>10:51:12 AM</u>	Ms. Reilly	Response regarding her affidavit.
<u>10:52:37 AM</u>	Mr. Holdaway	Response regarding his affidavit
<u>10:52:38 AM</u>	Court	Statement.
<u>10:52:53 AM</u>	Mr. Holdaway	Closing arguments.
<u>11:27:45 AM</u>	Court	Addresses counsel.
<u>11:29:00 AM</u>	Mr. Holdaway	Response to the Court's questions.
<u>11:30:18 AM</u>	Ms. Reilly	Statement regarding counsel who will be doing the closing arguments.
<u>11:30:20 AM</u>	Mr. Medema	Closing arguments.
<u>12:02:22 PM</u>	Mr. Beck	Closing arguments.
<u>12:16:13 PM</u>	Mr. Holdaway	Rebuttal arguments.
<u>12:29:51 PM</u>	Court	The Court will take this matter under advisement.
<u>12:30:01 PM</u>	Court	Recess.

APR 06 2012

CHRISTOPHER D. RICH, Clerk
By NICOL TYLER
DEPUTY

*See CRFE11-15480
for original*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN C. ALLEY, TASHINA ALLEY,
AND CHARLYNDA GOGGIN,

Defendants.

Case No. CR-FE-11-0015482/
CR-FE-11-0015483/CR-FE-11-0015480

MEMORANDUM DECISION
AND ORDER RE: MOTION TO DISMISS

BACKGROUND

Defendant Morgan Alley has moved to dismiss the Indictment in this case. The motion does not state the legal basis for requesting dismissal, but it is clear from the briefing and arguments of counsel at the hearing that Defendant is alleging the Indictment does not state a crime. He does not challenge the specificity of the Indictment or claim it does not put him on notice of the crime charged. The factual basis for his motion is the claim that the substance AM-2201 is not illegal. In the alternative, Defendant argues that the Idaho Uniform Controlled Substances Act is unconstitutionally vague as applied to the Defendants in this case because of the asserted ambiguity regarding AM-2201. He is joined in the motion by co-defendants Tashina Alley, Goggin, and Phan, but those defendants did not actively participate by the filing of briefs or examining witnesses at the hearing on this matter. This opinion will focus on the case against Mr. Alley while recognizing that these are consolidated cases and the ruling will apply to the co-

1 defendants joining in the motion to the extent the charges against them are the same as those
2 against Mr. Alley. All Defendants have been charged with, among other things, conspiracy to
3 manufacture, deliver or possess with intent to deliver, a Schedule I controlled substance in
4 violation of 37-2732(a), 18-1701, and 37-2732(f). The conspiracy count of the Indictment does
5 not further define the particular substance that was manufactured or possessed. Mr. Alley is also
6 charged with illegal possession of a Schedule I controlled substance in violation of 37-2732(c).
7 Ms. Goggin is charged with illegal delivery of a Schedule I controlled substance in violation of
8 37-2732(e). The illegal possession count against Mr. Alley simply specifies "marijuana and/or
9 synthetic cannabinoids." The illegal delivery count against Ms. Alley says a Schedule I drug
10 without further specification. However, the record includes the State forensics laboratory report
11 of the controlled substance analysis. The report reflects the presence of 3 substances identified
12 by the Forensic Scientist as being Schedule I substances--AM-2201, JWM-019, and JWM-210.
13 The essential argument by Mr. Alley is that AM-2201 is not a Schedule I substance.
14 Specifically, It is conceded by Defendants that the other two substances are within the definition
15 of I.C. § 37-2705(d).
16

17 ISSUES PRESENTED

- 18 1. Is the substance identified as AM-2201 a controlled substance as defined in
19 Schedule I of the Idaho Uniform Controlled Substances Act?
- 20 2. Is I.C. § 37-2705(d)(30)(ii) unconstitutionally vague with respect to AM-2201,
21 JWM-019, and JWM-210 as applied to the Defendants in this case?

22 DISCUSSION

- 23 1. Is AM-2201 a Controlled Substance? Schedule I substances are defined in
24
25

Idaho Code §37-2705. Subsection (a) provides: "The controlled substances listed in this section are included in schedule I." Subsections (b) and (c) list opiates and opium derivatives. Subsection (d) lists hallucinogenic substances, including marijuana.

The substance AM-2201 is a synthetic compound invented by researchers at the University of Connecticut. It is not named in the Controlled Substance Act. The name is derived from the initials of the inventor and conveys nothing about the nature of the substance itself. The state maintains AM-2201 is described by I.C. §37-2705(d)(30)(ii)(a). That section provides:

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

...

(30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

...

ii. The following synthetic drugs:

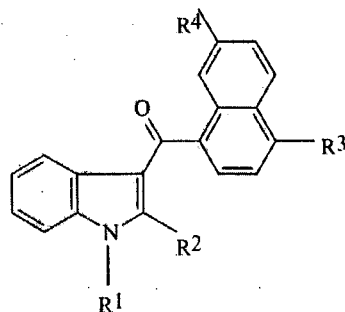
a. Any compound structurally derived from 3-(1-naphthoyl) indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

Rather than name a specific substance, §37-2705(d)(30)(ii)(a) describes groups of similar, but not chemically identical, substances. The parties pose the question then, as whether AM-2201 falls within the compounds described by §37-2705(d)(30)(ii)(a). As discussed below, the proper inquiry is the legislative intent in amending the statute.

1 The interpretation of a statute must begin with the literal words of the statute. The words
2 must be given their plain, usual, and ordinary meaning and the statute must be construed as a
3 whole. If the statute is not ambiguous, the court does not construe it, but simply follows the law
4 as written. *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted).
5 "We have consistently held that where statutory language is unambiguous, legislative history and
6 other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed
7 intent of the legislature." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d
8 502, 506 (2011) (citing *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961,
9 963 (1993)). A court must construe a statute as a whole, and consider all sections of applicable
10 statutes together to determine the intent of the legislature. It is incumbent upon the court to give
11 the statute an interpretation that will not deprive it of its potency. *Hillside Landscape Const.,*
12 *Inc. v. City of Lewiston*, 151 Idaho 749, 264 P.3d 388 (2011). In determining the ordinary
13 meaning of a statute effect must be given to all the words of the statute if possible, so that none
14 will be void, superfluous, or redundant. *Id.* (quoting *State v. Mercer*, 143 Idaho 108, 109, 138
15 P.3d 308, 309 (2006)).
16

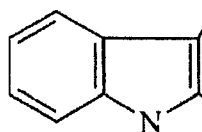
17
18 At the hearing on the motion to suppress there was no dispute that the applicable statute
19 describes compounds with a common parent structure a portion of which is composed of an
20 indole ring.¹ This is represented in State's Exhibit 101:
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25 ¹ What follows here is the Court's best effort to interpret submissions of the parties, including the testimony. This
26 judge is not an organic chemist and the discussion may not be completely accurate so far as the chemistry is
concerned, but the Court concludes this ultimately is not controlling.



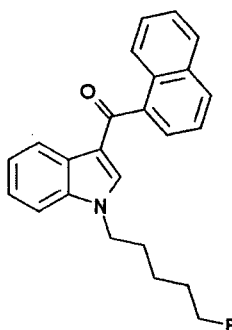
Naphthoylindole (Idaho Code 37-2705(d)30.ii.a)

The indole is the portion of the compound represented below:



N represents a nitrogen atom. R¹ in the first diagram represents a chain of atoms attached to the nitrogen atom. This chain of atoms is called a substituent. Specifically, the substituent here is a chain containing carbon and hydrogen atoms. This much is agreed upon. The controversy is over whether the chain attached to the nitrogen atom can contain an element other than carbon and hydrogen and still fit within the definition of the statute.

AM-2201 is represented structurally as:



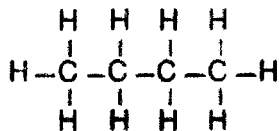
For the non-chemist, these representations are somewhat problematical in that some information contained in the diagrams is implied rather than explicit. For example, in organic

chemistry, when illustrating the structural formula for hydrocarbons, each unlabeled vertex² and unattached endpoint represents a carbon atom. Carbon has 4 valence bonds. Absent notation otherwise, it is assumed a hydrogen atom is present wherever a bond is available.³ A double line represents a double bond between adjacent atoms.

The portion of the AM-2201 diagram from the N to the F is the heart of the dispute here and the focus of the evidence and arguments at the hearing on the motion. In particular the parties dispute the meaning of "by substitution at the nitrogen atom of the indole ring by alkyl..." Some basic terminology is necessary to understand the arguments made. Both sides refer to the IUPAC⁴ nomenclature to explain the statute in question. A hydrocarbon is a compound composed only of carbon and hydrogen atoms. Alkanes are acyclic (chain structure) hydrocarbons having the general formula C_nH_{2n+2} , and therefore consisting entirely of hydrogen atoms and saturated carbon atoms. Alkyl groups are univalent groups derived from alkanes by removal of a hydrogen atom from any carbon atom: C_nH_{2n+1} -. The groups derived by removal of a hydrogen atom from a terminal carbon atom of unbranched alkanes form a subclass of normal alkyl (*n*-alkyl) groups. Alkyl radicals are carbon-centered radicals derived formally by removal

² Used in the mathematical sense of "the point where two sides of a plane figure or an angle intersect."

³ For example, the written formula for butane is C_4H_{10} . The structural formula is shown below along with the skeletal structural formula generally used by chemists and as represented in the exhibits in this case. All three represent the same compound.



Butane is also known as n-Butane, Diethyl, Butyl hydride, and Methyl ethyl methane. Source: National Center for Biotechnology Information website accessed at <http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=7843>

⁴ International Union Of Pure And Applied Chemistry; *A Guide to IUPAC Nomenclature of Organic Compounds (Recommendations 1993)*, 1993, Blackwell Scientific publications. Accessed commencing at <http://www.chem.qmul.ac.uk/iupac/class/> and *IUPAC Nomenclature of Organic Chemistry*. Accessed commencing at <http://www.iupac.org/fileadmin/the-network/index.html>.

1 of one hydrogen atom from an alkane. The court could not locate, and the parties did not cite, a
2 stand-alone definition of alkyl.

3 Defendant's witnesses testified that AM-2201 is not within the scope of the statute. Dr.
4 McDougal based his conclusion on the structure of the substituent being an alkyl halide rather
5 than an alkyl group. That is, the presence of the fluoride atom at the terminus of the carbon chain
6 prevents the compound being characterized as an alkyl group. He contrasts this with the
7 structure of JWH-018 that has a simple 5 carbon chain attached at the nitrogen atom on the
8 indole ring. Dr. De Jesus essentially says the same thing, only he labels the substituent a fluoro-
9 substituted alkyl group. By contrast, Mr. Sincerbeaux testified that it is the removal of the
10 hydrogen atom from the alkane that renders the resulting compound an alkyl group. In his view,
11 it matters not what replaces the missing hydrogen atom.⁵ The contrasting views can be
12 illustrated as follows:
13

14 N—(CH₂—C H₂—C H₂—C H₂—C H₂F) represents the interpretation of the
15 statute by the professors. N—(CH₂—C H₂—C H₂—C H₂)—CH₂F represents
16 the view espoused by the state's forensic scientist. In other words, the state treats
17 the carbon chain with the first 4 carbons as the spine and the final compound
(CH₂F) as a substituent.

18 As stated by Dr. De Jesus, the Idaho legislature is not a body of chemists. The issue is
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24 ⁵ Mr. Sincerbeaux also testifies extensively concerning his involvement in the drafting of the statute and what he and
25 the others sponsoring the legislation intended. Mr. Sincerbeaux and his colleagues are not legislators. Nor is it
26 apparent from the legislative history that the lawmakers adopted the sponsor's reasoning along with the proposed
language in the bill that ultimately became I.C. §37-2705(d)(30)(ii)(a). Consequently, this is not part of the
legislative history and sheds little light on the intent of the legislature.

1 what did the legislature intend to add to Schedule I? The legislature did not use the term "alkyl
2 group" or "alkyl radical." It used the phrase "any compound structurally derived from [certain
3 named chemicals] by substitution at the nitrogen atom of the indole ring by alkyl..." The
4 legislature was not engaged in naming the resulting chemical compound, which is the point of
5 much of the testimony regarding the IUPAC rules for nomenclature. If naming the resulting
6 chemical compound was the purpose of the legislature, it is obvious that neither AM-2201 nor
7 JWH-018 would be derived as names. Those are the names of the compounds discussed by
8 Defendants' experts, both of whom opine that JWH-018 comes within the prohibition of the
9 statute.
10

11 The parties, by focusing on the correct name for the portion of the compound represented
12 by the chain attached at the nitrogen atom are ignoring the language chosen by the legislature. It
13 appears undisputed from the testimony that the AM-2201 is derived from 3-(1-naphthoyl)indole
14 and that derivation happens by substitution at the nitrogen atom by alkyl halide. In organic
15 chemistry, substitution refers to a reaction process. According to the Encyclopedia Britannica, a
16 substitution reaction is "any of a class of chemical reactions in which an atom, ion, or group of
17 atoms or ions in a molecule is replaced by another atom, ion, or group."⁶ Wikipedia says "in a
18 substitution reaction, a functional group in a particular chemical compound is replaced by
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24 ⁶ *Encyclopedia Britannica Online*, s. v. "substitution reaction," accessed April 03, 2012,

<http://www.britannica.com/EBchecked/topic/571075/substitution-reaction>

25 See, also, *Illustrated Glossary of Organic Chemistry*, which defines substitution reaction as "a reaction in which any
26 part of a molecule is replaced (substituted). Harding, *Illustrated Glossary of Organic Chemistry*, UCLA <
http://www.chem.ucla.edu/harding/IGOC/S/substitution_reaction.html>; accessed April 03, 2012.

1 another group.⁷ Depending on which definition is chosen, the words “by substitution ... by
2 alkyl” could restrict the meaning of the phrase to mean that the prohibited substance may only be
3 derived using an alkyl functional group, or it may mean that “a group of atoms or ions”
4 containing only hydrocarbons with a missing hydrogen atom is part of the process by which the
5 substance is created. This type of analysis misses the point.

6 The Defendants and their experts derive their interpretation of the statute by reading a
7 select portion rather than reading it as a whole. To properly glean the meaning of the statute, one
8 has to read the statute as a whole, commencing with the listing of compounds that are defined in
9 Schedule I. In this instance the beginning point is I.C. §37-2705(a). This informs the reader that
10 Schedule I drugs are those listed in “this section”—meaning the entirety of §37-2705. There
11 follows 5 subsections listing various types of substances. Subsection (b) deals with opiates;
12 subsection (c) deals with opium derivatives; subsection (d) deals with hallucinogenic substances;
13 subsection (e) deals with central nervous system depressants; and subsection (f) deals with
14 stimulants. We are concerned here with subsection (d):
15

16 (d) Hallucinogenic substances. Any material, compound, mixture or preparation
17 which contains any quantity of the following hallucinogenic substances [their
18 salts, isomers, etc.]:
19
20

21 ⁷ http://en.wikipedia.org/wiki/Substitution_reaction ; accessed April 03, 2012. To the amazement of the Court, the
22 defendants’ scientific experts both cite Wikipedia in their written submissions. Wikipedia may be a common source
23 of information, but given its editorial policies, the Court hardly views it as an authoritative source. While any given
24 article may be completely accurate, it is not possible for one not familiar with the topic of the article to tell the
25 accurate from the false. From Wikipedia itself:

26 Wikipedia is written collaboratively by largely anonymous Internet volunteers who write without
pay. *Anyone with Internet access can write and make changes to Wikipedia articles (except in
certain cases where editing is restricted to prevent disruption or vandalism).* Users can contribute
anonymously, under a pseudonym, or with their real identity, if they choose.

<<http://en.wikipedia.org/wiki/Wikipedia:About> > accessed April 03, 2012 (emphasis added).

Subsection (d) has 35 sub-subsections. The first 29 are substances from 4-bromo-2,5-dimethoxy amphetamine to marijuana, to peyote, to psilocin. The last 5 also list specific substances. Sub-subsection (30) does not list a specific substance, but a description of types of substances:

(30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

Sub-subsection (30) has two sub-sub-subsections. Sub-sub-subsection (i) is titled "Tetrahydrocannabinols" and has a lettered list of 4 specific substances. We are concerned with Sub-sub-subsection (ii). It is titled "The following synthetic drugs:" and contains lettered sub-sub-subsections (a) through (i).

By stripping the statute down to the component parts to be construed it is fairly easy to discern the intention of the legislature:

37-2705. Schedule I.

(a) The controlled substances listed in this section are included in schedule I.

(d) Hallucinogenic substances.

(30) synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure *such as* ...

ii. The following synthetic drugs:

[list].

"Cannabis, sp". is marijuana. The psychoactive substance in marijuana is Tetrahydrocannabinol or THC. "...and/or synthetic substances, derivatives, and their isomers with similar chemical structure" is referring to synthetic marijuana or synthetic substances that mimic the hallucinogenic properties of marijuana. Use of the words "such as" by the legislature means the list is not exclusive. It could as well read "for example." Whether the Defendants are correct

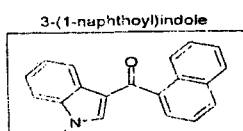
that AM-2201 is not derived “by substitution ... by alkyl,” or the state is correct in its view to the contrary, it is clear the legislature intended to include it and substances like it in Schedule I. The legislative statement of purpose provides:

The purpose of the legislation is to create safe regulations for the public concerning tetrahydrocannabinols from synthetic drugs (Spice) that mimic the effects of Cannabis and identifying additional substances to be classified in schedule I.⁸

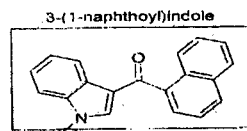
The chemical structure of AM-2201, if not exactly described in I.C. §37-2705(d)(30)(ii)(a), is certainly similar. The difference amounts to the presence of a fluoride atom rather than a hydrogen atom at the end of the carbon chain attached to the nitrogen atom on the indole. Dr. McDougal makes this point with his diagrams on his letter dated 6 January 2012 [sic].⁹ Dr. De Jesus makes the point with his discussion alternative language that could have been used by the legislature. He suggests that it should have simply left out the words “by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl.” While this indeed would have made the language broader, including it does not make the language of the *entire* statute narrower. It simply makes narrower the list of examples given by the legislature of the type of substances being added to the list. The minutes of the legislative committees also make clear that the purpose behind the legislation is the banning of categories of substances, not just

⁸ Affidavit of Heather Reilly, Exhibit 1.

⁹ Defendant’s Exhibit 2.



Alkyl halide is not specified in legislation



Alkyl group is specified in legislation

particular compounds.

The Court finds that the Idaho legislature unambiguously intended to add synthetic imitators of marijuana to Schedule I and it did so in broad language that encompasses AM-2201. The contrary conclusion is reached only by ignoring the portion of the statute which indicates the specific formulations are given by way of example. It was the intent of the legislature to not deal with the so-called "spice" problem by constantly amending the statute as new analogs for THC are developed or discovered in the scientific literature by purveyors of mind altering substances.

2. Is I.C. § 37-2705(d)(30)(ii) unconstitutionally vague?

(a) Legal standards.

A party challenging the constitutionality of a statute "bears the burden of establishing that the statute is unconstitutional and 'must overcome a strong presumption of validity.'" *State v. Korsen*, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003) (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990). Under both the U.S. Constitution and Idaho Constitution, "[a] criminal statute must be sufficiently certain to show what the legislature intended to prohibit and punish; otherwise it is void for uncertainty." *City of Lewiston v. Mathewson*, 78 Idaho 347, 350, 303 P.2d 680, 682 (1956). "The void-for-vagueness doctrine is premised upon the due process clause of the Fourteenth Amendment to the U.S. Constitution." *State v. Korsen*, 138 Idaho 706, 711-12, 69 P.3d 126, 131 (2003) (holding that provision in Idaho's trespass statute was not unconstitutionally void for vagueness under applied vagueness analysis). It "requires that a statute defining criminal conduct be worded with sufficient clarity and definiteness that ordinary people can understand what conduct is prohibited and that the statute be worded in a manner that does not allow arbitrary and discriminatory enforcement." *Id.* (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)). "It

1 is a basic principle of due process that an enactment is void for vagueness if its prohibitions are
2 not clearly defined.” *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104 (1972)). Due process
3 also provides that “no one may be required at the peril of loss of liberty to speculate as to the
4 meaning of penal statutes.” *Id.* (citations omitted).

5 As such, the Idaho Supreme Court “has held that due process requires that all ‘be
6 informed as to what the State commands or forbids’ and that ‘men of common intelligence’ not
7 be forced to guess at the meaning of the criminal law.” *Korsen*, 138 Idaho at 712, 69 P.3d at 132
8 (citing *State v. Cobb*, 132 Idaho 195, 969 P.2d 244 (1998), *Smith v. Goguen*, 415 U.S. 566, 574
9 (1974)). “A statute may be void for vagueness if it fails to give adequate notice to people of
10 ordinary intelligence concerning the conduct it proscribes ... or if it fails to establish minimal
11 guidelines to govern law enforcement or others who must enforce the statute.” *Id.* (citations
12 omitted). “A statute may be challenged as unconstitutionally vague on its face or as applied to a
13 defendant's conduct.” *Id.*

15 In a facial challenge of vagueness, “the complainant must demonstrate that the law is
16 impermissibly vague in all of its applications,” such that there are no circumstances where it is
17 constitutional. *Korsen*, 138 Idaho at 712, 69 P.3d at 132 (citing *Hoffman Estates*, 455 U.S. at
18 497) (reiterating that “the challenger must show that the enactment is invalid *in toto*”). In an
19 applied challenge, “a complainant must show that the statute, as applied to the defendant's
20 conduct, failed to provide fair notice that the defendant's conduct was proscribed or failed to
21 provide sufficient guidelines such that the police had unbridled discretion in determining whether
22 to arrest him.” *Id.* A facial challenge and applied challenge are mutually exclusive. *Id.*

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(b) Arguments of the parties

The Defendants do not expressly mount a facially unconstitutional challenge, but use language in their arguments that could be construed as suggesting the statute is unconstitutional on its face.¹⁰

Defendants argue that I.C. § 37-2705(d)(30)(ii) is unconstitutionally vague because a person of common intelligence cannot determine what conduct is being prohibited and ambiguities exist that open the door to arbitrary and discriminatory enforcement of the act. Defendant asserts that I.C. § 37-2705(d)(30) must necessarily be of a highly technical nature and therefore very specific as to its meaning and application. Idaho House Bill 139 instead created confusion and uncertainty as to the meaning of I.C. § 37-2705(d)(30) according to Defendants. This is demonstrated by the disagreement between the parties' experts as to whether AM-2201 is covered by the statute within subsection § 37-2705(d)(30)(ii). As such, a person of common experience could not be expected to know of the statute's application to AM-2201. Defendant points out that most people in the U.S. population could not know whether they were possessing a chemical potentially covered by 2705(d)(30)(ii)(a) without first seeking professional input.

Defendants note that Dr. Parent's services were obtained in order to remain compliant with the law. They claim was only because Dr. Parent concluded that AM-2201 was not covered that the manufacturers and retailers switched to the chemical. Defendant also point out that Utah passed its own law in which the legislature named numerous chemicals that were banned, but that Idaho instead decided to describe the chemicals. Thus, Defendants argue that, because is

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¹⁰ The Defendants' brief is somewhat short on law and long on argument. The Defendants do not make explicit whether the challenge is based on the language of the statute alone or as applied. The cases cited by Defendants do not make the distinction.

1 only one chemical by the name AM-2201, the legislature should have simply named AM-2201 as
2 an illegal substance rather than describe potential chemical structures.

3 Ultimately, Defendants suggest that the only way for the State to constitutionally regulate
4 drugs is through legislation specifically naming individual chemicals. Defendants recognize that
5 the state never likely be able to make the list long enough to capture all of the potential chemicals
6 that can be abused.¹¹ Defendants theorize it is not possible use a description other than
7 substance by substance to ban chemicals without the statute suffering from unconstitutional
8 vagueness and over-breadth.

9
10 The State sets forth that the statute provides actual notice and enforcement guidelines
11 sufficient to satisfy due process standards. The State argues that the statute sufficiently informs a
12 person of common intelligence that AM-2201 and similar types of synthetic drugs are illegal.
13 The State also asserts that Defendants understood the legislation based on their attempt to
14 circumvent the law by relying on a chemist to recommend a substitute substance and the
15 maintaining of a clandestine operation. The State characterizes Defendant's production of AM-
16 2201 as a calculated risk based on the erroneous belief that the legislature could not ban AM-
17 2201 without specifically naming it.

18
19 The State disagrees with the argument that the statute is vague because of its technical
20 nature. This would yield absurd results by invalidating all statutes requiring specialized
21 legislation or using specialized terminology where a defendant can locate an expert to disagree.
22 The State also notes that scientific or technical terms of art in a regulated field do not
23 automatically render a statute unconstitutional. *See Omaechevarria v. Idaho*, 246 U.S. 343, 348
24

25 ¹¹ In fact it appears Defendants are counting on this to stay in business in the future.

1 (1918). The State points out that the Defendant concedes that the description in I.C. § 37-
2 2705(d)(30)(ii)(a) “intentionally covers thousands of potential chemicals,” and the State asserts
3 that Defendant and his counsel were well aware of the highly publicized rise of synthetic drug
4 use in Idaho such as “spice.”

5 The State also notes that Defendant Alley’s s counsel participated extensively in
6 committee hearings in opposition to enactment of the law by attempting to dissuade lawmakers
7 from prohibiting designer drugs, including cannabinoids. The Court does not find this argument
8 on point. While counsel may have been representing Mr. Alley at the time of counsel’s
9 appearance before the legislature, there is no evidence to that effect in the record.
10

11 In an abundance of caution, given the Defendants’ overall lack of specificity of the nature
12 of the challenge being mounted, the State, in its brief, discussed enforcement guidelines as they
13 pertain to vagueness challenges to a statute. Defendants did not brief the issue. At the hearing
14 Defendants stated the issue was not briefed because Defendants were lacking evidence to support
15 the challenge on an “as applied basis.” At the hearing, Defendants sought to interject the issue
16 into the case through recently obtained preliminary hearing transcripts. The Court declined to
17 allow this evidence which apparently concerned events involving pending criminal cases in
18 eastern Idaho. The exclusion was discretionary and based on the late disclosure to the State. The
19 Court will not discuss it further.
20

21 **(c) Discussion**

22 To the extent the Defendants are making an argument that the statute is facially overbroad
23 (see footnote No. 10, above), the argument must fail. The answer is in the testimony of
24 Defendant’s experts. The essence of a facial challenge is that the complainant must demonstrate
25

1 that the law is impermissibly vague in all of its applications, such that there are no circumstances
2 where it is constitutional. Here all three of Defendant's experts agree that JWH-210 and JWH-
3 019 are unambiguously described by the statute. This is obviously a circumstance where the
4 State has banned a substance and there is no confusion over whether it is banned. Defendants do
5 not claim they were confused over the legality of these substances.

6 Ultimately, the Defendants' arguments are all based on the same faulty premise—that §
7 37-2705(d)(30)(ii) is a stand-alone statute. That sub-sub-subsection of the statute is part of a
8 larger statute as discussed above. That discussion will not be repeated here. In drawing the
9 conclusion that AM-2201 is a legal substance, Defendant's experts focused on whether the
10 particular substance was described by the isolated subsection rather than on the proper question
11 of whether the substance is "synthetic equivalents of the substances contained in the plant, or in
12 the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their
13 isomers with similar chemical structure..." In lay terms, is this substance a synthetic
14 cannabinoid?
15

16 The following is taken from a website cited by Dr. McDougal in Exhibit 2:
17

18 **AM-2201 – A Hyperpotent Halogenated Unintended Consequence**

19 With the recent legal issues surrounding certain synthetic cannabinoids in the
20 United States, the market has changed

21

22 The effects of AM-2201 also appear to differ from natural cannabis and the first
23 generation synthetic cannabinoids, both to start and as tolerance builds. Initially
24 the effects are quite similar, although doses for AM-2201 are approximately a
25 third of JWH-018. This has resulted in many reports of self-reported "seasoned"
26 synthetic cannabinoid users having anxiety reactions as a result of apparent
overdose due to increased sensitivity to inaccurate measurement. Tolerance builds
quickly, and frequent users have reported psychedelic-style effects typically
previously only associated with high-dose oral consumption of marijuana.

1 <<http://countyourculture.com/2011/01/12/am-2201-a-hyperpotent-halogenated-unintended-consequence/>> last accessed April 5, 2012.

2 There is a link to comments on the same page that contain a series of commentary on AM-2201
3 that can only lead to the conclusion the posters are discussing a marijuana substitute.¹²
4 Wikipedia, the seeming source of information of choice by the general population, contains the
5 following under the entry discussing Cannabinoid:
6

7 Synthetic cannabinoids encompass a variety of distinct chemical classes: the
8 classical cannabinoids structurally related to THC, the nonclassical cannabinoids
9 (cannabimimetics) including the aminoalkylindoles, 1,5-diarylpyrazoles,
10 quinolines, and arylsulphonamides, as well as eicosanoids related to the
11 endocannabinoids.

12
13 Other notable synthetic cannabinoids include:
14

15 AM-2201, a potent cannabinoid receptor agonist.

16 <http://en.wikipedia.org/wiki/Synthetic_cannabinoid#Synthetic_and_patented_cannabinoids> last accessed April 5, 2012.

17 If this weren't enough, one has only to look at the name AM-2201. The name was given to the
18 chemical by its inventor. Mr. Alley is apparently engaged in the business of marketing synthetic
19

20 ¹² A sample:

21 DailyToker
22 December 3rd, 2011

REPLY | QUOTE

23 Well I make and sell herbal incense, AM-2201 is the active ingredient in my company's product.
24 I add 1g of AM to 30g of Marshmallow leaf, and it last me about 10 days or so.

25 I have been using AM2201 for over a year now and have not noticed any ill effects...its just like smoking weed to me.

26 I guess everyone reacts differently.

<<http://countyourculture.com/2011/01/12/am-2201-a-hyperpotent-halogenated-unintended-consequence/#comments>> last accessed April 5, 2012

1 cannabinoids.¹³ Assuming, based on his counsel's argument, that someone such as Mr. Alley
2 went looking for information to determine the nature of AM-2201, it does not great effort or
3 ingenuity to get from the Wikipedia entry on AM-2201 to the patent.¹⁴ Footnote No. 1 in the
4 Wikipedia article is a link to the patent. The patent makes clear that AM-2201 intended to
5 mimic marijuana. It was specifically invented in the hope of discovering a compound that could
6 be used in medical research in place of marijuana. See Exhibits 111 and 112.

7
8 There is no real ambiguity or uncertainty over the nature of AM-2201. Nor is the statute
9 vague or incapable of being understood by a person of ordinary intelligence. The Defendants are
10 of the mistaken impression that it is somehow improper for the legislature to outlaw "thousands
11 of compounds." Defendant's claimed ambiguity only exists because Defendant's asked their
12 experts the wrong question. Rather than ask whether AM-2201 is described in I.C. §37-
13 2705(d)(30)(ii)(a), they should have asked the experts whether AM-2201 is a synthetic
14 cannabinoid. If they had asked that question, the answer would no doubt have been "yes."

15
16
17
18
19 ¹³ Mr. Alley did not testify and not submit any affidavit in support of the motion. His counsel argued that Mr. Alley
20 and the other Defendants were assiduously attempting to follow the law and were attempting to find a legal substance
21 to market in light of the actions of the Board of Pharmacy and the legislature. He suggested by argument that Mr.
22 Alley is merely a businessman doing his best to make his way in the world , but there is no evidence in the record
23 that any Defendant, including Mr. Alley, took any particular action. Dr. Parent's letter was addressed to Counsel and
24 there is no evidence that any Defendant relied on Dr. Parent's opinion in any way.

25 ¹⁴ *C.f. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 501, 102 S.Ct. 1186 (1982)
26 holding that the technical term "roach clip" has sufficiently clear meaning in the drug paraphernalia industry such
that, without undue burden, the defendant could easily determine the meaning of the term, citing dictionaries
defining "roach."

CONCLUSION

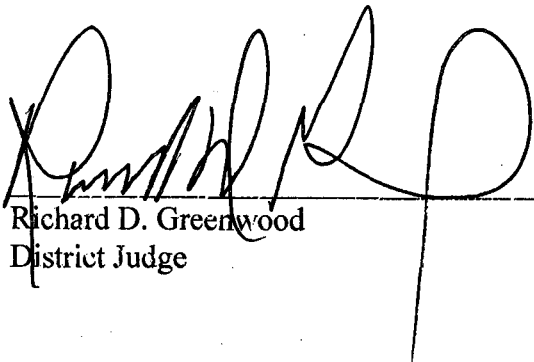
AM-2201 is a schedule one substance. This is so whether or not it is specifically described in I.C. §37-2705(d)(30)(ii)(a). It is on Schedule I because it is a "synthetic equivalent of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure."

Idaho Code §37-2705(d)(30)(ii)(a) is not unconstitutionally vague nor are the 2011 amendments to Idaho Code §37-2705 applicable here. The Idaho Legislature intended to outlaw synthetic marijuana and it did so in terms such that a person of ordinary intelligence is on notice of the conduct prohibited.

Defendants' Motion to Dismiss is DENIED.

IT IS SO ORDERED.

Dated this 6 day of April, 2012.


Richard D. Greenwood
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of April, 2012, I mailed (served) a true and correct

copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
HEATHER REILLY/JONATHAN MEDEMA
VIA: INDERDEPARTMENTAL MAIL

& VIA: EMAIL

ADA COUNTY PUBLIC DEFENDER
KIMBERLEY SIMMONS
VIA: INDERDEPARTMENTAL MAIL

& VIA: EMAIL

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16 CHRISTOPHER D. RICH
17 Clerk of the District Court

18 By: 

19 Deputy Court Clerk

APR 09 2012

See CRFE11-15480
for original

CHRISTOPHER D. RICH, Clerk
By NICOL TYLER
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN C. ALLEY, TASHINA ALLEY,
AND CHARLYNDA GOGGIN, HIEU NGOC
PHAN,

Defendants.

Case No. CR-FE-11-0015480/
CR-FE-11-0015482/CR-FE-11-0015483/
CR-FE-11-0016248

CORRECTED MEMORANDUM
DECISION AND ORDER RE:
MOTION TO DISMISS

This decision is entered to correct the caption to reflect the participation of Hieu Ngoc Phan ("Phan") in the motion.

BACKGROUND

Defendant Morgan Alley has moved to dismiss the Indictment in this case. The motion does not state the legal basis for requesting dismissal, but it is clear from the briefing and arguments of counsel at the hearing that Defendant is alleging the Indictment does not state a crime. He does not challenge the specificity of the Indictment or claim it does not put him on notice of the crime charged. The factual basis for his motion is the claim that the substance AM-2201 is not illegal. In the alternative, Defendant argues that the Idaho Uniform Controlled Substances Act is unconstitutionally vague as applied to the Defendants in this case because of the asserted ambiguity regarding AM-2201. He is joined in the motion by co-defendants Tashina

1 Alley, Goggin, and Phan, but those defendants did not actively participate by the filing of briefs
2 or examining witnesses at the hearing on this matter. This opinion will focus on the case against
3 Mr. Alley while recognizing that these are consolidated cases and the ruling will apply to the co-
4 defendants joining in the motion to the extent the charges against them are the same as those
5 against Mr. Alley. All Defendants have been charged with, among other things, conspiracy to
6 manufacture, deliver or possess with intent to deliver, a Schedule I controlled substance in
7 violation of 37-2732(a), 18-1701, and 37-2732(f). The conspiracy count of the Indictment does
8 not further define the particular substance that was manufactured or possessed. Mr. Alley is also
9 charged with illegal possession of a Schedule I controlled substance in violation of 37-2732(c).
10 Ms. Goggin is charged with illegal delivery of a Schedule I controlled substance in violation of
11 37-2732(a). The illegal possession count against Mr. Alley simply specifies "marijuana and/or
12 synthetic cannabinoids." The illegal delivery count against Ms. Alley says a Schedule I drug
13 without further specification. However, the record includes the State forensics laboratory report
14 of the controlled substance analysis. The report reflects the presence of 3 substances identified
15 by the Forensic Scientist as being Schedule I substances—AM-2201, JWM-019, and JWM-210.
16 The essential argument by Mr. Alley is that AM-2201 is not a Schedule I substance.
17 Specifically, It is conceded by Defendants that the other two substances are within the definition
18 of I.C. § 37-2705(d).
19
20

21 ISSUES PRESENTED

- 22 1. Is the substance identified as AM-2201 a controlled substance as defined in
23 Schedule I of the Idaho Uniform Controlled Substances Act?
- 24 2. Is I.C. § 37-2705(d)(30)(ii) unconstitutionally vague with respect to AM-2201,
25

JWM-019, and JWM-210 as applied to the Defendants in this case?

DISCUSSION

1. Is AM-2201 a Controlled Substance? Schedule I substances are defined in Idaho Code §37-2705. Subsection (a) provides: "The controlled substances listed in this section are included in schedule I." Subsections (b) and (c) list opiates and opium derivatives. Subsection (d) lists hallucinogenic substances, including marijuana.

The substance AM-2201 is a synthetic compound invented by researchers at the University of Connecticut. It is not named in the Controlled Substance Act. The name is derived from the initials of the inventor and conveys nothing about the nature of the substance itself. The state maintains AM-2201 is described by I.C. §37-2705(d)(30)(ii)(a). That section provides:

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

...

(30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

...

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl) indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

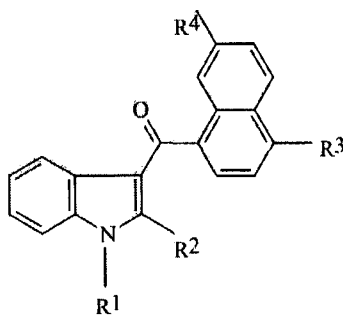
Rather than name a specific substance, §37-2705(d)(30)(ii)(a) describes groups of similar, but

1 not chemically identical, substances. The parties pose the question then, as whether AM-2201
2 falls within the compounds described by §37-2705(d)(30)(ii)(a). As discussed below, the proper
3 inquiry is the legislative intent in amending the statute.

4 The interpretation of a statute must begin with the literal words of the statute. The words
5 must be given their plain, usual, and ordinary meaning and the statute must be construed as a
6 whole. If the statute is not ambiguous, the court does not construe it, but simply follows the law
7 as written. *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted).
8 “We have consistently held that where statutory language is unambiguous, legislative history and
9 other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed
10 intent of the legislature.” *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d
11 502, 506 (2011) (citing *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961,
12 963 (1993)). A court must construe a statute as a whole, and consider all sections of applicable
13 statutes together to determine the intent of the legislature. It is incumbent upon the court to give
14 the statute an interpretation that will not deprive it of its potency. *Hillside Landscape Const.,*
15 *Inc. v. City of Lewiston*, 151 Idaho 749, 264 P.3d 388 (2011). In determining the ordinary
16 meaning of a statute effect must be given to all the words of the statute if possible, so that none
17 will be void, superfluous, or redundant. *Id.* (quoting *State v. Mercer*, 143 Idaho 108, 109, 138
18 P.3d 308, 309 (2006)).
19
20

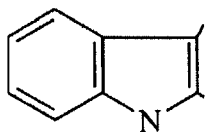
21 At the hearing on the motion to suppress there was no dispute that the applicable statute
22 describes compounds with a common parent structure a portion of which is composed of an
23
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26

indole ring.¹ This is represented in State's Exhibit 101:



Naphthoylindole (Idaho Code 37-2705(d)30.(l.a))

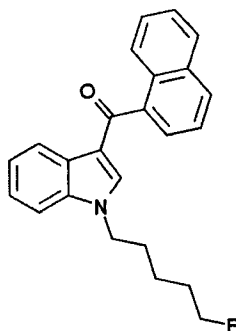
The indole is the portion of the compound represented below:



N represents a nitrogen atom. R¹ in the first diagram represents a chain of atoms attached to the nitrogen atom. This chain of atoms is called a substituent. Specifically, the substituent here is a chain containing carbon and hydrogen atoms. This much is agreed upon. The controversy is over whether the chain attached to the nitrogen atom can contain an element other than carbon and hydrogen and still fit within the definition of the statute.

AM-2201 is represented structurally as:

¹ What follows here is the Court's best effort to interpret submissions of the parties, including the testimony. This judge is not an organic chemist and the discussion may not be completely accurate so far as the chemistry is concerned, but the Court concludes this ultimately is not controlling.

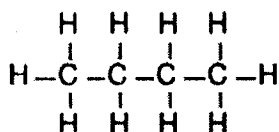


For the non-chemist, these representations are somewhat problematical in that some information contained in the diagrams is implied rather than explicit. For example, in organic chemistry, when illustrating the structural formula for hydrocarbons, each unlabeled vertex² and unattached endpoint represents a carbon atom. Carbon has 4 valence bonds. Absent notation otherwise, it is assumed a hydrogen atom is present wherever a bond is available.³ A double line represents a double bond between adjacent atoms.

The portion of the AM-2201 diagram from the N to the F is the heart of the dispute here and the focus of the evidence and arguments at the hearing on the motion. In particular the parties dispute the meaning of “by substitution at the nitrogen atom of the indole ring by alkyl...” Some basic terminology is necessary to understand the arguments made. Both sides refer to the

² Used in the mathematical sense of “the point where two sides of a plane figure or an angle intersect.”

³ For example, the written formula for butane is C₄H₁₀. The structural formula is shown below along with the skeletal structural formula generally used by chemists and as represented in the exhibits in this case. All three represent the same compound.



Butane is also known as n-Butane, Diethyl, Butyl hydride, and Methylene methane. Source: National Center for Biotechnology Information website accessed at <http://pubchem.ncbi.nlm.nih.gov/summary/summary.cgi?cid=7843>

1 IUPAC⁴ nomenclature to explain the statute in question. A hydrocarbon is a compound
2 composed only of carbon and hydrogen atoms. Alkanes are acyclic (chain structure)
3 hydrocarbons having the general formula C_nH_{2n+2} , and therefore consisting entirely of hydrogen
4 atoms and saturated carbon atoms. Alkyl groups are univalent groups derived from alkanes by
5 removal of a hydrogen atom from any carbon atom: C_nH_{2n+1} -. The groups derived by removal of
6 a hydrogen atom from a terminal carbon atom of unbranched alkanes form a subclass of normal
7 alkyl (*n*-alkyl) groups. Alkyl radicals are carbon-centered radicals derived formally by removal
8 of one hydrogen atom from an alkane. The court could not locate, and the parties did not cite, a
9 stand-alone definition of alkyl.
10

11 Defendant's witnesses testified that AM-2201 is not within the scope of the statute. Dr.
12 McDougal based his conclusion on the structure of the substituent being an alkyl halide rather
13 than an alkyl group. That is, the presence of the fluoride atom at the terminus of the carbon chain
14 prevents the compound being characterized as an alkyl group. He contrasts this with the
15 structure of JWH-018 that has a simple 5 carbon chain attached at the nitrogen atom on the
16 indole ring. Dr. De Jesus essentially says the same thing, only he labels the substituent a fluoro-
17 substituted alkyl group. By contrast, Mr. Sincerbeaux testified that it is the removal of the
18 hydrogen atom from the alkane that renders the resulting compound an alkyl group. In his view,
19 it matters not what replaces the missing hydrogen atom.⁵ The contrasting views can be
20
21

22
23 ⁴ International Union Of Pure And Applied Chemistry; *A Guide to IUPAC Nomenclature of Organic Compounds*
(Recommendations 1993), 1993, Blackwell Scientific publications. Accessed commencing at
24 <http://www.chem.qmul.ac.uk/iupac/class/> and *IUPAC Nomenclature of Organic Chemistry*. Accessed commencing
at <http://www.iupac.org/fileadmin/the-network/index.html>.

25 ⁵ Mr. Sincerbeaux also testifies extensively concerning his involvement in the drafting of the statute and what he and
the others sponsoring the legislation intended. Mr. Sincerbeaux and his colleagues are not legislators. Nor is it
apparent from the legislative history that the lawmakers adopted the sponsor's reasoning along with the proposed

illustrated as follows:

$\text{N}-(\text{CH}_2-\text{CH}_2-\text{CH}_2-\text{CH}_2-\text{CH}_2\text{F})$ represents the interpretation of the statute by the professors. $\text{N}-(\text{CH}_2-\text{CH}_2-\text{CH}_2-\text{CH}_2)-\text{CH}_2\text{F}$ represents the view espoused by the state's forensic scientist. In other words, the state treats the carbon chain with the first 4 carbons as the spine and the final compound (CH_2F) as a substituent.

As stated by Dr. De Jesus, the Idaho legislature is not a body of chemists. The issue is what did the legislature intend to add to Schedule I? The legislature did not use the term "alkyl group" or "alkyl radical." It used the phrase "any compound structurally derived from [certain named chemicals] by substitution at the nitrogen atom of the indole ring by alkyl..." The legislature was not engaged in naming the resulting chemical compound, which is the point of much of the testimony regarding the IUPAC rules for nomenclature. If naming the resulting chemical compound was the purpose of the legislature, it is obvious that neither AM-2201 nor JWH-018 would be derived as names. Those are the names of the compounds discussed by Defendants' experts, both of whom opine that JWH-018 comes within the prohibition of the statute.

The parties, by focusing on the correct name for the portion of the compound represented by the chain attached at the nitrogen atom are ignoring the language chosen by the legislature. It appears undisputed from the testimony that the AM-2201 is derived from 3-(1-naphthoyl)indole and that derivation happens by substitution at the nitrogen atom by alkyl halide. In organic chemistry, substitution refers to a reaction process. According to the Encyclopedia Britannica, a substitution reaction is "any of a class of chemical reactions in which an atom, ion, or group of

language in the bill that ultimately became I.C. §37-2705(d)(30)(ii)(a). Consequently, this is not part of the legislative history and sheds little light on the intent of the legislature.

atoms or ions in a molecule is replaced by another atom, ion, or group.⁶ Wikipedia says “in a substitution reaction, a functional group in a particular chemical compound is replaced by another group.”⁷ Depending on which definition is chosen, the words “by substitution ... by alkyl” could restrict the meaning of the phrase to mean that the prohibited substance may only be derived using an alkyl functional group, or it may mean that “a group of atoms or ions” containing only hydrocarbons with a missing hydrogen atom is part of the process by which the substance is created. This type of analysis misses the point.

The Defendants and their experts derive their interpretation of the statute by reading a select portion rather than reading it as a whole. To properly glean the meaning of the statute, one has to read the statute as a whole, commencing with the listing of compounds that are defined in Schedule I. In this instance the beginning point is I.C. §37-2705(a). This informs the reader that Schedule I drugs are those listed in “this section”—meaning the entirety of §37-2705. There follows 5 subsections listing various types of substances. Subsection (b) deals with opiates; subsection (c) deals with opium derivatives; subsection (d) deals with hallucinogenic substances;

⁶ *Encyclopedia Britannica Online*, s. v. “substitution reaction,” accessed April 03, 2012,

<http://www.britannica.com/EBchecked/topic/571075/substitution-reaction>

See, also, *Illustrated Glossary of Organic Chemistry*, which defines substitution reaction as “a reaction in which any part of a molecule is replaced (substituted). Harding, *Illustrated Glossary of Organic Chemistry*, UCLA <http://www.chem.ucla.edu/harding/IGOC/S/substitution_reaction.html>; accessed April 03, 2012.

⁷ http://en.wikipedia.org/wiki/Substitution_reaction ; accessed April 03, 2012. To the amazement of the Court, the defendants’ scientific experts both cite Wikipedia in their written submissions. Wikipedia may be a common source of information, but given its editorial policies, the Court hardly views it as an authoritative source. While any given article may be completely accurate, it is not possible for one not familiar with the topic of the article to tell the accurate from the false. From Wikipedia itself:

Wikipedia is written collaboratively by largely anonymous Internet volunteers who write without pay. *Anyone with Internet access can write and make changes to Wikipedia articles (except in certain cases where editing is restricted to prevent disruption or vandalism)*. Users can contribute anonymously, under a pseudonym, or with their real identity, if they choose.

<<http://en.wikipedia.org/wiki/Wikipedia:About> > accessed April 03, 2012 (emphasis added).

subsection (e) deals with central nervous system depressants; and subsection (f) deals with stimulants. We are concerned here with subsection (d):

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances [their salts, isomers, etc.]:

Subsection (d) has 35 sub-subsections. The first 29 are substances from 4-bromo-2,5-dimethoxy amphetamine to marijuana, to peyote, to psilocin. The last 5 also list specific substances. Sub-subsection (30) does not list a specific substance, but a description of types of substances:

(30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

Sub-subsection (30) has two sub-sub-subsections. Sub-sub-subsection (i) is titled "Tetrahydrocannabinols" and has a lettered list of 4 specific substances. We are concerned with Sub-sub-subsection (ii). It is titled "The following synthetic drugs:" and contains lettered sub-sub-subsections (a) through (i).

By stripping the statute down to the component parts to be construed it is fairly easy to discern the intention of the legislature:

37-2705. Schedule I.

(a) The controlled substances listed in this section are included in schedule I.

(d) Hallucinogenic substances.

(30) synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure *such as* ...

ii. The following synthetic drugs:

[list].

1 “Cannabis, sp”. is marijuana. The psychoactive substance in marijuana is Tetrahydrocannabinol
2 or THC. “...and/or synthetic substances, derivatives, and their isomers with similar chemical
3 structure” is referring to synthetic marijuana or synthetic substances that mimic the
4 hallucinogenic properties of marijuana. Use of the words “such as” by the legislature means the
5 list is not exclusive. It could as well read “for example.” Whether the Defendants are correct
6 that AM-2201 is not derived “by substitution ... by alkyl,” or the state is correct in its view to the
7 contrary, it is clear the legislature intended to include it and substances like it in Schedule I. The
8 legislative statement of purpose provides:

9
10 The purpose of the legislation is to create safe regulations for the public
11 concerning tetrahydrocannabinols from synthetic drugs (Spice) that mimic the
12 effects of Cannabis and identifying additional substances to be classified in
13 schedule I.⁸

14 The chemical structure of AM-2201, if not exactly described in I.C. §37-2705(d)(30)(ii)(a), is
15 certainly similar. The difference amounts to the presence of a fluoride atom rather than a
16 hydrogen atom at the end of the carbon chain attached to the nitrogen atom on the indole. Dr.
17 McDougal makes this point with his diagrams on his letter dated 6 January 2012 [sic].⁹ Dr. De
18 Jesus makes the point with his discussion alternative language that could have been used by the
19 legislature. He suggests that it should have simply left out the words “by alkyl, alkenyl,
20 cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl.” While this indeed would have
21
22
23
24

25 ⁸ Affidavit of Heather Reilly, Exhibit 1.

26 ⁹ Defendant’s Exhibit 2.

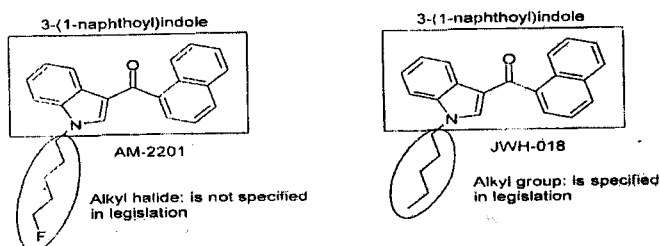
made the language broader, including it does not make the language of the *entire* statute narrower. It simply makes narrower the list of examples given by the legislature of the type of substances being added to the list. The minutes of the legislative committees also make clear that the purpose behind the legislation is the banning of categories of substances, not just particular compounds.

The Court finds that the Idaho legislature unambiguously intended to add synthetic imitators of marijuana to Schedule I and it did so in broad language that encompasses AM-2201. The contrary conclusion is reached only by ignoring the portion of the statute which indicates the specific formulations are given by way of example. It was the intent of the legislature to not deal with the so-called “spice” problem by constantly amending the statute as new analogs for THC are developed or discovered in the scientific literature by purveyors of mind altering substances.

2. Is I.C. § 37-2705(d)(30)(ii) unconstitutionally vague?

(a) Legal standards.

A party challenging the constitutionality of a statute “bears the burden of establishing that the statute is unconstitutional and ‘must overcome a strong presumption of validity.’” *State v. Korsen*, 138 Idaho 706, 711, 69 P.3d 126, 131 (2003) (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990)). Under both the U.S. Constitution and Idaho Constitution, “[a] criminal statute must be sufficiently certain to show what the legislature



intended to prohibit and punish; otherwise it is void for uncertainty.” *City of Lewiston v. Mathewson*, 78 Idaho 347, 350, 303 P.2d 680, 682 (1956). “The void-for-vagueness doctrine is premised upon the due process clause of the Fourteenth Amendment to the U.S. Constitution.” *State v. Korsen*, 138 Idaho 706, 711-12, 69 P.3d 126, 131 (2003) (holding that provision in Idaho's trespass statute was not unconstitutionally void for vagueness under applied vagueness analysis). It “requires that a statute defining criminal conduct be worded with sufficient clarity and definiteness that ordinary people can understand what conduct is prohibited and that the statute be worded in a manner that does not allow arbitrary and discriminatory enforcement.” *Id.* (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982)). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Id.* (citing *Grayned v. City of Rockford*, 408 U.S. 104 (1972)). Due process also provides that “no one may be required at the peril of loss of liberty to speculate as to the meaning of penal statutes.” *Id.* (citations omitted).

As such, the Idaho Supreme Court “has held that due process requires that all ‘be informed as to what the State commands or forbids’ and that ‘men of common intelligence’ not be forced to guess at the meaning of the criminal law.” *Korsen*, 138 Idaho at 712, 69 P.3d at 132 (citing *State v. Cobb*, 132 Idaho 195, 969 P.2d 244 (1998), *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). “A statute may be void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes ... or if it fails to establish minimal guidelines to govern law enforcement or others who must enforce the statute.” *Id.* (citations omitted). “A statute may be challenged as unconstitutionally vague on its face or as applied to a defendant's conduct.” *Id.*

1 In a facial challenge of vagueness, “the complainant must demonstrate that the law is
2 impermissibly vague in all of its applications,” such that there are no circumstances where it is
3 constitutional. *Korsen*, 138 Idaho at 712, 69 P.3d at 132 (citing *Hoffman Estates*, 455 U.S. at
4 497) (reiterating that “the challenger must show that the enactment is invalid *in toto*”). In an
5 applied challenge, “a complainant must show that the statute, as applied to the defendant's
6 conduct, failed to provide fair notice that the defendant's conduct was proscribed or failed to
7 provide sufficient guidelines such that the police had unbridled discretion in determining whether
8 to arrest him.” *Id.* A facial challenge and applied challenge are mutually exclusive. *Id.*

9
10 (b) Arguments of the parties

11 The Defendants do not expressly mount a facially unconstitutional challenge, but use
12 langue in their arguments that could be construed as suggesting the statute is unconstitutional on
13 its face.¹⁰

14 Defendants argue that I.C. § 37-2705(d)(30)(ii) is unconstitutionally vague because a
15 person of common intelligence cannot determine what conduct is being prohibited and
16 ambiguities exist that open the door to arbitrary and discriminatory enforcement of the act.
17 Defendant asserts that I.C. § 37-2705(d)(30) must necessarily be of a highly technical nature and
18 therefore very specific as to its meaning and application. Idaho House Bill 139 instead created
19 confusion and uncertainty as to the meaning of I.C. § 37-2705(d)(30) according to Defendants.
20 This is demonstrated by the disagreement between the parties’ experts as to whether AM-2201 is
21 covered by the statute within subsection § 37-2705(d)(30)(ii). As such, a person of common
22
23

24
25 ¹⁰ The Defendants’ brief is somewhat short on law and long on argument. The Defendants do not make explicit
26 whether the challenge is based on the language of the statute alone or as applied. The cases cited by Defendants do
not make the distinction.

1 experience could not be expected to know of the statute's application to AM-2201. Defendant
2 points out that most people in the U.S. population could not know whether they were possessing
3 a chemical potentially covered by 2705(d)(30)(ii)(a) without first seeking professional input.

4 Defendants note that Dr. Parent's services were obtained in order to remain compliant
5 with the law. They claim was only because Dr. Parent concluded that AM-2201 was not covered
6 that the manufacturers and retailers switched to the chemical. Defendant also point out that Utah
7 passed its own law in which the legislature named numerous chemicals that were banned, but
8 that Idaho instead decided to describe the chemicals. Thus, Defendants argue that, because is
9 only one chemical by the name AM-2201, the legislature should have simply named AM-2201 as
10 an illegal substance rather than describe potential chemical structures.
11

12 Ultimately, Defendants suggest that the only way for the State to constitutionally regulate
13 drugs is through legislation specifically naming individual chemicals. Defendants recognize that
14 the state never likely be able to make the list long enough to capture all of the potential chemicals
15 that can be abused.¹¹ Defendants theorize it is not possible use a description other than
16 substance by substance to ban chemicals without the statute suffering from unconstitutional
17 vagueness and over-breadth.
18

19 The State sets forth that the statute provides actual notice and enforcement guidelines
20 sufficient to satisfy due process standards. The State argues that the statute sufficiently informs a
21 person of common intelligence that AM-2201 and similar types of synthetic drugs are illegal.
22 The State also asserts that Defendants understood the legislation based on their attempt to
23 circumvent the law by relying on a chemist to recommend a substitute substance and the
24

25 ¹¹ In fact it appears Defendants are counting on this to stay in business in the future.
26

maintaining of a clandestine operation. The State characterizes Defendant's production of AM-2201 as a calculated risk based on the erroneous belief that the legislature could not ban AM-2201 without specifically naming it.

The State disagrees with the argument that the statute is vague because of its technical nature. This would yield absurd results by invalidating all statutes requiring specialized legislation or using specialized terminology where a defendant can locate an expert to disagree. The State also notes that scientific or technical terms of art in a regulated field do not automatically render a statute unconstitutional. *See Omaechevarria v. Idaho*, 246 U.S. 343, 348 (1918). The State points out that the Defendant concedes that the description in I.C. § 37-2705(d)(30)(ii)(a) "intentionally covers thousands of potential chemicals," and the State asserts that Defendant and his counsel were well aware of the highly publicized rise of synthetic drug use in Idaho such as "spice."

The State also notes that Defendant Alley's s counsel participated extensively in committee hearings in opposition to enactment of the law by attempting to dissuade lawmakers from prohibiting designer drugs, including cannabinoids. The Court does not find this argument on point. While counsel may have been representing Mr. Alley at the time of counsel's appearance before the legislature, there is no evidence to that effect in the record.

In an abundance of caution, given the Defendants' overall lack of specificity of the nature of the challenge being mounted, the State, in its brief, discussed enforcement guidelines as they pertain to vagueness challenges to a statute. Defendants did not brief the issue. At the hearing Defendants stated the issue was not briefed because Defendants were lacking evidence to support the challenge on an "as applied basis." At the hearing, Defendants sought to interject the issue

1 into the case through recently obtained preliminary hearing transcripts. The Court declined to
2 allow this evidence which apparently concerned events involving pending criminal cases in
3 eastern Idaho. The exclusion was discretionary and based on the late disclosure to the State. The
4 Court will not discuss it further.

5 ***(c) Discussion***

6 To the extent the Defendants are making an argument that the statute is facially overbroad
7 (see footnote No. 10, above), the argument must fail. The answer is in the testimony of
8 Defendant's experts. The essence of a facial challenge is that the complainant must demonstrate
9 that the law is impermissibly vague in all of its applications, such that there are no circumstances
10 where it is constitutional. Here all three of Defendant's experts agree that JWH-210 and JWH-
11 019 are unambiguously described by the statute. This is obviously a circumstance where the
12 State has banned a substance and there is no confusion over whether it is banned. Defendants do
13 not claim they were confused over the legality of these substances.
14

15 Ultimately, the Defendants' arguments are all based on the same faulty premise—that §
16 37-2705(d)(30)(ii) is a stand-alone statute. That sub-sub-subsection of the statute is part of a
17 larger statute as discussed above. That discussion will not be repeated here. In drawing the
18 conclusion that AM-2201 is a legal substance, Defendant's experts focused on whether the
19 particular substance was described by the isolated subsection rather than on the proper question
20 of whether the substance is "synthetic equivalents of the substances contained in the plant, or in
21 the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their
22 isomers with similar chemical structure..." In lay terms, is this substance a synthetic
23 cannabinoid?
24
25

The following is taken from a website cited by Dr. McDougal in Exhibit 2:

AM-2201 – A Hyperpotent Halogenated Unintended Consequence

With the recent legal issues surrounding certain synthetic cannabinoids in the United States, the market has changed

....
The effects of AM-2201 also appear to differ from natural cannabis and the first generation synthetic cannabinoids, both to start and as tolerance builds. Initially the effects are quite similar, although doses for AM-2201 are approximately a third of JWH-018. This has resulted in many reports of self-reported “seasoned” synthetic cannabinoid users having anxiety reactions as a result of apparent overdose due to increased sensitivity to inaccurate measurement. Tolerance builds quickly, and frequent users have reported psychedelic-style effects typically previously only associated with high-dose oral consumption of marijuana.

<http://countyourculture.com/2011/01/12/am-2201-a-hyperpotent-halogenated-unintended-consequence/> > last accessed April 5, 2012.

There is a link to comments on the same page that contain a series of commentary on AM-2201 that can only lead to the conclusion the posters are discussing a marijuana substitute.¹² Wikipedia, the seeming source of information of choice by the general population, contains the following under the entry discussing Cannabinoid:

Synthetic cannabinoids encompass a variety of distinct chemical classes: the classical cannabinoids structurally related to THC, the nonclassical cannabinoids (cannabimimetics) including the aminoalkylindoles, 1,5-diarylpyrazoles, quinolines, and arylsulphonamides, as well as eicosanoids related to the endocannabinoids.

....

¹² A sample:

DailyToker
December 3rd, 2011

REPLY | QUOTE

Well I make and sell herbal incense, AM-2201 is the active ingredient in my company’s product. I add 1g of AM to 30g of Marshmallow leaf, and it last me about 10 days or so. I have been using AM2201 for over a year now and have not noticed any ill effects...its just like smoking weed to me.

I guess everyone reacts differently.

<http://countyourculture.com/2011/01/12/am-2201-a-hyperpotent-halogenated-unintended-consequence/#comments>
> last accessed April 5, 2012

Other notable synthetic cannabinoids include:

....

AM-2201, a potent cannabinoid receptor agonist.

<http://en.wikipedia.org/wiki/Synthetic_cannabinoid#Synthetic_and_patented_cannabinoids> last accessed April 5, 2012.

If this weren't enough, one has only to look at the name AM-2201. The name was given to the chemical by its inventor. Mr. Alley is apparently engaged in the business of marketing synthetic cannabinoids.¹³ Assuming, based on his counsel's argument, that someone such as Mr. Alley went looking for information to determine the nature of AM-2201, it does not great effort or ingenuity to get from the Wikipedia entry on AM-2201 to the patent.¹⁴ Footnote No. 1 in the Wikipedia article is a link to the patent. The patent makes clear that AM-2201 intended to mimic marijuana. It was specifically invented in the hope of discovering a compound that could be used in medical research in place of marijuana. See Exhibits 111 and 112.

There is no real ambiguity or uncertainty over the nature of AM-2201. Nor is the statute vague or incapable of being understood by a person of ordinary intelligence. The Defendants are of the mistaken impression that it is somehow improper for the legislature to outlaw "thousands of compounds." Defendant's claimed ambiguity only exists because Defendant's asked their

¹³ Mr. Alley did not testify and not submit any affidavit in support of the motion. His counsel argued that Mr. Alley and the other Defendants were assiduously attempting to follow the law and were attempting to find a legal substance to market in light of the actions of the Board of Pharmacy and the legislature. He suggested by argument that Mr. Alley is merely a businessman doing his best to make his way in the world, but there is no evidence in the record that any Defendant, including Mr. Alley, took any particular action. Dr. Parent's letter was addressed to Counsel and there is no evidence that any Defendant relied on Dr. Parent's opinion in any way.

¹⁴ *C.f. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 501, 102 S.Ct. 1186 (1982) holding that the technical term "roach clip" has sufficiently clear meaning in the drug paraphernalia industry such that, without undue burden, the defendant could easily determine the meaning of the term, citing dictionaries defining "roach."

1 experts the wrong question. Rather than ask whether AM-2201 is described in I.C. §37-
2 2705(d)(30)(ii)(a), they should have asked the experts whether AM-2201 is a synthetic
3 cannabinoid. If they had asked that question, the answer would no doubt have been "yes."

4
5 **CONCLUSION**

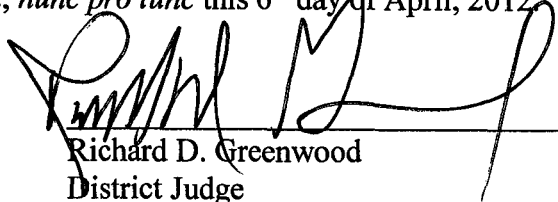
6 AM-2201 is a schedule one substance. This is so whether or not it is specifically
7 described in I.C. §37-2705(d)(30)(ii)(a). It is on Schedule I because it is a "synthetic equivalent
8 of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or
9 synthetic substances, derivatives, and their isomers with similar chemical structure."

10
11 Idaho Code §37-2705(d)(30)(ii)(a) is not unconstitutionally vague nor are the 2011
12 amendments to Idaho Code §37-2705 applicable here. The Idaho Legislature intended to outlaw
13 synthetic marijuana and it did so in terms such that a person of ordinary intelligence is on notice
14 of the conduct prohibited.

15 Defendants' Motion to Dismiss is DENIED.

16 IT IS SO ORDERED.

17 Dated this 9th day of April, 2012, *nunc pro tunc* this 6th day of April, 2012.

18
19 
20 Richard D. Greenwood
21 District Judge
22
23
24
25
26

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of April, 2012, I mailed (served) a true and correct

copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
HEATHER REILLY/JONATHAN MEDEMA
VIA: INDERDEPARTMENTAL MAIL

& VIA: EMAIL

ADA COUNTY PUBLIC DEFENDER
KIMBERLEY SIMMONS
VIA: INDERDEPARTMENTAL MAIL

& VIA: EMAIL

RYAN HOLDAWAY/DIANE PITCHER
PITCHER & HOLDAWAY
40 W. CACHE VALLEY BLVD., STUE 3B
LOGAN UTAH 84341

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& VIA FAX: 208-788-3918

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ATTORNEY AT LAW
300 W MYRTLE ST, STE 200
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8 290 S 2ND E
9 MOUNTAIN HOME, ID 83647

10 & VIA FAX: 587-6940

11 JAMES K. BALL
12 MANWEILER BREEN BALL & HANCOCK, PLLC
13 PO BOX 937
14 BOISE, ID 83701-0937

15 & VIA FAX: 424-3100

16 CHRISTOPHER D. RICH
17 Clerk of the District Court

18 By: 
19 Deputy Court Clerk

107
PTC
4/24
11A

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #8340
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Attorneys for Defendant

NO. _____
A.M. _____ FILED P.M. **5**

APR 11 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR FE 11-15482
Plaintiff,)	
)	
v.	)	MOTION TO ENLARGE TIME
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	
_____)	

The Defendant, Morgan C. Alley, by and through his attorneys of record, Ryan L. Holdaway and Diane Pitcher, of Pitcher and Holdaway, PLLC, hereby submits to this Court his Motion to Enlarge Time. This Court issued its Corrected Memorandum Decision and Order Re: Motion to Dismiss on April 9, 2012. The basis of this Court's decision appears to revolve heavily around the Court's interpretation and application of I.C. § 37-2705(d)(30). Specifically, this Court appears to have concluded AM-2201 is a synthetic cannabinoid and therefore the synthetic equivalent of THC.

MOTION TO ENLARGE TIME - 1

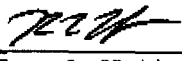
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2

As noted by the Court in its decision the parties and the arguments revolved almost entirely on the interpretation and application of I.C. § 37-2705(d)(30)(a)(ii). The parties did not brief or argue the issues, facts, and statutory section upon which this Court relied in making its determination.

The Defendant is concerned with a substantial portion of the basis upon which this Court relied in rendering its opinion and wishes to file a motion to reconsider and brief the Court on the specific issues and legal grounds upon which the Court should not apply I.C. § 37-2705(d)(30) in the manner that it did. However, the Defendant needs some time to consult with his experts and for the experts to render opinions relating to the Court's determination that AM-2201 is a synthetic equivalent of THC. Based on the foregoing the Defendant requests that this Court grant an enlargement of time to permit the Defendant to file a motion to reconsider.

DATED this 11th of April, 2012



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ___ day of April, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
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MOTION TO ENLARGE TIME - 2

000320

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Theresa Kidman

107
PTC
4/12/12
11A

FILED
A.M. P.M. 5

APR 19 2012

R. KEITH ROARK, ISBN 2230
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CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**MOTION TO VACATE AND
RESET TRIAL DATE**

COMES NOW the Defendant in the above entitled action, Morgan Alley, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court for its ORDER VACATING AND RESETTING TRIAL DATE. This motion is based upon and supported by the AFFIDVIT OF R. KEITH ROARK filed contemporaneously herewith.

DATED this 19th day of April, 2012.

THE ROARK LAW FIRM


R. KEITH ROARK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of April, 2012, I served a true and correct copy

of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney

Fax: (208) 287-7709

James Ball

Fax: (208) 424-3100

Paul Taber

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Rob S. Lewis

Fax: (208) 338-1273

Marco DeAngelo

Fax: (208) 608-5061

Ada County Public Defender

Fax: (208) 287-7409

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

 X By telecopying copies of same to said attorney(s) at the telecopier numbers listed above.



R. KEITH ROARK

TIME RECEIVED April 19, 2012 4:31:17 PM MDT	REMOTE CSID	DU 110	ON	PAGES 5	STATUS Received
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FAX No. 208 788 3918

NO. _____
A.M. _____
P.M. _____
FILED 4/19/2012

APR 19 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

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FAX: 208/788-3918**

Attorneys for Defendant.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**AFFIDAVIT OF R. KEITH ROARK IN
SUPPORT OF MOTION TO VACATE
AND RESET TRIAL DATE**

STATE OF IDAHO,)
) ss.
County of Blaine.)

R. KEITH ROARK, being sworn upon oath, deposes and states as follows:

1. I am a resident of the State of Idaho, County of Blaine and make the averments contained herein of my own, personal knowledge.
2. I am an attorney duly licensed to practice law in the State of Idaho and am counsel of record for the Defendant in the above captioned case.
3. My co-counsel in this matter, Ryan Holdaway, as this Court is aware, prepared and presented a somewhat complex Motion to Dismiss which was heard and denied recently after significant briefing and presentation of evidence by both sides.
4. Mr. Holdaway has filed a Motion to Reconsider this Court's ruling and we are in the process of having our experts examine this Court's Decision with a view toward addressing the issue upon which such Decision was based from an expert witness point

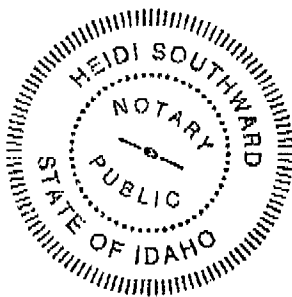
of view.

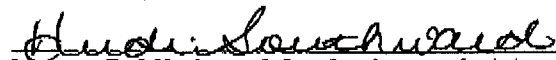
5. My client has been heavily involved in the preparation and presentation of the Motion to Dismiss and, while continuing to work on trial preparation, we have placed major emphasis on the Motion rather than trial.
6. It is now highly likely that this matter will go to trial and significant additional preparation is required in order for Defendant and client to be fully ready.
7. Your affiant has reason to believe that the Prosecutor in charge of this case and counsel for the co-defendants would welcome a continuance in order to be properly and fully prepared for trial and I do not believe any prejudice would accrue to the detriment of any party as a result of delay.
8. Attached hereto and incorporated by reference herein is your affiant's schedule of available trial dates beginning July 1, 2012.
9. Waiver of speedy trial has already been entered by my client and, to my best knowledge and belief, by all other defendants as well.

FURTHER YOUR AFFIANT SAYETH NOT.


R. Keith Roark

SUBSCRIBED AND SWORN to before me this 19 day of April, 2012.




Notary Public in and for the State of Idaho,
residing at Hailey, therein.
My Commission expires 1-18-17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of April, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
Fax: (208) 287-7709

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Marco DeAngelo
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Ada County Public Defender
Fax: (208) 287-7409

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

 X By telecopying copies of same to said attorney(s) at the telecopier numbers listed above.



R. KEITH ROARK

Time	Speaker	Note
10:35:54 AM		CRFE11.15480 State v. Charlynda Goggin/CRFE11.15481 State v. Cadee Peterson/CRFE11.15482 State v. Morgan Alley/CRFE11.15483 State v. Tashina Alley/CRFE11.16247 State v. Matthew Taylor/CRFE11.16248 State v. Hieu Phan
11:01:53 AM	Court	Calls case defts present on bond with counsels. State's atty Heather Reilly.
11:02:22 AM	Court	Motion that has not been noticed for hearing to continue.
11:02:35 AM	Mr. Roark	Would like to hear the motion today.
11:02:45 AM	State Attorney	No objection.
11:02:47 AM	Mr. Roark	Argument on motion to continue the trial.
11:05:10 AM	Court	Addresses counsel regarding the motion to enlarge.
11:05:28 AM	Mr. Ball	No objection to the continuance.
11:05:48 AM	Mr. DeAngelo	No objection.
11:05:55 AM	Mr. Lewis	No objection.
11:06:00 AM	Ms. Simmons	Objection for the continuance. On Ms. Peterson's case - objection to the continuance. Her part of the trial would be short and minor. Mr. Taylor - same objection undue stress on his health and the issues with the ankle bracelet. Reconsider the bracelet on Mr. Taylor if the trial is reset or a small bond if that bracelet is removed.
11:09:25 AM	State Attorney	Response regarding the motion to reset the trial.
11:10:27 AM	Court	Addresses counsel regarding the waiver of speedy trial.
11:10:37 AM	State Attorney	Further response regarding the motion to reset the trial.
11:12:23 AM	Court	Addresses counsel regarding severing certain cases.
11:13:03 AM	State Attorney	Response regarding severing the cases.
11:14:05 AM	Court	Addresses counsel.
11:14:58 AM	Mr. Roark	Further argument on the motion to reset the trial.
11:15:44 AM	Court	Addresses counsel.
11:16:12 AM	Mr. Roark	Further argument on motion. 6 weeks.
11:17:00 AM	Court	Addresses counsel.
11:17:34 AM	State Attorney	8 weeks.
11:17:47 AM	Court	July time frame.
11:18:35 AM	Court	Discussion between the Court and counsel regarding July time frame.
11:19:21 AM	Ms. Simmons	Response regarding the continuance.
11:19:33 AM	State Attorney	Willing to address the bracelet. Will agree that the Court can reconsider the order of the GPS and leave in Crt's discretion regarding bond.

<u>11:22:38 AM</u>	Court	JT July 18, 2012 at 9:00 am - no objection from counsel.
<u>11:23:10 AM</u>	Court	Discussion between Court and counsel - will not entertain another motion to continue.
<u>11:23:36 AM</u>	State Attorney	Response.
<u>11:23:58 AM</u>	Court	Motion to continue will be granted. Trial currently scheduled is vacated.
<u>11:24:20 AM</u>	Court	Will not sever the cases.
<u>11:24:47 AM</u>	Court	PT June 26, 2012. Will not hear any motions at the time of the pretrial. PT is at 1:30 pm.
<u>11:26:01 AM</u>	Court	Modify terms of release on Taylor will no longer be on the ankle monitor. Addresses counsel regarding how the Court runs the calendar for trial. Addresses counsel regarding voir dire and opening argument.
<u>11:28:00 AM</u>	Ms. Simmons	Will supply the appropriate order.
<u>11:28:14 AM</u>	End.	

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF **APR 30 2012**

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

CHARLYNDA LYNN GOGGIN,
CADEE PETERSON, MORGAN ALLEY,
TASHINA ALLEY, MATTHEW TAYLOR,
HIEU PHAN,

Defendants.

Case No. CR-FE-2011-0015480
CR-FE-2011-0015481
CR-FE-2011-0015482
CR-FE-2011-0015483
CR-FE-2011-0016247
CR-FE-2011-0016248

SCHEDULING ORDER

This matter came before the court on Tuesday, April 24, 2012 for pretrial conference and with defense counsel's request to continue and the State having no objection the Court vacated the currently scheduled jury trial and reset this matter for Tuesday, June 26, 2012 at 01:30 PM for a Pretrial Conference and Wednesday, July 18, 2012 at 09:00 AM for a Jury Trial of the above named Defendant, CHARLYNDA LYNN GOGGIN. The attorneys present were:

For the State: Heather Reilly

For the Defendant: Rob S. Lewis

Kimberly Simmons

R. Keith Roark

James Ball

Kimberly Simmons

Marco DeAngelo

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The 2 week jury trial of this action shall commence before this court on **July 18, 2012**, at 9:00 a.m.

- 2) Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Dennis Goff
Hon. Daniel C. Hurlbutt, Jr.
Hon. James Judd
Hon. Peter McDermott
Hon. Duff McKee
Hon. Daniel Meehl
Hon. George R. Reinhart, III

Justice Gerald Schroeder
Hon. Kathryn A. Sticklen
Justice Linda Copple Trout
Hon. Darla Williamson
Hon. Barry Wood
Hon. W. H. Woodland

All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.


- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on June 26, 2012, at 1:30 p.m. for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Exhibit and witness lists shall also be submitted to the Court via email at kajohnson@adaweb.net.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at DCTYLENI@adaweb.net. It is sufficient for the parties to identify unmodified pattern instructions by number.

- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 26 day of April, 2012.



RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of April, 2012, I mailed (served) a true

and correct copy of the within instrument to:

HEATHER REILLY
ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

ROB LEWIS
ATTORNEY AT LAW
PO BOX 1061
BOISE ID 83701
MAILED

KIMBERLY SIMMONS
ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

R KEITH ROARK
ATTORNEY AT LAW
409 N MAIN STREET
HAILEY ID 83333
MAILED

JAMES BALL
ATTORNEY AT LAW
PO BOX 937
BOISE ID 83701-0937
MAILED

KIMBERLY SIMMONS
ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

MARCO DEANGELO
ATTORNEY AT LAW
290 SOUTH 2ND EAST
MOUNTAIN HOME ID 83647-3013
MAILED

CHRISTOPHER D. RICH
Clerk of the District Court

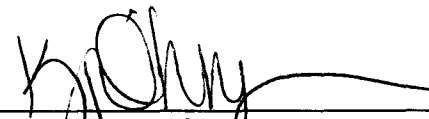
By 
Deputy Court Clerk

EXHIBIT LIST

Before the date set for the pretrial conference, the parties shall contact the clerk for assignment of exhibit numbers.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Fran Morris, COURT REPORTER

CASE NO: **CR-FE-2011-0015480**
CR-FE-2011-0015481
CR-FE-2011-0015482
CR-FE-2011-0015483
CR-FE-2011-0016247
CR-FE-2011-0016248

DATE(S): _____

STATE OF IDAHO

vs.

**CHARLYNDA LYNN GOGGIN,
CADEE PETERSON, MORGAN ALLEY,
TASHINA ALLEY, MATTHEW TAYLOR,
HIEU PHAN**

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
1						
2						
3						

Exhibit 1

107
MS
5/15
9A

NO. _____
A.M. 10 FILED P.M. _____

MAY - 4 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #8340
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR FE 11-15482
Plaintiff,)	
)	
v.	)	MOTION TO RECONSIDER
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	
_____)	

The Defendant, Morgan Alley, by and through his attorney of record, Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, hereby submits to this Court his Motion to Reconsider. While the Defendant is not aware of a specific rule permitting a motion to reconsider it appears such a motion is permissible. *See State v. Nelson*, 104 Idaho 430, 431 (Ct. App. Idaho 1983). Specifically, the Defendant asks this Court to reconsider the basis upon which it made its decision as contained in the Corrected Memorandum Decision and Order Re: Motion to Dismiss (Apr. 9, 2012).

DATED this 2nd of May, 2012


Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
Boise, ID 83702
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Theresa Kidman

MAY - 4 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR FE 11-15482
Plaintiff,)	
)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION TO
MORGAN CHRISTOPHER ALLEY,	)	RECONSIDER
)	
Defendant.)	
_____)	

The Defendant, Morgan Alley, by and through his attorney of record, Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, hereby submits to this Court his Memorandum in Support of Defendant's Motion to Reconsider.

ARGUMENT

The Defendant asks this Court to reconsider its prior ruling based on two grounds. The first is under standard rules of statutory construction and the second is in looking to legislative intent, the prior version of I.C. § 37-2705(d)(30), and House Bill 139 of the 2011 legislative session. The first issue was addressed at least briefly in the prior arguments before this Court and

therefore will receive only brief discussion here. The second issue centers around this Court's heavy dependence on the application of I.C. § 37-2705(d)(30) and the legislative intent as to that section. That issue was not briefed or addressed in any meaningful way by the parties for this Court and therefore will receive a greater weight of the attention in this motion.

1. This Court Improperly Turned to Legislative Intent Without First Finding That a Portion of the Statute at Issue was Ambiguous, Incomplete, Absurd, or Arguably in Conflict With Other Laws.

In argument before this Court the Defendant cited to *Idaho v. Ephraim*, which states, "[i]f the language is clear and unambiguous, there is no occasion for the court to resort to legislative history, or rules of statutory construction." 267 P.3d 1291, 1292-93 (Idaho Ct. App. 2011). The rule of law coming down from *Ephraim* suggests that this Court cannot turn to legislative intent without first making a finding that a portion of the statute at issue was The court may only turn to legislative intent after a determination is made that a portion of the statute is either ambiguous, incomplete, absurd, or arguably in conflict with other laws. *See also Hillside Landscape Construction, Inc. v. City of Lewiston*, 264 P.3d 388, 392 (Idaho 2011). In the decision issued by this Court it appears the Court turned to legislative intent without first finding any portion of the statute ambiguous as required under *Ephraim* and *Hillside Landscape Construction, Inc.*

This Court's reliance on legislative intent is evidenced by the Court's framing of the issue when it asked, "what did the legislature intend to add to Schedule I?" Corrected Memo. Decision and Order Re: Mot. to Dismiss, 8 (Apr. 9, 2012)(hereinafter "Order"). The Court then turns to the entirety of I.C. § 37-2705(d) and concludes that "[b]y stripping the statute down to the component parts to be construed it is fairly ease to discern the intention of the legislature[.]" Order at 10. Other language evidencing this Court's reliance on the legislative intent includes, "[t]he minutes of the legislative committees," "the Idaho legislature unambiguously *intended* to

add synthetic imitators of marijuana to Schedule I..." and "[i]t was the *intent* of the legislature." Order at 12 (emphasis added).

In discussing legislative intent, this Court couches the discussion in terms of "reading [the statute] as a whole." Order at 9. However, there is a distinct difference in reading the statute as a whole and reading a statute so as to give legislative intent some affect in its interpretation. The former relies solely on the clear language of the statute as stand-alone words with unambiguous meaning while the latter concerns itself with the interpretation of ambiguous words through the use of legislative intent. The former is to be done until a portion is found to be ambiguous and the latter cannot be used until such a finding has been made. Consequently, the Court cannot turn to legislative intent under the guise of giving effect to the entire statute without first making a determination that some relevant portion of the statute is ambiguous--no such finding was made in this case.

This Court also couched its analysis of legislative intent in terms of the intent being unambiguous. Order at 12. However, the question is not whether the legislative intent is ambiguous. *See Ephraim*, 267 P.3d at 1292-93 and *Hillside Landscape Construction, Inc.* 264 P.3d at 392. Rather the question is whether the words of the statute itself are unambiguous. *See id.* Where the words of the statute are unambiguous there is no occasion to even consider legislative intent irrespective of how crystal clear the legislative intent may be in the present circumstance. The Court may conclude that the legislative intent is unambiguous but it is of no import where the Court has not found any relevant portion of the statute itself to be ambiguous--which did not occur in this case.

In short, this Court appears to have relied heavily on legislative intent in forming its decision and opinion. This Court did so without first determining that any portion of the statute

was ambiguous. In doing so this Court acted in contravention to the law coming out of *Ephraim and Hillside Landscape Construction, Inc.*. In reconsidering its decision this Court should take a fresh look at the language in dispute and first answer the question as to the ambiguity of that language before moving on. If this Court cannot identify an ambiguous relevant portion it must give effect to the words themselves and cannot rely on its conclusions as to legislative intent even if such intent is clear and/or unambiguous.

2. This Court's Conclusion as to Legislative Intent Incorrectly Looked to the Effects of the Chemicals and Incorrectly Concluded all Synthetic Cannabinoids are Covered by I.C. § 37-2705(d).

To the extent this Court is going to consider legislative intent it should do so in a manner that more accurately reflects the actions of the legislature and words removed from and/or incorporated into the code. It appears from the decision that this Court may not have been aware of language that was recently removed from I.C. § 37-2705(d)(30) that manifests a legislative intent that differs from this Court's conclusion. Specifically, the removal of "and pharmacological activity" from I.C. § 37-2705(d)(30). *Aff. Ryan L. Holdaway Re: Support Mot. Reconsider, Ex. 'A' (Apr. 23, 2012)*(hereinafter "Aff. Holdaway").

The version of Idaho Code § 37-2705(d)(30) that was in place prior to the 2011 legislative passage of House Bill 139 read:

Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis, sp.* and/or synthetic substances, derivatives, and their isomers with *similar chemical structure and pharmacological activity* such as the following:

I.C. § 37-2705(d)(30)(2010)(emphasis added).

The 2011 House Bill 139 that added subsection (ii)(a), which was the subject of the arguments before this Court, also removed from I.C. § 37-2705(d)(30) the term "pharmacological activity" so that it now reads:

Tetrahydrocannabinols--or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with *similar chemical structure* such as the following:

I.C. § 37-2705(d)(30)(2011)(emphasis added).

The Defendant could not retrieve versions of I.C. § 37-2705(d)(30) prior to 1989 but the version of the code that existed then contained the reference to "pharmacological activity." So it appears that the term has been in use in the statute for a significant period of time. With such a longstanding history one has to wonder why the legislature suddenly removed that language if its intent is so clearly to prohibit chemicals that would cause similar pharmacological activity as THC. With the removal of the term "pharmacological activity" the only remaining basis for evaluating if something is a "synthetic equivalent" of THC under I.C. § 37-2705(d)(30) is to look solely at the substance's structure.

Nevertheless, the opinion of this Court appears to have been based strongly on this Court's conclusion that the legislature was attempting to prohibit substances that *behaved* like THC rather than substances that *look* like THC. For example, immediately after quoting the current version of the statutory language, this Court opined that the language was "referring to synthetic marijuana or synthetic substances *that mimic the hallucinogenic properties* of marijuana." Order at 11 (emphasis added). The Court then turned to outside sources that equated the pharmacological activity of AM-2201 as being similar to that of marijuana. Order at 18-19. At no point in time did the Court ever concern itself with comparing the structure of AM-2201 to that of THC despite repeated references to the current version of the code that expressly states, "with similar chemical structure." Order at 11, 17, and 20.

In fact, the removal of the term "pharmacological activity" made I.C. § 37-2705(d)(30) more consistent with the statutory scheme in which it is embedded. As this Court noted in its

decision the entire statute must be given effect. Order at 4. The statutory scheme created by the Idaho legislature is one that is structure focused and not effect driven.

For instance, I.C. § 37-2705(d) prohibits hallucinogenic substances as identified in the code as well as "their salts, isomers and salts of isomers." The terms "salts," "isomers," and "salts of isomers" are references to structural variations that can be found in substances. They are not terms that are indicative of whether a particular substance will behave in a similar manner to another chemical or have the same effect in the body.

Turning to I.C. § 37-2705(d)(30), the focus on structure is even more clearly manifested through the express reference to "similar structure" and the removal of the phrase "pharmacological activity." That section also mentions "isomers," "derivatives," and "equivalents." All of which denote a focus on structural similarity between substances.

Finally, the subsections of section 37-2705(d)(30) are all entirely focused on structure. Indeed, the focus on structure becomes so specific as to distinguish between single bonded carbon atoms and double bonded carbon atoms. Those subsections focus on "geometric isomers," "optical isomers," "atomic positions," alkyl," alkenyl," "cycloalkylethyl" and "cycloalkylmethyl" (the difference between the last two is nothing more than the number of carbon atoms present). All of the preceding terms are focused solely on structure in the smallest detail. Indeed, noticeably absent from I.C. § 37-2705(d)(30) and the subsections of 37-2705(d)(30) is any reference whatsoever to the pharmacological activity of any of the substances.

From start to finish the entirety of the statute is not focused on the hallucinogenic effects of substances but rather on the structure of hallucinogenic substances. Structure is the beginning and end in the statute and that focus was made even clearer when the legislature removed

references to "pharmacological activity." If the statute is focused on structure, then the analysis of this Court should likewise turn to structure.

The structure of THC and AM-2201 are nothing alike. *Aff. Karl De Jesus Re: Mot. Reconsider, Ex. 'A' (Apr. ___, 2012)*(hereinafter "*Aff. De Jesus*"). As noted by the opinion of Dr. De Jesus submitted with this motion and memorandum there are striking differences between the structures of THC and AM-2201.¹ *Id.* The differences are pronounced enough that even the layman can look at the diagrams and conclude without hesitation that the two substances look nothing alike. Given the stark contrast between the two structures of the substances AM-2201 cannot be considered to be a synthetic equivalent of THC as defined by I.C. § 37-2705(d)(30).

Viewing the statutory scheme as being focused on structure also allows this Court to give effect to another rule of statutory construction. Specifically, this Court is not to interpret the statute so as to render language superfluous, void, or redundant. *See State v. Mercer*, 143 Idaho 108, 109 (2006) and Order at 4. In looking at the statute's focus on structure, subsection (ii)(a) has meaning and effect as it further limits forms of structures that are covered by the statute. This is because those sections are unquestionably structure based and intended to identify prohibited structures.

In contrast where the Court looks to pharmacological activity instead of structure it renders subsection (i) and (ii)(a) superfluous and redundant. The Court's order manifests this point by indicating that the answer lay not in I.C. § 37-2705(d)(30)(ii)(a) but rather higher in the code under I.C. § 37-2705(d)(30). Order at 10. Indeed, this Court relies heavily on the language of I.C. § 37-2705(d)(30) and determines that language to prohibit synthetic cannabinoids. Order

¹ Due to time constraints the Defendant's motion, memorandum, and affidavit are being filed with the Defendant having only received Dr. De Jesus's opinion letter. Dr. McDougal's expected opinion letter will be provided to the Court upon receipt but is not expected to differ in result from Dr. De Jesus.

at 10-11 and 17-20. If the language of I.C. § 37-2705(d)(30) in and of itself is sufficient to criminalize all synthetic cannabinoids, then all of the subsections under 37-2705(d)(30)(ii) are superfluous and redundant as they only describe the structures of synthetic cannabinoids. Indeed, their inclusion in the statute is entirely unnecessary to reach the conclusion reached by this Court.

The consequence is that this Court's approach ignores the focus on structure manifest throughout the entire statute of 37-2705(d) and renders 37-2705(d)(30)(a)(ii) entirely moot. Such an approach is not in line with standard rules of statutory construction requiring an application of the entire statute while giving effect to all words in the statute so as not to render any word superfluous or redundant. Were this Court to look at structure instead, it would find itself comfortably within the statutory scheme and would ensure each portion of the statute is given effect and meaning. Therefore, this Court should look to the structure of AM-2201 as compared to THC rather than looking to the pharmacological activity. Under such an analysis, AM-2201 would certainly not be covered under the statute as it does not have a structure that is anything like THC.

As a final note, this Court posited that the Defendant should have been asking his experts if AM-2201 is a synthetic cannabinoid. Order at 20. This is a curious question to pose to the experts when one considers that the term is nowhere to be found in I.C. § 37-2705(d). Indeed, were the issue that simple, one has to ask why the legislature went to such great pains to identify numerous specific structural variations that would be prohibited if all it had to do was say "all synthetic cannabinoids." Furthermore, the terms "synthetic equivalent" and "synthetic substances" do not necessarily equate to "synthetic cannabinoid."

The former terms denote some comparison to another identified substance to which the "synthetic" is to be compared. The latter denotes a relatively specific type of substance that would not require any comparison to another substance as it is a class all of its own. Consequently, were the legislature to mean synthetic cannabinoid, it ought to have used the term. Its absence is telling and the Defendant was proper in looking to language of the statute added by the legislature specifically for the purpose of targeting certain spice chemicals (37-2705(d)(30)(ii)(a)). In looking to that specific language AM-2201 is not a controlled substance under Idaho Code.

CONCLUSION


This Court should take a fresh look at the statute before it before turning to legislative intent without first finding that some relevant portion of the statute is ambiguous. Under such an analysis this Court would have to apply the clear and unambiguous language of the statute. As has been previously briefed and argued the clear language does not prohibit AM-2201.

Additionally, this Court should consider the statutory scheme in light of HB139 which removed the reference to "pharmacological activity." In light of that information the statutory scheme is focused solely on structure and not pharmacological activity. In looking solely at structure the entire statutory scheme can be given effect and portions such as subsection (30)(ii)(a) will not be rendered superfluous or redundant. There is no occasion for this Court to work the pharmacological activity of AM-2201 into its analysis not just because of the absence of that language from the statute but also because of the legislatures affirmative act in removing the language.

In looking to the structure of AM-2201 as compared to THC it will be evident to the Court that they look nothing alike. Consequently, AM-2201 is not covered under I.C. § 37-

2705(d)(30). Based upon the foregoing the Defendant respectfully requests that this Court reconsider its Order and enter a new Order finding that AM-2201 is not a controlled substance under Idaho Code.

DATED this 23rd of April, 2012



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
Boise, ID 83702
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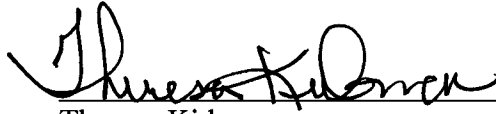
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Theresa Kidman

MAY - 4 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. #3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,) Case No. CR FE 11-15482
)
v.) **AFFIDAVIT OF RYAN L.**
) **HOLDAWAY RE: SUPPORT OF**
MORGAN CHRISTOPHER ALLEY,) **MOTION TO RECONSIDER**
)
Defendant.)
_____)

STATE OF UTAH)
) ss.
County of Cache)

Ryan L. Holdaway, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.
2. I am the attorney of record for Mr. Alley and as such have personal knowledge regarding the facts of this case.

**AFFIDAVIT OF RYAN L. HOLDAWAY RE: SUPPORT OF MOTION TO
RECONSIDER - 1**

000348

3. Attached to this affidavit is a true and accurate excerpt of the relevant portion of House Bill 139 as drafted and adopted during the 2011 Idaho legislative session.

Further your affiant sayeth naught.

DATED this 25th day of February, 2012

Ryan L. Holdaway

Ryan L. Holdaway

SUBSCRIBED AND SWORN to before me this 23rd day of April, 2012



Theresa Kidman
Notary Public for Utah
Residing at: Mendon, Cache, UT
My Commission Expires: 11-3-2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
Boise, ID 83702
Facsimile: (208) 287-7709

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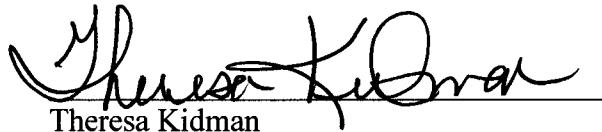

Theresa Kidman

EXHIBIT A

000351

(27) N-methyl-3-piperidyl benzilate;
 (28) Psilocybin;
 (29) Psilocyn;
 (30) Tetrahydrocannabinols- or ~~s~~synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure ~~and pharmacological activity~~ such as the following:

i. Tetrahydrocannabinols:

a. Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

b. Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.

c. $\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyl-octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and it's geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the

indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrol-o[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone (WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(31) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(32) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) -pyrrolidine, PCPy, PHP;

(33) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on

MAY - 4 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #
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40 W. Cache Valley Blvd., Ste. #3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,) Case No. CR FE 11-15482
)
v.) **AFFIDAVIT OF KARL DE JESUS**
) **RE: MOTION TO RECONSIDER**
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

STATE OF IDAHO)
) ss.
County of Ada)

Dr. Karl De Jesus, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.

2. I have been asked to compare the chemical commonly known as AM-2201 with THC and render an opinion as whether AM-2201 is structurally similar to THC.

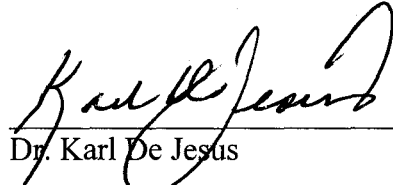
AFFIDAVIT OF KARL DE JESUS RE: MOTION TO RECONSIDER - 1

000354

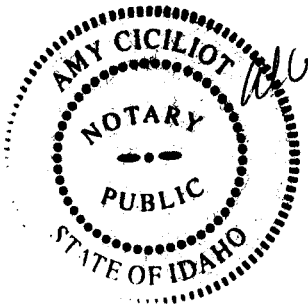
3. I have reviewed the two chemicals and have rendered a written opinion.
4. A true and accurate copy of my opinion is attached to this affidavit as Exhibit 'A'.
5. Based upon the reasons set forth in Exhibit 'A' to this affidavit I have concluded that AM-2201 is not structurally similar to THC.


Further your affiant sayeth naught.

DATED this 27th day of April, 2012


Dr. Karl De Jesus

SUBSCRIBED AND SWORN to before me this 27th day of April, 2012




Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: 12/2/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
Boise, ID 83702
Facsimile: (208) 287-7709

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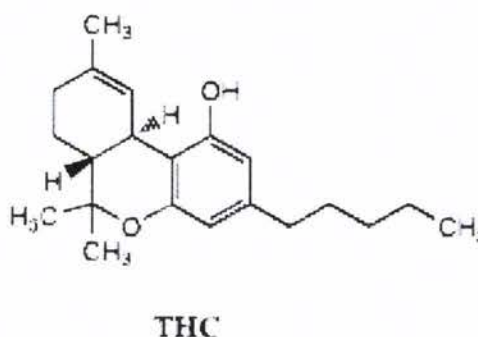
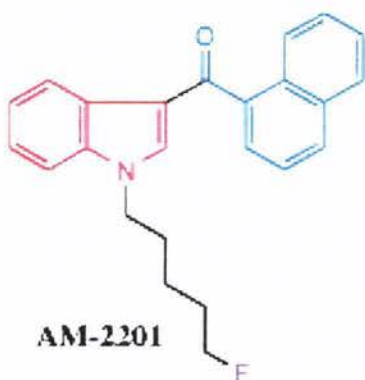

Theresa Kidman

April 20, 2012

Mr. Ryan Holdaway
Pitcher & Holdaway, PLLC
40 W. Cache Valley Blvd.
Suite 3B
Logan, UT 84321

Dear Mr. Holdaway,

In your most recent e-mail you asked the following question: Is AM-2201 structurally similar to THC? This report addresses this question. To begin, these are the structures of the two compounds in question.



I know that you have a limited background in organic chemistry, but hope you can appreciate that the basic skeleton for each system is totally different. AM-2201 contains an indole ring (in red) that is lacking in THC. For example, please note that THC has no five-sided ring with a nitrogen. Moreover, THC also lack the naphthyl group (two six-sided blue rings) present in AM-2201. THC does have a series of six-sided rings, all connected together, but they are three, not two, as found in AM-2201. Whichever outer ring in THC one looks at, the connecting six-sided ring is a dihydropyran ring, which contains an oxygen. A naphthyl ring would contain two sided, all carbon rings next two each other, each with alternating double bonds. That is not the case in THC.

Finally, note that the ring systems in AM-2201 are connected via a carbon oxygen double bond (in blue). This is the naphthoyl portion of AM-2201's, and what leads to the naphthylmethanone portion in an alternate name. By contrast, THC has all the rings attached directly to each other with no functional group "spacer" between them.

In Conclusion, structurally speaking, AM-2201 and THC are different classes of compounds. No reputable organic would confuse the two structures as having the same basic skeleton. Because the two structures are so different, AM-2201 cannot be prepared from THC. Therefore it is neither a preparation nor a derivative of THC.

Please accept this as my final report on this question.

Respectfully submitted,

Karl De Jesus, Ph.D.

MAY - 4 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. #3B
Logan, UT 84341
Telephone: (435) 787-1200
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,) Case No. CR FE 11-15482
)
v.) **AFFIDAVIT OF OWEN MCDOUGAL**
) **RE: MOTION TO RECONSIDER**
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

STATE OF IDAHO)
) ss.
County of Ada)

Dr. Owen McDougal, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.

2. I have been asked to compare the chemical commonly known as AM-2201 with THC and render an opinion as whether AM-2201 is structurally similar to THC.

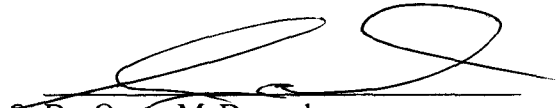
AFFIDAVIT OF OWEN MCDOUGAL RE: MOTION TO RECONSIDER - 1

000359

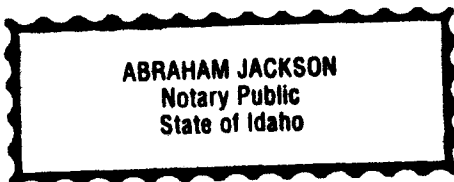
3. I have reviewed the two chemicals and have rendered a written opinion.
4. A true and accurate copy of my opinion is attached to this affidavit as Exhibit 'A'.
5. Based upon the reasons set forth in Exhibit 'A' to this affidavit I have concluded that AM-2201 is not structurally similar to THC.


Further your affiant sayeth naught.

DATED this 26 day of April, 2012


Dr. Owen McDougal

SUBSCRIBED AND SWORN to before me this 26th day of April, 2012




Notary Public for Boise, ID
Residing at: Ada County
My Commission Expires: 2/2/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather Reilly
Ada County Prosecutor
200 W. Front St., Rm. 3191
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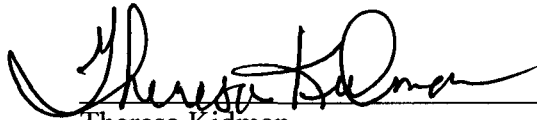
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Theresa Kidman

Owen M. McDougal, Ph.D.
2023 N. 18th Street
Boise, ID 83702

23 April 2012

Pitcher & Holdaway
40 W. Cache Valley Blvd. Suite 3B
Logan, UT 84321

Dear Mr. Holdaway,

I have completed a structure comparison review of (-)-(6a*R*, 10a*R*)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6*H*-benzo[*c*]chromen-1-ol, commonly referred to as THC and AM-2201 (Figure 1). I find the two compounds to be structurally dissimilar.

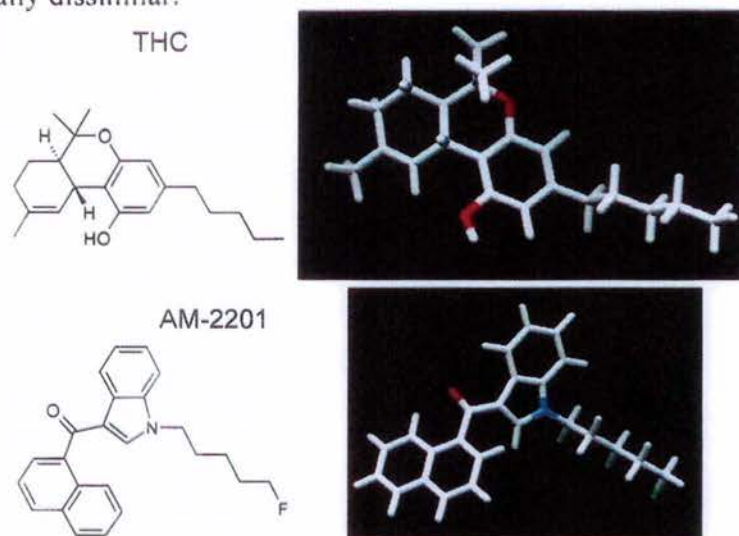


Figure 1. Structure of THC (top) and AM-2201 (bottom). Molecular representations are provided in two and three dimensional perspectives.

THC Structure: THC contains a three ring scaffold that provides a rigid template from which protrudes the alkyl chain (observed toward the bottom right of the structure). The functional groups are limited to the arene (aromatic) ring, an ether, hydroxyl, and pi bond of a cycloalkene.

AM-2201 Structure: In contrast, the molecular structure of AM-2201 is not as constrained about the central core of the molecule. The energy barrier for rotation of either the indole or the naphthalene ring systems is considerably less. This is to say that the naphthalene rings may rotate about the single bond to the carbonyl of the ketone. In a similar manner, the indole ring may rotate about the single bond of the carbonyl on the other side. The functional groups present in AM-2201 are the arene rings of the naphthyl, the aromatic ring system of the indole, a ketone, and the haloalkyl.

Contrast between THC and AM-2201:

Scaffold: The central three-ring scaffold of THC provides bulk and puckering of the molecule. This bulk is further exacerbated by the dimethyl substituents attached to carbon number 6 in the center ring. In contrast, AM-2201 is not constrained by this central ring system. AM-2201 is spread out over a greater region in space than THC; due in part to the lack of a central ring. AM-2201 lacks the bulk associated with the core structure of THC; the atoms are spread out over a greater region in space giving the molecule a very different three dimensional depiction. Figure 2 shows the structure of THC and AM-2201 where the atomic radii are displayed as a transparent surface. The surface enables a view of the space occupied by the atoms that comprise each structure. Regions of red represent electronegative oxygen, blue for electronegative nitrogen, and green is used for the halogen, fluorine.

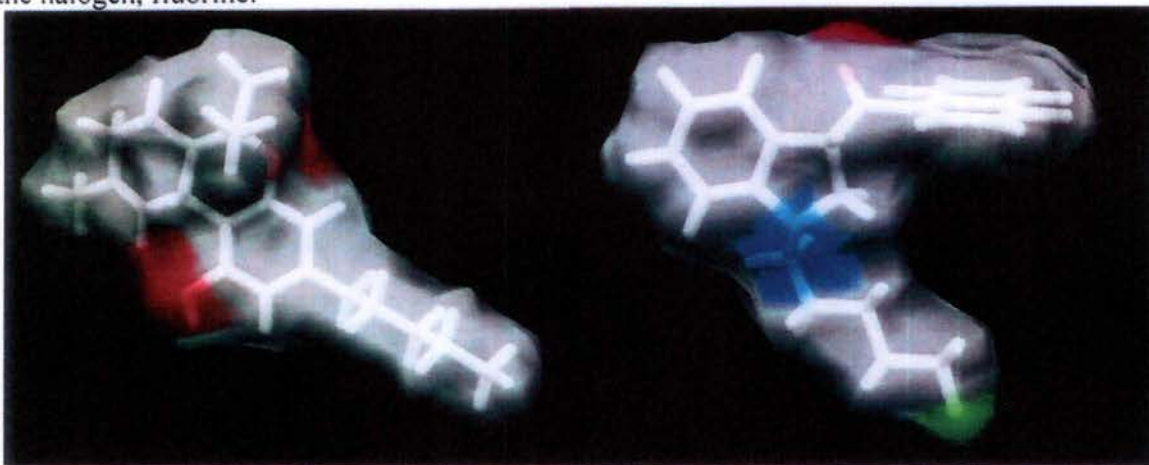


Figure 2. Structure comparison of THC (left) to AM-2201 (right). Electronegative atoms are identified by color: oxygen (red), nitrogen (blue), and fluorine (green).

Alkyl vs Haloalkyl: The difference between the alkyl chain in THC and the haloalkyl chain in AM-2201 is significant from a functional perspective. There is an appreciable difference in polarity between the hydrogen atoms of an alkyl group and the fluorine atom in haloalkyl group of AM-2201.

Functional Groups: THC is limited to a single aromatic ring, while the two sets of rings in AM-2201 are both aromatic. This has a profound impact on the global structure of AM-2201. A naphthalene ring consists of two benzene rings attached to one another, they are flat or planar. The naphthalene is coupled through a carbonyl group in AM-2201 to the aromatic heteroatomic indole ring, also planar. The carbonyl group allows rotation of the aromatic rings: a degree of structural flexibility than cannot be found in THC.

In my review of I.C. 37-2705(d)(30), the section of the law that most closely addresses AM-2201 is section ii. a., which refers to 3-(1-naphthoyl)indoles. While AM-2201 contains a the 3-(1-naphthoyl)indole, it does not contain substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl. The argument that AM-2201 fits into a category of "synthetic substances, derivatives, and their isomers with similar chemical structure," to tetrahydrocannabinols, is in my opinion, not valid for the reasons specified above.

Please let me know if you would like additional clarification on any or all of the content provided in this opinion letter.

Best regards,



Owen M. McDougal, Ph.D.

Time	Speaker	Note
<u>09:26:58 AM</u>		CRFE11.16247 St v Matthew Taylor
<u>09:27:35 AM</u>		CRFE11.16248 St v Hieu Phan
<u>09:27:39 AM</u>		CRFE11.15480 St v Charlynda Goggin Motn to Withdraw
<u>09:27:41 AM</u>		CRFE11.15481 St v Cardee Peterson
<u>09:27:43 AM</u>		CRFE11.15482 St v Morgan Alley
<u>09:27:44 AM</u>		CRFE11.15483 St v Tashina Alley Motn to Withdraw
<u>09:28:45 AM</u>		Defendants present on bond
<u>09:30:26 AM</u>	State Attorney	Heather Reilly
<u>09:31:52 AM</u>	Judge	would like a substitution of counsel and conflict PD. The conflict PD must be ready to go to trial July 18.
<u>09:31:55 AM</u>	Jim Ball	will contact the PD office
<u>09:31:58 AM</u>	Judge	continues Motions to Withdraw - May 22 @ 9:00 am
<u>09:32:00 AM</u>	Judge	other defendants do not have to be present at that time

MAY 18 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

Ryan L. Holdaway ISB# 8289
Diane Pitcher ISB# 8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: diane@pitcherholdaway.com
Email: ryan@pitcherholdaway.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO

Plaintiff,

V.

MORGAN CHRISTOPHER ALLEY

Defendant.

Case No.: CR FE 11-15482

NOTICE OF HEARING

RE: MOTION TO RECONSIDER

NOTICE IS HEREBY GIVEN that a Hearing of the above captioned matter is to be held on the 12th day of June 2012, at 11 a.m., at the Courthouse, 200 W Front St. Boise, ID 83702.

DATED this 18th day of May 2012.

D. Pitcher

Diane Pitcher
Attorney for Plaintiff

NOTICE OF HEARING RE: MOTION TO RECONSIDER

000365

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather C. Reilly
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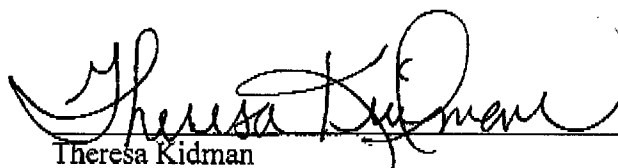
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Theresa Kidman

NOTICE OF HEARING RE: MOTION TO RECONSIDER

107
HS
6/12
11:00

NO. _____
A.M. _____ FILED P.M. _____

JUN 07 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482
Plaintiff,)	
)	
vs.	)	STATE'S OBJECTION &
	)	RESPONSE TO
	)	DEFENDANT'S MOTION TO
MORGAN C. ALLEY,	)	RECONSIDER
)	
Defendants.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County, State of Idaho, and hereby **OBJECTS** to Defendant's request for this Court to Reconsider its' Decision and Order re: Motion to Dismiss.

Applicable Legal Principles

On May 4, 2012, Defendant, by and through Mr. Holdaway, filed a Motion to Reconsider as well as a Memorandum in Support of Defendant's Motion to Reconsider. In the Motion to Reconsider, Counsel refers to State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. Idaho 1983) for the proposition that a motion to reconsider in this case is

JB

permissible. However, in Nelson, the Court of Appeals was considering the timeliness of an appeal filed by the state regarding the granting of a Defense Motion to Suppress. In Nelson, upon a motion to dismiss the state's appeal as untimely, the state argued that it had filed a timely "motion for reconsideration" in the district court which stayed the running of the time for filing an appeal. Nelson, 104 Idaho at 430, 659 P.2d at 783. The Court of Appeals specifically stated: "Neither the criminal rules nor the civil rules provide for a "motion for reconsideration". Id. at 430, 659 P.2d at 783. In conclusion, the court held: "In summary, we can find no rule of criminal procedure which permits a party to file a motion for reconsideration of an order granting a motion to suppress evidence. This does not mean that such a motion is improper if made, but only that it does not terminate the time for filing notice of appeal under I.A. R. 14(a)." Id. at 431, 569 P.2d at 284. Years later, in State v. Bicknell, 140 Idaho 201, 91 P.3d 1105 (2004), Justice Burdick cited to the Nelson case in his dissenting opinion, stating: "The Court of Appeals concluded that the motion for reconsideration was not an appropriate filing under the Criminal Rules..." Id., at 206, 91 P.3d at 1110.

Similarly, in this case, there is no rule of criminal procedure, which permits a party to file a motion for reconsideration of an order denying a motion to dismiss. Therefore, the state respectfully requests this Court **DECLINE** Defendant's invitation to reconsider the Corrected Memorandum Decision and Order Re: Motion to Dismiss filed on April 9, 2012, and **DENY** the motion.

Response to Memorandum in Support of
Defendant's Motion to Reconsider

Since there is no rule of criminal procedure specifically allowing the Court to Reconsider the Denial of a Motion to Dismiss, the state is unclear if the hearing set on June 12, 2012, is a hearing at which time the Court will decide whether or not to Reconsider its' Order, consider the merits of the Defendant's Motion to Reconsider, and/or both. Therefore, out of an abundance of caution, the state provides the following response.

If this Court is inclined to consider the Defendant's Motion, the state respectfully requests the Court **DENY** the Motion to Reconsider on the merits. In light of the fact that the Idaho Criminal Rules do not expressly provide for a Motion to Reconsider in this context, it appears that the appellate courts have not established a trial judge standard of review on motions for reconsideration of denial of a motion to dismiss pursuant to either Idaho Criminal Rule (ICR) 6.7 and/or (ICR) 48. Therefore, for assistance, the state notes that in the civil context, as this Court is no doubt aware, "The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court."

Antim v. Fred Meyer Stores, Inc., 150 Idaho 774, 782, 251 P.3d 602, 610 (Ct. App. 2011); Campbell v. Reagan, 144 Idaho 254, 258, 159 P.3d 891, 895 (2007); Carnell v. Barker Mgmt. Inc., 137 Idaho 322, 329, 48 P.3d 651, 658 (2002).

1. Legislative Intent

The state disagrees with Defendant's conclusion that "This Court improperly turned to Legislative Intent..." On the contrary, the Court begins its' Discussion in the Memorandum Decision and Order, on page 3, by re-stating, verbatim, the language of the applicable sections of Schedule I, pursuant to I.C. §37-2705(d)(30)(ii)(a). The Court goes on to clearly and repeatedly articulates as follows: "The interpretation of a statute must begin with the literal words of the statute." (Corrected Memorandum Decision and Order {Order} at p. 4). Again, later in the Court's Discussion, the court reiterates: "To properly glean the meaning of the statute, one has to read the statute as a whole, commencing with the listing of the compounds that are defined in Schedule I. (Order at

page 9). While the Court makes reference to legislative intent/history during the discussion, it is clear that the Court's Decision is based upon the plain language of the statute. Further, the Court did not consult legislative history or other extrinsic evidence for the purpose of altering the clearly expressed intent of the language, which is what is prohibited when the statutory language of the statute is unambiguous. Verska v. St. Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (*citing City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)). Any reference, by this Court, to the legislative history and/or intent in amending Schedule I was appropriate and permissible as further support of this Court's Conclusion that AM2201 is a Schedule I Controlled Substance based upon a reading of the language of I.C. §37-2705(d)(30)(ii)(a). In fact, this Court specifically states: "The minutes of the legislative committee **also** make clear that the purpose behind the legislation is the banning of categories of substances, not just particular compounds." (Order at p. 12 lines 3-5, *emphasis added*). Further evidence of the Court's use of legislative history and intent merely as support for the Court's conclusions based upon the language of the statute.

As the Court correctly points out, the statute must be read as a whole, starting with:

(d) Hallucinogenic substances.

(30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure **such as the following**:

(ii) The following synthetic drugs:

[List.]

(*emphasis added*)

In reading the statute as a whole, and based upon the language in the statute, this Court correctly ruled that AM-2201 is a Schedule I Controlled Substance, specifically, the chemical structure of AM-2201, if not exactly described in I.C. §37-2705(d)(3)(ii)(a), is certainly similar. (Order at p. 11). To put it another way, AM-2201 is a (d)

Hallucinogenic substance: (30) a synthetic substance with similar chemical structure, *such as* those specifically listed under (ii) *the following synthetic drugs:* (a) any compound structurally derived from 3-(1-naphthoyl) indole... by substitution at the nitrogen atom by alkyl....

Additionally, from the state's perspective, this Court's reference to legislative intent including, Committee Minutes, was proper because, upon the conclusion of the evidentiary hearings held on the Motion to Dismiss, this Court was essentially faced with the task of defining one (1) word contained within the statute. By way of the testimony and evidence presented, the parties framed the issue and implicitly suggested that the word "alkyl" was ambiguous. Or to re-state using the Court's language: "In particular, the parties dispute the meaning of "by substitution at the nitrogen atom of the indole ring by alkyl..." (Order at p. 6). However, this Court ultimately held: "This type of analysis misses the point." (Order p. 9) As previously pointed out, the Court immediately thereafter states: "To properly glean the meaning of the statute, one has to read the statute as a whole, commencing with the listing of compounds defined in Schedule I." (Order p. 9).

This Court properly gave effect to the words of I.C. §37-2705, and correctly concluded that AM-2201 is a Schedule I controlled substance based upon the language contained in the statute.

2. Effects of the Chemicals

Turning to Defendant's second "ground" presented in the Motion to Reconsider, once again, the state disagrees and submits that this Court properly considered the statute as a whole in formulating its' Decision and Order. Consideration of all of the language contained in I.C. § 37-2705, specifically including sub-section (d) Hallucinogenic substances is required. Whether the Defendant and his experts agree or not, synthetic drugs, such as AM-2201, have been designated by the Legislature of Idaho as Hallucinogenic substances. The legislature further designated these synthetic drugs under sub-sub section (30) Tetrahydrocannabinols.....and/or synthetic substances. As this Court ruled, sub-sub section (30) does not list a specific substance, but a description of substances. (Order p. 10, lines 7-8). In Defendant's argument in support of his second ground for reconsideration, Defendant ignores portions of the statute by suggesting that this Court improperly considered the fact that AM-2201, as well as the other examples of synthetic drugs listed in 37-2732(d)(30)(ii), is (are) substance(s) or compound(s) that mimic the **hallucinogenic** properties of marijuana. (Order at p. 11, *emphasis added*). When in fact, this conclusion by the Court is exactly what the plain language and organization of the statute requires.

Defendant apparently takes issue with the Court's use of the term synthetic cannabinoids. However, that term was utilized during the presentation of the evidence on the Motion to Dismiss, because it is a common, easily understood, shorthand way to refer to the types of chemicals/synthetic drugs at issue in this case.

It is ironic that, starting at page 4 of the Memorandum in Support of Defendant's Motion to Reconsider, the Defendant is specifically asking this Court to consider "legislative intent" regarding the Court's discussion of the hallucinogenic effects of AM-2201. Defendant urges this Court to consider House Bill 139, despite the fact that the first 3-½ pages of Defendant's Memorandum criticized the perceived improper reliance, by this Court, upon legislative intent/history without the Court first finding the language of the statute ambiguous. The state further notes with interests that Defendant cites, on several occasions, to language contained in the Court's Order at pages 17-20, in support of Defendant's second ground for reconsideration re: effects of the chemicals. However, pages 17-20 of the Court's Decision and Order relate to the Defendant's initial challenge that the statute is unconstitutionally vague. That portion of the ruling by the Court is not challenged in Defendant's Motion to Reconsider. Therefore, the references and citations to pages 17-20 of the Court's Order are taken out of context by Defendant and improperly utilized to support Defendant's second ground for reconsideration.

In any event, Defendant's suggestion that the statute is focused solely on structure is inaccurate. As mentioned, the sub-section at issue in this case, is entitled simply: (d) Hallucinogenic substances. The sub-section goes on to state: **Any** material, compound,

mixture or preparation which contains any quantity **of the following hallucinogenic substances....** (*emphasis added*). The noun **hallucinogen**, is defined by Webster's Dictionary as a substance which produces hallucinations. –**hallucinogenic, adj.**

(*emphasis added*) Further, hallucinations is defined by Webster's Dictionary in part as, noun, 1. an apparent sensory experience of something that does not exist outside the mind; sense perception not caused by external stimuli....¹

In addition, according to the Encyclopedia Britannica, hallucinogen is a substance that produces psychological **effects** that are normally associated only with dreams, schizophrenia, or religious exaltation. It produces changes in perception, thought, and feeling, ranging from distortions of what is sensed (illusions) to sensing objects where none exist (hallucinations). Hallucinogens heighten sensory signals, but this is often accompanied by loss of control over what is experienced. (*emphasis added*). The plain language of the statute relates directly to the effect of the substance, a hallucinogenic.

Further, Defendant is apparently asking this Court to also disregard I.C. §37-2704 Schedule I tests.

I.C. §37-2704 Schedule I tests. – The board shall place a substance in schedule I if it finds that the substance:

- (a) has high potential for abuse; and
- (b) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

¹ Webster's New Universal Unabridged Dictionary, 639 (copyright 1994 by dilithium Press, Ltd., published by Barnes and Noble 1994)

Contrary to Defendant's argument, the Controlled Substance Act specifically includes and considers the effects of substances when placing them within each schedule, including Schedule I. By way of further example, see also I.C. 37-2706 Schedule II Tests, which includes: (c) the abuse of the substance may lead to severe psychic or physical dependence. (*See also* I.C. §37-2708; 10 & 12.). In addition, the state respectfully directs the Court's attention to I.C. §37-2702 Authority to Control. This section requires consideration of the effects of substances when determining within which schedule a substance will be placed. Specifically, among other considerations of the effect of a substance, I.C. §37-2702(a)(2) states: the scientific evidence of its' pharmacological effect, if known.

Defendant suggests that the removal of the words "and pharmacological activity" in the 2011 amendment to I.C. §37-2705 implicitly means that the only remaining basis for evaluating if a substance is prohibited by I.C. 37-2705 is to look at the substances structure. This suggestion is flawed and without support in the legislative history. To come to this conclusion, the Defendant ignores the plain language of Schedule I, sub-section (d) Hallucinogenic substances and the statute as a whole including I.C. § 37-2702 and 37-2704. The state suggests that the language "and pharmacological activity" was likely deleted from sub-sub section (30) due to its' redundancy in light of the entire statutory language, as described above. In additional, the inclusion of the language could have been interpreted to require difficult and potentially costly scientific analysis

specifically related to proof of “pharmacological activity”. Therefore, the language was deleted from the sub-sub section.

Defendant continues the argument by heavily relying upon the distinction between the structure of THC and AM-2201, and even submits additional “affidavits” from Dr. De Jesus and Dr. McDougal. However, comparing the structure of THC and AM-2201 misses the point. The plain language of the statute does not require such a comparison or determination. As previously articulated and specifically found by this Court, upon reading the statute as a whole, and based upon the language in the statute, AM-2201 is a Schedule I Controlled Substance. Specifically, the chemical structure of AM-2201, if not exactly described in I.C. §37-2705(d)(3)(ii)(a), is certainly similar to the example listed in the statute. (Order at p. 11). The Court specifically states “It appears undisputed from the testimony that AM-2201 is derived from 3-(1-naphthoyl)indole by substitution at the nitrogen atom by alkyl halide”. (Order at p. 8, lines 19-20). Therefore, based upon the statutory language and organization, it is unnecessary for this Court to compare AM-2201 to the chemical structure of THC.

Finally, the Court’s Order correctly articulates that the synthetic drugs listed in I.C. §37-2705(d)(30)(ii) are examples of the compounds prohibited. Contrary to Defendant’s suggestion, this Court’s reading of the statute and ruling in this case does not render the list of the examples of synthetic drugs identified in I.C. §37-2705(d)(30)(ii) superfluous and redundant. The list provides examples of the types of synthetic drugs and/or compounds prohibited and are useful guidance for the citizens of Idaho.

CONCLUSION

In accordance with the reasoning above, the State respectfully requests the Court decline to consider the Defendant's Motion and **DENY** the same. In the alternative, the State respectfully request this Court exercise its' discretion and **DENY** the Motion to Reconsider based upon the merits. The Court properly ruled that AM-2201 is contained within Schedule I, pursuant to I.C. §37-2705.

The State, for the foregoing reasons, respectfully requests this Court **DENY** the Defendant's Motion to Reconsider in its' entirety.

DATED this 7th day of June, 2012.

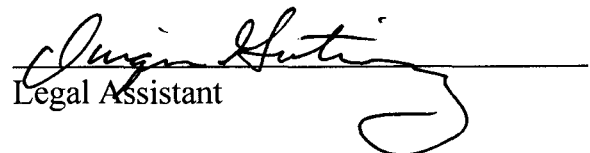
GREG H. BOWER
Ada County Prosecuting Attorney


By: Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of June, 2012, a true and correct copy of the foregoing Response to Motion to Dismiss, was sent to:

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Legal Assistant

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>10:48:59 AM</u>		CRFE11.15482 State v. Morgan Alley
<u>11:04:03 AM</u>	Court	Calls case deft present on probation with counsel Ryan Holloday and Diane Pitcher. State's atty Heather Reilly.
<u>11:04:44 AM</u>	Court	Addresses counsel.
<u>11:05:06 AM</u>	Personal Attorney - Holloday	Argument on motion to reconsider.
<u>11:14:53 AM</u>	State Attorney	Argument on motion to reconsider. Deny the motion on merits.
<u>11:22:02 AM</u>	Personal Attorney - Holloday	Further argument on motion to reconsider.
<u>11:24:59 AM</u>	Court	Addresses counsel.
<u>11:25:04 AM</u>	Personal Attorney - Holloday	Further argument on motion.
<u>11:27:59 AM</u>	Court	Addresses counsel regarding a motion to reconsider. Not conteplated in the criminal rules but are in civil rules.
<u>11:29:43 AM</u>	Court	Will entertain the motion to reconsider on this case.
<u>11:31:12 AM</u>	Court	Remain convinced regarding the reading of the statute.
<u>11:31:45 AM</u>	Court	Stands by his original ruling and will not reverse it.
<u>11:32:25 AM</u>	Court	Motion to reconsider is denied.
<u>11:32:31 AM</u>	End.	

FILED 4:56
A.M. P.M.

JUN 12 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Heather C. Reilly

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

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Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

THE STATE OF IDAHO,
Plaintiff,

VS.

MORGAN C. ALLEY,
TASHINA ALLEY,
CHARLYNDA GOGGIN,
CADEE PETERSON,
HIEU PHAN, &
MATTHEW TAYLOR.

Defendants.

**Case No. CR-FE-2011-0015482;
CR-FE-2011-0015483;
CR-FE-2011-0015480;
CR-FE-2011-0015481;
CR-FE-2011-0016248; &
CR-FE-2011-0016247**

**STATE'S MOTION IN LIMINE
AND REQUESTED JURY
INSTRUCTION**

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves this Court in Limine to make the following ruling: issuing an Order precluding the Defendants' from presenting testimony and/or evidence relating to "ignorance of the law" or Defendants' claimed lack of knowledge of the illegality of the substances manufactured and/or possessed and/or delivered in this case. Further, the State provides notice of intent to request this Court consider, upon the conclusion of the trial if appropriate, among other jury instructions, Idaho Criminal Jury Instruction 1511 Ignorance or Mistake of Law Defense. *(copy of ICJI 1511 attached)*.

STATE'S MOTION IN LIMINE (ALLEY; ALLEY; GOGGIN; PETERSON; PHAN; & TAYLOR) Page 1

000380

Based upon previous motions filed by several Defendants' in this case, as well as statements made by several Defendants' to law enforcement during the investigation, the state perceives or anticipates one or more of the Defendants' to claim as a defense, that they were unaware of the illegality of the substances that were being manufactured, prepared for sale/distribution and/or sold out of the Red Eye Hut in this case.

Ignorance of the law is not a defense. *State v. Fox*, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993). In the *Fox* case, as the state anticipates in the case currently before this Court, the Defendant proffered evidence in an effort to establish Fox's lack of knowledge that the substance, ephedrine, was illegal. The Supreme Court of Idaho held as follows: "The mens rea element of the offense of Possession of Controlled Substance is knowledge of the possession not knowledge that the substance possessed is a controlled substance." *Id.*, 124 Idaho at 925; 866 P.2d at 182. (emphasis added). Therefore, defense evidence tending to establish lack of knowledge that the substance is illegal is irrelevant. Evidence that is not relevant is not admissible. I.R.E. 402. *Id.*, at 926.

The charged conduct for which the state anticipates this defense to be presented relate to each Defendant charged as a co-conspirator in Count I. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), §18-1701; 37-2732(f). In addition, at least two (2) of the Defendants', Goggin and Taylor, are also charged with the actual Delivery of a Controlled Substance. The Defendants' are charged pursuant to I.C. §37-2732(a), which contains language similar to the statute that the Supreme Court of Idaho reviewed in *Fox*. Specifically, the Court held that pursuant to I.C. 37-2732(c) Possession of Controlled Substance is a general intent crime. The language relative to mens rea in I.C. §37-2732(c) analyzed by the Supreme Court is also contained in I.C. 37-2732(a) "...it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance." Therefore, the analysis applied in *Fox* applies in this case. The state must prove the Defendants' had knowledge of the manufacture or delivery, not knowledge that the substance manufactured or delivered is a

controlled substance. In this case, any Defense evidence tending to establish lack of knowledge that the substances at issue are illegal is irrelevant. Evidence that is not relevant is not admissible. I.R.E. 402.

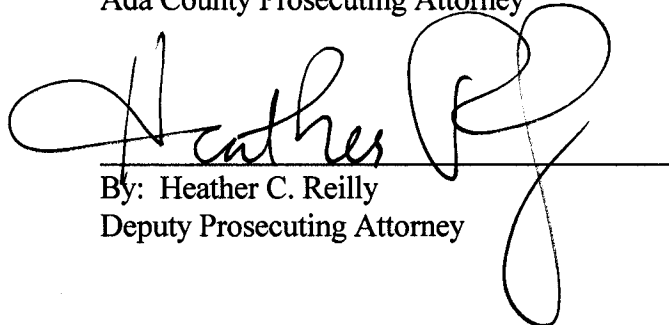
The state concedes that the Defendants' in this case are charged with Conspiracy, which does require the state to prove beyond a reasonable doubt that two (2) or more Defendants agreed to commit the crime and intended that the crime would be committed. Further, the state concedes that as charged, under the possession with intent to deliver alternative, the state must prove one or more Defendants possessed the substance with the intent to deliver said substance. However, any perceived additional knowledge or intent elements pursuant to the Conspiracy or Possession with Intent to Deliver statutes do not relate to the knowledge that the substance was illegal. (*See ICJI 403A Possession of a Controlled Substance with Intent to Deliver/Manufacture*, also cites State v. Fox in the comment section).

Therefore, the holding in State v. Fox, applies in this case, as articulated above. Any evidence or testimony tending to establish any Defendants' claimed lack of knowledge that the substances in this case are illegal is irrelevant. Evidence that is irrelevant is not admissible pursuant to I.R.E. 402 and the state seeks an Order from this court precluding the admission of such evidence as well as any reference in voir dire, questioning of witnesses, and statements or arguments by Counsel to such evidence.

DATED this 12th day of June 2012.

GREG H. BOWER

Ada County Prosecuting Attorney


A large, stylized handwritten signature in black ink, appearing to read "Heather C. Reilly", is written over a horizontal line.

By: Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of June 2012, I caused to be served, a true and correct copy of the foregoing Motion in Limine to be sent to:
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Legal Assistant

ICJI 1511 IGNORANCE OR MISTAKE OF LAW DEFENSE

INSTRUCTION NO. _____

When the evidence shows that a person voluntarily did that which the law declares to be a crime, it is no defense that the person did not know that the act was unlawful or that the person believed it to be lawful.

Comment

State v. Fox, 124 Idaho 924, 866 P.2d 181 (1993).

ICJI 403A POSSESSION OF A CONTROLLED SUBSTANCE
WITH INTENT TO DELIVER/MANUFACTURE

INSTRUCTION NO.

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] possessed any amount of [name of substance], and
4. the defendant either knew it was [name of substance] or believed it was a controlled substance, and
5. the defendant intended to [deliver that substance to another] [manufacture that substance].

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

[The possession of [one or more] controlled substances[, even in multiple packages,] is not sufficient by itself to prove an intent to deliver. The state must prove one or more additional circumstances from which you can infer that intent. The additional circumstances could include, but are not limited to, the possession of controlled substances in quantities greater than would be kept for personal use; or the existence of items customarily used to weigh, package, or process controlled substances; or the existence of money and/or records which indicate sales or deliveries of controlled substances.

You are not required to infer an intent to deliver from any such additional circumstances. Whether any such additional circumstances have been proven, whether an intent to deliver should be inferred from them, and the weight to be given such inference are for you to decide. You should consider all of the evidence when deciding whether the state has proven an intent to deliver beyond a reasonable doubt.]

Comment

I.C. § 37-2732(a). See ICJI 428 for definition of "deliver."

If the defendant is charged with "second offense" drug possession, I.C. § 37-2739, that issue should be presented in a bifurcated proceeding.

Included Offense: ICJI 225. I.C. § 19-2132. Pursuant to the 1988 amendments to I.C. § 19-2132, a defendant has an obligation to request jury instruction on included offenses. The district court does not have a duty *sua sponte* to instruct the jury on included offenses. *State v. Porter*, 130 Idaho 772, 948 P.2d 127 (1997). Courts have inherent authority to instruct a jury on included offenses, and such authority does not infringe upon the power of charging and prosecuting, which is reserved to the executive branch. Accordingly, the district court has the authority, but not the duty, to *sua sponte* instruct on included offenses provided the giving of such instructions was reasonable based on the evidence presented. *State v. Rae*, 139 Idaho 650, 84 P.3d 586 (Ct. App. 2004)

In *State v. Fox*, 124 Idaho 924, 866 P.2d 181 (1993), the Supreme Court held that I.C. § 37-2732(c) does not set forth any mental state as an element of the crime of possession of a controlled substance. "Thus, as [this statute] does not expressly require any mental element and I.C. § 18-114 only requires a general intent, we conclude that the offense only requires a general intent, that is, the knowledge that one is in possession of the substance." The Court held that the defendant's lack of knowledge that the substance was illegal (as a controlled substance) was irrelevant.

In order to establish possession of a controlled substance, a defendant need not have actual physical possession of the substance; the state need only prove that the defendant had such dominion and control over the substance to establish constructive possession. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994). Constructive possession of a controlled substance exists where a nexus between the accused and the substance is sufficiently proven so as to give rise to the reasonable inference that the accused was not simply a bystander but, rather, had the power and intent to exercise dominion and control over the substance. *State v. Rozajewski*, 130 Idaho 644, 945 P.2d 1390 (Ct. App. 1997).

Separate convictions for manufacturing a controlled substance and possession of a controlled substance with intent to deliver require different set of facts and thus do not violate state and federal constitutional protection against double jeopardy. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

Even trace or residual quantities of cocaine fall within the scope of I.C. § 37-2732(c). *State v. Groce*, 133 Idaho 144, 983 P.2d 217 (Ct. App. 1999).

The statute does not contain a mental element. The committee concluded, based upon *State v. Lamphere*, 130 Idaho 630, 945 P.2d 1 (1997), a mental element as set forth in element 4 should be included.

The bracketed paragraphs regarding the intent to deliver are prompted by *State v. O'Mealey*, 95 Idaho 202, 506 P.2d 99 (1973), and *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

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1:30

JUN 13 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482,
	)	CR-FE-2011-0015483,
Plaintiff,	)	CR-FE-2011-0015480
	)	CR-FE-2011-0015481
vs.	)	CR-FE-2011-0016248, &
	)	CR-FE-2011-0016247
MORGAN C. ALLEY,)	
TASHINA ALLEY,)	
CHARLYNDA GOGGIN,)	
CADEE PETERSON,	)	NOTICE OF HEARING
HIEU PHAN, &)	
MATTHEW TAYLOR)	
)	
Defendants.)	

TO: The above-named defendants and their attorneys of record, Ryan Holdaway and/or Diane Pitcher, R. Keith Roark, John C. DeFranco, Michael Lojek, Kimberly Simmons, and Marco DeAngelo, you will please take notice that on the 21st day of June 2012, at the hour of 1:30 p.m. of said day, Heather C. Reilly, Deputy Prosecuting Attorney, will move this Honorable Court regarding the State's

NOTICE OF HEARING (ALLEY; ALLEY; GOGGIN; PETERSON; PHAN; & TAYLOR), Page 1

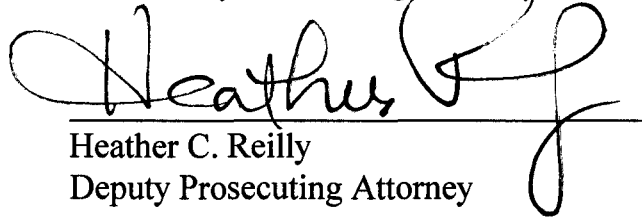
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Motion in Limine and Requested Jury Instructions in the above-entitled actions.

DATED this 13th day of June 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Heather C. Reilly", written over a horizontal line.

Heather C. Reilly

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of June 2012, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

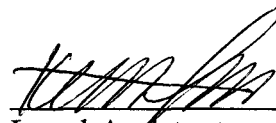
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Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

NO. _____
A.M. _____ FILED P.M. _____

JUN 13 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

GREG H. BOWER
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482;
	)	CR-FE-2011-0015483;
Plaintiff,	)	CR-FE-2011-0015480;
vs.	)	CR-FE2011-0015481;
	)	CR-FE2011-0016248 &
MORGAN C. ALLEY,	)	CR-FE2011-0016247
TASHINA ALLEY,)	
CHARLYNDA GOGGIN,	)	NOTICE OF INTENT TO USE
CADEE PETERSON,	)	EVIDENCE PURSUANT TO
HIEU PHAN, &	)	I.R.E. 404(b) and I.C.R. 16(a)
MATTHEW TAYLOR,)	
)	
Defendants.)	
)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County, State of Idaho, and provides notice to the Court and Counsel of the State's intent to use facts set out in the police reports, Search Warrant Affidavits, and/or other documents or evidence described below as Idaho Criminal Rule 404(b) evidence. The State believes that evidence of the other crimes, wrongs, or acts is admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident and/or common scheme or plan. In general, that State believes the following facts, as described below, are admissible and the probative value outweighs any prejudice:

NOTICE OF INTENT TO USE EVIDENCE PURSUANT TO I.R.E. 404(b) and I.C.R. 16(a) (ALLEY; ALLEY; GOGGIN; PETERSON; PHAN; & TAYLOR), Page 1

000391

On or about November 8, 2010, after receiving complaints regarding the suspected sale of "Spice" at a business called "Urban Alleys", which was located at 2613 Camas, Boise, Ada County, Idaho, Boise City Officer Joe Andreoli and Officer Kelley Clark responded to the business and made contact with two male adults inside. Both officers were wearing Boise City Police Uniforms and immediately upon the officers' entry into the store, one of the males, later identified as Colin Thomas, quickly closed the door leading from the main store to a back room in the shop. Officer Clark identified the other male present as Enoch Jodea Ford. Ford had been seen exiting the back room upon our arrival. Ford was then released as he claimed he had to go to class.

Officer Andreoli advised Thomas of the information received that the store was selling the product known as "Spice", that contained chemicals recently banned by the Board of Pharmacy. At the time, Officer Andreoli was aware that the Board of Pharmacy had recently added several of the chemicals commonly found in "Spice" to Schedule I in the Controlled Substance Act, by emergency rule. Thomas initially claimed that he was not an employee of the store, but rather was just helping out a friend. Officer Andreoli observed several different types/flavors of "potpourri" in a glass-shelving unit, each packaged in the same manner, in a 1" diameter circular plastic container/jar with a plastic lid bearing a round sticker labeling the product. Each of the individual containers identified the product as "Twizted Potpourri" along with an individual flavor or type. Each small container was being sold for \$10 with the exception of one called "Ultra Twizted Potpourri". According to Thomas, the "Ultra" was more potent than the others. Each of the labels identified the substance as "not for human consumption" and stated that it does not contain "*Spice*".

Thomas informed Officer Andreoli that the business owner, Tashina Alley, had recently left the store to go to dinner and a movie. At Andreoli's request, Thomas made contact with Tashina by telephone and Tashina agreed to speak with Officer Andreoli. Thereafter, Andreoli engaged in a telephone conversation with a female who identified herself as Tashina. Andreoli identified himself to Tashina and explained the purpose for being at her store. Andreoli asked

Tashina for consent to enter the back room of the store to ensure that no controlled substances or other chemicals commonly found in "Spice" were present in the store. Tashina stated that there is nothing illegal inside the store, however, denied consent to search further.

Officer Andreoli advised Thomas that he could be charged criminally, along with the owners if the "potpourri" was found to contain the recently banned chemicals. In Andreoli's presence, Thomas then made telephone contact with a person identified as the other owner of the store, described as Tashina's husband, Morgan Alley. According to Thomas, Morgan Alley told him that Morgan did not have authority to grant consent. Officer Andreoli was able to hear only one side of the conversation. Thomas explained to Andreoli that Morgan continually handed the phone to Tashina during the phone call. Further, the Alley's continually hung up on Thomas and ultimately refused to speak any further. When Thomas attempted to call the Alley's back they did not answer the phone.

Thomas asked Officer Andreoli if he could grant consent to search the shop. Andreoli informed Thomas that, due to the owners' denying consent, he could not grant consent. Thomas asked if he could bring the contents of the back room to the front of the store for inspection. Officer Andreoli advised Thomas that he was not going to direct him to do so and it was up to Thomas. Thomas made several trips to the back room and emerged each time with several items. These items consisted of the following: several pounds of packaged foliage leaves that were labeled and identified, including: Damiana Leaf, Mullein Leaf, Lemon Balm Leaf, Skull Cab Herb, Marshmallow Plant, several bottles of "Tasty Puff" Tobacco flavoring (ingredients - water propylene, glycol), several spray bottles (smelling of acetone), 8 canisters of Acetone (one (1) container was a gallon sized), metal pots with white pasty substance, drying plant material already having been sprayed with chemicals and flavoring, plastic containers, lids, and sticker labels (to be placed on the plastic containers for sale). Thomas did provide your affiant with a sample of the "Ultra Twizted Potpourri" as well as purported documentation from an "independent laboratory" stating that one (1) canister of "Twizted Potpourri" had been analyzed and did not contain the banned chemicals.

Officer Andreoli maintained custody of the canister of Ultra Twizted Potpourri and transported it to the Ada County Property Room where it was properly packaged and booked into property as evidence bearing DR#028909. This substance was ultimately sent to the Idaho State Forensic Laboratory to be analyzed. On a later date, Officer Andreoli learned that this substance did not contain one of the synthetic chemicals that had been recently banned in the State of Idaho pursuant to the Idaho Board of Pharmacy Emergency Rule. At that time, only seven (7) specific chemicals had been added to the Controlled Substance Act by the Rule.

Thereafter, in early February of 2011, Boise Home Depot Corporation loss prevention staff contacted Ada County Sheriff Detective Matt Taddicken regarding suspicious purchases. According to Detective Taddicken, the loss prevention staff explained that suspicious purchases by a person using the name Morgan Alley had been noticed. Apparently, Alley had made numerous purchases that included acetone, respirators, nitrile gloves, ceramic heaters, Rubbermaid style totes and a security alarm. Home Depot staff went on to tell Detective Taddicken that according to their records, Alley, had purchased over 60 containers of acetone and was attempting to special order one hundred more gallons of acetone. The amount of acetone being purchased was suspicious to staff because they normally do not sell that quantity of acetone, nor do they have people request to order such a large amount at one time. Loss prevention also explained that Alley had applied for a Home Depot business credit card using the business name of Urban Alley's LLC with an address of 2613 W. Camas Boise, Idaho. Mr. Alley had also provided personal information for himself at 4095 E. Race Street Meridian, Idaho. Detective Taddicken advised staffers that the quantity of acetone was too large for that typically used for methamphetamine production but it was a potentially dangerous amount if used, stored or transported improperly. Loss prevention advised that they would track the special order and contact Detective Taddicken when and if the order was to be picked up so the individual(s) could be interviewed concerning its use.

Detective Taddicken was able to make contact with Morgan Alley's probation officer, Derek Howell, from the Idaho Department of Corrections – Probation and Parole Office, and

advised him of the situation. Howell told Taddicken that Alley had been involved in the retail sale of "Spice" at several Treasure Valley retail locations in the past. Howell went on to say that he had warned Alley to distance himself from the "Spice" business, as it could be contrary to his probationary status. Howell was informed that Home Depot was going to alert Detective Taddicken if Alley arrived to pick up the acetone. Further, Howell was informed that Detective Taddicken intended to interview Alley due to the safety concerns regarding the large quantities of chemicals and danger associated with the handling and use of the acetone. Howell asked that he be included in the interview.

On February 26, 2011, Detective Taddicken received a call from loss prevention personnel at the Home Depot on Federal Way, in Boise, Ada County, Idaho. Detective Taddicken learned that Morgan Alley was at the Home Depot Store located on Federal Way in Boise, Idaho, attempting to pick up the one hundred gallons of acetone he had ordered. Detective Taddicken contacted the on-duty Probation and Parole Officer, Chad Smith, and asked for assistance in the matter. Smith agreed to assist. Detective Taddicken also requested assistance from ACSO patrol.

ACSO Deputy Brodin responded to The Home Depot store on Federal Way in Boise and located Morgan Alley near the lumber loading area at the west end of the building. A Home Depot employee had loaded a large pallet with boxes into Alley's pickup license plate 1ATW743. Brodin made contact with Alley who was identified by his Idaho driver's license. According to Brodin, Alley was questioned regarding the large quantity of acetone. Alley informed Brodin that he purchased the acetone in the large quantity because he gets a better deal on it and it's a good business decision. Alley explained to Brodin that he wanted to start a body shop and possibly a car lot, however did not have a building or tools or said business at that time. Alley was released by Deputy Brodin. However, Deputy Brodin learned that Detective Taddicken and Probation and Parole Officer Smith wanted to speak with Alley, so Deputy Brodin initiated a traffic stop on Alley's vehicle on Federal way near Broadway and again made

contact with Alley. Deputy Brodin detained Alley until Probation and Parole Officer Smith and Detective Taddicken arrived to speak with Alley.

Once Detective Taddicken and Probation and Parole Officer Smith arrived on scene, Probation and Parole Officer Smith requested that Patrol Deputy Brodin and Sgt. DeLeon search Alley's vehicle. During this search, Sgt. DeLeon located the following items: several large empty plastic containers (one of which had a very small quantity of a green plant like substance), a bank envelope with a ledger with initials and amounts next to them, filters for a professional grade painter's respirator, two digital scales with an unknown white powdery residue, and at least six paper towel rolls. Detective Taddicken made contact with Alley who was detained in the back of Deputy Brodin's patrol car. Alley began to echo the story that he had told Deputy Brodin concerning the use of the acetone for the purposes of an auto body business or a car lot. Detective Taddicken asked Alley if he had any background in auto bodywork. Alley stated that he did not have any but that he wanted to re-do the truck he was currently driving as well as his "Chrysler". Detective Taddicken questioned Alley regarding a white powder residue that was on the two digital scales located inside his truck. Alley stated that it was nothing illegal. Alley further informed Detective Taddicken that it was probably his wife's as she was on a diet and it could be flour. Detective Taddicken questioned Alley as to why the scales would be in the truck if they were used for a dietary reasons. Alley responded that they were his wife's and that she owned the business. Alley went on to say that he had removed himself from the business as requested by his probation and parole officer and that he had documentation from the State of Idaho that he had in fact done so.

Alley was transported to the Urban Alley's store at 2613 Camas Street in Boise so that a search of his store could be conducted at the request of Probation and Parole. Once inside the store, Probation and Parole Officer Smith and Detective Taddicken located the following items: green plant material in jars labeled with various trade names for potpourri, numerous sheets of labels and small empty glass jars, several empty containers of acetone, one half-face respirator, several digital scales, several three drawer plastic cabinets, numerous Rubbermaid type totes, a

stainless steel pot with a green and white powder residue, plant like residue in totes and on top of tables, a Fed Ex package addressed to "morgan urban alley's at 2613 W. camas boise, ID", and one "Product Analysis Report from Research Triangle Park Laboratories". The items were photographed but ultimately returned.

Detective Taddicken then spoke with Alley regarding the items located inside the business. Alley started out by denying the existence of both the respirator and the acetone. Once these items were shown to Alley, he stated that those items should not be there. Alley stated that he wasn't doing anything with the products and that no one was going to get hurt. He went on to say that the acetone in the truck was for the auto body business. When questioned about the acetone under the sink inside the business he said that was his from before and said that he gets it for other people but would not identify anyone else involved. Alley also stated that the acetone could have been left from before he moved into the shop.

On the same date, at approximately the same time, ACSO Deputy J. Meyer had been requested to assist with this investigation and was requested to respond to Alley's residence of 4095 E. Race Street in Meridian, Idaho. Deputy Meyer responded to this area and parked down the street from the residence. Deputy Meyer observed a brown Chevrolet Silverado bearing Idaho license plate 1A1S270, leave the residence of 4095 E. Race Street. Deputy Meyer followed the vehicle and ultimately initiated a traffic stop near Ustick/Five Mile after noticing a broken taillight on the vehicle, which was emitting a white light to the rear of the vehicle. Deputy Meyer identified the driver of the vehicle by his Idaho driver's license as James L. Lindsey.

While Deputy Meyer was speaking with Lindsey, he observed several pint size containers of acetone in the bed of the truck. Lindsey was detained and interviewed regarding the items at that time. Lindsey claimed no knowledge of the items in the truck. Lindsey stated that his friends Tashina (Alley) and Charlynda (Goggin) loaded bags of trash into the bed of his truck claiming that they contained empty beer cans. According to Lindsey, Tashina and Charlynda wanted to get rid of the items for fear of violating probation.

While Deputy Meyer was speaking with Lindsey, ACSO Deputy Savage arrived on scene with his certified narcotics detection canine and conducted a sniff of the exterior of the vehicle. The canine alerted to the bed of truck. A search of the contents of the bed of the truck by Deputies Savage and Meyer produced the following: approximately ten (10) Pyrex dishes, 9x13 in size, containing a crusty yellowish substance (consistent with the residue inside the stainless steel pot at the Urban Alley's store), approximately 50 empty acetone containers, white woven bags bearing a sticker label identifying the contents as "Damiana" from: www.mountainroseherbs.com.

Detective Taddicken, Sgt. De Leon and Probation and Parole Officer Smith then went to Alley's home located at 4095 Race Meridian, ID. Patrol deputies transported Alley to the home. Upon arrival at Alleys' home, Detective Taddicken noticed six unopened boxes from www.mountainroseherbs.com on the front porch. The labels indicated that the boxes weighed 55 pounds each for a total of 330 pounds. The boxes were addressed to Morgan Alley at 4095 Race Street Meridian, ID. Detective Taddicken and Probation and Parole Officer Smith went inside the home and conducted a walk through. Located inside the garage were the following: more Mylar bags labeled as Damiana, more of the small jars containing plant material, some of which were housed in white grocery bags and a large glass container containing green plant material.

At the home, Detective Taddicken spoke with Morgan's wife and confirmed her identity as Tashina Alley. Detective Taddicken explained to Tashina the same concerns for safety and handling of the acetone and the potential for fire or other hazards with the use of acetone in large quantities. Tashina was equally evasive in answering questions, stating the acetone was used by Morgan for concrete work and a future auto body business. Detective Taddicken stopped talking to Tashina shortly thereafter.

The facts sought to be introduced are detailed in the police reports, Search Warrant Affidavits and other documents provided with the State's Response to Discovery filed on the 19th day of January 2012. The State will be filing contemporaneously a supplemental discovery listing

the potential witnesses not previously specifically identified. However, each individual was previously disclosed in the documents provided in the January 19, 2012, Discovery Response.

RULE 404(b) AND CASE LAW

Idaho Rule of Evidence 404 generally prohibits the use of evidence of a person's character or trait of character for the purpose of proving "that the person acted in conformity therewith on a particular occasion." However, evidence of a person's character is admissible where the evidence is "offered by an accused, or by the prosecution to rebut the same." 404(a)(1).

Subparagraph (b) also allows evidence of other crimes, wrongs, or acts for purposes other than to show that the defendant acted in conformity therewith. The evidence is admissible to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The State must give the defendant notice reasonably in advance of trial of the existence of such evidence. The State has complied with that requirement, through discovery.

An Idaho Supreme Court case, State v. Grist is instructive on the issue. In State v. Grist, 147 Idaho 49, 205 P.3d 1185, (2009), the Supreme Court considered the admissibility of uncharged sexual misconduct in a sexual battery case. While the facts of that case are not similar to this instant case, the Court's analysis is a good reminder of the analysis that must be undertaken before evidence of uncharged misconduct should be admitted.

The Court stated as follows:

Admissibility of evidence of other crimes, wrongs, or acts when offered for permitted purpose is subject to a two-tiered analysis. First, the trial court must determine whether there is sufficient evidence to establish the other crime or wrong as fact. (citations omitted) The trial court must also determine whether the fact of another crime or wrong, if established, would be relevant. Evidence of uncharged misconduct must be relevant to a material and disputed issue concerning the crime charged, other than propensity. (citations omitted) Such evidence is only relevant if the jury can reasonably conclude that the act occurred and that the defendant was the actor. (citations omitted, Grist, 147 Idaho at 52, 205 P.3d at 1188)

As quoted above from the Grist case, admissibility of uncharged misconduct is a two-tiered analysis. The first tier, as discussed above, is relevance. The second portion of the analysis is a determination of prejudice versus probative value. As the Grist court stated:

Second, the trial court must engage in a balancing under I.R.E. 403 and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. (citations omitted) This balancing is committed to the discretion of the trial judge. The trial court must determine each of these considerations of admissibility on a case-by-case basis. (citations omitted) State v. Grist, 147 Idaho at 52, 205 P.3d at 1188.

In addition, more recently, in State v. Brummett, 150 Idaho 337, 247 P.3d 204 (Ct. App 2010), the Court of Appeals engaged in the same two-tiered analysis in the context of a retail burglary and petit theft case. The Court of Appeals held that since the Defendant's intent upon entry into the store was specifically at issue, prior acts of burglary and petit theft were relevant and admissible to a material disputed issue concerning the crime.

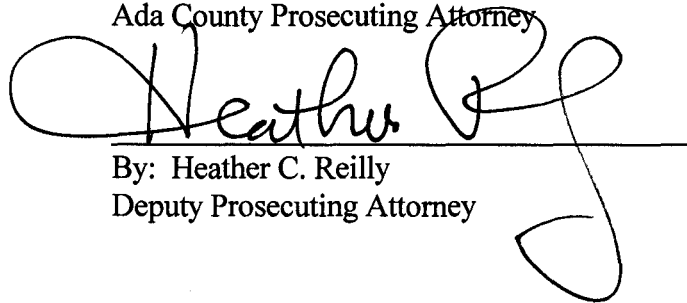
In the context of controlled substance and paraphernalia cases, the Court of Appeals has utilized the two-tiered analysis, in State v. Williams, 134 Idaho 590, 6P.3d 840 (Ct. App. 2000), holding that evidence of Williams familiarity with methamphetamine and past use of substances was probative of his intent to use drug paraphernalia as charged. Id., at 592-593, P.3d 842-843. However, regarding the second tier in the Williams case, it appears that the Court held that any unfair prejudice from the evidence to which defense counsel objected was minimal because Williams volunteered he had used and been addicted to the drugs in the past. Id., at 593, P.3d 843.

It is the State's view, in this case, that the evidence articulated above is admissible for a purpose other than propensity. Motive, opportunity, intent, knowledge and/or common scheme or plan are shown through the State's evidence as described, but the evidence is are also central to the anticipated defense of mistake, accident, or lack of knowledge. Because of this centrality, its probative value cannot be overstated. On balance, it appears to the State that the probative value outweighs the danger of unfair prejudice.

DATED this 13th day of June 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Heather C. Reilly", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

By: Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of June 2012, I caused to be served, a true and correct copy of the foregoing Notice of Intent to Use Evidence Pursuant to I.R.E. 404(b) and I.C.R. 16(a) upon the individuals named below in the manner noted:

**Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200**

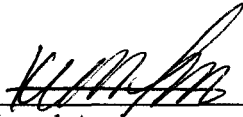
**R. Keith Roark
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Boise, ID 83712
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**Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702
FAX: 287-7409**

**Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061**

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

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1:30

FILED 4
A.M. P.M.

JUN 13 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
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Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482,
	)	CR-FE-2011-0015483,
Plaintiff,	)	CR-FE-2011-0015480
	)	CR-FE-2011-0015481
vs.	)	CR-FE-2011-0016248, &
	)	CR-FE-2011-0016247
MORGAN C. ALLEY,)	
TASHINA ALLEY,)	
CHARLYNDA GOGGIN,)	
CADEE PETERSON,	)	NOTICE OF HEARING
HIEU PHAN, &)	
MATTHEW TAYLOR)	
)	
Defendants.)	

TO: The above-named defendants and their attorneys of record, Ryan Holdaway and/or Diane Pitcher, R. Keith Roark, John C. DeFranco, Michael Lojek, Kimberly Simmons, and Marco DeAngelo, you will please take notice that on the 21st day of June 2012, at the hour of 1:30 p.m. of said day, Heather C. Reilly, Deputy Prosecuting Attorney, will move this Honorable Court regarding the State's

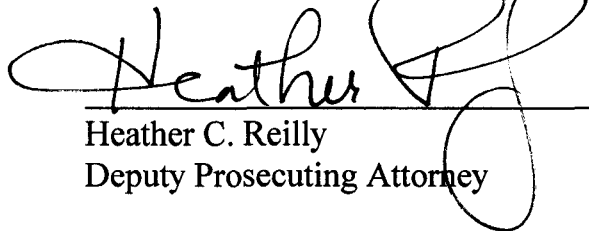
C

Notice of Intent to Use Evidence Pursuant to I.R.E. 404(b) and I.C.R. 16(a) in the above-entitled actions.

DATED this 13th day of June 2012.

GREG H. BOWER

Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of June 2012, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

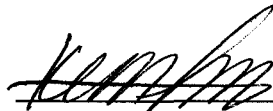
R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
FAX: 208-788-3918

John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
FAX: 345-8945

Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702
FAX: 287-7409

Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

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FAX No. 208 788 3918

A.M. P. 001/004

JUN 15 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**MOTION TO VACATE AND
RESET THE STATE'S MOTION
IN LIMINE, REQUESTED JURY
INSTRUCTIONS AND NOTICE
OF INTENT TO USE EVIDENCE
PURSUANT TO I.R.E. 404(b) AND
I.C.R. 16(a)**

COMES NOW the Defendant in the above entitled action, Morgan Alley, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby moves this court for its ORDER vacating the State's Motion in Limine, Requested Jury Instructions and Notice of Intent to Use Evidence Pursuant to I.R.E. 404(B) and I.C.R. 16(a) currently set for the 21st day of June, 2012 at 1:30 p.m. and resetting it at a date and time convenient to the court and counsel. The basis for this motion is that both Mr. Holdaway and myself will be in hearings that were previously scheduled on their calendars on the 21st day of June, 2012.

DATED this 15 day of June, 2012.

THE ROARK LAW FIRM

R. KEITH ROARK

000407

MOTION TO CONTINUE STATE'S MOTION IN LIMINE, JURY INSTRUCTIONS AND NOTICE OF INTENT TO USE EVIDENCE PURSUANT TO I.R.E. 404(b) and I.C.R. 16(a) - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of June, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

✓ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.

Doug Nelson for
R. KEITH ROARK

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1:30

NO. _____
A.M. _____ P.M. 2:45

JUN 15 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

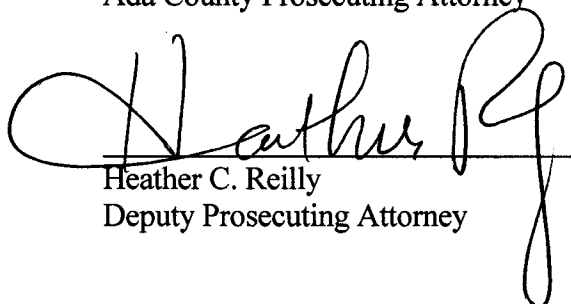
Case No. CR-FE-2011-0015482

**SECOND ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 15th day of June 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

JUN 18 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

STATE OF IDAHO

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,
TASHINA ALLEY,
CHARLYNDA GOGGIN,
CADEE PETERSON,
HIEU PHAN, and
MATTHEW TAYLOR,

Defendants.

Case No. CR-FE-2011-0015482
CR-FE-2011-0015483
CR-FE-2011-0015480
CR-FE-2011-0015481
CR-FE-2011-0016248 &
CR-FE-2011-0016247

**AMENDED
NOTICE OF HEARING**

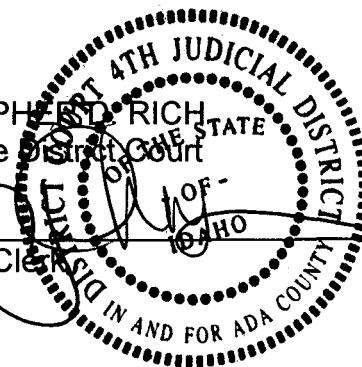
PLEASE TAKE NOTICE that the Honorable Richard D. Greenwood District Judge, has set this matter for Pretrial Conference, Notice of Intent to Use Evidence Pursuant to I.C.R. 404(b) and 16(a), Motion in Limine, and Requested Jury Instructions on Tuesday, June 26, 2012 at 09:30 AM, Hearing Scheduled on Tuesday, June 26, 2012 at 09:30 AM, at the Ada County Courthouse, 200 West Front Street, Boise, Idaho.

Dated this 18th day of June, 2012.

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____

Deputy Clerk



CERTIFICATE OF MAILING

I hereby certify that on the 18th day of June, 2012, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:

Heather Reilly
Deputy Prosecuting Attorney
200 W Front Street, Room 3191
Boise ID 83702

☐ By United States mail
☐ By telefacsimile
☒ By personal delivery
☐ By overnight mail/Federal Express

Ryan Holdaway
Diane Pitcher
Attorneys at Law
40 W Circle Valley Blvd., Ste. 3B
Logan UT 84341

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

R Keith Roark
Attorney at Law
409 N Main Street
Hailey ID 83333

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

John DeFranco
Attorney at Law
1031 E Park Blvd
Boise ID 83712

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

Michael Lojek
Ada County Public Defender
200 W Front Street, Rm. 1107
Boise ID 83702

☐ By United States mail
☐ By telefacsimile
☒ By personal delivery
☐ By overnight mail/Federal Express

Kimberly Simmons
Ada County Public Defender
200 W Front Street, R. 1107
Boise ID 83702

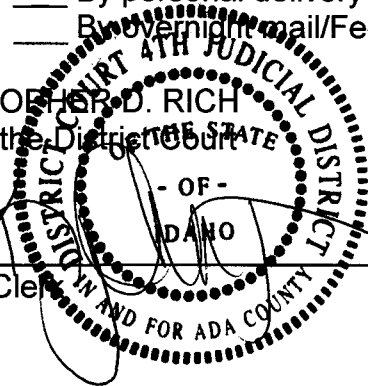
☐ By United States mail
☐ By telefacsimile
☒ By personal delivery
☐ By overnight mail/Federal Express

Marco DeAngelo
Attorney at Law
290 S 2nd East
Mountain Home ID 83647

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

CHRISTOPHER D. RICH
Clerk of the District Court

Deputy Clerk



107
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9:30

NO. _____
A.M. _____ FILED P.M. 3:15

JUN 21 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.	)	CR-FE-2011-0015483
	)	CR-FE-2011-0015480
MORGAN CHRISTOPHER ALLEY,	)	CR-FE-2011-0015481
TASHINA M. ALLEY,	)	CR-FE-2011-0016248
CHARLYNDA LYNN GOGGIN,	)	CR-FE-2011-0016247
CADEE JO PETERSON,)	
HIEU N. PHAN, and	)	STATE'S MOTION FOR LEAVE
MATTHEW STEVEN TAYLOR,	)	TO FILE EXHIBIT LIST
)	
Defendants.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for the County of Ada, State of Idaho, and moves this Court for leave for an extension of time for the State to file its Exhibit List in the above-listed cases. This Court's Scheduling Order requires the Exhibit List to be filed at the pre-trial conference on June 26, 2012.

However, due to the voluminous number of potential exhibits and the vast amount of time
STATE'S MOTION/ORDER FOR LEAVE TO FILE EXHIBIT LIST (ALLEY, ALLEY, GOGGIN, PETERSON, PHAN, TAYLOR), Page 1

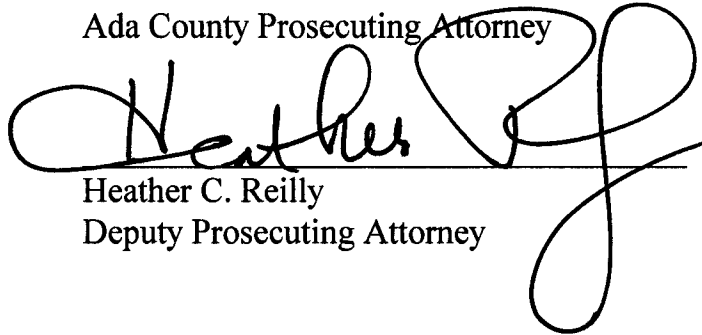
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it is taking to compile an Exhibit List, the State seeks additional time. The State will have the Exhibit List filed with the Court before the Jury Trial, set to commence on July 18, 2012, and proposes an extension of time to July 11, 2012.

RESPECTFULLY SUBMITTED this 21 day of June 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Heather C. Reilly", written over a horizontal line. The signature is stylized with large loops and a long vertical stroke extending downwards.

Heather C. Reilly

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of June 2012, I caused to be served, a true and correct copy of the foregoing State's Motion to Extend Time to File Exhibit List upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

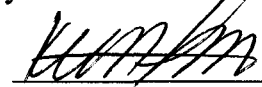
R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
FAX: 208-788-3918

John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
FAX: 345-8945

Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702
FAX: 287-7409

Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

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June 22, 2012 9:20:44 AM MDT	208 788 3918	133		7	Received

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JUN 22 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

**R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918**

Attorneys for Defendant.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

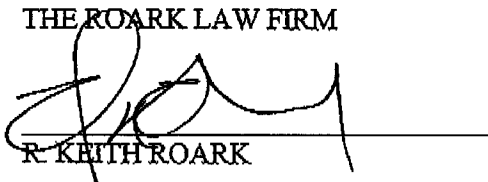
Case No. CR-FE-2011-15482

**MOTION TO SEVER COUNT III
OF THE INDICTMENT PURSUANT
TO RULE**

COMES NOW the Defendant in the above entitled action, Morgan Alley, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and pursuant to Rule 14 I.C.R., hereby moves this court for its ORDER requiring the State of Idaho to sever Count III of the Indictment on file herein upon the grounds that said Count requires the State to prove that the Defendant is a felon previously convicted of a drug offense and such proof will unduly and unfairly prejudice the Defendant as to Counts I, II, IV and V

DATED this 22nd day of June, 2012.

THE ROARK LAW FIRM


R. KEITH ROARK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of June, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Heather Riley, Deputy
Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

✓ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

NO. 130
 A.M. FILED P.M.

JUN 22 2012

CHRISTOPHER D. RICH, Clerk
 By JACKIE BROWN
 DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

Attorneys for Defendant.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

Case No. CR-FE-2011-15482

**MEMORANDUM IN SUPPORT OF
 MOTION TO SEVER COUNT III
 OF THE INDICTMENT**

COMES NOW the Defendant in the above entitled action offers this MEMORANDUM in support of his MOTION TO SEVER COUNT III OF THE INDICTMENT.

Idaho Criminal Rule 14 reads, in its entirety, as follows:

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information or by such joinder for trial together, the court may order the state to If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information or by such joinder for trial together, the court may order the state to elect between counts, grant separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

In Count I of the Indictment, Defendant Morgan Alley is charged with Conspiracy to "manufacture, deliver or possess with intent to deliver" a controlled substance. In Count II of the Indictment he is charged with conspiracy to "deliver or possess with intent to deliver" drug paraphernalia. In Count IV Mr. Alley is charged with possession of marijuana, a misdemeanor and Count V charges possession of paraphernalia, also a misdemeanor.

Count III of the Indictment charges Mr. Alley with possession of a firearm after having been convicted of a prior drug offense. There is no question that the mere reading of this portion of the Indictment to the jury, much less the evidence of his conviction of such offense, will prejudice his defense beyond repair.

Joinder of offenses is permissible if those offenses "could have been joined in a single complaint, indictment or information." *I.C.R. 13*. Two or more offenses may be charged on the same complaint, indictment or information when the offenses charged "are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan." *I.C.R. 8(a)*. Whether joinder is proper is "determined by what is alleged, not what the proof eventually shows. [footnote omitted] *State v. Cochran*, 97 Idaho 71, 73, 539 P.2d 999, 1001 (1975).

State v. Field, 144 Idaho 559, 565, 165 P.3d 273, 279 (2007).

There appears to be absolutely no connective tissue between Count III of the Indictment and any of the other charges contained therein. Even assuming the firearm in question was indeed within the possession of Mr. Alley and that he has previously been convicted of a drug offense, there is no allegation that the firearm was in any way connected to the alleged conspiracies or the individual misdemeanor charges. There is no "single transaction" or series of

transactions in which the activities alleged to constitute the factual predicate for Counts I and II are related to, much less arise out of, the facts alleged in Count II.

Perhaps the most often cited case regarding the issue of prejudicial joint is *United States v. Foutz*, 540 F.2d 733, 736 (4th Cir.1976), which analyzed the proper application of the Federal Rule paralleling Idaho's I.C.R. 14:

When two or more offenses are joined for trial solely on this theory [similar offenses], three sources of prejudice are possible which may justify the granting of severance under Rule 14: (1) the jury may confuse and cumulate the evidence, and convict the defendant of one or both crimes when it would not convict him of either if it could keep the evidence properly segregated; (2) the defendant may be confounded in presenting defenses, as where he desires to assert his privilege against self incrimination with respect to one crime but not the other; or (3) the jury may conclude that the defendant is guilty of one crime and then find him guilty of the other because of his criminal disposition.


The instant case provides an even more startling source of prejudice: the State will put evidence of a prior drug conviction before the jury in its order of proof for Count III and, therefore, not only will the jury be at risk to "conclude that the defendant is guilty of one crime and then find him guilty of the other because of his criminal disposition"; they will be shown clear evidence that, at a prior date and time, he was convicted of such crime and find him guilty of the instant crimes "because of his criminal disposition.

While the burden of proving prejudice is on the defendant *State v. Dambrell*, 120 Idaho 532, 537, 817 P.2d 646, 651 (1991) and the motion is directed to the court's discretion, *State v. Abel*, 104 Idaho 865, 867-70, 664 P.2d 772, 774-77 (1983); *State v. Cochran*, 97 Idaho 71, 74, 539 P.2d 999, 1002 (1975), it is also instructive to note that none of the overt acts alleged in Counts I and II mention the firearm. It is clear that possession of such firearm, even if it is proved, was not part of or material to the alleged conspiracy and the highly prejudicial nature

Count III as to all remaining counts far outweighs any interest the State might have in having the weapons count tried with the others.

For the reasons set forth herein, Count III should be severed from the indictment to be presented to the jury in this case.

RESPECTFULLY SUBMITTED this 22^d day of June, 2012.


R. Keith Roark, Attorney
For the Defendant Morgan Alley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of June, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

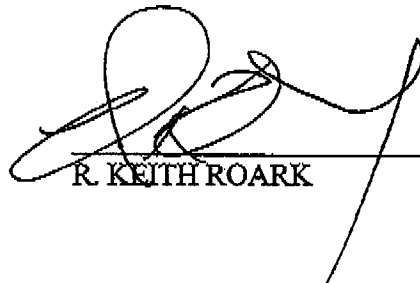
Heather Riley, Deputy
Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

✓

By hand delivering copies of the same to the office of the attorney(s) at his office.

By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

TIME RECEIVED
June 22, 2012 9:25:30 AM

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A.M. _____ FILED P.M. _____

JUN 22 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

**R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918**

Attorneys for Defendant.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

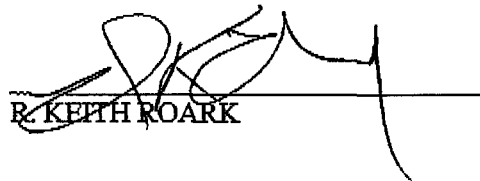
Case No. CR-FE-2011-15482

**JOINDER IN OBJECTION TO
STATE'S MOTION IN LIMINE AND
REQUESTED JURY INSTRUCTION**

COMES NOW the Defendant in the above entitled action, Morgan Alley, by and through his attorney of record, R. Keith Roark of The Roark Law Firm, and hereby joins in the objections made by co-defendant Matthew Steven Taylor to the States Motion in Limine and Requested Jury Instruction.

DATED this 22nd day of June, 2012.

THE ROARK LAW FIRM


R. KEITH ROARK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of June, 2012, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Heather Riley, Deputy
Ada County Prosecuting Attorney
200 W. Front Street
Room 3191
Boise, Idaho 83702

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at his office.

✓ By telecopying copies of same to said attorney(s) at the telecopier number 208/287-7709.



R. KEITH ROARK

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JUN 25 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Holly A. Koole
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482;
)	
vs.	)	STATE'S OBJECTION TO
	)	DEFENDANT'S MOTION TO
MORGAN CHRISTOPHER ALLEY	)	SEVER
)	
Defendant.)	
)	

COMES NOW, Holly A. Koole, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves this Court to deny Defendant's Motion to Sever Count III of the indictment. The proper procedure to strike an appropriate balance between the concern(s) about prejudice to the defendant and considerations of judicial economy is not to sever Count III but to bifurcate Count III. The jury should first hear evidence and deliberate on the other counts and then hear evidence of the defendant's criminal record and deliberate concerning Count III - Unlawful Possession of a Firearm. *United States v. Joshua*, 976 F.2d 844, 848 (3rd Cir. 1992), *United States v. Nauven*, 88 F.3d 812, 818 (9th Cir. 1996).

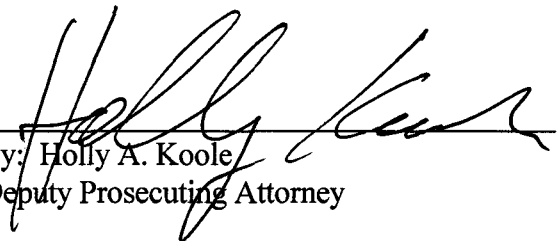
The bifurcated trial procedure addresses the concerns of prejudice to the defendant. The defendant's criminal past is not made known to the jury until after they have reached a verdict with respect to the other charges. At the same time, this procedure is considerably more efficient

C

than conducting an entirely new trial on the weapon possession charge at a later date. *United States v. Joshua*, 976 F.2d 844, 848 (3rd Cir. 1992), *United States v. Nauven*, 88 F.3d 812, 818 (9th Cir. 1996).

DATED this 25 day of June 2012.

GREG H. BOWER
Ada County Prosecuting Attorney

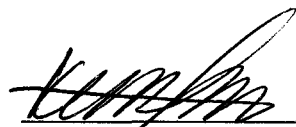

By: Holly A. Koole
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June 2012, I caused to be served, a true and correct copy of the foregoing Objection to Defendant's Motion to Sever upon the individual named below in the manner noted:

R. KEITH ROARK
ROARK LAW FIRM
409 N MAIN ST.
HAILEY, ID 83333
FAX: (208) 788-3918

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☐ By hand delivering said document to defense counsel.
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile number


Legal Assistant

Time	Speaker	Note
<u>9:31:04 AM</u>		CRFE11.15480 State v. Charlynda Goggin/CRFE11.15481 State v. Cadee Peterson/CRFE11.15482 State v. Morgan Alley/CRFE11.15483 State v. Tashina Alley/CRFE11.16247 State v. Matthew Taylor/CRFE11.16248 State v. Hieu Phan
<u>9:31:14 AM</u>	Court	Calls case. Counsel make their presence.
<u>9:32:50 AM</u>	Court	Addresses counsel. Lorello for Lojek for Goggin. Simmons for Peterson and Taylor. Roark for Morgan Alley. DeFranco for Tashina Alley. DeAngelo for Phan. Heather Reilly and Holly Koole for the State.
<u>9:32:59 AM</u>	Reilly	Statement.
<u>9:33:17 AM</u>	Ms. Simmons	Mr. Taylor is absence but on his way.
<u>9:33:27 AM</u>	Court	Addresses counsel.
<u>9:34:44 AM</u>	Reilly	Argument for additional time to prepare exhibit list - July 11, 2012.
<u>9:35:22 AM</u>	Court	Addresses counsel.
<u>9:35:25 AM</u>	Reilly	Response.
<u>9:35:27 AM</u>	Roark	No objection to July 11, 2012.
<u>9:35:43 AM</u>	Lorello	No objection.
<u>9:35:49 AM</u>	DeAngelo	No objection.
<u>9:35:55 AM</u>	Simmons	Statement regarding the deadline more than a week before trial.
<u>9:36:31 AM</u>	DeFranco	No objection.
<u>9:36:42 AM</u>	Court	Will grant the motion to extend deadline to July 11, 2012.
<u>9:37:09 AM</u>	Reilly	Exhibit list - proposed exhibit list from Simmons and DeFranco has not received.
<u>9:37:34 AM</u>	Court	Addresses counsel - all counsel will have until July 11, 2012 and with rules of discovery all materials already disclosed.
<u>9:38:07 AM</u>	Court	404(b) evidence.
<u>9:38:13 AM</u>	Reilly	Argument on motion.
<u>9:48:26 AM</u>	Roark	Argument on motion.
<u>9:56:36 AM</u>	Lorello	Argument on motion.
<u>9:57:28 AM</u>	DeAngelo	Submit.
<u>9:57:33 AM</u>	Simmons	Submit.
<u>9:57:37 AM</u>	DeFranco	Argument on motion.
<u>10:02:31 AM</u>	Reilly	Further argument on motion for 404(b) evidence.
<u>10:03:03 AM</u>	Court	Motion in limine and request for jury instruction.
<u>10:03:04 AM</u>	Reilly	Argument on motion.
<u>10:24:24 AM</u>	Roark	Argument on motion.
<u>10:35:43 AM</u>	Lorello	Argument on motion.
<u>10:38:35 AM</u>	DeAngelo	Argument on motion.

<u>10:38:44 AM</u>	Simmons	Argument on motion.
<u>10:39:32 AM</u>	DeFranco	Argument on motion.
<u>10:44:39 AM</u>	Reilly	Further argument on motion.
<u>10:46:11 AM</u>	Court	Addresses counsel - will address the issue at the time of trial - depending on the evidence both instruction on elements with possession with intent to deliver that has to be given to the jury and the blanks will be filed in at the time of trial. Proof of law - may or may not be given. Mistake of fact will be taken up at trial also. Jury will sort those issues out. Will not proclude the deff's to put on evidence and testimony.
<u>10:50:18 AM</u>	Court	Addresses counsel - language in paragraph 4 or similar language of the statute or depending on the evidence what wording will be at time of trial.
<u>10:51:16 AM</u>	Court	Motion to sever.
<u>10:51:26 AM</u>	Roark	Argument on motion.
<u>10:53:25 AM</u>	Koole	Argument on motion to sever. Bifurcate not seperate.
<u>10:54:34 AM</u>	Roark	Nothing further.
<u>10:54:45 AM</u>	Court	Addresses counsel regarding the motion to sever Cnt III.
<u>10:57:07 AM</u>	Court	Seperate stand along trial for Cnt III.
<u>10:57:58 AM</u>	Court	They will be severed. Waiver of a speedy trial for the firearms charge because it was brought up at a late date.
<u>10:59:01 AM</u>	Roark	Can submit dates.
<u>10:59:14 AM</u>	State Attorney	Response.
<u>10:59:25 AM</u>	Court	2 days trial.
<u>10:59:54 AM</u>	DeFranco	Statement regarding open statements of counsel.
<u>11:00:37 AM</u>	Court	Response - opening statements. What the facts will show have not made any rulings on evidence and testimony.
<u>11:01:19 AM</u>	Court	Addresses counsel regarding the Court's calendar during the week.
<u>11:03:48 AM</u>	Simmons	Statement regarding preemptions.
<u>11:04:31 AM</u>	Court	Addresses counsel regardin preemptions.
<u>11:05:04 AM</u>	Court	2 alternates.
<u>11:06:15 AM</u>	Roark	Response regarding the preemptions.
<u>11:07:42 AM</u>	State Attorney	Information Part II on Morgan Alley.
<u>11:07:55 AM</u>	Simmons	Response.
<u>11:08:00 AM</u>	Court	Addresses counsel. Mr. Alley will get 11 preempts.
<u>11:08:34 AM</u>	DeFranco	2 each.
<u>11:09:01 AM</u>	Simmons	No objection.
<u>11:09:17 AM</u>	State Attorney	State get's 11 preempts.
<u>11:10:05 AM</u>	Lorello	Statement.

<u>11:10:09 AM</u>	Court	Morgan Alley gets 11 preempts. Rest of the deft's get 2 and the State get 11 preempts. Subject to the Court thinking it over.
<u>11:10:48 AM</u>	Court	Pass the sheet to everyone everytime so the jury will not know who is doing the preempting. Go through the first 9 for Roark first then the remaining defendant's.
<u>11:11:27 AM</u>	Court	Order of the defts - follow the order that they appear in the cap MAley, TAlley, Goggin, Peterson, Phan, Taylor.
<u>11:12:13 AM</u>	Court	No objection from counsel.
<u>11:12:29 AM</u>	Court	Addresses counsel regarding voir dire. Opening and closing arguments.
<u>11:14:00 AM</u>	Roark	Concern of the furniture.
<u>11:14:19 AM</u>	Court	Will be asking for courtroom 400 for trial.
<u>11:14:52 AM</u>	Simmons	Statement.
<u>11:15:06 AM</u>	Court	Addresses counsel regarding computers - contact TCA's office for dry run. Elmo - needs to be requested.
<u>11:15:57 AM</u>	Court	Addresses counsel.
<u>11:16:20 AM</u>	Court	Addresses counsel regarding exhibits.
<u>11:16:32 AM</u>	Reilly	100's.
<u>11:16:56 AM</u>	Court	State 1-999. Roark 1000-1099. TAlley 1100-1199. Goggin 1200-1299 Peterson 1300-1399 Phan 1.400-1499 Taylor 1500-1599
<u>11:19:07 AM</u>	Reilly	Provides witness lists.
<u>11:19:30 AM</u>	Court	Addresses counsel regarding the jury instructions and the jury number.
<u>11:20:32 AM</u>	Court	Jury instructions emailed to his secretary. Exhibit and witness lists to be emailed to the clerk.
<u>11:20:59 AM</u>	End.	

JUN 27 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482;
	)	CR-FE-2011-0015483;
vs.	)	CR-FE-2011-0015480;
	)	CR-FE2011-0015481;
MORGAN C. ALLEY,	)	CR-FE2011-0016248 &
TASHINA ALLEY,	)	CR-FE2011-0016247
CHARLYNDA GOGGIN,)	
CADEE PETERSON,	)	STATE'S PROPOSED JURY
HIEU PHAN, &	)	INSTRUCTIONS
MATTHEW TAYLOR,)	
)	
Defendants.)	
)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County, State of Idaho, in compliance with the pre-trial order of the Court, the State hereby requests this Court utilize the "*standard*" Idaho Criminal Jury Preliminary, Pre and Post Proof, Evidence and Witness Instructions in the above-entitled cases. Further, the state respectfully requests the "*standard*" Idaho Criminal Jury Instructions (ICJI) for each of the crimes charged. Specifically, the state respectfully requests the following attached proposed instructions: ICJI 311 Aiders and

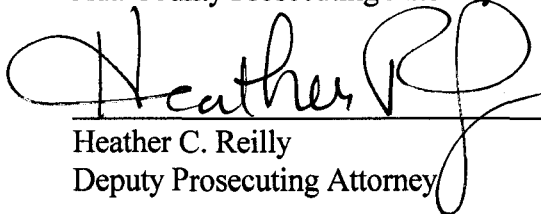
STATE'S PROPOSED JURY INSTRUCTIONS (ALLEY, ALLEY, GOGGIN, PETERSON, PHAN, TAYLOR), Page 1

000430

Abettors/Principals Defined; 312 Aiding and Abetting; and 422 CONTROLLED SUBSTANCE DEFINED, copies attached.

DATED this 25 day of June 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June 2012, I caused to be served, a true and correct copy of the foregoing State's Proposed Jury Instructions upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
FAX: 208-788-3918

John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
FAX: 345-8945

Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702

Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

ICJI 311 AIDERS AND ABETTERS/PRINCIPALS DEFINED

INSTRUCTION NO. _____

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

ICJI 312 AIDING AND ABETTING

INSTRUCTION NO. ____

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

ICJI 422 CONTROLLED SUBSTANCE DEFINED

INSTRUCTION NO.

Under Idaho law, **AM-2201** [1-(5 fluoropentyl)-3-(1-naphthoyl)indole], **JWH-019** [1-hexyl-3-(1-naphthoyl)indole] and **JWH-210** [1-pentyl-3-(4ethyl-1-naphthoyl)indole] are controlled substances.

JUN 27 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front St., Room 3191
Boise Idaho 83702
Telephone: 208-287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.	)	CR-FE-2011-0015483
	)	CR-FE-2011-0015480
MORGAN CHRISTOPHER ALLEY,	)	CR-FE-2011-0015481
TASHINA M. ALLEY,	)	CR-FE-2011-0016248
CHARLYNDA LYNN GOGGIN,	)	CR-FE-2011-0016247
CADEE JO PETERSON,)	
HIEU N. PHAN, and	)	STATE'S LIST OF POTENTIAL
MATTHEW STEVEN TAYLOR,	)	TRIAL WITNESSES
)	
Defendants.)	
)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and does hereby provide the following list of potential trial witnesses:

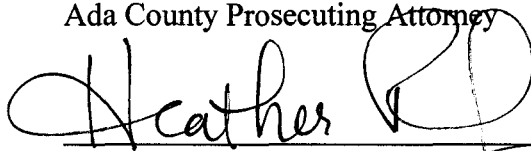
Detective Joe Andreoli, Boise Police Department
Deputy Gary Brodin, Ada County Sheriff's Office
Detective Coy Bruner, Boise Police Department
Detective Clay Christensen, Boise Police Department
Detective Kelley Clark, Boise Police Department
Sergeant Carlos DeLeon, Ada County Sheriff's Office
Detective Jason Harmon, Boise Police Department
Sergeant Mike Harrington, Boise Police Department
Detective Kevin Holtry, Boise Police Department
Terri Jones, Property Tech, Ada County Sheriff's Office
Juliet McKay, Ada County Sheriff's Office

Deputy Jared Meyer, Ada County Sheriff's Office
Officer Scott Nicholls, Boise Police Department
Deputy Derek Savage, Ada County Sheriff's Office
Deputy Ben Sterling, Ada County Sheriff's Office
Deputy Britton Stuart, Ada County Sheriff's Office
Detective Matthew Taddicken, Ada County Sheriff's Office
Officer Cory Turner, Boise Police Department
Lieutenant Ron Winegar, Boise Police Department
Officer Kepa Zubizarreta, Boise Police Department
Jennifer Rhead, Boise Police Department
Rachel Cutler, Criminalist, Idaho State Police Forensic Laboratory
Matthew Gamette, Idaho State Police Forensic Laboratory
Corinna Owsley, Criminalist, Idaho State Police Forensic Laboratory
David Sincerbeaux, Idaho State Police
Judy Packer, Idaho State Police
Jane Davenport, Idaho State Police
Glenna Traylor
Greg Cowles
Derek Howell
Chad Smith
Representative from Secretary of State office
James Lindsey
Donna Saleen
Gary Sullivan
Lisa Sullivan
Larry Chase
Colin Thomas

DATED this 25th day of June 2012

GREG H. BOWER

Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June 2012, I caused to be served, a true and correct copy of the foregoing State's List of Potential Trial Witnesses upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

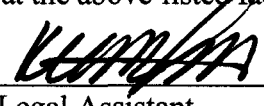
R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
FAX: 208-788-3918

John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
FAX: 345-8945

Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702

Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☒ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

JUL - 3 2012

000439

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July 2012, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individuals named below in the manner noted:

**Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
* FAX: 855-787-1200**


**R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
* FAX: 208-788-3918**

**John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
* FAX: 345-8945**

**Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702
* FAX: 287-7409**

**Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
* FAX: ~~608-5061~~ 587-6940**

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☐ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

107

JUL - 5 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

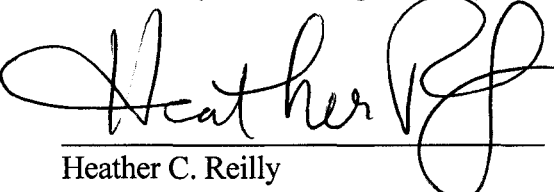
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.)	
)	
MORGAN CHRISTOPHER ALLEY,	)	THIRD ADDENDUM TO
	)	DISCOVERY RESPONSE
Defendant.	)	TO COURT
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted a Third Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 3rd day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

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JUL - 5 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

THE STATE OF IDAHO,	)	Case No. CR-FE-2011-0015482;
	)	CR-FE-2011-0015483;
Plaintiff,	)	CR-FE-2011-0015480;
vs.	)	CR-FE2011-0015481;
	)	CR-FE2011-0016248 &
MORGAN C. ALLEY,	)	CR-FE2011-0016247
TASHINA ALLEY,)	
CHARLYNDA GOGGIN,	)	NOTICE OF INTENT TO
CADEE PETERSON,	)	DESIGNATE CASE OFFICER
HIEU PHAN, &	)	AS STATE'S
MATTHEW TAYLOR,	)	REPRESENTATIVE PURSUANT
	)	TO I.R.E. 615 (a)(2)
Defendants.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney for Ada County, State of Idaho, and provides notice to the Court and Counsel of the State's intent to designate Detective Joe Andreoli as the State's representative pursuant to I.R.E. 615 (a)(2). Accordingly, should the defense move to exclude witnesses, the State moves the court for an order recognizing the State's designated officer as one who is not subject to any exclusion order. The State is not requesting a

NOTICE OF INTENT TO DESIGNATE CASE OFFICER PURSUANT TO I.R.E. 615 (a)(2) (ALLEY; ALLEY; GOGGIN; PETERSON; PHAN; & TAYLOR), Page 1

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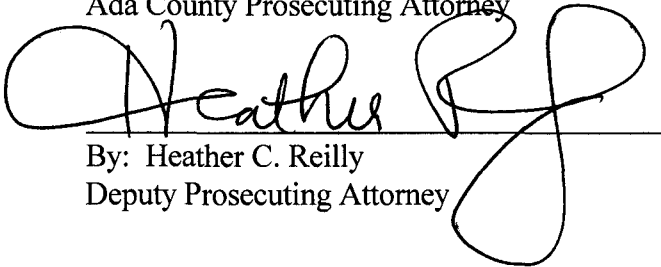
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hearing at this time but rather requests the issue be taken up on the morning of the trial or at another appropriate time during the proceedings.

DATED this 5th day of July 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Heather C. Reilly", is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail that extends to the right.

By: Heather C. Reilly

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July 2012, I caused to be served, a true and correct copy of the foregoing Notice of Intent to Designate Case Officer Pursuant to I.R.E. 615 (a)(2) upon the individuals named below in the manner noted:

Ryan Holdaway / Diane Pitcher
Pitcher and Holdaway
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
FAX: 855-787-1200

R. Keith Roark
Attorney at Law
409 N. Main Street
Hailey, ID 8333
FAX: 208-788-3918

John C. DeFranco
Attorney at Law
1031 E. Park Blvd.
Boise, ID 83712
FAX: 345-8945

Michael Lojek and Kimberly Simmons
Ada County Public Defenders
200 W. Front Street, Rm. 1107
Boise, ID 83702
FAX: 287-7409

Marco DeAngelo
Attorney at Law
290 S. 2nd East
Mountain Home, ID 83647
FAX: 608-5061

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class, and/or
- ☐ By hand delivering said document to defense counsel, and/or
- ☒ By faxing copies of the same to said attorneys at the above-listed facsimile numbers



Legal Assistant

107
HIS
7/16
2:00

FILED
A.M. 10 P.M.

JUL - 9 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

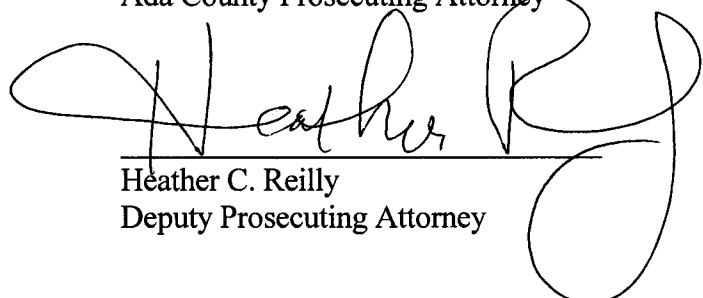
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.)	
	)	FOURTH ADDENDUM TO
MORGAN CHRISTOPHER ALLEY,	)	DISCOVERY RESPONSE
	)	TO COURT
Defendant.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted a FOURTH Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 6th day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

JB

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>2:35:26 PM</u>		CRFE11.15482 State v. Morgan Alley
<u>2:35:28 PM</u>	Court	Calls case deft present on bond with counsel Keith Roark. State's atty Heather Reilly and Holly Koole.
<u>2:36:09 PM</u>	State Attorney	Statement. Guilty Plea and amended Information.
<u>2:36:36 PM</u>	Court	Reviews the Amended Information.
<u>2:36:50 PM</u>	Personal Attorney	No objection to the amended Information.
<u>2:36:58 PM</u>	Court	Addresses the deft.
<u>2:37:11 PM</u>	Defendant	Will be pleading today.
<u>2:37:17 PM</u>	Court	Addresses the deft.
<u>2:37:47 PM</u>	Court	Deft sworn and examined on his own behalf.
<u>2:38:31 PM</u>	Personal Attorney	Statement regarding the guilty plea.
<u>2:39:37 PM</u>	Court	Examines the deft.
<u>2:40:57 PM</u>	Court	States plea on record. JOC on Amended Information - manufacturing a controlled substance and possession of paraphernalia. 3+12= 15 yrs all to run concurrent. Restitution on all counts. Fine left open. Provide truthful testimony for trial and contact law enforcement for truthful debriefing.
<u>2:45:22 PM</u>	State Attorney	State to argue all facts including the dismissed charges.
<u>2:45:41 PM</u>	Personal Attorney	Response.
<u>2:45:43 PM</u>	Court	Continues to examine the deft.
<u>3:01:04 PM</u>	State Attorney	Satisfied with the allocution to Cnt I.
<u>3:01:16 PM</u>	Court	Continues examination of the deft.
<u>3:04:40 PM</u>	State Attorney	Satisfied with the allocution to Cnt II.
<u>3:04:51 PM</u>	Court	Examines the deft regarding Cnt I of the Information Part II.
<u>3:08:07 PM</u>	State Attorney	Satisfied with the allocution.
<u>3:08:13 PM</u>	Court	Accepts the guilty plea and directs that they be entered.
<u>3:08:51 PM</u>	Court	Orders a PSI and 19-2524 substance abuse evaluation.
<u>3:09:10 PM</u>	Plaintiff Attorney	Sentencing September 11, 2012 at 9:00 am.
<u>3:09:36 PM</u>	Personal Attorney	Statement - might have to ask for a continuance due to a conflict of calendar.
<u>3:10:01 PM</u>	Court	Addresses the deft.
<u>3:11:33 PM</u>	End.	

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
TEL: 208/788-2427
FAX: 208/788-3918

NO. _____ FILED _____
A.M. _____ P.M. 1:32

JUL 11 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR-FE-2011-15482
Plaintiff,)	
	)	CONDITIONAL PLEA
vs.	)	OF GUILTY
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	
_____)	

COMES NOW the Defendant, **MORGAN CHRISTOPHER ALLEY**, in the above-entitled action and hereby enters his CONDITIONAL PLEAS OF GUILTY to the crimes of I. MANUFACTURE AND DELIVER A CONTROLLED SUBSTANCE; II. POSSESSION WITH INTENT TO DELIVER DRUG PARAPHERNALIA, as charged in the Amended Information and PART II, COUNT I [ENHANCEMENT] of the INFORMATION now pending.

The Defendant hereby acknowledges the following:

1. He has been represented by counsel throughout this matter and has specifically reviewed and thoroughly discussed this Plea and its ramifications with his attorney.
2. The plea of GUILTY entered in this matter is in all respects the free and voluntary act of the Defendant and is not the result of any explicit or implicit coercive influence.
3. The Defendant has been fully informed by his counsel of the consequences of the plea of GUILTY, including the minimum and maximum punishments therefor and all other direct and indirect consequences which may apply.
4. The Defendant has been advised by his counsel that by pleading GUILTY, he waives his right against compulsory self-incrimination, his right to trial by jury, and his right to

000447

confront witnesses against him.

5. The Defendant has been thoroughly informed of the nature of the charges to which he will enter his pleas of GUILTY.

6. The Plea contained herein is not the result of any plea bargain or other promise or inducement except as follows:

a. The State will move to DISMISS all other criminal charges pending against the Defendant. However, the state is free to argue all facts, including the facts of the dismissed counts.

b. The State agrees not to bring any other charges against the Defendant arising out of or related to the facts and circumstances upon which the current charges against the Defendant are based.

c. At the time of Sentencing in this matter, the State will recommend a Judgment of Conviction and the imposition of a 3 year determinate, 12 year indeterminate term in the custody of the Idaho Department of Correction, with the sentences on all counts to run concurrently with the others.

d. The Defendant shall be required to pay restitution including the cost of investigation and laboratory costs in the amount to be determined for all conduct including dismissed counts. The Defendant may, however, review and challenge the items and costs reflected in any request for restitution.

e. The Defendant may be required to pay a fine and other standard and/or special terms of sentencing shall be open to argument by the parties.

f. As a condition of this agreement, Defendant has agreed to provide truthful testimony if called as a witness during the trials involving the Co-Defendants as well as meet with law enforcement for truthful debrief.


g. The Defendant understands that the Court is not bound by any promises or recommendations from either party as to punishment.

d. Pursuant to Rule 11a(2), I.C.R., the State consents to the Defendant's plea being entered and approved as a conditional plea, reserving the Defendant's right to review on

appeal of this Court's Decision denying his MOTION TO DISMISS and the Court's denial of his MOTION FOR RECONSIDERATION of such decision. Defendant's plea is expressly conditioned upon the Court's approval of this provision.

e. At the time of Sentencing in this matter, the Defendant and his counsel are free to make any recommendation(s) they deem appropriate.

DATED this 10 day of July, 2012.


Morgan Christopher Alley

APPROVED this 10th day of July, 2012.

THE ROARK LAW FIRM

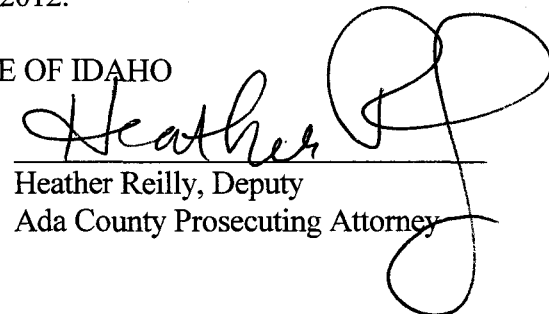
By:


R. Keith Roark

APPROVED this 10 day of July, 2012.

STATE OF IDAHO

By:


Heather Reilly, Deputy
Ada County Prosecuting Attorney

JUL 11 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR-FE-2011-0015482
Plaintiff,)	
)	
vs.	)	A M E N D E D
	)	I N F O R M A T I O N
MORGAN CHRISTOPHER ALLEY,)	
	)	Defendant's DOB: [REDACTED]
Defendant.	)	Defendant's SSN: [REDACTED]
_____)	

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that MORGAN CHRISTOPHER ALLEY is accused by this Amended Information of the crimes of: I. MANUFACTURING AND/OR DELIVERY OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a) and II. POSSESSION OF DRUG PARAPHERNALIA WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2734B, which crimes were committed as follows:

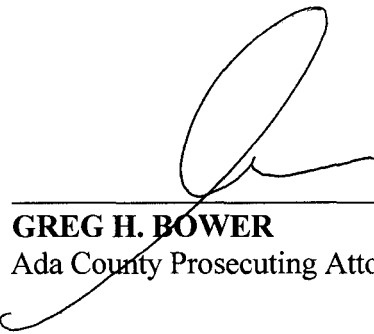
COUNT I

That the defendant, MORGAN CHRISTOPHER ALLEY, on or between the months of March and September 2011, in the County of Ada, State of Idaho, did unlawfully manufacture and deliver a controlled substance, to-wit: Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as synthetic drugs, Schedule I controlled substances, or of any mixture or substance containing a detectable amount of a Schedule I controlled substance, by production, preparation, compounding, conversion, processing, extracting, and/or by a combination thereof, to wit: by preparation, production, conversion, compounding and/or processing plant material, acetone and Schedule I controlled substances by dissolving Schedule I controlled substances, to wit: AM-2201, JWH-019 and JWH-210 in acetone, soaking plant material with said mixture, then drying the plant material, adding flavoring and packaging one (1) gram quantities of the completed controlled substance into labeled jars, that were delivered to others.

COUNT II

That the defendant, MORGAN CHRISTOPHER ALLEY, on or during the month of September 2011, in the County of Ada, State of Idaho did possess with intent to deliver drug paraphernalia, to wit: glass and metal pipes; bongs; scales; plastic jars and lids, grinders, and/or a variety of containers; knowing, or under circumstances where one reasonably should know, that said paraphernalia would be used to weigh, pack, repack, store, contain; conceal; ingest; inhale; or otherwise introduce into the human body a controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



GREG H. BOWER
Ada County Prosecuting Attorney

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JUL 11 2012
CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

GUILTY PLEA ADVISORY AND FORM (JUDGE RICHARD D. GREENWOOD)

TO BE FILLED OUT BY THE DEFENDANT

Defendant's Name: Margen Christopher Alley Signature: [Signature]
Date: 7-10-12 Case Number: CR-FE-2011-0015482
Date of Birth: [Redacted] Age: 25
Nature of Charge(s): Dist Controlled Substance Minimum & Maximum Possible Penalty: 5 yrs
Dist Para 9 yrs

**STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY
(PLEASE INITIAL EACH RESPONSE)**

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you choose to have a trial, the State cannot require you to testify. If you do decide to testify, however, the State will be permitted to ask you questions on cross examination and anything you say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent before and during trial. MA

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. MA

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. MA.

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent. MA.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial. MA.

6. You have the right to confront the witnesses called against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty, I am waiving my right to confront the witnesses against me, to present witnesses on my own behalf and to present evidence in my defense. MA.

7. The State has the burden of proving you guilty beyond a reasonable doubt.

I understand that by pleading guilty, I am waiving my right to require the State to prove my guilt beyond a reasonable doubt. MA.

QUESTIONS REGARDING PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language?

YES NO

If not, have you been provided with an interpreter to help you fill out this form?

YES NO N/A

2. What is your true and legal name? Morgan C Alley
3. What was the highest grade you completed? 10th

If you did not complete high school, have you received either a GED or HSE?

☒ YES ☐ NO ☐ N/A

4. Are you currently under the care of a mental health professional? ☒ YES ☐ NO

If you answered "yes," what is the mental health professional's name? _____

5. Have you ever been diagnosed with a mental health disorder? ☒ YES ☐ NO

If you answered "yes," what was the diagnosis and when was it made? _____

6. Are you currently prescribed any medication? ☒ YES ☐ NO

If you answered "yes," what medications are you taking at this time? _____

If you answered "yes," have you taken your prescription medication during the past 24 hours?

☒ YES ☐ NO ☐ N/A

7. In the last 24 hours, have you taken any medications or drugs, **INCLUDING** over the **counter drugs**, or drunk any alcoholic beverages?

☒ YES ☐ NO

If "yes," what have you taken? _____

Do you believe this affects your ability to understand these questions, and make a reasoned and informed decisions in this case?

☒ YES ☐ NO ☐ N/A

8. Is there any other reason that you would be unable to make a reasoned and informed decision in this case?

☒ YES ☐ NO

If "yes," what is the reason? _____

9. Is your guilty plea the result of a plea agreement?

☒ YES ☐ NO

If you answered "yes," what are the terms of that plea agreement? (If available, a written plea agreement should be attached hereto as "Addendum 'A'")

See attached form.

10. There are two types of plea agreements. Please initial the ONE paragraph below which describes the type of plea you are entering:

- a. I understand that the court is NOT bound by the plea agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. MA.
- b. I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty pursuant to Rule 11(d)(4) of the Idaho Criminal Rules and proceed to a jury trial. _____.

11. As a term of your plea agreement, are you pleading guilty to more than one crime?

YES NO

If you answered "yes," do you understand that your sentence for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)?

YES NO N/A

12. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues?

YES NO

If you answered "yes," what issue are you reserving the right to appeal?

Decision on motion to Dismiss.

13. Have you waived your right to appeal your judgment of conviction as part of your plea agreement?

YES NO

14. Have any other promises been made to you which have influenced your decision to plead guilty?

YES NO

If you answered "yes," what are those promises?

15. Do you feel you have had sufficient time to discuss your case with your attorney?

☒ YES ☐ NO

16. Have you told your attorney everything you know about the crime?

☒ YES ☐ NO

17. Is there anything you have requested your attorney to do that has not been done?

YES ☒ NO

If you answered "yes," please explain. _____

18. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery?

☒ YES ☐ NO

19. Are there any witnesses who could show your innocence?

☒ YES ☐ NO

If you answered "yes," have you told your attorney who those witnesses are?

YES ☒ NO ☐ N/A

20. Do you understand that by pleading guilty you waive any defenses, both factual and legal, that you believe you may have in this case?

☒ YES ☐ NO

21. Are there any motions or other requests for relief that you believe should still be filed in this case?

YES ☒ NO

If you answered "yes," what motions or requests? _____

22. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including:

- 1) any searches or seizures that occurred in your case,
- 2) any issues concerning the method or manner of your arrest, and
- 3) any issues about any statements you may have made to law enforcement?

☒ YES ☐ NO

23. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty?

YES NO

24. Are you currently on probation or parole?

YES NO

If you answered "yes", do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole and additional punishment?

YES NO N/A

25. As a result of your plea in this case, have you been advised that you may be required pay restitution to any victim in this case pursuant to I.C. §19-5304?

YES NO

If "yes", to whom? _____

26. As a result of your plea in this case, have you been advised that you may be required to pay restitution to any other party as a condition of your plea agreement?

YES NO

If "yes", to whom? _____

27. As a result of your plea in this case, will you be required to pay the costs of prosecution and investigation? (I.C. § 37-2732A(K))

YES NO

28. As a result of your plea in this case, will you be required to submit a DNA sample to the state? (I.C. § 19-5506)

YES NO

29. As a result of your plea in this case, can the court impose a fine for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. § 19-5307)

YES NO

30. As a result of your plea in this case, is there a **mandatory** driver's license suspension?

YES NO

If "yes", for how long must your license be suspended? _____.

31. As a result of your plea in this case, is there a mandatory domestic violence, substance abuse, or psychosexual evaluation? (I.C. §§ 18-918(7)(a), -8005(9), 8317)

YES NO

32. Have you discussed with your attorney the fact the Court will order a pre-sentence investigation, psychosexual evaluation, anger evaluation and/or domestic violence evaluation and that anything you say during any of those examinations may be used against you in sentencing?

YES NO

33. Has your attorney explained the fact that you have a constitutional right to remain silent during any of those examinations but that you may give up that right and voluntarily participate in those examinations? YES NO

34. Do you understand that by pleading guilty to a felony, you run the risk that if you have new felony charges in the future, you could be charged as a Persistent Violator? (I.C. § 19-2514) YES NO

Do you understand that if you are convicted as a Persistent Violator, the court in that new case could sentence you to an enhanced sentence which could include life imprisonment? YES NO

35. As a result of your plea in this case, will you be required to register as a sex offender? (I.C. § 18-8304) YES NO

If you answered "yes" to Question No. 35, do you understand that if you are found guilty or plead guilty to another charge that requires you to register as a sex offender in the future, you could be charged in the new crime under I.C. § 19-2520G requiring a mandatory sentence of fifteen (15) years to run consecutive to any other sentence imposed by the court? YES NO N/A

36. Do you understand that if you plead guilty to a felony, you will lose your right to vote in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) YES NO

37. Do you understand that if you plead guilty to a felony, you will lose your right to hold public office in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) YES NO

38. Do you understand that if you plead guilty to a felony, you will lose your right to perform jury service in Idaho during the period of your sentence? (ID. CONST. art. 6, § 3) YES NO

39. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. § 18-310) YES NO

40. Do you understand that no one, including your attorney, can force you to plead guilty in this case? YES NO

41. Are you pleading guilty freely and voluntarily? YES NO

42. Are you pleading guilty because you committed the acts alleged in the information or indictment? YES NO

43. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? YES NO N/A

44. Has any person (including a law enforcement officer or police office) threatened you or done anything to make you enter this plea against your will? YES NO

If your answer is "yes," what threats have been made and by whom?

45. **Other than in the plea agreement**, has any person promised you that you will receive any special sentence, reward, favorable treatment, or leniency with regard to the plea you are about to enter? YES NO

If your answer is "yes," what promises have been made and by whom?

46. Do you understand that the only person who can promise what sentence you will actually receive is the Judge? YES NO

47. Are you satisfied with your attorney? YES NO

48. Have you answered all questions on this Questionnaire truthfully and of your own free will? YES NO

49. Have you had any trouble answering any of the questions in this form which you could not work out by discussing the issue with your attorney? YES NO

50. **IF YOU ARE NOT A CITIZEN OF THE UNITED STATES**, do you understand that by pleading guilty you could be deported or removed from the United States, lose your ability to obtain legal status in the United States, or be denied an application for United States citizenship? YES NO N/A

51. **Do you swear under penalty of perjury that your answers to these questions are true and correct?** YES NO

I have answered the questions on pages 1-8 of this Guilty Plea Advisory form truthfully. I understand all of the questions and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this 10 day of July, 2010.


DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.


DEFENDANT'S ATTORNEY

107
SH
9/11
9:00

NO. 10- FILED
A.M. 10- P.M. 10-
JUL 13 2012
CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

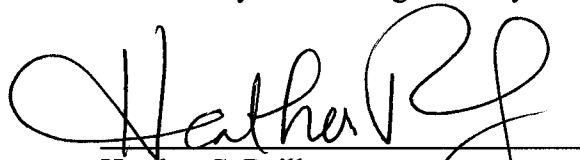
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.)	
	)	FIFTH ADDENDUM TO
MORGAN CHRISTOPHER ALLEY,	)	DISCOVERY RESPONSE
	)	TO COURT
Defendant.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County,
State of Idaho, and informs the Court that the State has submitted a Fifth Addendum to Response to
Discovery.

RESPECTFULLY SUBMITTED this 11th day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



Heather C. Reilly
Deputy Prosecuting Attorney

JB

107

NO. _____ FILED _____
A.M. _____ P.M. _____

JUL 16 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

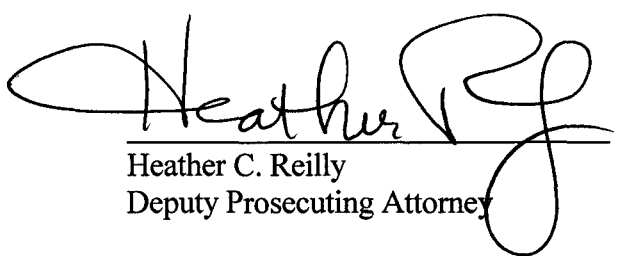
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2011-0015482
vs.)	
	)	SIXTH ADDENDUM TO
MORGAN CHRISTOPHER ALLEY,	)	DISCOVERY RESPONSE
	)	TO COURT
Defendant.)	
_____)	

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted a Sixth Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 16th day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

107
SM
9/11
9:00

NO. _____
A.M. _____ P.M. 2

JUL 18 2012

CHRISTOPHER D. RICH, Clerk
By JACKIE BROWN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

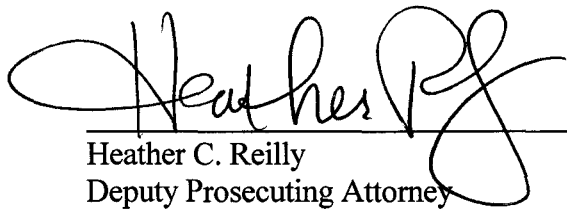
Case No. CR-FE-2011-0015482

**SEVENTH ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County,
State of Idaho, and informs the Court that the State has submitted a Seventh Addendum to Response
to Discovery.

RESPECTFULLY SUBMITTED this 18 day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

JP

107
SH
9/11
9:06

JUL 26 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Heather C. Reilly
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
MORGAN CHRISTOPHER ALLEY,)
)
Defendant.)
_____)

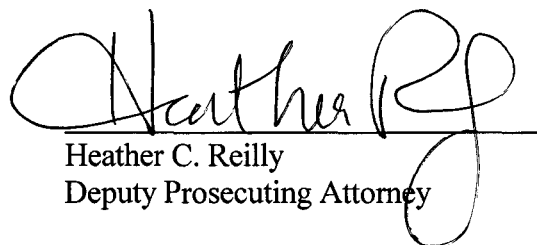
Case No. CR-FE-2011-0015482

**EIGHTH ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Heather C. Reilly, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Eighth Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 25th day of July 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Heather C. Reilly
Deputy Prosecuting Attorney

JB

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:02:55 AM</u>		CRFE11.15482 State v. Morgan Alley
<u>9:02:57 AM</u>	Court	Calls case deft present on bond with counsel Keith Roark. State's atty Jonathan Medema.
<u>9:03:11 AM</u>	Court	Addresses counsel no PSI.
<u>9:04:15 AM</u>	Court	Discussion between Court and counsel regarding new sentencing date.
<u>9:05:36 AM</u>	Court	Sentencing October 9, 2012 at 9:00 am.
<u>9:05:49 AM</u>	Court	Addresses the deft.
<u>9:05:52 AM</u>	End.	

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>9:26:22 AM</u>		CRFE11.15482 State v. Morgan Alley
<u>9:26:24 AM</u>	Court	Calls case deft present on bond with counsel Keith Roark. State's atty Heather Reilly.
<u>9:26:56 AM</u>	Court	Reviews the file. Decline the Memorandum be part of the PSI. But the letters will be removed and they will be part of the PSI.
<u>9:31:28 AM</u>	Court	Parties have received the materials and reveiwed them.
<u>9:31:42 AM</u>	Personal Attorney	No corrections.
<u>9:31:44 AM</u>	State Attorney	States corrections.
<u>9:33:31 AM</u>	State Attorney	Testimony from Detective Andreoli.
<u>9:33:46 AM</u>	Personal Attorney	No testimony.
<u>9:33:52 AM</u>	State Attorney	Calls Joseph Andreoli.
<u>9:34:06 AM</u>	Court	Witness sworn and testifies.
<u>9:34:08 AM</u>	State Attorney	Direct examination.
<u>9:37:38 AM</u>	Personal Attorney	No questions.
<u>9:37:42 AM</u>	Court	Witness steps down and is excused.
<u>9:37:50 AM</u>	State Attorney	Argument on recommendations. Restitution be left open. Ball park of \$16,000.00. Will be seeking a hearing at a later time. Not appropriate for probation or retained jurisdiction. Imposition of sentence. Cnt I - 3+7=10 yrs. Cnt II 3+12=15 concurrent and imposing that sentence. Fine \$5000.00. Rec: Therapeutic Community when he's eligible. Forfeiture of the firearm that was found in the deft's home. 19-3807 - firearm confiscation.
<u>9:54:38 AM</u>	Personal Attorney	Argument on recommedations.
<u>9:57:45 AM</u>	Court	Addresses Mr. Roark.
<u>9:58:04 AM</u>	Personal Attorney	Continues argument on recommendations. Retain jurisdiction for 365 days and recommend the Therapeutic Community. Suspend the sentence and permit an appeal bond in this case since he will be appealing this today.
<u>10:13:50 AM</u>	Court	No legal cause shown.
<u>10:13:58 AM</u>	State Attorney	Withdraw the forfeiture the firearm.
<u>10:14:19 AM</u>	Court	Addresses the deft.
<u>10:14:23 AM</u>	Defendant	Statement.
<u>10:14:46 AM</u>	Court	Addresses the deft.
<u>10:27:29 AM</u>	Court	Not a candidate for probation.
<u>10:31:53 AM</u>	Court	2+8=10 yrs on both counts to run concurrent. Will defer restitution. Standard cc. Will not impose a fine in this case. Credit for 3 days served.
<u>10:33:52 AM</u>	Court	Will not grant the request for suspended sentenct.
<u>10:34:07 AM</u>	Court	Will remand the deft.
<u>10:34:40 AM</u>	Court	Advises the deft of his right to appeal.

<u>10:34:50 AM</u>	Court	Addresses counsel regarding restitution.
<u>10:34:50 AM</u>	State Attorney	Response regarding the restitution. Joing and several.
<u>10:34:50 AM</u>	Court	Status conference with counsel after concluding sentencing on the other cases. Restitution will be reserved.
<u>10:34:50 AM</u>	End.	
<u>10:35:58 AM</u>	End.	

OCT 12 2012

CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

R. KEITH ROARK, ISBN 2230
THE ROARK LAW FIRM, LLP
409 North Main Street
Hailey, Idaho 83333
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Attorneys for Defendant.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY, et al.

Defendant.

Case No. CR-FE-2011-15482

**DEFENDANT'S SENTENCING
MEMORANDUM**

COMES NOW R. KEITH ROARK of The Roark Law Firm, LLP, and, on
behalf of the Defendant, MORGAN CHRISTOPHER ALLEY, hereby submits this
SENTENCING MEMORANDUM for the hearing scheduled to commence on October 9, at the
hour of 9:00 a.m.

INTRODUCTION

The defendant is scheduled to appear before the court for sentencing on his pleas
of guilty to one count of Manufacture/Delivery of a Controlled Substance, I.C. §37-2732(a) and
one Count of Possession of Drug Paraphernalia With Intent to Deliver, I.C. § 37-2734B. The
court has previously ordered and received a presentence report and defense counsel has
reviewed this report with the defendant. The purpose of this sentencing memorandum is to

**DEFENDANT'S SENTENCING
MEMORANDUM - 1**

THE ROARK LAW FIRM

409 North Main Street
Hailey, Idaho 83333
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1 review sentencing criteria and to propose a disposition of this case for the court's consideration.

2 This sentencing memorandum has been prepared and is being submitted by
3 defense counsel in fulfillment of his duties described in the ABA Standards Relating To
4 Sentencing Alternatives And Procedures, Section 18-5.17(a). It is requested that this sentencing
5 memorandum be sealed by court order with the presentence report, as provided for in I.C.R.
6 32(h) (1).

7 Certain letters testifying to the good character and trustworthiness of the
8 Defendant are submitted along with the pre-sentence investigation report. Counsel requests that
9 these materials be considered as part of the Memorandum and sentencing process in general.

10 GENERAL STATEMENT OF PURPOSE

11 Prior to receiving this SENTENCING MEMORANDUM, the Court has
12 received and reviewed the Presentence Report prepared by Ms. Holly Cook which advise the
13 Court sentence Mr. Alley is not a suitable candidate for a period of community supervision.

15 REVIEW OF THE GOALS OF SENTENCING

16 It is well settled that, in this jurisdiction, the four goals of sentencing are: (1) the
17 protection of society, (2) the deterrence of crime both generally and specifically, (3) punishment
18 or retribution for wrong doing; and (4) the possibility of rehabilitation. *State v. Wolfe*, 99 Idaho
19 382, 384, 582 P.2d 728, 730 (1978); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707,
20 (Ct.App.1982) *State v. Broadhead*, 120 Idaho 141, 814 P.2d 401, (1991); *State v. Stevens*, 191

1 P.3d 217, 146 Idaho 139 (2008).¹

2 If a term of confinement is to be imposed, the sentencing court must consider the
3 actual term of confinement imposed in light of the nature of the offense, the character of the
4 offender, and the protection of the public interest. *State v. Shideler*, 103 Idaho 593, 594, 651
5 P.2d 527, 528 (1982); *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct.App.1982).

6 The American Bar Association Standards for Sentencing, sets forth **Standard 18-6.1 General**
7 **principles:**

8 (a) The sentence imposed should be no more severe than necessary to
9 achieve the societal purpose or purposes for which it is authorized. The
10 sentence imposed in each case should be the minimum sanction that is
11 consistent with the gravity of the offense, the culpability of the
12 offender, the offender's criminal history, and the personal
13 characteristics of an individual offender that may be taken into
14 account.

15 APPLICATION OF THE GOALS OF SENTENCING IN THIS CASE

16 1. **Protection of Society.** Although the four goals of sentencing were
17 articulated nearly 50 years ago and have been reiterated or cited to by the appellate courts of this
18 state hundreds of times since then, the structure of that formulation is flawed and misleading.
19 From the perspective of logical analysis, it is far more useful to view Protection of Society as
20 not just the *primary* goal of sentencing but the *only* such goal or objective. Deterrence and
21 Rehabilitation are the *methods* or *tools* that can be employed to obtain the goal and Retribution

22 ¹ What may have been the first formulation of these goals is found in *State v. Moore*, 78 Idaho 359, 304 P.2d
23 1101 (1956) wherein the Idaho Supreme Court appears to quote from the decision of the trial court under
24 review. The *Moore* opinion refers to "the objectives of criminal punishment" and lists them as: 1) Protection of
society; 2) Deterrence of the individual and the public generally; 3) The possibility of rehabilitation; 4)
Punishment or retribution for wrongdoing.

1 (punishment) is the method used to obtain deterrence, both specific and general.

2 In other words, the point and purpose of the entire criminal justice system is to
3 protect society. Societal *protection* from criminal activity results from *prevention* of such
4 activity and when offenders are charged with and convicted of criminal offenses, courts attempt
5 to impose a sentence that will result, if at all possible, in the discouragement of future criminal
6 conduct both by the specific offender and the public generally. At least in theory,
7 discouragement of future criminal activity can be achieved by either specific deterrence or
8 rehabilitation as regards the individual being sentenced and general deterrence as to the public at
9 large. Retribution (punishment) does not provide any protection to society as such unless by
10 imposing punishment the courts specifically or generally deter future criminal behavior.

11 Idaho does not currently recognize incapacitation as one of the goals of
12 sentencing, although the federal courts and many states do endorse the concept. See *United*
13 *States v. Dunnigan*, 507 U.S. 87, 97, 113 S. Ct. 1111, 1118, 122 L. Ed. 2d 445 (1993). See
14 also, *18 U.S.C. § 3553(a)(2)*; *Mistretta v. United States*, 488 U.S. 361, 367, 109 S.Ct. 647,
15 652, 102 L.Ed.2d 714 (1989). "Incapacitation" generally refers to long term imprisonment
16 (sometimes referred to in the vernacular as "warehousing") designed to keep a convicted
17 offender from re-offending, not by deterring or rehabilitating him, but by simply locking him
18 away for such a significant period of time that society is protected by virtue of his absence
19 from its midst.

20 The overwhelming challenge to imposing an appropriate sentence in this case is
21 the unusual nature of the facts and circumstances involved. As the Court knows from the
22 hearings and trial in this case, Mr. Alley operated a business known as "Urban Alleys" during a
23

1 period of time in which "spice" had not been classified as a controlled substance. After the
2 Idaho State Legislature passed amendments to I.C. 37-2732 et seq. which outlawed the
3 substance(s) Mr. Alley had been selling through Urban Alleys, he shut the business down.

4 Subsequent to shuttering Urban Alleys, Mr. Alley endeavored to start a used car
5 business. At the same general time, he consulted with attorney Ryan Holdaway who
6 represented himself to have specialized knowledge in the area of the law relating to synthetic
7 cannabinoids. It was Mr. Holdaway's legal opinion that AM 2201 was not included in nor
8 covered by HB 139, passed by the 2011 Idaho Legislature and signed into law by Governor
9 Otter on March 11, 2011 which took effect on the date of such signing.

10 Mr. Holdaway also provided Mr. Alley with a report by Dr. Richard Parent,
11 chemist, indicating that AM 2201 was not covered by HB 139 and, therefore, not classified as a
12 controlled substance. These matters are fully set forth in Mr. Holdaway's Memorandum in
13 Support of Motion to Dismiss and Mr. Alley's Affidavit in Support of Motion to Dismiss.

14 Mr. Alley fully understands that this Court has rejected the arguments of Mr.
15 Holdaway and further understands that his well-founded belief that, in selling products
16 containing AM 2201 he was not violating the law, does not constitute a legal defense to the
17 charge upon which he has entered his conditional pleas of guilty. Indeed, counsel for Defendant
18 agrees with the presentence investigator's comment that, in choosing to sell products containing
19 AM 2201, Mr. Alley was gambling that the opinions of Mr. Holdaway and Dr. Pitcher were
20 correct.

21 Nonetheless, it is quite clear that this is not a case in which Mr. Alley chose to
22 distribute a substance that he fully knew to be illegal. His mistake of law, while not constituting
23 a complete legal defense, does at least mitigate the depth of his criminal intent.

1 How much protection does society require or demand from this conduct?
2 While it can certainly be argued that a long prison sentence will, for the most part,
3 specifically deter Mr. Alley from committing similar crimes during his term of
4 imprisonment, that is an incapacitation approach to the issue. In reality, it is fear of being
5 apprehended rather than concern about the particular sentence imposed upon conviction, that
6 provides the strongest deterrent to individuals and the population in general. Here, Mr. Alley
7 is being sentenced for being wrong about the lawfulness of AM 2201. He did not believe
8 that he could be punished for doing what he had been told was legal and, therefore,
9 protection of society only requires this Court to fashion and impose a sentence punishes him
10 for being wrong in that regard.

11 Morgan Alley understands that this Court is charged with imposing a sentence in
12 this case that will serve the goal of protecting society and that society expects be protected from
13 those who distribute substances found by the legislative branch of government to be detrimental
14 or injurious to public health. The question is not, therefore, *whether* the Court's goal in
15 imposing sentence in this case is the protection of society but *how* this Court should use the
16 sentencing tools or methods available to achieve or at least address that goal.

17 Mr. Alley has taken full and complete responsibility for what happened in this
18 case – not just for himself but for all of the others who were prosecuted by the State. He
19 continues to assert, through his conditional plea and intention to appeal this Court's ruling on his
20 motion to dismiss, that what he did was within the law at the time of his conduct.
21 Notwithstanding the conditional plea and appeal, however, the "gamble" Mr. Alley took is
22 almost assuredly the last such gamble he will ever take.

23 The presentence report documents Mr. Alley's commitment to his family, his

1 work ethic and his desire to better himself. He recognizes that, because of his prior conviction,
2 there is little likelihood that he will be placed on probation. However, there is nothing in the
3 unusual, indeed unique, circumstances of this case that would compel the Court to impose a
4 three year fixed prison sentence to protect society via specific or general deterrence.

5 **2. Deterrence of Crime.** Deterrence is classified as specific (to the offender)
6 and general (to a wider class of potential offenders at large). To the extent that imposition of a
7 sentence in any given case actually deters the Defendant from committing the same or similar
8 acts in the future, society is afforded protection against such conduct. Similarly, to the extent
9 that people who are disposed to commit the crime for which a given defendant is sentenced are
10 aware and pay heed to such sentence and refrain from committing such crime, society receives
11 further protection.

12 **a. Specific Deterrence.** Generally, when prosecutors ask for a long, fixed
13 term sentences in order to deter the offender from future illegal conduct, they are really
14 arguing from the incapacitation model. No one really purports to know "how much" prison
15 will achieve either specific or general deterrence for a particular type of criminal activity.
16 Morgan Alley engaged in the conduct that brings him before this Court not because his prior
17 prison sentence failed to deter him but because he sincerely thought, however incorrectly,
18 that the distribution of AM 2201 was not illegal.

19 **b. General Deterrence.** While the appellate courts of this jurisdiction have
20 long given their approval to the concept of general deterrence as an efficacious tool for societal
21 protection, such approval relies more upon *a priori* conclusions than empirical evidence and
22 analysis. The theory is that people not being sentenced for a crime, people who have not yet
23 committed a crime, will pay attention to the sentence imposed upon someone who did commit
24

1 that crime and, thereby be discouraged from committing that crime themselves.

2 In reality, the extent to which an individual sentence in a specific case actually
3 works to discourage bad behavior in those who are not being sentenced is a completely open
4 question. However, even assuming that there is a demonstrable "general deterrent" effect
5 emanating from the criminal sentencing process, general deterrence is based upon the premise
6 that those being deterred are within the class of people otherwise disposed to commit the crime
7 for which the Defendant is being sentenced. If a particular crime is unique to the Defendant
8 being sentenced, then by definition there can be no general deterrence.

9 As previously noted, this case is much different than Morgan Alley's 2006
10 conviction for distribution of methamphetamine. In the prior case Mr. Alley knew that what he
11 was doing was illegal. Here, he was advised by a lawyer and Ph.D. chemist that the substance
12 he was distributing was not illegal. Accordingly, what kind of sentence can this Court fashion
13 to deter those who are advised that their conduct is legal from accepting such advice?

14 **3. Punishment or Retribution.** As noted above, listing
15 Punishment/Retribution as a "goal" of sentencing is illogical and misleading. Even the sternest
16 of judges don't punish simply for the sake of punishment. By way of analogy, no sane parent
17 punishes a child for the mere sake of punishment; children are punished for inappropriate
18 behavior to discourage future inappropriate behavior. Likewise in the criminal justice system,
19 punishment is a tool by which courts discourage future bad behavior and thereby protect society.
20 Just as rational parents do not punish for the mere sake of punishment and try to avoid random
21 and arbitrary infliction of punishment on their children, rational courts strive to use punishment
22 fairly and, as much as possible, uniformly.

23 If an older brother tells a child that it's alright to take money out of mommy's

purse, that advice won't excuse the child when he is caught filching change to buy candy. However, the punishment mom metes out under such circumstances will certainly be mitigated by the incorrect advice given by the older brother. Mr. Holdaway's advice did not make Mr. Alley's conduct legal, but it does stand in mitigation of the retribution/punishment this Court should impose.

4. **Possibility of Rehabilitation.** The State will undoubtedly argue that Mr. Alley's prior conviction argues strongly against any likelihood of his rehabilitation. But Mr. Alley has had long periods of legitimate, productive employment. He has been a good father to his children and shows a strong desire to use his innate business sense to build a law abiding, productive life for himself and his family.

REVIEW OF CRITERIA FOR PLACING THE DEFENDANT ON PROBATION OR IMPOSING IMPRISONMENT

Idaho Code §19-2521 states that the court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public under certain criteria specified in the statute. The Idaho Supreme Court has held that this statute, extending to district courts the power to place a convicted person on probation at its discretion, is a humane provision, permitting the court to exercise clemency in imposing sentence and the purpose of the statute is reformation and rehabilitation of a defendant, particularly a first offender, to give him an opportunity to reform and take his proper place in society. *State v. O'Dell*, 71 Idaho 64, 225 P.2d 1020.

The following comments on the criteria of *I.C. §19-2601* are offered in support

1 of counsel's sentence recommendation.

2 **"(a) There is undue risk that during the period of a suspended sentence**
3 **or probation the defendant will commit another crime;"**

4 Counsel for the Defendant recognizes that this is Mr. Alley's second appearance for
5 sentencing before a Court on felony charges. It should be noted, nonetheless, that he served a
6 good probationary term and that this crime occurred under far different circumstance than the
7 previous one.

8 **"(b) The defendant is in need of correctional treatment which can be**
9 **provided most effectively by his commitment to an institution;"**

10 There is no suggestion in the PSI as to what "treatment" Mr. Alley is in need of
11 or how that treatment can most effectively be provided by a correctional institution. Mr. Alley
12 has made significant strides in coping with his addictions but community based therapy would
13 seem most appropriate for those issues.

14 **"(c) A lesser sentence will depreciate the seriousness of the defendant's**
15 **crime;"**

16 All crimes are, by definition, "serious", particularly those that are labeled
17 "felony". Again, this is not a case of someone choosing to sell a substance universally known to
18 be illegal and should not be treated as if it were such a case.

19 **"(d) Imprisonment will provide appropriate punishment and deterrent to**
20 **the defendant;"**

21 The phrase "appropriate punishment" is shrouded in mystery. Since we have
22 long since relegated the rack, whip and pillory to museums, there are but three forms of
23 punishment: prison, fine and probation – any one of which would be appropriate in this case.

1 **"(e) Imprisonment will provide an appropriate deterrent for other**
2 **persons in the community;"**

3 As far as we know there are no other persons in the community similarly situated
4 and general deterrence is, therefore, inapplicable.

5 **"(f) The defendant is a multiple offender or professional criminal."**

6 Mr. Alley is a multiple offender, though not a professional criminal. Again, this
7 offense is unusual, if not unique, and treating this offense as if it were simply a repeat of the
8 methamphetamine conviction is unfair and inappropriate.

9 **GROUND IN FAVOR OF AVOIDING IMPRISONMENT**

10 The aforementioned statute also provides that certain grounds, while not
11 controlling the discretion of the court, shall be accorded weight in favor of avoiding sentence of
12 imprisonment, as follows:

13 **"(a) The defendant's criminal conduct neither caused or threatened**
14 **harm;"**

15 Harm comes in many sizes and shapes and can be the result of perfectly legal
16 conduct as well as criminal conduct. We have seen no evidence of any specific, actual harm to
17 anyone in this case other than those charged. While a case could be made that such harm would
18 have occurred had Mr. Alley's operation not been shut down so soon after its start-up and
19 therefore "threatened harm" the specifics of that assertion have not been made out by the state.

20 **"(b) The defendant did not contemplate that his criminal conduct would**
21 **cause or threaten harm;"**

22 Mr. Alley did not contemplate that his conduct was illegal, much less harmful. It
23 could fairly be said, however, that a greater degree of contemplation by Mr. Alley about the
24

1 totality of his risk should Mr. Holdaway's view ultimately prove to be wrong would have
2 caused him to act differently.

3 **"(c) The defendant acted under strong provocation;"**

4 There was no provocation, strong or otherwise.

5 **"(d) There were substantial grounds tending to excuse or justify the**
6 **defendant's criminal conduct, though failing to establish a defense;"**

7 The words "excuse" and "justify" in this section are probably ill-chosen for a
8 case such as this. The defense of "mistake of fact" has been ruled out by the Court and Mr.
9 Alley's belief in the advice of his attorney does not rise to the level of a legal defense. But he
10 did what he did believing that it was legal and that is something far different than doing
11 something one clearly knows to be illegal.

12 **"(e) The victim of the defendant's criminal conduct induced or facilitated**
13 **its commission;"**

14 It's hard to know who the "victim of the defendant's criminal conduct" is in this
15 case. However, there is certainly no claim by Mr. Alley that his conduct was victim induced.

16 **"(f) The defendant has compensated or will compensate the victim of his**
17 **criminal conduct for the damage or injury that was sustained;"**

18 Mr. Alley has lost everything he owned as a result of this series of events and
19 has nothing left to compensate anyone – even if a "victim" could be identified.

20 **"(g) The defendant has no history of prior delinquency or criminal**
21 **activity or has led a law abiding life for a substantial period of time**
22 **before the commission of the present crime;"**

23 Mr. Alley readily concedes that he has a history of prior delinquency. His has
24

not been an easy, untroubled life. But he makes no excuses and accepts responsibility for all of his choices, good and bad.

"(h) The defendant's criminal conduct was the result of circumstances unlikely to recur;"

Morgan Alley acknowledges that this is not his first criminal conviction and that fact alone might incline the Court to view recidivism as a clear problem. The circumstances of this case are so highly unusual, however, that it is hard to imagine them occurring again.

"(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely."

The character and attitudes of Mr. Alley can be judged from testimony before the Court, his dedication to his children and extended family and his sincere sense of responsibility for what those who worked for him have suffered. He has no desire to "gamble" with his future and his conduct in the future will reflect the best aspects of his nature and commitment to true rehabilitation.

CONCLUSION

The four "goals" sentencing in this case can clearly be served in their entirety by a probationary sentence. Any objective, fair evaluation of the factors enumerated in I.C. §19-2521 provides overwhelming preference for a term of probation as opposed to incarceration. Nonetheless, counsel for Mr. Alley is fully cognizant of the fact that repeat felony offenders are seldom granted probationary sentences.

Since Mr. Alley has previously received a rider, the Court may be inclined to reject a second such sentence out of hand. However, it is now possible to sentence the Defendant to a 365 day rider which, along with the jail time Mr. Alley has already served,

1 would be more than a sufficient amount of imprisonment to fully serve the goals of sentencing.
2 What is not required in this case is a three year period of incarceration which will have virtually
3 no general deterrent effect and will not demonstrably add to the deterrent effect this entire series
4 of events has had on Mr. Alley.

5 Mr. Alley, in accepting responsibility for what he chose to do, understands that
6 he will be sentenced to serve a prison sentence. But that sentence can and should involved
7 retained jurisdiction or at the very least be of sufficiently short duration to permit Mr. Alley to
8 pay his debt to society without taking away permanently his ability to be rehabilitated and make
9 a productive life for himself and his family.

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14 DATED this 5th day of October, 2012.

15
16 Respectfully submitted,

17 
18 R. Keith Roark, Attorney
19 for the Defendant
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23
24

CERTIFICATE OF SERVICE


I hereby certify that on the 5th day of October, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Heather Reilly, Deputy
Ada County Prosecuting Attorney
Fax: (208) 287-7709

By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.

By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.

By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


R. Keith Roark

OCT 12 2012

CHRISTOPHER D. RICH, Clerk
By MERSHA TAYLOR
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Case No. CR-FE-2011-0015482

JUDGMENT OF CONVICTION
AND COMMITMENT

On October 9, 2012, Heather C. Reilly, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and the defendant, MORGAN CHRISTOPHER ALLEY, with his attorney, R. Keith Roark, appeared before this Court for sentencing. The defendant was duly informed of the Amended Information filed against him for the crimes COUNT I: MANUFACTURING AND/OR DELIVERY OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a) AND COUNT II: POSSESSION OF DRUG PARAPHERNALIA WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2734B, committed on or between March 2011 and September 2011, both dates being approximate and inclusive, and his plea of guilty to Count I and Count II thereto on July 10, 2012.

The defendant, and defendant's counsel, were then asked if they had any legal cause or reason to offer why judgment and sentence should not be pronounced against the defendant, and if the defendant, or defendant's counsel, wished to offer any evidence or to make a statement on behalf

of the defendant, or to present any information to the Court in mitigation of punishment; and the Court, having accepted such statements, and having found no legal cause or reason why judgment and sentence should not be pronounced against the defendant at this time; does render its judgment of conviction as follows, to-wit:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the crimes of COUNT I: MANUFACTURING AND/OR DELIVERY OF A CONTROLLED SUBSTANCE, FELONY, I.C. §37-2732(a), and COUNT II: POSSESSION OF DRUG PARAPHERNALIA WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2734B, and that he be sentenced on each count pursuant to the Uniform Sentence Law of the State of Idaho, I.C. § 19-2513, to the custody of the State of Idaho Board of Correction for an aggregate term of ten (10) years: with the first two (2) years of the term to be FIXED, and with the remaining eight (8) years of the term to be INDETERMINATE, with such sentence to commence immediately and run concurrently.

Pursuant to I.C. § 18-309, the defendant shall be given credit for the time already served upon the charge specified herein of three (3) days.

IT IS FURTHER ORDERED that pursuant to I.C. § 31-3201A(b) the defendant shall pay court costs on each count in the amount of \$17.50; County Administrative Surcharge Fee in the amount of \$10.00 pursuant to I.C. § 31-4502; P.O.S.T. Academy fees in the amount of \$10.00 pursuant to I.C. § 31-3201B; ISTARS technology fee in the amount of \$10.00 pursuant to I.C. § 31-3201(5); \$75.00 reimbursement to the Victims Compensation Fund pursuant to I.C. § 72-1025; \$3.00 for the Peace Officer Temporary Disability Fund pursuant to I.C. § 72-1105; Emergency Surcharge Fee in the amount of \$100 pursuant to I.C. § 31-3201H; \$30.00 domestic

violence fee pursuant to I.C. § 32-1410 and \$10.00 for the drug hotline fee pursuant to I.C. § 37-2735A, to be paid through the Clerk of the District Court.

The defendant shall pay an amount to be determined by the Department of Correction, not to exceed one hundred dollars (\$100), for the cost of conducting the pre-sentence investigation and preparing the pre-sentence investigation report. The amount will be determined by the Department and paid by the defendant in accordance with the provisions of I.C. § 19-2516.

The defendant shall be remanded to the custody of the Sheriff of Ada County, to be delivered FORTHWITH by him into the custody of the Director of the State Board of Correction of the State of Idaho.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this Judgment and Commitment to the said Sheriff, which shall serve as the commitment of the defendant.

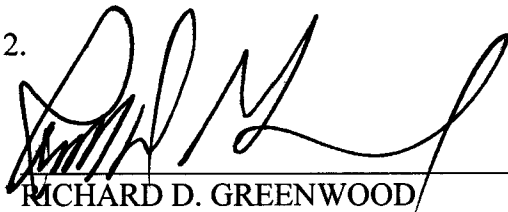
NOTICE OF RIGHT TO APPEAL

You, MORGAN CHRISTOPHER ALLEY, are hereby notified that you have the right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days from the entry of this judgment.

You are further notified that you have the right to be represented by an attorney in any appeal, that if you cannot afford to retain an attorney, one may be appointed at public expense. Further, if you are a needy person, the costs of the appeal may be paid for by the State of Idaho. If you have questions about your appeal rights, you should consult your present lawyer.

IT IS SO ORDERED.

Dated this 9th day of October, 2012.


RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of October, 2012, I mailed (emailed) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR'S OFFICE
VIA EMAIL

R. KEITH ROARK
ROARK LAW FIRM
409 N MAIN ST
HAILEY, ID 83333

ADA COUNTY JAIL
VIA EMAIL

IDAHO DEPARTMENT OF CORRECTION
VIA EMAIL

PSI DEPARTMENT
VIA EMAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By

Deputy Court Clerk

Ada County Mugshot - Prosecutor's Office



User: PRSTARCB

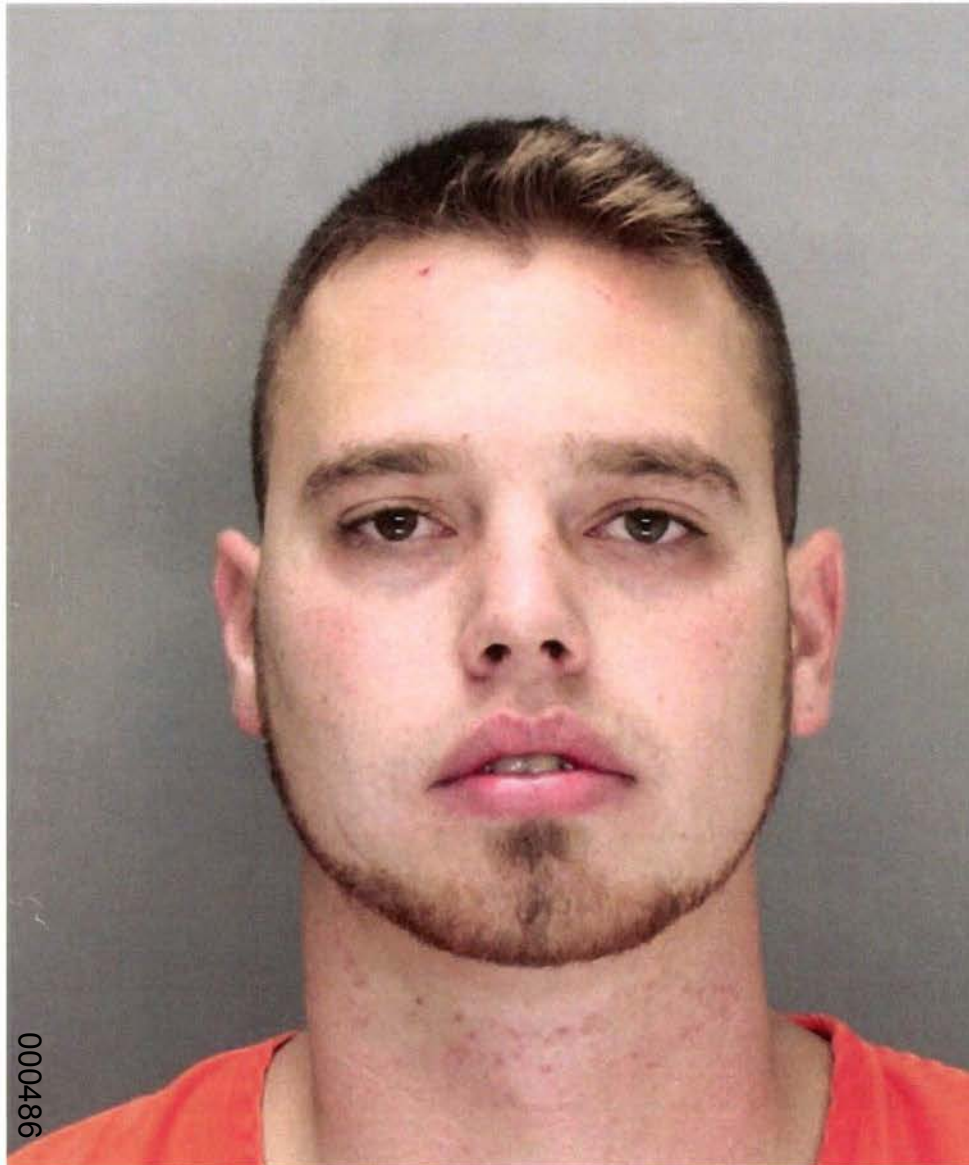


Photo Taken: 2011-09-29 11:08:00

Name: ALLEY, MORGAN CHRISTOPHER

Case #: CR-FE-2011-0015482

LE Number: 650618

DOB: [REDACTED]

SSN: [REDACTED]

Height: 601

Weight: 160

Drivers License Number:

Drivers License State:

Sex: M **Race:** W **Eye Color:** BRO **Hair Color:** BRO **Facial Hair:**

Marks: HAND, LEFT

Scars:

Tattoos:

RECEIVED

OCT 22 2012

Ada County, Idaho
Ryan Holdaway, ISB# 8289
Diane Pitcher, ISB# 8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. 3B
Logan, Utah 84341
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Facsimile: (855) 787-1200
Email: diane@pitcherholdaway.com
Email: ryan@pitcherholdaway.com

Attorneys for Defendant

NO. _____ FILED _____
A.M. 8:00 P.M. _____

OCT 22 2012

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 11-15482
)	
v.)	
	)	NOTICE OF APPEAL
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	
_____)	

Notice is hereby given that:

1. The above named Defendant/Appellant, Morgan Alley, appeals against the above named Plaintiff/Respondent to the Idaho Supreme Court from the district court's findings of law and rulings on the Defendant/Appellant's motion to dismiss and motion to reconsider, entered in the above entitled action on April 9, 2012 and June 12, 2012 respectively. The Honorable Richard D. Greenwood presiding.

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

NOTICE OF APPEAL - 1

000487

3. The Defendant raises a number of issues on appeal:

- Idaho Code 37 § 2705(d)(30)(a) does not prohibit the possession, manufacturing, and/or distribution of the chemical AM-2201 and the district court's findings to the contrary were in error. This issue contains several subparts as follows:
 - a) The district court improperly turned to legislative intent in interpreting 2705(d)(30)(a);
 - b) The district court's improperly considered the alleged affects of AM-2201 in interpreting 2705(d)(30)(a);
 - c) The district court should have applied the rule of lenity and if it had done so it should have concluded that 2705(d)(30)(a) does not cover AM-2201;
- Under the interpretation afforded I.C. § 37-2705(d)(30)(a) by the State, and district court, that section is rendered unconstitutionally vague;

4. The Defendant is not aware of any order sealing any portion of the record.

5. The Defendant is requesting transcripts from the hearing on the motion to dismiss, heard on March 12, 2012 and March 14, 2012. The Defendant is also requesting the transcript for the hearing on his motion to reconsider heard on June 12, 2012. The Defendant is requesting these transcripts in hard copy.

6. The Defendant/Appellant requests that all exhibits introduced into evidence at both the hearing on the motion to dismiss and the motion to reconsider be included in the record.


7. I certify 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:

Fran Morris
11981 La Pan Dr.

Boise, ID 83709

I further certify that the court reporter preparing the transcript has been paid the estimated amount for the requested transcripts, the estimated fee for the preparation of the record, and the appeal filing fee. I certify that service has been made upon all parties required to be served pursuant to Rule 20 and in conformity with I.C. § 67-1401(1).

DATED this 16th day of October, 2012.



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Heather C. Reilly
Ada County Prosecutor's Office
200 W. Front St. Rm. 3191
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

R. Keith Roark
409 N. Main St.
Hailey, ID 83333

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

John C. DeFranco
1031 E. Park Blvd.
Boise, ID 83712

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Michael Lojek
Kimberly Simmons
Ada County Public Defender's Office
200 W. Front St., Rm. 1107
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Marco DeAngelo
290 S. 2nd E.
Mountain Home, ID 83647

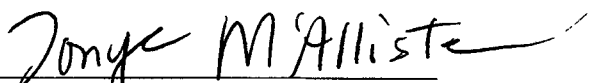
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Fran Morris
Court Reporter
11981 La Pan Dr.
Boise, ID 83709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

LaMont Anderson
Idaho Attorney General's Office
Criminal Law Division
700 W. Jefferson St.
PO Box 83720
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Tonya McAllister

107
HS
12/14
3:26

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd. Ste., 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

NO. 9
A.M. _____ FILED _____ P.M. _____

NOV 13 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY


Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR FE 11-15482
Plaintiff,)	
)	
v.	)	MOTION FOR APPEAL BAIL
)	
MORGAN CHRISTOPHER ALLEY,)	
)	
Defendant.)	
_____)	

The Defendant, Morgan Alley, by and through his attorney of record, Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, hereby submits to this Court his Motion for Appeal Bail. The Defendant makes this motion pursuant to I.C.R. 38(b) and 46(d) as well as I.C. § 19-2903(2). The Defendant is requesting that he be released from incarceration pending the resolution of an appeal filed in this case. The appeal was filed contemporaneously with this motion. This motion is supported by memorandum.

DATED this 8th of November, 2012



Ryan L. Holdaway
Attorney for Defendant

MOTION FOR APPEAL BAIL - 1

000491

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of November, 2012, I caused a true and correct copy of the **MOTION FOR APPEAL BAIL** to be served by the method indicated below, and addressed to the following:

Ada County Clerk
Fourth District Court
200 W. Front St.
Boise, ID 83702

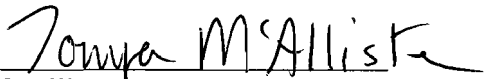
☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Heather C. Reilly
Ada County Prosecutor's Office
200 W. Front St. Rm. 3191
Boise, ID 83702

☐ () U.S. Mail, Postage Prepaid
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R. Keith Roark
409 N. Main St.
Hailey, ID 83333

☐ () U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☒ (x) Facsimile



Tonya McAllister

NOV 13 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd. Ste., 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
	) Case No. CR FE 11-15482
Plaintiff,)
)
v.	) MEMORANDUM IN SUPPORT OF
	) DEFENDANT'S MOTION FOR
MORGAN CHRISTOPHER ALLEY,	) APPEAL BAIL
)
Defendant.)
_____)

The Defendant, Morgan Alley, by and through his attorney of record, Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, hereby submits to this Court his Motion for Appeal Bail. The Defendant makes this motion pursuant to I.C.R. 38(b) and 46(d) as well as I.C. § 19-2903(2). The Defendant is requesting that he be released from incarceration pending the resolution of an appeal filed in this case.

PROCEDURAL HISTORY

On September 29, 2011 multiple charges were brought against the Defendant. Most of the charges were based on the Defendant's involvement with alleged controlled substances. The

primary alleged controlled substance in question was the chemical AM-2201. The Defendant challenged the State's assertion that AM-2201 is a controlled substance through a motion to dismiss that was heard by this Court March 12th and 14th of 2012. This Court concluded that AM-2201 is a controlled substance in its Corrected Memorandum Decision and Order Re: Motion to Dismiss issued on April 9, 2012. The Defendant challenged that decision in a motion to reconsider that was heard on June 12, 2012. The Court ruled from the bench at that hearing and upheld its prior decision and order.

Following the motion to reconsider the Defendant reached an agreement with the State to enter a conditional plea of guilty to manufacturing a controlled substance and drug paraphernalia. The conditional plea reserved to the Defendant the right to appeal this Court's decision and order on the Defendant's motion to dismiss and motion to reconsider. The Defendant has filed a Notice of Appeal along with this motion thereby exercising that right to appeal.

On October 9, 2012 the Defendant was sentenced to 2 years fixed and 8 years indeterminate for each offense with credit for three days time served in jail. He was also fined \$265.50 per count. Defendant's co-counsel attending the hearing requested the Defendant be given bail on appeal. That request was denied and the Defendant was instructed to file a motion to that affect should he want bail on appeal. The present motion is made pursuant to the Court's request.

ARGUMENT

Idaho Criminal Rule 38(b) provides that a "judgment of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail." That same rule permit for fines to be stayed solely based on the entry of an appeal by the defendant. I.C.R. 38(c). Whether bail is available and/or appropriate is controlled by Idaho Criminal Rule 46 and I.C. § 19-2901 et seq.

Idaho Criminal Rule 46(d) provides that a "defendant may be admitted to bail or released upon the defendant's own recognizance...upon consideration of the factors" contained in 46(c). Similarly, I.C. § 19-2903(2) grants discretionary authority to this Court to grant bail to a convicted defendant pending appeal so long as the defendant was not sentenced to death or life imprisonment. The only question remaining is whether the Defendant in the present case should be granted bail on appeal in light of the factors enumerated in I.C.R. 46(c).

In preparing this memorandum, counsel spoke at length with the Defendant's mother, Rochelle Moore, in order to acquire the necessary information to address the factors set forth in the Rule. Ms. Moore will likely be present at any hearing granted by the court to hear this motion and will be able to answer any additional questions the Court may have at that time. Counsel also relied on the PSI report generated prior to Mr. Alley's sentencing.

Defendant's Employment Status and Financial Condition:

If released pending appeal, the Defendant will be able to maintain employment through his father who owns and operates a Jamaica MeTan store in the Boise area. The job will pay the Defendant anywhere between \$10-15 dollars per hour. Because the Defendant would reside with his mother, along with his wife and four daughters, the Defendant should be able to meet all of his financial obligations based upon the work and pay afforded to him through work at Jamaica MeTan.

Nature and Extent of Defendant's Family Relationships:

Defendant's immediate family reside and work in the Boise, Idaho area. The Defendant is married and has four young children, one of whom was born on [REDACTED], and is only a few weeks old. Currently his wife and his four daughters reside with his mother in Boise. The Defendant's mother and father both live and work in the Boise area. The Defendant's family have

lived in the Boise area for all but one year of the Defendant's life with the last 20 years being in Boise. The Defendant is not aware of any plans on the part of his immediate family members to relocate outside of Boise.

The Defendant has a positive and loving relationship with his parents, wife, and children.¹ Those strong family ties will allow the Defendant to remain in a positive and beneficial environment while out on bail and awaiting the resolution of his appeal. Indeed, Ms. Moore has been present at all of the hearings for the Defendant, has maintained regular contact with the Defendant's attorneys, and is actively engaged in ensuring her sons compliance with terms of release and court dates while supporting him through this difficult time in his life. This will continue through the appeal period should the Defendant be released from custody.

Defendant's Past and Present Residences:

The Defendant has resided in the Boise for his entire life with the exception of one year as a child when his family temporarily lived in Hawaii. While the Defendant has had different physical addresses over the years they have been within the Boise area. Most recently the Defendant has been living in his mother's home along with his wife and four children. The Defendant would continue to reside at his mother's house throughout the pending appeal.

Defendant's Character and Reputation:

The Defendant is a loving father and husband. He is a devoted son. He works hard to provide for his family and strives to be a productive member of society. He has struggled in the past with substance abuse which in turn led to some contact with the criminal justice system both

¹ The PSI report contains some information suggesting that at times Mr. Alley's marriage has gone through difficult times. Nevertheless, it appears the Alleys have consistently worked their way through any marriage difficulties and continue to be in a loving and devoted relationship to each other.

as a juvenile and shortly after turning eighteen. He has combated his addictions and has made significant progress in that area.²

The Court is cautioned in ascribing the present controlled substance charges to the Defendant's addiction. The prior substance abuse issues and the present issue have distinct differences. The first and foremost is that the Defendant was not selling spice/potpourri to fuel an addiction. Second, the Defendant was operating a business that he held out and open to the public, with employees, payrolls, taxes, and other indicia of a lawful activity. This is in contrast to past involvement which was more discreet. Finally, the Defendant knew when he was engaged in his past substance abuse that he was dealing with unquestionably illegal substances. In the present case the Defendant was operating under the legitimate belief that he was dealing with a legal substance.

While ignorance of the law is not a defense to conviction for the crime itself, surely it should play a role in other aspects of the case such a plea negotiations, sentencing, and setting bail. This is because those things tend to center around acquiring compliance with the law. Where a person was operating under the belief that his actions were legal it demonstrates the person desires to be a law abiding citizen. With such an individual it should take considerably less pressure from the State to get that individual to remain in compliance with the law.

The Defendant has shown a desire to remain compliant with the law. He successfully completed probation for his past offense. He engaged in a business he truly did believe was a legal enterprise. While his current case was ongoing the Defendant remained compliant with the

² The PSI report expresses some concern on the part of the State that Mr. Alley is in need of some substance abuse treatment. However, that concern appears to be related primarily to Mr. Alley's current involvement in a drug related charge and not to any identified concerns with current use of illicit drugs. The Defendant is not aware of any allegations that he has recently, or currently is, personally using illicit drugs.

terms of his release.³ When it came time to enter his plea and appear for sentencing the Defendant appeared and complied as promised. He did so knowing full well his criminal history, the charges he pled guilty to, and the likelihood of incarceration. This evidences the character of an individual who will be compliant with court orders, the law, and court appearance dates.

Person Agreeing to Assist Defendant in Attending Court

As noted earlier, the Defendant's mother has consistently attended Mr. Alley's hearings. The Defendant will reside with his mother if he is released. This living arrangement will permit his mother to continue to assist Mr. Alley to attend all court mandated appearances. This arrangement was effective during the pretrial hearings, plea hearing, and sentencing of Mr. Alley during the course of the present case.

Nature of Current Charge

Mr. Alley has entered a conditional plea of guilty to the charges in the present case. Mitigating factors this Court should consider center around the Defendant's belief he was in compliance with the law for the reasons detailed earlier in this memorandum. While the charges of distribution of a controlled substance are quite serious there remains a question as to whether Mr. Alley was distributing an unregulated substance or a controlled substance. That question is the subject of Mr. Alley's appeal as well as other appeals recently filed. Until such time as that issue is definitively resolved by an appellate court Mr. Alley should be permitted to continue to support his family and maintain employment.

³ There may be an exception to this assertion. Counsel for the Defendant is not certain whether a condition of the Defendant's release required abstinence from consuming alcohol. Mr. Alley has already conceded in his PSI report to drinking several times after his arrest. Consequently, if abstinence from alcohol was a term of release Mr. Alley did violate that term of his release.

Defendant's Prior Record and Prior Court Attendance

The Defendant has a prior history with controlled substance charges. Due to that history Mr. Alley has undergone substantial substance abuse treatment. His current charges do not appear related to personal use of a controlled substance thereby suggesting Mr. Alley will not abuse illicit drugs while on release.

Additionally, Mr. Alley's prior criminal history shows the Defendant has consistently attended court when required and overall has complied with court dates, sentencing provisions, and probationary terms. While the State may be able to point to a couple of time where the Defendant may have slipped up the Defendant has always recovered from those mistakes and worked his way through the programs, conditions, and expectations placed upon him. That history demonstrates Mr. Alley is willing and able to comply with this Court's conditions of release and will attend court as required.

Violations of Law While on Release

Counsel for the Defendant is unaware of any violations of the law by the Defendant while on release during the present case. Furthermore, Counsel is unaware of any indicia of a likelihood to violate the law while on release. The only issue Counsel is aware of is the PSI's indication Mr. Alley consumed alcohol while on release in the present case which may have been in violation of the this Court's conditions of release. It does not appear that his consumption of alcohol on those occasions led to any other issues of concern regarding the Defendant's release or compliance with the law.

Ties to the Community

The Defendant has detailed his ties to the community in the prior sections and has nothing to add for this section.

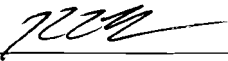
Conditions of Release

The terms of release previously imposed on Mr. Alley during the proceedings in the present case appear to have been effective in keeping Mr. Alley out of trouble and responsive to Court dates and appearances. Therefore, the same conditions and terms of release as previously imposed appear to be appropriate and sufficient during the pendency of Mr. Alley's appeal.

CONCLUSION

The Defendant has shown reliable court attendance. The Defendant has a history of overall compliance with court imposed conditions and sanctions. The Defendant possesses strong family ties to and community ties. While released the Defendant will have stable employment, a stable home life, positive external influences, and the ability to support his young family. Given the unique nature of the appeal in question and the novelty of the legal issues being appealed this case is one that is appropriate for granting bail on appeal. Based on the foregoing the Defendant respectfully request that this Court set bail for the Defendant while his appeal is pending.

DATED this 9th of November, 2012.



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2012, I caused a true and correct copy of the **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR APPEAL BAIL** to be served by the method indicated below, and addressed to the following:

Ada County Clerk
Fourth District Court
200 W. Front St.
Boise, ID 83702

☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Heather C. Reilly
Ada County Prosecutor's Office
200 W. Front St. Rm. 3191
Boise, ID 83702

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R. Keith Roark
409 N. Main St.
Hailey, ID 83333

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☐ () Overnight Mail
☒ (x) Facsimile



Tonya McAllister

NOV 13 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

Ryan L. Holdaway ISB# 8289
Diane Pitcher ISB# 8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
diane@pitcherholdaway.com
ryan@pitcherholdaway.com

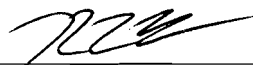
Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO)	
)	
Plaintiff,	)	Case No.: CR FE 11-15482
)	
v.	)	NOTICE OF HEARING
	)	RE: MOTION FOR APPEAL BAIL
MORGAN CHRISTOPHER ALLEY)	
)	
Defendant.)	
)	

NOTICE IS HEREBY GIVEN that a Hearing on Defendant's Motion for Appeal Bail in the above captioned matter is to be held on the 4th day of December, 2012, at 3:30 p.m., at the Fourth District Court of Ada County, 200 W Front St. Boise, Idaho 83702.

DATED this 9th day of November, 2012.



Ryan L. Holdaway
Attorneys for Defendant

NOTICE OF HEARING ON MOTION FOR APPEAL BAIL - 1

000502

K

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2012, I caused a true and correct copy of the **NOTICE OF HEARING ON MOTION FOR APPEAL BAIL** to be served by the method indicated below, and addressed to the following:

Ada County Clerk
Fourth District Court
200 West Front Street
Boise, ID 83702

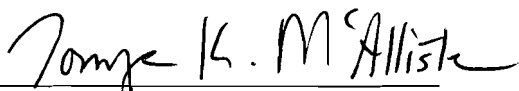
☒ (x) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Heather C. Reilly
Ada County Prosecutor
200 W. Front St. Room 3191
Boise, ID 83702
Fax: 208.287.7709

☐ () U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☒ (x) Facsimile

Keith Roark
Roark Law Firm, LLP
409 N. Main St.
Hailey, ID 83333
Fax: 208.788.3918

☐ () U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☒ (x) Facsimile



Tonya K. McAllister

101

NO. 10530
A.M. 10:50 P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE **DEC 03 2012**

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA CHRISTOPHER D. RICH, Clerk
By KATHY JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant.

DOB: [REDACTED]

Case No. CR-FE-2011-0015482

ORDER TO TRANSPORT

It appearing that the above-named defendant is in the custody of the Idaho State Board of Correction, and that it is necessary that MORGAN CHRISTOPHER ALLEY be brought before this Court for:

HEARING SCHEDULED.....Tuesday, December 04, 2012 at 03:30 PM

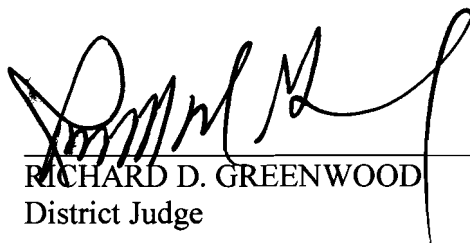
IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Defendant from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Defendant to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho State Board of Correction release the said Defendant to the Ada County Sheriff for the purpose of the aforementioned appearance and retake him into custody from the Sheriff upon his return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated this 3rd day of December, 2012.


RICHARD D. GREENWOOD
District Judge

Copies To:

BOARD OF CORRECTIONS
FAXED

ADA COUNTY JAIL
FAXED

ORDER TO TRANSPORT

Page 1

000504

Time	Speaker	Note
<u>3:08:08 PM</u>		CRFE11.15482 State v. Morgan Alley
<u>3:08:08 PM</u>	Court	Calls case deft present in custody with counsel Ryan Holdaway. State's atty Heather Reilly.
<u>3:30:30 PM</u>	Court	Addresses counsel.
<u>3:30:36 PM</u>	Personal Attorney	Argument on motion to bail pending appeal. ROR or bail while appeal is on going.
<u>3:33:07 PM</u>	State Attorney	Didn't file written response.
<u>3:33:30 PM</u>	State Attorney	Argument on motion for bail. Deny motion.
<u>3:37:38 PM</u>	Court	Addresses counsel.
<u>3:37:42 PM</u>	State Attorney	If would grant bail - bond amount for at least \$500,000.00.
<u>3:38:08 PM</u>	Court	Addresses counsel.
<u>3:38:32 PM</u>	Personal Attorney	Further argument on motion for bail.
<u>3:39:11 PM</u>	Court	Addresses counsel regarding what drug parapharnelia and testimony at trial.
<u>3:40:53 PM</u>	Personal Attorney	Further argument on motion for bail.
<u>3:41:37 PM</u>	Court	Addresses counsel regarding drug parapharnelia.
<u>3:42:45 PM</u>	Personal Attorney	Further argument.
<u>3:45:51 PM</u>	Court	Addresses counsel regarding the PSI.
<u>3:45:56 PM</u>	Court	Addresses counsel regarding bond.
<u>3:46:22 PM</u>	Court	Bond is not appropriate.
<u>3:49:20 PM</u>	Court	Addresses counsel regarding the PSI materials.
<u>3:49:39 PM</u>	End.	
<u>3:49:39 PM</u>		

57

NO. _____
A.M. _____ FILED P.M. _____

• Ryan L. Holdaway, ISB #8289
Diane Pitcher, ISB #8340
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd. Ste., 3B
Logan, UT 84341
Telephone: (435) 787-1200
Facsimile: (855) 787-1200
Email: ryan@pitcherholdaway.com
Email: diane@pitcherholdaway.com

DEC 10 2012
ORIGINAL
B. J. CHRISTENSEN, Clerk
DEPUTY

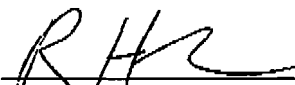
Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
	)	Case No. CR FE 11-15482
Plaintiff,)	
)	
v.	)	MOTION FOR TRANSPORT ORDER
	)	FOR DEFENDANT TO ATTEND
MORGAN CHRISTOPHER ALLEY,	)	HEARING ON MOTION FOR
	)	APPEAL BAIL
Defendant.)	
_____)	

The Defendant, Morgan Alley, by and through his attorney of record, Ryan L. Holdaway, of the firm, Pitcher & Holdaway, PLLC, and pursuant to I.C.R. 43, hereby submits to this Court his Motion for Transport Order for Defendant to Attend Hearing on Motion for Appeal Bail. Defendant requests that the court issue an order pursuant to Idaho Code § 19-4601 for the production of a prisoner so that Mr. Alley can attend his hearing. A proposed order is attached to this motion.

DATED this 27th of November, 2012.



Ryan L. Holdaway
Attorney for Defendant

MOTION FOR TRANSPORT ORDER TO ATTEND BAIL HEARING - 1

Fax: 334-2616

NO. _____ FILED
A.M. 8:00 P.M. _____

DEC 20 2012

In the Supreme Court of the State of Idaho


CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

State of Idaho)
Plaintiff-Respondent)
v)
Christopher Morgan Alley,)
Defendant-Appellant)

Docket No. 40428-2012

Notice of Transcript Lodged

Notice is hereby given that on December 16, 2012,
I lodged one (1) original and three (3) copies of transcripts 407 pages in length,
as listed below, for the above referenced appeal with
the District Court Clerk of Ada County, Fourth Judicial District.



Frances J. Morris, RPR, CSR No. 696

TRANSCRIPT LODGED

Motion to dismiss 3/12/12 and 3/14/12
Motion to reconsider 6/12/12

000507

BT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant-Appellant.

Supreme Court Case No. 40428

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

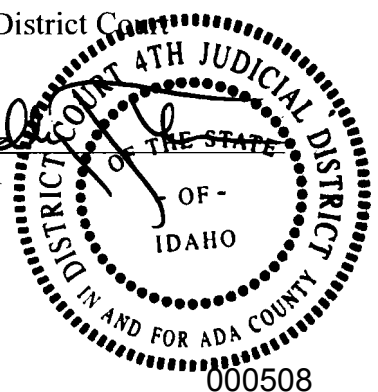
1. Pre-Sentence Investigation Report.
2. Transcript of Grand Jury Hearing Held October 11, 2011, Boise, Idaho, filed January 17, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of December, 2012.

CHRISTOPHER D. RICH

Clerk of the District Court

By Bradley J. Rich
Deputy Clerk



CERTIFICATE OF EXHIBITS

000508

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

HONORABLE RICHARD GREENWOOD

CLERK: KATHY JOHNSON

CT REPTR: FRAN MORRIS

STATE OF IDAHO,

Plaintiff,

vs.

Case No. CRFE11.15482

MORGAN ALLEY,

Defendant.

EXHIBIT LIST

Counsel for Plaintiff:

Heather Reilly/Jonathan Medema

Counsel for Defendant:

Ryan Holdaway/Diane Pitcher/Keith Roark

STATE'S EXHIBITS

100 Drawing/Diagram	03/12/12	Admitted
101 Diagram - Naphthoylindole	03/12/12	Admitted
102 Diagram - AM-2201	03/14/12	Admitted
103 Wikipedia document	03/14/12	Admitted
104 IDAPA Rule - 27.01.01	03/14/12	Admitted
105 IUPAC The Network	03/14/12	Admitted
106 IUPAC Search	03/14/12	Admitted
107 IUPAC R-1.0 Introduction	03/14/12	Admitted
108 IUPAC R-1.2.1 Substitutive operation	03/14/12	Admitted
109 IUPAC R-4.0 Introduction	03/14/12	Admitted
110 IUPAC R-4.1 General Principles	03/14/12	Admitted
111 Interntnl App Published under Patent 04/26/01	03/14/12	Admitted
112 Interntnl App Published under Patent 08/08/02	03/14/12	Admitted

DEFENDANT'S EXHIBITS

1 Dr. Owen McDougal's Curriculum Vitae	03/12/12	Admitted
2 Dr. Owen McDougal's opinion	03/12/12	Admitted
3 Diagram - AM-2201	03/12/12	Admitted
4 About.Com Chemistry	03/12/12	Admitted
5 Dr. Carl DeJesus' Curriculum Vitae	03/12/12	Admitted
6 Dr. Carl DeJesus' written opinion	03/12/12	Admitted
7 International Union of Pure & Applied Chemistry	03/12/12	Admitted
8 Functional Groups	03/14/12	Admitted
9 Diagram of alcohol/alkyl	03/14/12	Admitted
10 Diagram - ethyl alcohol structure	03/14/12	Admitted
11 Diagram - alknyl	03/14/12	Admitted

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant-Appellant.

Supreme Court Case No. 40428

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

RYAN L. HOLDAWAY

ATTORNEY FOR APPELLANT

LOGAN, UTAH

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

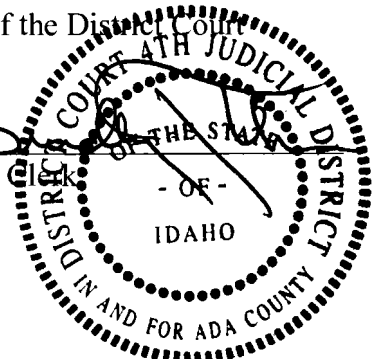
BOISE, IDAHO

Date of Service: JAN 14 2013

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH
Clerk of the District Court

By [Signature]
Deputy Clerk



000510

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

MORGAN CHRISTOPHER ALLEY,

Defendant-Appellant.

Supreme Court Case No. 40428

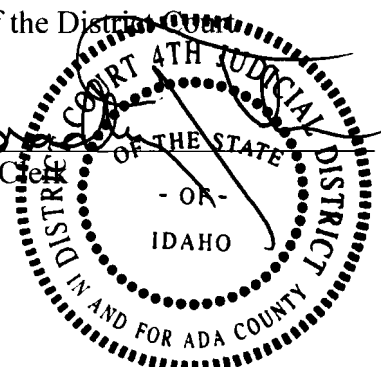
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 22nd day of October, 2012.

CHRISTOPHER D. RICH
Clerk of the District Court

By B. Rich
Deputy Clerk



CERTIFICATE TO RECORD

000511