

8-30-2012

State v. Baker Clerk's Record Dckt. 39877

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	SUPREME COURT NUMBER
Defendant/Appellant)	
	)	39877
vs.)	
)	
Carey Mitchell Baker)	
<u>Plaintiff/Respondent</u>)	

CLERK'S RECORD

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
THE HONORABLE CARL B. KERRICK, PRESIDING JUDGE
FIRST JUDICIAL DISTRICT, PRESIDING

SARA SEARS
PUBLIC DEFENDER
400 NORTHWEST BLVD.
COEUR D'ALENE, ID 83814

MR. LAWRENCE WASDEN
ATTORNEY GENERAL
STATE OF IDAHO
700 W JEFFERSON, STE 210
BOISE, ID 83720

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge
12/7/2009	WARI	LSMITH	Warrant Issued - Arrest Bond amount: 2000.00 Defendant: Baker, Carey Mitchell Issued 12/9/09 Is
	CSOS	LSMITH	Case Status Order *****SEALED*****
	XSEA	LSMITH	Case Sealed
	STAT	LSMITH	Case status changed: Inactive
12/8/2009	NCRM	LSMITH	New Case Filed - Misdemeanor
	CRCO	LSMITH	Criminal Complaint
	AFPC	LSMITH	Affidavit Of Probable Cause
	ORPC	LSMITH	Order Finding Probable Cause
4/2/2010	BNDS	BIELEC	Bond Posted - Surety (Amount 2000.00)
4/5/2010	HRSC	ROSENBUSCH	Hearing Scheduled (Pre-Trial Conference/Arraignment 04/21/2010 08:30 AM)
	STAT	ROSENBUSCH	Case status changed: Reopened
		ROSENBUSCH	Notice of Pretrial Conference
	STAT	ROSENBUSCH	Case status changed: inactive
4/7/2010	NODF	BIELEC	Notice To Defendant
4/21/2010		OREILLY	Email Sent Date: 04/21/2010 09:43 am To: warrants@kcgov.us No Files Attached.
	ARRN	DARNELL	Hearing result for Pre-Trial Conference/Arraignment held on 04/21/2010 08:30 AM: Arraignment / First Appearance
	CSOR	DARNELL	Case Status Order *****OPEN*****
	XUNS	DARNELL	Case Unsealed
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)

State of Idaho vs. Carey Mitchell Baker

Date	Code	User		Judge
4/21/2010	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)	Penny E. Friedlander
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)	Penny E. Friedlander
	PLEA	DARNELL	A Plea is entered for charge: - NG (I39-6312 Domestic Violence-Violation of Protection Order)	Penny E. Friedlander
	WRTA	MCCANDLESS	Arrest Warrant Returned, Served Defendant: Baker, Carey Mitchell	To Be Assigned
	STAT	MCCANDLESS	Case status changed: Pending	To Be Assigned
	ADMR	MITCHELL	Administrative assignment of Judge	Barry E. Watson
	HRSC	MITCHELL	Hearing Scheduled (Pre-Trial Conference 07/09/2010 10:30 AM)	William Hamlett
	HRSC	MITCHELL	Hearing Scheduled (Jury Trial Scheduled 08/16/2010 08:30 AM) 8/16-8/20	Barry E. Watson
		MITCHELL	Notice of Pre-Trial Conference and Trial	Barry E. Watson
4/22/2010	STRS	HOFFMAN	Speedy Trial Limit Satisfied	Barry E. Watson
6/29/2010	ORPD	STONE	Defendant: Baker, Carey Mitchell Order Appointing Public Defender Public defender Public Defender	Penny E. Friedlander
7/2/2010	NANG	DARNELL	Notice of Appearance, Plea of Not Guilty & Demand For Jury Trial	Barry E. Watson
	DRQD	DARNELL	Defendant's Request For Discovery	Barry E. Watson
7/8/2010	PRQI	MCCANDLESS	Plaintiff's Request for Discovery & Demand For Written Notice of Intent to Offer Defense of Alibi	Barry E. Watson
	PRSD	MCCANDLESS	Plaintiff's Response To Discovery	Barry E. Watson
7/9/2010	HRHD	BUTLER	Hearing result for Pre-Trial Conference held on 07/09/2010 10:30 AM: Hearing Held	William Hamlett
7/12/2010	MOTN	DARNELL	Motion to Sever	Barry E. Watson
7/14/2010	HRSC	ALBERS	Hearing Scheduled (Motion 08/06/2010 01:30 PM) to Sever (Sears)	Barry E. Watson
7/19/2010	DRSD	DARNELL	Defendant's Response To Discovery	Barry E. Watson
7/20/2010	NOHG	MCCANDLESS	Notice Of Hearing	Barry E. Watson
7/27/2010	LETR	MCCANDLESS	Letter from Robyn Shea	Barry E. Watson
8/3/2010	SDTA	CRUMPACKER	Subpoena Duces Tecum Acceptance of Service 7/30/10 Officer Jana Alleman	Barry E. Watson
8/6/2010	HRVC	CARROLL	Hearing result for Motion held on 08/06/2010 01:30 PM: Hearing Vacated to Sever (Sears)	Barry E. Watson
8/12/2010	SUBF	BAXLEY	Subpoena Return/found on 08/09/10 served Robyn Elizabeth Shea	Barry E. Watson
8/13/2010	PSRQ	MCCANDLESS	Plaintiff's Supplemental Request For Discovery	Barry E. Watson
8/16/2010	CONT	ALBERS	Hearing result for Jury Trial Scheduled held on 08/16/2010 08:30 AM: Continued 8/16-8/20	Barry E. Watson

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge
8/16/2010	HRSC	ALBERS	Hearing Scheduled (Jury Trial Scheduled 10/12/2010 08:30 AM)
	NOHG	ALBERS	Notice Of Hearing
8/17/2010	SDTA	CRUMPACKER	Subpoena Duces Tecum Acceptance of Service 8/11/10 Officer John Kelly
8/24/2010	SDTA	ROSENBUSCH	Subpoena Duces Tecum Acceptance of Service Officer John Kelly served 08-22-10
9/3/2010	MNDS	MCCANDLESS	Motion To Dismiss
9/7/2010	HRSC	ALBERS	Hearing Scheduled (Motion to Dismiss 10/08/2010 10:30 AM) Sears (1 hr)
9/9/2010	NOHG	MCCANDLESS	Notice Of Hearing
10/8/2010	INHD	ALBERS	Hearing result for Motion to Dismiss held on 10/08/2010 10:30 AM: Interim Hearing Held Sears (1 hr)
	HRVC	ALBERS	Hearing result for Jury Trial Scheduled held on 10/12/2010 08:30 AM: Hearing Vacated
	HRSC	ALBERS	Hearing Scheduled (Jury Trial Scheduled 12/06/2010 08:30 AM) 12/07/10 -12/10/10
	NOHG	ALBERS	Notice Of Hearing
	MEMS	ALBERS	Memorandum In Support Of Motion to Dismiss
	MEMP	ALBERS	State's Memorandum Of Points And Authorities
10/15/2010	HRSC	ALBERS	Hearing Scheduled (Decision 11/05/2010 03:00 PM) ARGUMENT
		ALBERS	Notice of Hearing
10/18/2010	SDTA	CRUMPACKER	Subpoena Duces Tecum Acceptance of Service 10/15/10 Officer John Kelly
11/5/2010	DSBC	MOLLETT	Dismissed by Court (I39-6312 Domestic Violence-Violation of Protection Order)
	DENY	MOLLETT	Hearing result for Decision held on 11/05/2010 03:00 PM: Motion Denied
	HRVC	MOLLETT	Hearing result for Jury Trial Scheduled held on 12/06/2010 08:30 AM: Hearing Vacated 12/07/10 -12/10/10
	NOHG	MOLLETT	Notice Of Hearing
11/9/2010	HRSC	MOLLETT	Hearing Scheduled (Jury Trial Scheduled 01/31/2011 08:30 AM)
11/10/2010	ORDR	ALBERS	Order Denying Defendant's Motion to Dismiss
11/15/2010	SDTA	CRUMPACKER	Subpoena Duces Tecum Acceptance of Service 11/11/10 Officer John Kelly
1/25/2011	SRES	VIGIL	Supplemental Response For Discovery
1/28/2011	MOTN	MCCANDLESS	Motion to Change Venue
1/31/2011	INHD	ALBERS	Hearing result for Jury Trial Scheduled held on 01/31/2011 08:30 AM: Interim Hearing Held

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge
1/31/2011	HRSC	ALBERS	Hearing Scheduled (Jury Trial Scheduled 02/01/2011 09:00 AM)
	NOHG	ALBERS	Notice Of Hearing
	PRJI	ALBERS	Plaintiff's Requested Jury Instructions
	FILE	MITCHELL	New File Created #2
2/1/2011	JTST	ALBERS	Hearing result for Jury Trial Scheduled held on 02/01/2011 09:00 AM: Jury Trial Started
	AFFD	ALBERS	Affidavit of Carey Baker
	MOTN	ALBERS	Motion in Limine
	VERD	ALBERS	Verdict CT 1 - Guilty
	VERD	ALBERS	Verdict Ct 2 - Guilty
	VERD	ALBERS	Verdict - Ct 3 -Guilty
	VERD	ALBERS	Verdict Ct 4 -Guilty
	VERD	ALBERS	Verdict Ct 5 -Guilty
	VERD	ALBERS	Verdict Ct 7 -Guilty
	VERD	ALBERS	Verdict CT 8 -Guilty
	VERD	ALBERS	Verdict CT 9 -Guilty
	VERD	ALBERS	Verdict CT 10 -Guilty
	VERD	ALBERS	Verdict Ct 11 -Guilty
	VERD	ALBERS	Verdict CT 12 -Guilty
	NOHG	ALBERS	Notice Of Hearing
	HRSC	ALBERS	Hearing Scheduled (Sentencing 03/24/2011 10:30 AM)
2/17/2011	MOTN	MCCANDLESS	Motion to Stay Execution of Sentence Pending Appeal
	APDC	OREILLY	Appeal Filed In District Court
2/22/2011	ADMR	OREILLY	Administrative assignment of Judge
2/23/2011	ESTI	CAMPBELL	Estimate Of Transcript Costs (exempt)
3/4/2011	LETR	BOOTH	Letter - from Robyn Shea
3/24/2011	HRHD	BUTLER	Hearing result for Sentencing held on 03/24/2011 10:30 AM: Hearing Held
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 364 days. Credited time: 1 day.
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge
3/24/2011	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 364 days. Credited time: 1 day.
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 364 days. Credited time: 1 day.
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)
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	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 364 days. Credited time: 1 day.
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)
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	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 364 days. Credited time: 1 day.
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge	
3/24/2011	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 335 days. Credited time: 1 day.	Barry E. Watson
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)	Barry E. Watson
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 335 days. Credited time: 1 day.	Barry E. Watson
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)	Barry E. Watson
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)	Barry E. Watson
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 335 days. Credited time: 1 day.	Barry E. Watson
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)	Barry E. Watson
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 335 days. Credited time: 1 day.	Barry E. Watson
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)	Barry E. Watson
	PROB	ROHRBACH	Probation Ordered (I39-6312 Domestic Violence-Violation of Protection Order) Probation term: 2 years. (Unsupervised)	Barry E. Watson
	SNPF	ROHRBACH	Sentenced To Pay Fine (I39-6312 Domestic Violence-Violation of Protection Order)	Barry E. Watson
	SNIC	ROHRBACH	Sentenced To Incarceration (I39-6312 Domestic Violence-Violation of Protection Order) Confinement terms: Jail: 365 days. Suspended jail: 335 days. Credited time: 1 day.	Barry E. Watson
	STAT	ROHRBACH	Case status changed: closed pending clerk action	Barry E. Watson
	JDMT	ROHRBACH	Judgment	Barry E. Watson
	ORDR	ROHRBACH	Order to Stay Execution of Jail Sentence Pending Appeal	Barry E. Watson
3/30/2011	NLTR	CAMPBELL	Notice of Lodging Transcript (for appeal-First Appearance, Motions Hearing, Jury Status Hearing and Jury Trial excluding jury voir dire)	John P. Luster
	LODG	CAMPBELL	Lodged - Transcript - First Appearance, Motions Hearing, Jury Status Hearing and Jury Trial excluding jury voir dire (In Expando)	John P. Luster

State of Idaho vs. Carey Mitchell Baker

Date	Code	User	Judge
3/31/2011	RECT	BROWN	Receipt Of Transcript - First Appearance, Motions Hearing, Jury Status Hearing and Jury Trial (Excluding Jury Voir Dire) - City Attorney
4/4/2011	BNDE	ROHRBACH	Surety Bond Exonerated (Amount 2,000.00)
4/13/2011	ANOA	CARROLL	Amended Notice of Appeal
4/15/2011	BNDC	LYONS	Bond Posted - Cash (Receipt 16760 Dated 4/15/2011 for 1500.00)
4/18/2011	ANOA	BROWN	Second Amended Notice of Appeal
4/20/2011	FILE	ROSEBUSCH	*****File #3 Created (Expando)*****
4/22/2011	ESTI	CAMPBELL	Estimate Of Transcript Costs (for Second Amended Notice of Appeal - Exempt)
5/6/2011	SRPT	MCCANDLESS	Kootenai County Sheriff's Incident Report-fta
	ADMR	LSMITH	Administrative assignment of Judge
5/10/2011	NLTR	CAMPBELL	Notice of Lodging Transcript - Sentencing (per Amended Notice of Appeal)
	LODG	CAMPBELL	Lodged - Transcript - Sentencing
	RECT	LSMITH	Receipt Of Transcript p/u by PD
5/12/2011	RCPH	BROWN	Receipt Of Preliminary Hearing Transcript - Wes Somerton - CDAPA
6/1/2011	NOTS	CAMPBELL	Notice Of Settling Transcript On Appeal and Briefing Schedule
	HRSC	BOOTH	Hearing Scheduled (Appeal Hearing 09/09/2011 08:00 AM)
		BOOTH	Notice of Hearing
6/2/2011	RECT	BROWN	Receipt Of Transcript - First Appearance, Motions Hearing, Jury Status Hearing and Jury Trial (Excluding Jury voir dire) - PD
7/5/2011	BRFA	BROWN	Brief Of Appellant
8/5/2011	MISC	OREILLY	State's Reply Brief
8/24/2011	MOTN	BROWN	Motion For Extension Of Time For Filing Reply Brief
8/29/2011	ORDR	BOOTH	Order exte4nding time for filing reply brief (to 9/28/11)
	HRVC	BOOTH	Hearing result for Appeal Hearing scheduled on 09/09/2011 08:00 AM: Hearing Vacated
	HRSC	BOOTH	Hearing Scheduled (Appeal Hearing 10/28/2011 08:00 AM)
		BOOTH	Amended Notice of Hearing
9/28/2011	ADMR	MEYER	Administrative assignment of Judge
	ORAJ	HAMILTON	Order Assigning Judge
	ABRF	MCCANDLESS	Appellant's Reply Brief

State of Idaho vs. Carey Mitchell Baker

Date	Code	User		Judge
9/29/2011		BOOTH	Notice Vacating Hearing	John P. Luster
	HRVC	BOOTH	Hearing result for Appeal Hearing scheduled on 10/28/2011 08:00 AM: Hearing Vacated	John P. Luster
	ADMR	CRUMPACKER	Administrative assignment of Judge	Carl B. Kerrick
11/7/2011	ORDR	MITCHELL	Order for Telephonic Scheduling Conference	Carl B. Kerrick
	HRSC	MITCHELL	Hearing Scheduled (Scheduling Conference 11/30/2011 11:15 AM) Teleconference - NezPerce County Courthouse to initiate call	Carl B. Kerrick
11/8/2011	FILE	MITCHELL	*****New File Created #4 (#3 expando)	Carl B. Kerrick
11/30/2011	HRHD	MITCHELL	Hearing result for Scheduling Conference scheduled on 11/30/2011 11:15 AM: Hearing Held Teleconference - NezPerce County Courthouse to initiate call	Carl B. Kerrick
12/1/2011	NOTH	MITCHELL	Notice Of Hearing	Carl B. Kerrick
	HRSC	MITCHELL	Hearing Scheduled (Oral Argument on Appeal 01/10/2012 09:00 AM) Telephonic. In Lewiston. Court to initiate call.	Carl B. Kerrick
1/10/2012	HRHD	MITCHELL	Hearing result for Oral Argument on Appeal scheduled on 01/10/2012 09:00 AM: Hearing Held Telephonic. In Lewiston. Court to initiate call.	Carl B. Kerrick
	NOTE	MITCHELL	Court takes matter under advisement and will issue written decision.	Carl B. Kerrick
3/20/2012	STAT	LSMITH	Case status changed: closed pending clerk action	Carl B. Kerrick
3/21/2012	OPIN	HOFFMAN	Appellate Opinion and Order	Carl B. Kerrick
4/9/2012	APSC	HOFFMAN	Appealed To The Supreme Court	Carl B. Kerrick
5/14/2012	NAPL	MCCANDLESS	Notice Of Appeal Due Date From Supreme Court	Carl B. Kerrick

BARRY McHugh
Prosecuting Attorney
501 N. Government Way
Coeur d'Alene, ID 83816
Telephone: (208) 446-1800

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: LSS

2009 DEC -8 AM 9: 28

IN THE DISTRICT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK DISTRICT COURT
[Signature]
DEPUTY

STATE OF IDAHO,)

Plaintiff)

vs.)

CASE NO.09C28614

AFFIDAVIT IN SUPPORT
OF PROBABLE CAUSE

DOB: [REDACTED]
SSN:Unk.

Defendant)
Carey Mitchell Baker)

STATE OF IDAHO)
:ss)
County of Kootenai)

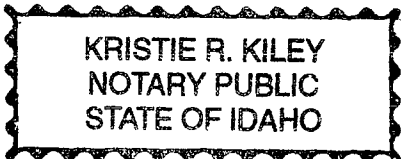
Det. T. Martin K50, being first duly sworn, deposes and says that:

I am a detective for the Coeur d' Alene Police Department for the City of Coeur d'Alene. The basis for the request for the issuance of a Criminal Complaint is set forth in the police report attached hereto and incorporated herein. I further depose and say that I have read the report and all the contents are true and correct to the best of my knowledge, and that I am the author or that I personally know the author of the report to be a law enforcement officer whom I believe to be credible and reliable.

DATED this 7th day of Dec, 2009.

[Signature] K50
AFFIANT

SUBSCRIBED and SWORN to before me on this 7th day of Dec, 2009.



[Signature]
NOTARY PUBLIC FOR IDAHO
RESIDING AT: CDA, ID
COMMISSION EXP. 11/13/13

COEUR D'ALENE POLICE DEPARTMENT
COMPLAINT REQUEST FORM

CDAPA
10-0209

PERSON RESPONSIBLE FOR CASE: J. Alleman K67

CHARGE : CPOR Violation

AGENCY'S REPORT # : 09C28614

WARRANT : SUMMONS : IN CUSTODY :

ATTACHED ARE : OFFICER'S REPORT: SUSPECT'S CRIMINAL RECORD:

NAME OF BUSINESS / VICTIM Shea, Robyn E

DATE / TIME OF INCIDENT : 09/17/09 TIME: 11:18:00 AM

LOCATION OF INCIDENT 1400 N. Northwood Center Ct, CDA, ID

DEFENDANT : NAME : Baker, Carey M DOB : [REDACTED]

ADDRESS : Unknown in Ada County

EMPLOYER :

LOCAL FAMILY :

BRIEF RESUME OF INCIDENT :

See attached report.

PHYSICAL EVIDENCE :

LIST OF PROSPECTIVE WITNESSES AND TESTIMONY AVAILABLE FROM EACH

NAME : AGE : PHONE :

ADDRESS :

TESTIMONY :

NAME : AGE : PHONE :

ADDRESS :

TESTIMONY :

COEUR D'ALENE POLICE DEPARTMENT COMPLAINT REQUEST
FORM RECEIPT DATE : -----

PERSON RESPONSIBLE FOR CASE: J. Alleman K67

I, THE UNDERSIGNED HAVE RECEIVED THE COMPLAINT REQUEST FORM WITH ATTACHED COPIES OF THE REPORT IN REGARD TO :

CHARGE : CPOR Violation

NAME : Baker, Carey M AGENCY'S REPORT # : 09C28614

SIGNED : _____ AGENCY : CITY COUNTY PROSECUTOR



Coeur d'Alene Police

Report for CDA Incident 09C28614

Nature: DVA VIOLATION

Address: 1400 N NORTHWOOD CENTER
CT

Location: 84

COEUR D'ALENE ID 83814

Offense Codes: DVAV

Received By: S.MCKINLEY

How Received: T

Agency: CDA

Responding Officers:

Responsible Officers: J.KELLY

Disposition: ACT 09/17/09

When Reported: 14:32:43 09/17/09

Occurred Between: 11:18:00 05/26/09 and 14:09:00 09/17/09

Assigned To: J.Alleman

Detail: DVAV

Date Assigned: 09/21/09

Status: AC

Status Date: 09/21/09

Due Date: 09/17/10

Complainant: 443506

Last: SHEA

First: ROBYN

Mid: ELIZABETH

Race: W

Sex: F

Dr Lic: [REDACTED]
Phone: (208)819-9009

Address: [REDACTED] RD
City: COEUR D'ALENE, ID 83814

Offense Codes

Reported: NC Not Classified

Observed: DVAV DOMESTIC VIOLENCE
ACT VIOLATIO

Additional Offense: DVAV DOMESTIC VIOLENCE
ACT VIOLATIO

Circumstances

VIPR VIPR EVIDENCE STORAGE - CDAPD

Responding Officers:

Unit :

J.KELLY

K58

Responsible Officer: J.KELLY

Agency: CDA

Received By: S.MCKINLEY

Last Radio Log: **:**:** **/**/**

How Received: T Telephone

Clearance: 6 REPORT TAKEN

When Reported: 14:32:43 09/17/09

Disposition: ACT Date: 09/17/09

Judicial Status:

Occurred between: 11:18:00 05/26/09

Misc Entry:

and: 14:09:00 09/17/09

Modus Operandi:

Description :

Method :

LT

LOCATION TYPE

LT25 OTHER/UN-
KNOWN

VR

VICTIM: RELATIONSHIP

VR-XS EX-SPOUSE

Involvements

Date	Type	Description	
09/21/09	Name	SHEA, ROBYN ELIZABETH	VICTIM
09/17/09	Name	BAKER, CAREY MITCHELL	SUSPECT
09/17/09	Name	SHEA, ROBYN ELIZABETH	Complainant
09/17/09	Cad Call	14:32:43 09/17/09 DVA VIOLATION	Initiating Call

Narrative

CDAPD Investigation Narrative

FELONY: MISDEMEANOR: XX

Date : 09/17/09

Incident #: 09C28614

Crime : Protection Order Violation

Victim : Shea, Robyn E. (AKA: Baker, Robyn E.)

Suspect : Baker, Carey Mitchell

Supp By : Kelly, John M. / K58

Mentioned : Fortier, Laurie
Deputy City Attorney, City of Boise Idaho
(208)384-3870

Protection Order Information: Ada County, Case No. CV DV 2009-03241

Narrative:

I made contact with Robyn Shea in reference to several violations of a protection order she has in effect between she and her ex-husband Carey Baker. This order originated in Ada County and was issued on 02/20/2009. It expires 03/04/2010. This order restrictions Carey from communicating with Robyn. The order specifically restricts communication via telephone.

I met with Robyn at the PD and she and I began to go through her voice messages on her cell phone. I began to log the date and time of each voice message left by Carey. By the time that we were done, I logged and recorded 16 voice messages ranging from May 26, 2009 up until today (09/17/09). These dates/times are as follows:

05/26/09 1118 hrs
06/06/09 1412 hrs
07/29/09 1538 hrs
07/29/09 1540 hrs
08/04/09 0724 hrs
08/05/09 0539 hrs
08/24/09 1603 hrs

Report for CDA Incident 09C28614

08/31/09 1136 hrs
08/31/09 1141 hrs
09/08/09 1833 hrs
09/08/09 1900 hrs
09/08/09 1951 hrs
09/10/09 1440 hrs
09/12/09 0647 hrs
09/15/09 1415 hrs
09/17/09 1409 hrs

These messages seemed to have a common theme. Carey was demanding Robyn pay money that she owes him. He would also consistently use profane, vulgar language in describing and speaking of Robyn. In reference to a phone number that Carey was calling from, he would consistently use a "restricted" number.

I used my digital pocket recorder and recorded each of these messages. I then uploaded this audio file into the Viper system at the CdA PD.

In reference to a possible location of the suspect in this case (Carey Baker), Robyn said Carey lives in the Boise area. She did not have a specific address.

I also asked Robyn why she had let these violations multiply before she decided to call law enforcement. Robyn said that she called the PD one other time but it didn't appear to her that anything happened as a result of that call.

I checked in the Spillman system and saw that Robyn called on September 10, 2009. (09C27854) The disposition of that incident was "referred to other agency".

I also made contact with the Office of the City Prosecutor in Boise City. I learned that they had at least one case (possibly two) that they had listing Carey Baker as a defendant. The Deputy City Prosecutor (Laurie Fortier) that was assigned the case was out of the office, but I left a message requesting contact.

*I had Ada County fax a copy of the protection order to me. This copy was attached to this report.

Approved By

Date

Supplement

Incident Number: 09C28614 Nature: DVA VIOLATION Incident Date: 07:40:36 10/02/2009

Name: J.Alleman Date: 07:36:49 10/02/2009

CDAPD Investigation Narrative

FELONY: MISDEMEANOR:X

Date :09/17/09

Incident #:0928614

Crime :CPOR Violation

Victim :Shea, Robyn E. [REDACTED]

Suspect :Baker, Carey Mitchell [REDACTED]

Inv. Lead :

Supp By :J. Alleman K67

Property Status : HOLD

Witness :

Mentioned :

Narrative:
10/02/09

I reviewed this case. I am sending this case to the CDA PA for their review. I have no contact information for Carey Baker and the victim does not know a current address or telephone number for Carey because he always calls in on a restricted number. I am requesting a warrant for Carrey's arrest.

Status Code: AP 10/02/09

Name Involvements:

SUSPECT : 425065

Last: BAKER	First: CAREY	Mid: MITCHELL
DOB: [REDACTED]	Dr Lic: [REDACTED]	Address:
Race: W	Sex: M	Phone: () -
		City: ,

Complainant : 443506

Last: SHEA	First: ROBYN	Mid: ELIZABETH
DOB: [REDACTED]	Dr Lic: [REDACTED]	Address: [REDACTED]
Race: W	Sex: F	Phone: [REDACTED]
		City: COEUR D'ALENE, ID 83814



FAX COVER SHEET

THE FOLLOWING PAGES ARE FOR:

NAME John Kelly

AGENCY CPD

FAX # 208 769-2307

SENDER: Deputy Stephanie Hill
 NCO/CPO Specialist
 Ada County Sheriff's Office
 Central Records
 7200 Barrister Drive
 Boise, Idaho 83704

Direct 208/577-3022
 Fax 208/577-3009
 Records/Main 577-3000
 E-Mail: shill@adaweb.net

PAGES TO FOLLOW 4

DATE 9-17-09 TIME 1600

Ref Case # Ref # 09C28614

If you have received this fax in error, please contact us at 208/577-3022 or 3000. Thank you.

Filed 3/4/09 at OBAM
 BY DAVID NAVARRO
 CLERK OF THE DISTRICT COURT
[Signature]
 Deputy Clerk

Protection Order

- Amended Order
- Renewed Order

Case No. CV DV 2009-03241
 Court Fourth Judicial District
 County Ada State Idaho

PETITIONER [] PROTECTED PERSON

Robin B Baker
 First Middle Last

- And Or on behalf of minor family member(s)
 (list name and DOB)

PETITIONER/PROTECTED PERSON IDENTIFIERS

[Redacted Box]

Date of Birth of Petitioner

- other Protected Person(s): (list name and DOB)

RESPONDENT

Carey M. Baker
 First Middle Last

Respondent's Address

Relationship to Protected person:

- spouse;
- former spouse;
- living together;
- formerly living together;
- child in common;
- parent
- related by blood, adoption or marriage;
- are in, or have been in, a dating relationship.

RESPONDENT IDENTIFIERS

SEX	RACE	DOB	HT	WT
EYES	HAIR	DISTINGUISHING FEATURES		
DRIVERS LICENSE #		STATE		

CAUTION: Weapon Alleged to be Involved.

The court has jurisdiction over the parties and subject matter, the Respondent has been provided with reasonable notice and opportunity to be heard.

There is an immediate and present danger of domestic violence to the Protected Person(s).

The terms of this order shall be effective until March 4, 2010 at 11:59 P.M. unless terminated earlier by another court order.

WARNINGS: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(3)).

Violation of any provision of this order by the respondent, after actual notice of its terms, is a misdemeanor and may result in arrest and sentencing for up to one (1) year in jail and a five thousand dollar (\$5,000) fine, even if the protected person consents to the violation.

Only the Court can change this order.

Petitioner Appeared: Yes No Represented by: _____

Respondent Appeared: Yes No Represented by: _____

- The Respondent agreed to entry of a protection order.
- The Court found, after a hearing, that a protection order should be issued.
- The Court finds that the original Petitioner is the abuser and the original Respondent is the victim of domestic violence. The original Petitioner shall be the Respondent and the original Respondent shall be the Petitioner.

THE COURT ORDERS:

1. **Personal Conduct Order.** Respondent shall not harass, annoy, disturb the peace of, telephone, contact, or otherwise communicate with (either directly or indirectly, in person or through any other person):

[01]

- The Protected Person
- The minor child/ren residing in the Protected Person's household.

[05]

Exceptions are: to meet with or through attorneys or during legal proceedings

- contact by telephone to arrange visitation of the child/ren
- contact by telephone between _____, m. and _____, m. on _____ for the following purposes: _____

- to participate in counseling/mediation, if Court ordered
- to respond to an emergency involving the child/ren
- Other: _____

2. **Stay-Away Order.** Respondent shall not, **EVEN IF INVITED BY THE PROTECTED PERSON,**

- go to: go within 300 feet of:
 - Protected Person
 - Protected Person's residence at 1882 E. BENTLEY, MERIDIAN; 728 2nd St., Cour d'Alex, Idaho;
 - Protected Person's school campus or work place at 660 FRANKLIN RD., MERIDIAN; 1400 N. WOOD CT., Cour d'Alex, ID
 - Protected Person's child/ren's school campus or work place at _____
 - Other: 1124 CAMELOT, BOISE

[04]

3. **Move-out Order.** Respondent is ordered to move from the residence at _____

[03]

_____ within _____ hours of the time you are served with this order and take from the residence only items needed for employment and necessary personal effects (at peace officer's discretion).

4. **Child custody.** Custody of the minor child/ren is awarded

as provided in the existing child custody order/divorce decree entered _____

as follows:

[05]

Name of Child (first, middle initial, last)	Birth Date	Sex	Custody Awarded To

Protected Person Respondent

[08]

shall NOT have the child/ren until further order of the Court

shall have the child/ren as follows (list days, times and conditions): _____

[06]

supervised by: _____

neutral drop off/pick up location: _____

child/ren to be transported by: _____

Neither party shall remove the child/ren from _____

5. **Law enforcement assistance.** Peace officers are instructed to enforce this Court order by all necessary means, including arrest.

Law enforcement officers are ordered to:

Remove the Respondent from the residence at _____

The time for removal shall be at the peace officer's discretion, but no later than _____ hours after service of this order.

Place the Protected Person in possession of the residence at _____

Supervise the removal of Protected Person's Respondent's items needed for employment and necessary personal effects (at peace officer's discretion) from the residence.

6. **Conflicting Orders.**

If any term of another order conflicts with any term of this order you must follow the more restrictive term.

7. **Change in address.** The parties shall at all times keep the Court informed of their current mailing addresses.

8. **Treatment/Counseling.**

Within _____ days of this order, Respondent shall report to _____ and participate and complete all scheduled _____

treatment or counseling. A written report shall be submitted to the Court within _____ days of this order.

9. **Future notices.**

The parties have waived their right to personal service and agreed that all future notices of hearing may be served by certified mail.

10. **Other:** _____

[07]

[08]

11. **Order to clerk.** It is further ordered that the clerk of the court shall forward a copy of this order to the appropriate law enforcement agency for immediate entry into record systems and service upon Respondent, if not previously served; and the clerk shall deliver or mail a copy of this order to the Petitioner.

Date: March 4, 2009

Signed: *Russell C. ...*
Judge

NOTICE:

It is a misdemeanor under Idaho Code § 39-6312 for the respondent, after notice of this order, to violate the provisions of this order. Further, it is a crime under Idaho Code § 8-204 for any person to aid and abet a crime, or, not being present, to advise and encourage a crime. In addition, under Idaho Code §18-304, any person who counsels, aids, solicits or incites another to commit a misdemeanor is guilty of a misdemeanor. Therefore, it may be a crime for any person to encourage or invite contact between the respondent and the petitioner, except such contact as is expressly permitted by the above order.

I have received a copy of this order and advisory notice and warning.

Signed: *Robyn Baker*
Petitioner

Date: 3-4-09

Signed: *[Signature]*
Respondent

Date: 3-4-09

ATTENTION: KEEP A COPY OF THIS ORDER IN YOUR POSSESSION AT ALL TIMES IN ORDER TO ASSIST PEACE OFFICERS. IMMEDIATELY REPORT ANY VIOLATION OF THIS ORDER TO LAW ENFORCEMENT.

ORDER

2009 DEC -8 AM 9: 28

The above named defendant having been charged with the offense(s) 12 counts of violation of a protection order 39-6312 and having examined the affidavit and police report, the Court finds probable cause, based on substantial evidence, for believing that said offense has been committed and that the said Defendant committed it.

IT IS THEREFORE ORDERED that a Criminal Complaint be issued for the appearance for the above named Defendant.

ENTERED this 7th day of Dec, 2009.


MAGISTRATE

2009 DEC -8 AM 9:29

CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323

CLERK DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
Plaintiff,)
vs.)
CAREY MITCHELL BAKER,)
Defendant.)
CASE NO. CR M09-*24916*
REPORT NO. 09C28614
CRIMINAL COMPLAINT
12 COUNTS VIOLATION
OF PROTECTION ORDER
I.C. SECTION 39-6312

STATE OF IDAHO)
) ss.
County of Kootenai)

Det J Martin *ks0*, appeared personally before me, and being duly sworn on oath, complains and says that:

COUNT I: The defendant, CAREY MITCHELL BAKER, on or about May 26, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 11:18 am; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section **39-6312**;

COUNT II: The defendant, CAREY MITCHELL BAKER, on or about June 6, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 2:12 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section **39-6312**,

COUNT III: The defendant, CAREY MITCHELL BAKER, on or about July 29, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 3:38 pm and 3:40 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section **39-6312**,

COUNT IV: The defendant, CAREY MITCHELL BAKER, on or about August 4, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 7:24 am; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT V: The defendant, CAREY MITCHELL BAKER, on or about August 5, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 5:39 am; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT VI: The defendant, CAREY MITCHELL BAKER, on or about August 24, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 4:03 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT VII: The defendant, CAREY MITCHELL BAKER, on or about August 31, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 11:36 am and 11:41 am; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT VIII: The defendant, CAREY MITCHELL BAKER, on or about September 8, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 6:33 pm, 7:00 pm, and 7:51 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT IX: The defendant, CAREY MITCHELL BAKER, on or about September 10, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection

order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 2:40 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

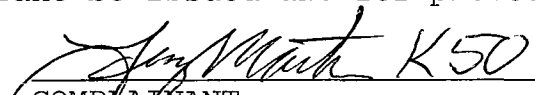
COUNT X: The defendant, CAREY MITCHELL BAKER, on or about September 12, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 6:47 am; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT XI: The defendant, CAREY MITCHELL BAKER, on or about September 15, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 2:15 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

COUNT XII: The defendant, CAREY MITCHELL BAKER, on or about September 17, 2009, in the County of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to-wit: called by telephone at or about 2:09 pm; all of which constitutes the offense of **Violation of Protection Order**, a misdemeanor, pursuant to Idaho Code Section 39-6312,

All the listed counts are contrary to the form, force and effect of the statutes provided and against the peace and dignity of the State of Idaho.

Said complainant prays that a Warrant be issued and for proceedings according to law.


COMPLAINANT

SUBSCRIBED AND SWORN to before me this 7th day of DEC, 2009.


MAGISTRATE

CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	CASE NO. CR M09-24916
Plaintiff,	)	RPT NO. 09C28614
vs.)	
CAREY MITCHELL BAKER,)	
DOB: [REDACTED])	
SSN/OLN: [REDACTED])	
Defendant.	)	WARRANT OF ARREST
_____)	

STATE OF IDAHO)
) ss.
County of Kootenai)

STATE OF IDAHO TO: Any Sheriff, Constable, Marshal or
Policeman of the State of Idaho:

A complaint on oath having been laid before me and it appearing that there is probable cause to believe that the crime of 12 COUNTS OF CPOR VIOLATION, pursuant to Idaho Code Section 39-6312 has been committed in Kootenai County, Idaho, and accusing CAREY MITCHELL BAKER thereof,

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named defendant in the daytime or nighttime, including inside a person's residence between 8:00 p.m. and 8:00 a.m. and bring him/her before me at my office in Kootenai County, Idaho, or in the case of my absence or inability to act, before the nearest or most accessible magistrate in the County.

BAIL is fixed at \$ 2,000

DATED at 4:35 pm o'clock p.m. at my office in Kootenai County, Idaho, this 7 day of December, A.D. 2009.

[Signature]
MAGISTRATE

OFFICER'S RETURN

I hereby certify that I received the within warrant on the ____ day of _____, 20__ and served it by arresting the named defendant on _____, 20__, and bringing him/her to the Kootenai County Sheriff's Office and turning him/her over to the custody of the Kootenai County Sheriff on the ____ day of _____, 20__.

Deputy/Sheriff

Court Minutes:

Session: FRIEDLAN042110A
Session Date: 04/21/2010
Judge: Friedlander, Penny
Reporter:

Division: MAG
Session Time: 07:08

Courtroom: Courtroo11

Clerk(s): Darnell, Nicole

State Attorney(s): Gowey, Roy

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Nicole Darnell

Case ID: 0003

Case number: CR2009-24916

Plaintiff:

Plaintiff Attorney:

Defendant: BAKER, CAREY

Pers. Attorney:

Co-Defendant(s):

State Attorney: Gowey, Roy

Public Defender:

04/21/2010

09:03:24

Recording Started:

09:03:24

Case called

09:04:48

Judge: Friedlander, Penny

Misd PTC/ARRN, Defendant is Present.

09:04:51

I was just checking w/my assistant because it appears that a bond was posted

09:05:02 for this matter out of Ada and it still shows an
09:05:13 outstanding warrant that
needs to be dealt w/so the record is clear.

09:05:20 **Defendant: BAKER, CAREY**
Understands rights from video.

09:06:37 **Judge: Friedlander, Penny**
Reviews charge and allegations w/Def.

09:08:02 **Defendant: BAKER, CAREY**
I did read that stuff.

09:08:10 **Judge: Friedlander, Penny**
So you did read it?

09:08:15 **Defendant: BAKER, CAREY**
This was another situation in Ada County and I
went to Court for it there,
09:08:24 also.

09:10:25 **Judge: Friedlander, Penny**
Continues to review allegations w/Defendant.

09:10:57 **Defendant: BAKER, CAREY**
Understands allegations.

09:11:12 **Judge: Friedlander, Penny**
Are you going to hire a lawyer?

09:11:17 **Defendant: BAKER, CAREY**
Yes mam.

09:11:18 **Judge: Friedlander, Penny**
Enter a NG plea; NG PTC JT on your behalf.

09:11:35 **State Attorney: Gowey, Roy**
To make a record of State's offer, we would be
asking for guilty pleas for 6
09:11:56 of the 12 counts and would dismiss the remaining
6 counts. The offer was only
09:12:05 good for today in some regard. P/G to first 6
counts dismiss counts 7-12 we
09:12:23 would rec 365/180 on each of them 1000/500 on
each and 2 yr probation. If Def
09:12:38 accepted offer we would rec jail be concurrent.

09:12:49 Having not accept today Mr Sommerton may be seeking consecutive jail time.

09:13:20 **Judge: Friedlander, Penny**
You need to keep in contact w/the court and be sure we have a current mailing address for you. Until we rec a Ntc of App, notice of all court hearings will be sent to you.

09:13:42

09:13:53 **Stop recording**

MUST BE COMPLETED
TO BE CONSIDERED

226

Filed 6/29/10 AT 8:49 AM m.
CLERK OF THE DISTRICT COURT

BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

APPLICATION FOR: Carey M. Baker
 DEFENDANT JUVENILE CHILD PARENT
 DOB [Redacted]
 BY _____
 PARENT or GUARDIAN OF MINOR
 DOB _____

CASE NO. C209-24916

FINANCIAL STATEMENT AND ORDER

NOTE: If this application is being made on behalf of a minor, please answer the following questions as they apply to his/her parents or legal guardian. Include information for you and your spouse.

I, the above named defendant (or the parent(s) on behalf of a minor), being first duly sworn on oath, depose and say in support of my request for court appointed counsel:

My current mailing address is: 10 [Redacted] [Redacted] City Boise ID 83704
Street or P.O. Box City State Zip Code

My current telephone number or message phone is: [Redacted]

Crimes Charged: Violation of No Contact Order

I request the Court appoint counsel at county expense; and I agree to reimburse the county for the cost of said defense, in the sum and upon the terms as the Court may order.

BELOW IS A TRUE AND CORRECT STATEMENT OF MY FINANCIAL CONDITION:

1. EMPLOYMENT:

A. Employed: yes no
 B. Spouse Employed: N/A no
 C. If not employed, or self-employed, last date of employment 7/2009
 D. My employer is: N/A
 Address: N/A

2. HOUSEHOLD INCOME MONTHLY (Include income of spouse):

Wages before deductions Unemployment \$ 352.00
 Less Deductions C.S. \$ 840.00
 Net Monthly Wages \$ 512
 Other income: (Specify: Child Support, S.S., V.S., A.D.C., Food Stamps, Etc.) \$ 0

3. HOUSEHOLD EXPENSES MONTHLY:

Rent or Mortgage Payment	\$ <u>250.00</u>	Child Care	\$ _____
Utilities	\$ _____	Recreation	\$ _____
Clothing	\$ _____	Medical	\$ _____
Transportation	\$ <u>150.00</u>	Insurance	\$ _____
School	\$ _____	Other (Specify)	\$ _____
Food	\$ <u>100.00</u>		

3. HOUSEHOLD EXPENSES MONTHLY: (cont.)

DEBTS: Creditor _____
Creditor _____
Creditor _____

Total \$ _____ per mo.
Total \$ _____ per mo
Total \$ _____ per mo

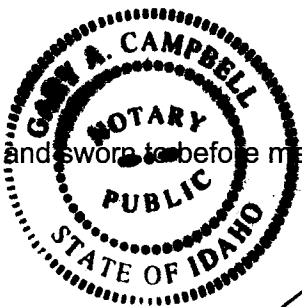
4. ASSETS:

A. I (we) have cash on hand or in banks \$ 0
B. I (we) own personal property valued at \$ 0
C. I (we) own vehicle(s) valued at \$ repossessed - none
D. I (we) own real property valued at \$ none
E. I (we) own stocks, bonds, securities, or interest therein \$ none

5. THE FOLLOWING ALSO AFFECTS MY FINANCIAL CONDITION (Specify): _____

6. DEPENDENTS: self _____ spouse _____ children _____ other (specify) _____
(number) (pay for children)

2 children
3 other (specify)
APPLICANT



Subscribed and sworn to before me this 22nd day of June 2010, 2010.

Gary Campbell
NOTARY PUBLIC/CLERK/JUDGE

The above named defendant _____ parent _____ guardian appeared before the court on the aforesaid charge and requested the aid of counsel. The court having considered the foregoing, and having personally examined the applicant; **ORDERS** _____ **DENIES** the appointment of the service of counsel.

The applicant is ordered to pay \$ _____ monthly beginning _____, 20 _____ for the cost of appointed counsel. Payments are to continue until

[] notified by the court that no further amount is due.
[] the sum of \$ _____ has been paid.

THE APPLICANT IS ORDERED TO PAY REIMBURSEMENT FOR THE COST OF APPOINTED COUNSEL AT THE CONCLUSION OF THE CASE; THIS AMOUNT MAY BE IN ADDITION TO ANY SUMS ORDERED ABOVE.

ENTERED this 24th day of July, 2010
[Signature]
JUDGE

Custody Status: In Out

Bond \$ _____

Copies to:
 Prosecuting Attorney 764-2326
 Public Defender 446-1701
Date 6/29/10 Deputy Clerk [Signature]
#7737

Court Minutes:

Session: HAMLETT070910A
Session Date: 07/09/2010
Judge: Hamlett, William C.
Reporter:

Division: MAG
Session Time: 08:34

Courtroom: Courtroom4

Clerk(s): Butler, Wanda

State Attorney(s):
Eckhart, Anna
Gowey, Roy
Shulsen, Jessica
Somerton, Wes

Public Defender(s):
Brooks, J. Lynn
Sears, Sarah
Szott, Paul
Walsh, Mayli
Zanetti, Craig

Prob. Officer(s):

Court interpreter(s):

Wanda Butler

Case ID: 0013

Case number: CR2009-24916
Plaintiff:
Plaintiff Attorney:
Defendant: BAKER, CAREY MITCHELL
Pers. Attorney:
Co-Defendant(s):
State Attorney: Eckhart, Anna
Public Defender: Sears, Sarah

07/09/2010

10:32:45

Recording Started:

10:32:45 Case called

10:32:49 **Add Ins: CR09-24916**

10:32:50 **Add Ins: PTC**

10:32:51 **Public Defender: Sears, Sarah**

10:32:56 **State Attorney: Eckhart, Anna**

10:32:59 **Defendant: BAKER, CAREY MITCHELL
PRESENT**

10:33:03 **Judge: Hamlett, William C.
CHARGED WITH MULTIPLE OFFENSES - 12 COUNTS**

10:34:24 **Public Defender: Sears, Sarah
POSSIBLY BE MOTION TO SEVER I NEED TO LOOK
THROUGH THAT MORE ASK THAT THIS BE**

10:34:37 **LEFT SET FOR TRIAL**

10:34:40 **Judge: Hamlett, William C.
12 COUNTS VIOLATION OF PROTECTION ORDER MAY JUNE
JULY SEPT 09. SET FOR TRIAL**

10:34:55 **ON 8/16**


10:35:00 **OK LEAVE SET.**

10:35:03 **STAY IN TOUCH WITH ATTORNEY.**

10:35:20 **Stop recording**

Sarah L. Sears, Deputy Public Defender
 Office of the Kootenai County Public Defender
 PO Box 9000
 Coeur d'Alene, Idaho 83816
 Phone: (208) 446-1700; Fax: (208) 446-1701
 Bar Number: 7902

STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
 FILED: 350
 2010 JUL 12 AM 9:42

CLERK DISTRICT COURT

 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-09-24916
)	
V.)	
	)	MOTION TO SEVER
CAREY M. BAKER,)	
)	
Defendant.)	
)	

COMES NOW, the above named defendant by and through his attorney, Sarah L. Sears, Deputy Public Defender, and pursuant to Idaho Criminal Rule 14 hereby moves this court for relief from prejudicial joinder by requiring the state to elect between counts or by granting separate trials of the counts alleged in the Criminal Complaint filed December 8, 2009, wherein the defendant is alleged to have committed twelve counts of Violation of Protection Order, I.C. § 39-6312.

This motion is based upon the United States Constitution, Amendments 5, 6, and 14, Article 1, section 13 of the Idaho Constitution, and Rule 14 of the Idaho Criminal Rules.

BRIEF STATEMENT OF THE RELEVANT FACTS

Mr. Baker is charged in the above entitled matter with twelve separate counts of Violation of Protection Order. The first count is alleged to have occurred on May 26, 2009. The second count is alleged to have occurred June 6, 2009. The third count is alleged to have

occurred on July 29, 2009. The fourth count is alleged to have occurred on August 4, 2009. The fifth count is alleged to have occurred August 5, 2009. The sixth count is alleged to have occurred on August 24, 2009. The seventh count is alleged to have occurred on August 31, 2009. The eighth count is alleged to have occurred on September 8, 2009. The ninth count is alleged to have occurred on September 10, 2009. The tenth count is alleged to have occurred on September 12, 2009. The eleventh count is alleged to have occurred on September 15, 2009. Finally, the twelfth count is alleged to have occurred on September 17, 2009. All of the above counts are alleged to have occurred by telephone to a the same protected person, Robyn E. Shea.

LEGAL BASIS FOR REQUESTED RELIEF

Actions properly joined under I.C.R. 8(b) may be severed under I.C.R. 14 if it appears that a joint trial would be prejudicial. *State v. Field*, 144 Idaho 559, 565 n. 1 (2007); *State v. Caudill*, 109 Idaho 222, 226 (1985); *State v. Cochran*, 97 Idaho 71, 73 (1975). In the case at hand, the twelve counts of Violation of Protection Order are not based on the “same act or transaction” nor are they “two or more acts or transactions connected together” as described in Rule 8(a). Mr. Baker is subject to possible prejudice because the jury may confuse and cumulate the evidence and because the defendant may be confounded in presenting defenses where he desires to assert his privilege against self-incrimination with respect to one allegation but not the other.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 15 minutes.

DATED this 9th day of July, 2010.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah L. Sears
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 9th day of July, 2010, addressed to:

City of Coeur d'Alene Prosecutor

S. PROCKMAY

Robyn Shea
4601 E. Potlatch Hill Road
Coeur d Alene, Idaho 83814
(208) 819-9009
robyn@tb.com

356
STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2010 JUL 27 PM 3:33

CLERK DISTRICT COURT
Maile McGeer
DEPUTY

Honorable Judge Watson
Kootenai County Courthouse
Garden Street
Coeur d Alene, Idaho 83814
[REDACTED]

July 27, 2010

Dear Honorable Judge Watson,

I am writing to you because I am the victim of Carey Baker. I have spent years being harassed and tormented by him. He is cunning and manipulative and also incredibly violent and dangerous. He has a hearing scheduled for August 6th to separate the charges for his 12 counts of protection order violation. He should be charged for hundreds upon hundreds of counts of protection order violation. My neighbors, my co-workers, my employer and my children are all willing to testify in regards to the matter, but the prosecuting attorney does not think any of that is necessary.

Carey Baker is a convicted felon who has served 5 different prison sentences since 1997. He struggles with his addiction to meth. He is an IV drug user, he manufactures meth and he trafficks meth.

He believes that he can manipulate the system. And quite truthfully, he is a hoodini at escaping the consequences for his crimes. For example, while on felony probation he was picked up for battery in a bar in Canyon County. He was one month later picked up in Ada county for 8 counts of probation violation. He was able to get the charges in Canyon County (Case No. CR2007-0014342C) dismissed pending the charges in Ada County. Ada County was not aware of that and he served a 5 month rider at Cottonwood.

He had a battery charge in April of 2009 just 3 days before he was to be released from his felony probation that was supervised in Kootenai County by Rebecca Shrum. She released him not knowing that he had absconded to Ada County and was sitting in the Ada County jail for the battery (Case No. CR MD 2009-0016878). He later intimidated that victim who then chose not to appear in court. The charge was dismissed. Not to mention the fact of that crime was also a violation of this protection order and a violation of his felony probation, but the police did not see that as important at the time. The counties within the state of Idaho do not communicate well between each other.

He is a bully. He is relentless. And he is very calculated. I do not want him to be able to manipulate the court system on these current protection order violations. He is very dangerous and threatening to me. All of these charges involve his harassment and torment of other people. I am the victim in the last two charges. He is a danger to himself and to society.

Please take a look at his history:

9/12/2000 Battery CR MD 2000-0013854 Ada County

4/7/2003 Domestic Violence and Protection Order Violation CR MD 2003-003854

2003 Charged for Felony Trafficking of Meth and Marijuana

11/15/2003 Domestic Assault and No Contact Order Violation CR MD 2003-0014862

6/12/2007 Battery (bar fight) CR 2007-0014342C Canyon County

7/12/2007 8 counts Felony Probation Violation Ada County

Incarcerated at Cottonwood 2008 (how did a man who has served prison 4 times already, get a sentence to Cottonwood???)

4/18/2009 Battery CR MD 2009-0007046 Ada County

5/26/2009 Protection Order Violations CR 2009-0024916 Kootenai County

8/24/2009 Protection Order Violation CR MD 2009-0016878 Ada County

I pray for your consideration in this matter. He suffers from narcissism, anger management, and borderline personality disorder. Not to mention his affliction with meth. He will admit these things himself. He is a mess. And...more importantly to the courts, he is dangerous!!!

Sincerely,

Robyn E. Shea

Robyn Shea
4601 E. Potlatch Hill Road
Coeur d Alene, Idaho 83814
(208) 819-9009
robyn@tb.com

Judge Robert Taisley
Canyon County Courthouse
Caldwell, Idaho 83607
RE: Case Number CR2010 0018836

July 27, 2010

Dear Honorable Judge Taisley,

You have a case that will be before you soon regarding Carey Baker and the fact that he was driving without privileges for the supposed first time. His citation number is 1479462.

I pray that you do not go light with his penalty. He has a lengthy history of repeatedly committing the same offense.

His charges start in 1989. But I will list the more current charges, as it would seem more pertinent considering that he is now nearly 40 years of age.

June 26, 2010 driving without privileges for the first time CR 2010 0018836-C

February 27, 2010 driving without privileges CR MD 2010 0003481

October 19, 2009 driving without privileges CR MD 2009-0020002

Incarcerated at Cottonwood 2008 (5th time to be sentenced to Idaho Department of Corrections Prison System)

November 12, 2007 Inattentive Careless Driving

June 17, 2007 Excessive Speed

June 12, 2007 Excessive Speed

May 29, 2007 Speeding down shoulder of freeway & Failure to provide Insurance

February 19, 2007 Excessive Speed

January 19, 2007 Driving the wrong way on one way street & hit oncoming car in traffic

Your attention to this matter is greatly appreciated.

Sincerely,

Robyn E. Shea

Court Minutes:

Session: WATSON080610P
Session Date: 08/06/2010
Judge: Watson, Barry
Reporter:

Division: MAG
Session Time: 08:26

Courtroom: Courtroom3

Clerk(s): Carroll, Theresa

State Attorney(s):
Chesebro, Lisa
Reiersen, James
Somerton, Wes

Public Defender(s):
Brooks, J. Lynn
Taylor, Anne
Zanetti, Craig

Prob. Officer(s):

Court interpreter(s):



Case ID: 0005

Case number: CR2009-24916

Plaintiff:

Plaintiff Attorney:

Defendant: BAKER, CAREY

Pers. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender:

08/06/2010

13:44:40

Recording Started:

13:44:40

Case called

13:44:48 **Add Ins: SEVER, MOTION TO**

13:44:49 **Judge: Watson, Barry**
VACATE HEARING

13:44:55 **Stop recording**

Court Minutes:

Session: WATSON081610A
Session Date: 08/16/2010
Judge: Watson, Barry
Reporter:

Division: MAG
Session Time: 07:49

Courtroom: Courtroom4

Clerk(s): Albers, Nancy

State Attorney(s):

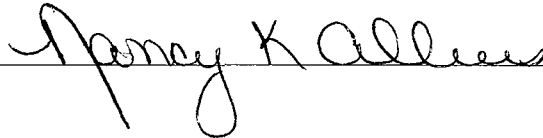
Brooks, Ken
Chesebro, Lisa
Eckhart, Anna
Green, Robert

Public Defender(s):

Brooks, J. Lynn
Chapman, Brad
Clapin, Michael
Sears, Sarah
Walsh, Mayli
Zanetti, Craig

Prob. Officer(s):

Court interpreter(s):



Case ID: 0037

Case number: CR2009-24916
Plaintiff:
Plaintiff Attorney:
Defendant: BAKER, CAREY MITCHELL
Pers. Attorney:
Co-Defendant(s):
State Attorney: Eckhart, Anna
Public Defender: Sears, Sarah

08/16/2010

11:32:52 Recording Started:

11:32:52 Case called

11:32:56 **Judge: Watson, Barry**
MOVE TO AMEND POSSESSION OF PARA TO FREQUENTING

11:33:06 CALLS CASE JURY TRIAL PA/DA/DEFENDANT PRESENT

11:33:18 **Public Defender: Sears, Sarah**
MOVE TO CONTINUE - DEFENDANT HAS PLEAD IN ADA
COUNTY TO WHAT WOULD BE COUNT 6

11:33:43 IN THIS CASE AND AGREEMENT WAS THE STATE WOULD
NOT FILE ANY NEW CHARGES FROM

11:33:54 THAT DATE BACK - JUST GOT COPY OF CD AND SENT TO
MR SOMERTON WHO DOESNT'

11:34:13 FEEL BOUND BY THAT AGREEMENT -LIKE TO CONTINUE
THIS TRIAL AND HAVE TIME TO

11:34:29 FILE MOTION TO DISMISS

11:35:00 **State Attorney: Eckhart, Anna**
COMMENTS

11:35:39 WE ARE PREPARED TO PROCEED TO TRIAL - BUT LIKE
TO HAVE SET LATER IN WEEK TO

11:35:57 LISTEN TO CD -

11:36:04 **Public Defender: Sears, Sarah**
MY CLIENT RESIDES IN ADA COUNTY LONG DISTANCE TO
DRIVE

11:36:15 **Judge: Watson, Barry**
REVIEWS COMPLAINT - NOT SURE THAT ADA COUNTY CAN
BIND ANOTHER PROSECUTOR TO

11:37:01 SOMETHING THAT HAPPENED IN THEIR COUNTY - BUT
WILLING TO LOOK AT ANY

11:37:16 AUTHORITY ON THAT - QUESTION IS ARE WE GOING TO
TRIAL THIS WEEK OR NOT

11:37:27 **Defendant: BAKER, CAREY MITCHELL**
EXPLAINS CONCERN ABOUT WAIVER OF SPEEDY TRIAL -
HARD TIME TO WAIVE RIGHT TO

11:38:22 SPEEDY TRIAL - WILL WAIVE SPEEDY TRIAL

11:39:09 ACCEPTS WAIVER OF SPEEDY TRIAL -

11:39:53 **State Attorney: Eckhart, Anna**

WE ARE PREPARED FOR TRIAL THIS WEEK - WE WOULD
NEED 1 1/2 - 2 DAYS FOR TRIAL
11:40:20 CALLING 3 WITNESSES - OFFICER KELLY DETECTIVE
ALLEMAN - ROBIN SHEA

11:41:01 **Public Defender: Sears, Sarah**
ONE DEFENSE WITNESS

11:41:11 **State Attorney: Eckhart, Anna**
WE HAVEN'T LISTENED TO CD YET

11:41:28 **Public Defender: Sears, Sarah**
I HAVE LISTENED TO PART OF CD -

11:41:49 **Judge: Watson, Barry**
WILL GRANT CONTINUANCE - RESET TO 10/12/10 @ 8:
30 AM - PROBABLY BE A 2 DAY

11:42:18 TRIAL -

11:43:13 **Stop recording**

Sarah L. Sears, Deputy Public Defender
 Office of the Kootenai County Public Defender
 500 Government Way Suite 600
 Coeur d'Alene, Idaho 83814
 Phone: (208) 664-1347; Fax: (208) 769-4475
 Bar Number: 7902

STATE OF IDAHO
 COUNTY OF KOOTENAI
 FILED: ^{SS}

2010 SEP -3 AM 9:39

CLERK DISTRICT COURT
 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

A

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-M-09-24916
)	
V.	)	MOTION TO DISMISS
)	
CAREY M. BAKER,)	
)	
Defendant.)	
)	

Comes now, the above named Defendant, by and through his attorney, Sarah L. Sears, and moves this Court for its Order dismissing this case. This motion is made on the grounds and for the reason that Mr. Baker entered into a plea agreement with a representative of the State of Idaho in Ada County and it was agreed no further charges of Violation No Contact Order from the date of sentencing past would be pursued. This plea agreement was made in Ada County on February 17, 2010. The current charges against Mr. Baker all are alleged to have occurred prior to February 17, 2010 and are in violation of the plea agreement made by a representative of the State of Idaho. Moreover, a plea of guilty has already been entered to what is described as Count VI in this case and is the basis for the plea agreement described above. This motion is based upon the United States Constitution, the Idaho Constitution, the Idaho Code §18-202, §19-301, §19-304 and Idaho Criminal Rule 19. Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is one hour.

DATED this 2nd day of September, 2010.

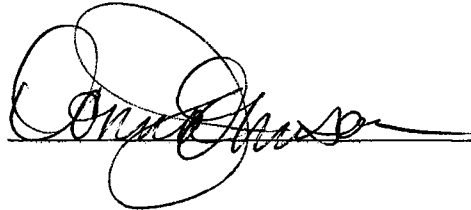
OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah L. Sears
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 3 day of September, 2010, addressed to:

City of Coeur d'Alene County Prosecutor



Court Minutes:

Session: WATSON100810A
Session Date: 10/08/2010
Judge: Watson, Barry
Reporter:

Division: MAG
Session Time: 06:58

Courtroom: Courtroom2

Clerk(s): Albers, Nancy

State Attorney(s):
Green, Robert
Robins, Dave
Somerton, Wes

Public Defender(s):
Clapin, Michael
Sears, Sarah
Zanetti, Craig

Prob. Officer(s):

Court interpreter(s):

Nancy K Albers

Case ID: 0004

Case number: CR2009-24916

Plaintiff:

Plaintiff Attorney:

Defendant: BAKER, CAREY MITCHELL

Pers. Attorney:

Co-Defendant(s):

State Attorney: Somerton, Wes

Public Defender: Sears, Sarah

Previous audio and annotations can be found in case: 0001

10/08/2010

10:44:28

Recording Started:

10:44:28 Case recalled

10:44:33 **Judge: Watson, Barry**
CALLS CASE PA/DA/DEFENDANT PRESENT MOTION TO DISMISS

10:44:44 **Public Defender: Sears, Sarah**
WE HAVE TWO CD'S STIPULATED TO ADMITTING INTO EVIDENCE AND BOTH SIDES WILL

10:45:09 SUBMIT A BRIEF AND DO ARGUMENT AND LEAVE TO COURT

10:46:09 EXPLAINS WHAT IS ON CD'S

10:46:42 **Judge: Watson, Barry**
EXH A - CD OF COURT HEARING AND EXH B IS DISCOVERY

10:46:57 **Public Defender: Sears, Sarah**
OFFER EXH A & B

10:47:07 **State Attorney: Somerton, Wes**
NO OBJECTION

10:47:19 **Judge: Watson, Barry**
WILL ADMIT EXH A & B

10:47:38 **Public Defender: Sears, Sarah**
SUBMITS BRIEF

10:47:42 **State Attorney: Somerton, Wes**
SUBMITS BRIEF

10:47:47 **Judge: Watson, Barry**
WOULD IT BE BEST TO ARGUE NOW OR AFTER I HAVE LISTENED TO CD'S AND REVIEWED

10:48:06 BRIEFS

10:48:29 **Public Defender: Sears, Sarah**
GIVE COURT IDEA OF WHAT I BELIEVE YOU WILL HEAR ON CD'S

10:48:42 **Judge: Watson, Barry**
LETS DO THAT NOW AND IF NEED FURTHER ARGUMENT AFTER I HEAR CD'S WILL SET

10:48:56 ANOTHER HEARING

10:49:01 **Public Defender: Sears, Sarah**
EXPLAINS WHAT WILL BE ON THE CD'S - WHEN PLEA
ENTERED BY CLIENT IN ADA -

10:49:48 AGREEMENT STATE WOULD NOT PURSUE ANY FURTHER
CHARGES FROM THAT DATE AND BACK

10:50:08 EXPLAINS THE JUDGE IN ADA COUNTY LISTENED TO THE
PHONE MESSAGES AT SENTENCING

10:50:42 OF THE SAME MESSAGES USED IN THIS COMPLAINT -
ARGUMENT DOUBLE JEAPORDY - AND

10:51:54 ALSO ARGUMENT OF VIOLATION OF PLEA AGREEMENT

10:52:37 **State Attorney: Somerton, Wes**
WE AGREE THAT COUNT 6 WAS IN THE ADA COUNTY CASE
AND WOULD BE DOUBLE JEAPORDY

10:53:36 WILL BE DISMISSING THAT CHARGE - THE CITY OF CDA
CHARGES WERE FILED 12/09

10:53:59 THE SENTENCING IN ADA COUNTY CASE WAS IN
FEBRUARY 2010 - ADA COUNTY WAS AWARE

10:54:14 OF OUR CHARGES - IT IS CLEAR ON TAPE ONLY
MEANING NO NEW CHARGES IN ADA

10:56:33 COUNTY

10:56:34 **Public Defender: Sears, Sarah**
I DON'T KNOW IT TO BE TRUE THAT ADA COUNTY WAS
AWARE OF CDA CHARGES - NOT

10:56:53 SURE CDA CASE FILED FIRST - NOT IN AGREEMENT
WITH MR SOMERTON -

10:57:25 ALSO REQUEST COURT TAKE JUDICIAL NOTICE OF FILE
REGARDING THE COMPLAINT IN

10:57:37 CLIENT CONTINUES TO HAVE TO TRAVEL HERE FOR
HEARINGS - CAN UNDERSTAND WHY MY

10:57:39 THIS CASE AND THE FINANCIAL STATEMENT SHOWS
CLIENT RESIDES IN BOISE IDAHO -

10:58:36 CLIENT UNDERSTOOD THAT NO CHARGES PERIOD -

10:58:59 **State Attorney: Somerton, Wes**
NO OBJECTION TO JUDICIAL NOTICE OF COMPLAINT IN
CASE AND AND FINANCIAL

10:59:18 STATEMENT

10:59:20 **Judge: Watson, Barry**
WILL TAKE JUDICIAL NOTICE OF THOSE ITEMS

10:59:30 **State Attorney: Somerton, Wes**
HAVE EXHIBIT OF LETTER FROM ADA COUNTY INQUIRING
ABOUT OUR CHARGES - AND ALSO

10:59:55 HAVE A COPY OF COMPLAINT -

11:01:39 **Judge: Watson, Barry**
EXH 1 - ADA COUNTY PROSECUTOR LETTER

11:01:55 **Public Defender: Sears, Sarah**
NO OBJECTION

11:01:58 **Judge: Watson, Barry**
ADMIT EXH 1

11:02:03 EXH 2 - 6 PAGES - COMPLAINT AND POLICE REPORTS
ADA COUNTY

11:02:21 **Public Defender: Sears, Sarah**
NO OBJECTION

11:02:24 **Judge: Watson, Barry**
WILL ADMIT EXH 2

11:02:29 **State Attorney: Somerton, Wes**
NOTHING FURTHER

11:02:38 **Public Defender: Sears, Sarah**
NOTHING FURTHER

11:03:52 **State Attorney: Somerton, Wes**
CASE SET FOR TRIAL 10/12/10 8:30 A.M.

11:04:05 **Judge: Watson, Barry**
WAS SPEEDY TRIAL WAIVED? REVIEWS FILE - SPEEDY
TRIAL WAS WAIVED PRIOR

11:05:17 IF RESET WOULD BE WEEK OF DECEMBER 6TH

11:05:42 **State Attorney: Somerton, Wes**
LEAVE UP TO COURT

11:05:56 **Judge: Watson, Barry**
OFF RECORD

11:06:02 **Stop recording**
(On Recess)

11:07:44
Recording Started:

11:07:44 **Record**

BAKER, CAREY MITCHELL

- 11:07:44 **Judge: Watson, Barry**
BACK ON THE RECORD :
- 11:07:51 **Public Defender: Sears, Sarah**
REQUEST CONTINUE TRIAL
- 11:08:03 **Defendant: BAKER, CAREY MITCHELL**
I HAVE COURT IN BOISE ON THE 6TH OF DECEMBER
- 11:08:59 **Judge: Watson, Barry**
COULD SET FOR 12/6/10 @ 8:30 A.M. AND PRIOR TO
THAT WE WOULD SET A HEARING TO
- 11:09:20 PUT DECISION ON THE RECORD AND THEN DETERMINE
WHAT TO DO WITH THE JURY TRIAL
- 11:09:34 DATE
- 11:09:37 **Public Defender: Sears, Sarah**
REQUEST DEFENDANT'S PRESENCE EXCUSED FOR
DECISION
- 11:09:49 **Judge: Watson, Barry**
HE COULD BE EXCUSED OR COULD PARTICIPATE BY
PHONE
- 11:10:00 WILL CONTINUE TRIAL AND RESET TO 12/6/10 @ 8:30
A.M.
- 11:11:05 **Stop recording**
-

CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323

STATE OF IDAHO }ss
COUNTY OF KOOTENAI
FILED: 10-8-10
AT 10:30 O'CLOCK A.M.
CLERK, DISTRICT COURT
Amey K. [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
Plaintiff,) CASE NO. CRM-09-024916
)
vs.) STATE'S MEMORANDUM OF
) AUTHORITIES
)
CAREY MITCHELL BAKER,)
Defendant.)
_____)

COMES NOW, Wes Somerton, Coeur d'Alene Deputy City Attorney and provides the Court and Defendant this Memorandum of Authorities in opposition to Defendant's Motion to Dismiss.

History of Case:

Kootenai County received allegations and instituted and investigation in September 2009. These allegations related to phone messages the Defendant had left on the victim's, Robyn Shay's, voice mail. The investigation revealed that a Civil Protection Order was entered protecting Robyn Shay from Defendant on March 4, 2009 in Ada County, Idaho. See: CPOR CV-09-3421. Formal charges were filed by the City of Coeur d'Alene on December 12, 2009, with an Arrest warrant issued on 12/7/2009, the allegations are 12 violations of a civil protection order by leaving voice messages on the victim's cell phone voice mail. Defendant was arrested on Warrant on April 12, 2010.

The Ada County prosecuting Attorney office filed a single count of CPOR violation, alleging a August 24, 2009 violation. Charges were formally filed on September 10, 2009 in Ada County Case No. CR-MD-2009-16878 and an Arrest Warrant was issued September 10, 2009. At jury trial status conference on February 17, 2010 guilty

plea to allegation was entered, and sentence imposed. The Meridian City Prosecutor agreed based on Defendant's guilty plea to the 8/24/09 allegation that no further violations up to February 17, 2010 would be filed.

The Kootenai County charges had already been filed by the time the Ada County agreement was made. Essentially the Meridian City Attorney promised something that based on Idaho statutes they were already bound to due to the previous filing of charges in Kootenai County. The Ada County prosecutor was aware of the pending criminal charges in Kootenai County at that hearing in February, as they had received a copy of the Kootenai County charges in January 2010.

Original Count VI is Barred by Double Jeopardy.

The State recognizes and agrees the allegation set out in the original count VI occurring on August 24, 2009 is the same allegation that Defendant has entered a guilty plea and been sentenced in Ada County Criminal Case - CR-MD-2009-0016878. Therefore, consistent with §§19-304, 19-305 Idaho Code, a prosecution in one (1) county shall be a bar to a prosecution for the same act or offense in the other county.

Remaining Counts Are Properly Before the Kootenai County Court.

The state will present evidence at trial that the victim, Robyn Shay, was in Kootenai County when she received the phone messages which make up the charges of the state's complaint.

§19-304 (1) provides the "When a public offense is committed in part in one (1) county and in part in another, or the acts or effects thereof constitution or requisite to the consummation of the offense occur in two (2) or more counties, the venue is in either county."

The prosecution teams in Ada County and Kootenai County are required to coordinate the charges in these specific cases due to the location of the victim. Kootenai County prosecution of the August 24, 2009 allegation is properly in Ada County. However, the

inverse is true of the remaining 11 counts, they are properly in Kootenai County.

Presumptions and burden of proof.

In a criminal prosecution, the State must prove subject matter jurisdiction by showing that an essential element of the offense occurred within Idaho, however jurisdiction, like other elements of an offense, may be proven by circumstantial evidence. *State v. Dietrich*, 2001, 26 P.3d 53, 135 Idaho 870. In a criminal case, the court acquires both personal and subject matter jurisdiction in order to properly proceed. *State v. Rogers*, 2004, 91 P.3d 1127, 140 Idaho 223.

Place of commission of offense and venue.

Direct or circumstantial evidence may be used to establish venue. I.C. § 19-301(2). *State v. Wimer*, 1990, 118 Idaho 732, 800 P.2d 128.

Nature and necessity of venue in prosecution.

"Criminal actions are to be brought in particular counties as matter of appropriate venue, but not because of any jurisdictional requirement." "So long as prosecution proves that crime occurred within state, precise location of crime within any particular county is not required as element to establish that crime has been committed by accused." "Fact that action is commenced in wrong county does not mean that state will be unable to prove guilt of accused but, rather, it simply means that, if dispute arises as to proper venue for prosecution of action, resolution of dispute may include transfer of action to appropriate location." I.C. § 19-301(1, 2); *Criminal Rule 19*. *State v. Amerson*, 1996, 925 P.2d 399, 129 Idaho 395, petition for review denied, certiorari denied 117 S.Ct. 2519, 521 U.S. 1123, 138 L.Ed.2d 1020.

Question of which county should be the situs for prosecution of a crime occurring in the State is not a jurisdictional question; it is simply a question of venue. I.C. § 19-301(2). *State v. Magill*, 1991,

119 Idaho 218, 804 P.2d 947. Venue is nonjurisdictional. I.C. § 19-301(2). *State v. Wimer*, 1990, 118 Idaho 732, 800 P.2d 128

Chapter 3 of title 19 of the Idaho Code contains the statutory provisions relating to venue in criminal actions. From statehood until 1986, these statutes focused on the county in which various criminal actions must be brought, addressing that location in terms of "jurisdiction" of the forum. Thus it appeared necessary to prove that the alleged crime was committed in a particular county, in order to satisfy jurisdictional requirements. However, in 1986 the legislature substantially revised this chapter, inserting the word "venue" in lieu of the word "jurisdiction" in appropriate places throughout the statutes. 1986 *Idaho Sess. Laws*, ch. 289, p. 727. The result is that the various criminal actions are to be brought in particular counties as a matter of the appropriate venue, but not because of any "jurisdictional" requirement. So long as the prosecution proves that the crime occurred within the state of Idaho, the precise location of the crime within any particular county in Idaho is not required as an element to establish that a crime has been committed by the accused. *See, e.g., State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992). Indeed, the 1986 legislation inserted this concept into *section 19-301* by adding two important provisions. The first, added to subsection 1 of 19-301, reads:

Evidence that a prosecutable act was committed within the state of Idaho is a jurisdictional requisite, and proof of such must be shown beyond a reasonable doubt.

The second provision was codified as subsection 2 of 19-301, and reads:

(2) Venue is nonjurisdictional. Proof that venue is proper under this chapter is satisfied if shown by a preponderance of the evidence.

Thus, under *section 19-301(1)*, the prosecution must allege and prove, beyond a reasonable doubt, that the interdicted act constituted a crime and that it occurred in Idaho. Proof that the crime occurred in any particular county does not come into play except where there appears a dispute about the county in which the criminal action must be prosecuted. As a matter of course, such disputes may be forestalled by application of *Idaho Criminal Rule 19* which provides that

"Except as otherwise permitted by statute or these rules, the prosecution shall be had in the county in which the alleged offense was committed." But the fact that the action is commenced in the wrong county does not mean that the state will be unable to prove the guilt of the accused. It simply means that, if a dispute arises as to the proper venue for prosecution of the action, resolution of the dispute may include transfer of the action to the appropriate location. The ****406 *402** proper location for the proceeding can be established by a preponderance of the evidence. Once the venue question is resolved, then the prosecution of the criminal action may proceed.

State v Amerson, 129 Idaho 395, 401, 925 P.2d 399, 406 (Ct. App. 1996).

Offenses committed partly in one county and partly in another.

Where element of intent to "keep or conceal" a child was committed in Idaho, defendant could be charged with kidnapping in Idaho, even though actual concealment occurred outside the state. *State v. Chapman*, 1985, 108 Idaho 841, 702 P.2d 879.

Where defendant forged signature to note in Clark County and uttered the forged note in Bingham County, district court sitting in Bingham County had jurisdiction over the entire crime. *State v. May*, 1969, 93 Idaho 343, 461 P.2d 126.

Defendant who allegedly aided in loading stolen steer in truck

in Bingham county, dressing it out, and transporting it into Bonneville county with intent to deprive owner of his property could be tried for larceny either in Bingham county or Bonneville county. I.C. §§ 18-204, 19-309. *State v. Bassett*, 1963, 86 Idaho 277, 385 P.2d 246.


Where a defendant acting as agent for a foreign corporation engaged in buying wool executed a fictitious contract of sale of wool and, on basis of such fictitious contract, foreign corporation honored defendant's sight draft, defendant was properly tried for obtaining money by false pretenses in county where sight draft was drawn and paid, and from which contract was sent. Code 1932, §§ 17-202, 19-304. *State v. Dunn*, 1939, 60 Idaho 568, 94 P.2d 779.

When conversations were had in B. county, and money was paid over on checks in P. county, venue of crime of obtaining money under false pretenses was in either B. or P. counties (C.S. § 8688). *State v. Stevens*, 1929, 48 Idaho 335, 282 P. 93.

Conclusion

The prosecution in Ada County knew of the Kootenai County prosecution and in entering the plea negotiations with Defendant they complied with the Idaho Statutes by agreeing to not seek additional charges in Ada County. Those additional charges being the same charges filed in Kootenai County before the negotiation and sentence in Ada County.

Respectfully submitted this 8th day of October, 2010.



Wes Somerton
Deputy City Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing Memorandum of Authorities, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

SARAH L. SEARS
Attorney for Defendant
FAX: 446-1701

this _____ day of _____, 2010.

COP

Filed 3/4/10 at CBHm
DAVID NAVARRO
CLERK OF THE DISTRICT COURT
By [Signature]
Deputy Clerk

Protection Order

- Amended Order
 Renewed Order

Case No. CV DV 2009-03241
Court Fourth Judicial District
County Ada State Idaho

PETITIONER [] PROTECTED PERSON

Robyn E Baker
First Middle Last

- And Or on behalf of minor family member(s)
(list name and DOB)

PETITIONER/PROTECTED PERSON IDENTIFIERS

[Redacted]
Date of Birth of Petitioner

- other Protected Person(s): (list name and DOB)

RESPONDENT

Carey M. Baker
First Middle Last

Respondent's Address

Relationship to Protected person:

- spouse;
 former spouse;
 living together;
 formerly living together;
 child in common;
 parent
 related by blood, adoption or marriage;
 are in, or have been in, a dating relationship.

RESPONDENT IDENTIFIERS

Table with columns: SEX, RACE, DOB, HT, WT, EYES, HAIR, DISTINGUISHING FEATURES, DRIVERS LICENSE #, STATE

CAUTION: Weapon Alleged to be Involved.

The court has jurisdiction over the parties and subject matter, the Respondent has been provided with reasonable notice and opportunity to be heard.

There is an immediate and present danger of domestic violence to the Protected Person(s).

The terms of this order shall be effective until March 4, 2010 at 11:59 P.M. Unless terminated earlier by another court order.

WARNINGS: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)).

Violation of any provision of this order by the respondent, after actual notice of its terms, is a misdemeanor and may result in arrest and sentencing for up to one (1) year in jail and a five thousand dollar (\$5,000) fine, even if the protected person consents to the violation.

Only the Court can change this order.

COPY

Petitioner Appeared: Yes No Represented by: _____
Respondent Appeared: Yes No Represented by: _____

- The Respondent agreed to entry of a protection order.
- The Court found, after a hearing, that a protection order should be issued.
- The Court finds that the original Petitioner is the abuser and the original Respondent is the victim of domestic violence. The original Petitioner shall be the Respondent and the original Respondent shall be the Petitioner.

THE COURT ORDERS:

1. **Personal Conduct Order.** Respondent shall not harass, annoy, disturb the peace of, telephone, contact, or otherwise communicate with (either directly or indirectly, in person or through any other person):

[01]

- The Protected Person
- The minor child/ren residing in the Protected Person's household.

[05]

Exceptions are: to meet with or through attorneys or during legal proceedings

- contact by telephone to arrange visitation of the child/ren
- contact by telephone between _____ .m. and _____ .m. on _____ for the following purposes: _____
- to participate in counseling/mediation, if Court ordered
- to respond to an emergency involving the child/ren
- Other: _____

2. **Stay-Away Order.** Respondent shall not, **EVEN IF INVITED BY THE PROTECTED PERSON,**

- go to: go within 300 feet of:
 - Protected Person
 - Protected Person's residence at 1882 E. BENTLEY, MERIDIAN; 728 2nd St., Coeur d'Alene, Idaho;
 - Protected Person's school campus or work place at 660 FRANKLIN RD., MERIDIAN; 1400 N. WOOD CT., COEUR D'ALENE, ID
 - Protected Person's child/ren's school campus or work place at _____
- Other: 1124 CHAMELOT, BOISE

[04]

3. **Move-out Order.** Respondent is ordered to move from the residence at _____

[03]

_____ within _____ hours of the time you are served with this order and take from the residence only items needed for employment and necessary personal effects (at peace officer's discretion).

COPY

4. **Child custody.** Custody of the minor child/ren is awarded
 as provided in the existing child custody order/divorce decree entered _____

as follows:

[06]

Name of Child (first, middle initial, last)	Birth Date	Sex	Custody Awarded To

Protected Person Respondent

[09]

- shall NOT have the child/ren until further order of the Court
- shall have the child/ren as follows (*list days, times and conditions*): _____

[06]

- supervised by: _____
- neutral drop off/pick up location: _____
- child/ren to be transported by: _____

Neither party shall remove the child/ren from _____

5. **Law enforcement assistance.** Peace officers are instructed to enforce this Court order by all necessary means, including arrest.

Law enforcement officers are ordered to:

- Remove the Respondent from the residence at _____
_____. **The time for removal shall be at the peace officer's discretion, but no later than _____ hours after service of this order.**
- Place the Protected Person in possession of the residence at _____

- Supervise the removal of Protected Person's Respondent's items needed for employment and necessary personal effects (at peace officer's discretion) from the residence.

6. **Conflicting Orders.**

If any term of another order conflicts with any term of this order you must follow the more restrictive term.

7. **Change in address.** The parties shall at all times keep the Court informed of their current mailing addresses.

8. **Treatment/Counseling.**

- Within _____ days of this order, Respondent shall report to _____
_____ and participate and complete all scheduled _____

treatment or counseling. A written report shall be submitted to the Court within _____ days of this order.

9. **Future notices.**

The parties have waived their right to personal service and agreed that all future notices of hearing may be served by certified mail.

10. **Other:** _____

[07]

[08]

11. **Order to clerk.** It is further ordered that the clerk of the court shall forward a copy of this order to the appropriate law enforcement agency for immediate entry into record systems and service upon Respondent, if not previously served; and the clerk shall deliver or mail a copy of this order to the Petitioner.

Date:

March 4, 2009

Signed:

Russell Couffer

Judge

NOTICE:

It is a misdemeanor under Idaho Code § 39-6312 for the respondent, after notice of this order, to violate the provisions of this order. Further, it is a crime under Idaho Code § 8-204 for any person to aid and abet a crime, or, not being present, to advise and encourage a crime. In addition, under Idaho Code §18-304, any person who counsels, aids, solicits or incites another to commit a misdemeanor is guilty of a misdemeanor. Therefore, it may be a crime for any person to encourage or invite contact between the respondent and the petitioner, except such contact as is expressly permitted by the above order.

I have received a copy of this order and advisory notice and warning.

Signed:

Robyn Baker
Petitioner

Date:

3-4-09

Signed:

[Signature]
Respondent

Date:

3-5-09

ATTENTION: KEEP A COPY OF THIS ORDER IN YOUR POSSESSION AT ALL TIMES IN ORDER TO ASSIST PEACE OFFICERS. IMMEDIATELY REPORT ANY VIOLATION OF THIS ORDER TO LAW ENFORCEMENT.

STATE OF IDAHO }
COUNTY OF ADA } ss.
I, J. David Navarro, 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 foregoing is a true and correct copy of the original on file in this office. In witness whereof I have hereunto set my hand and affixed by official seal this _____ day of _____, 2009.
J. DAVID NAVARRO, Clerk

Protection Order
CAO DV 8-1 Revised 12/10/2007

Sarah L. Sears, Deputy Public Defender
 Office of the Kootenai County Public Defender
 500 Government Way Suite 600
 Coeur d'Alene, Idaho 83814
 Phone: (208) 664-1347; Fax: (208) 769-4475
 Bar Number: 7902

STATE OF IDAHO }ss
 COUNTY OF KOOTENAI
 FILED: 10-8-16
 AT 10:30 O'CLOCK A.M.
 CLERK, DISTRICT COURT
 Amy K. Allen
 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-09-24916
)	
V.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS
CAREY M. BAKER,)	
)	
Defendant.)	
)	

The defendant, through his attorney, Deputy Public Defender, Sarah L. Sears, submits the following Memorandum in Support of Motion to Dismiss:

ISSUES PRESENTED

- I. Prosecution of Mr. Baker in this case violates the Double Jeopardy Clause.**
- II. Prosecution of Mr. Baker in this case violates a binding plea agreement.**

FACTS AND PROCEDURAL HISTORY

On February 17, 2010, Mr. Baker pled guilty and was sentenced in Ada County Case MD-09-16878 in front of the Honorable Cathleen Macgregor-Irby. A plea agreement was articulated by Mr. Baker's attorney on the record explaining "the state would bring one charge today, he will admit that, plead guilty today and they would pursue no further charges from anything that has happened in the past to today's date. We do not have any specific agreements as to the recommendations." Mr. Baker pled guilty to Violation of a No Contact Order (Idaho Code §39-6312) by having contact with Robyn Shea on August 24, 2009 when he telephoned

MEMORANDUM IN SUPPORT OF
 MOTION TO DISMISS

and left a voice message knowing there was a protection order in place. The Ada County Prosecutor played audio of several messages left by Mr. Baker on Robyn Shea's voicemail. (Ada County CD of 2-17-10 Hearing) The messages played during sentencing at the Ada County hearing are identical to the discovery supplied in this case CR-09-24916. Mr. Baker again is charged with Violation of No Contact Order by the State of Idaho alleging twelve violations with the protected person Robyn Shea by leaving voice messages on her phone on dates ranging from May 26, 2009 until September 17, 2009 and including August 24, 2009.

I. Prosecution of Mr. Baker in this case violates the Double Jeopardy Clause.

The Fifth Amendment of the United States Constitution provides "...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..." Article 1, section 13 of the Idaho Constitution states, "No person shall twice be put in jeopardy." The core principal of the Double Jeopardy Clause applies not only to multiple punishments but also to multiple prosecutions for the same crimes. *State v. Manley*, 142 Idaho 338, 127 P.3d 957, 960 (2005), *State v. Avelar*, 132 Idaho 775, 778, 979 P.2d 648, 651 (1999), *United States v. Dixon*, 509 U.S. 668, 696, 113 S.Ct. 2849, 2856, 125 L.Ed2d 556, 567 (1993), *State v. Werneth*, 101 Idaho 241, 611 P.2d 1026 (1980).

This right to be free from multiple prosecutions "ensures that the State does not make repeated attempts to convict an individual, thereby exposing him to continued embarrassment, anxiety, and expense, while increasing the risk of an erroneous conviction or an impermissibly enhanced sentence." *Ohio v. Johnson*, 467 U.S. 493, 498-99 (1984); *State v. Avelar*, 132 Idaho 775, 778 (1999). The Clause affords a defendant three basic protections: it protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple criminal punishments for the same offense. *Schiro v.*

Farley, 510 U.S. 222, 229 (1994); *State v. McKeeth*, 136 Idaho 619, 622 (Ct.App.2001). The present case presents an instance of both a second prosecution for the same offense after conviction as well as facing multiple punishments for the same offense.

Second Prosecution for the Same Offense

Kootenai County alleges in its Criminal Complaint that Mr. Baker “on or about August 24, 2009, in the county of Kootenai, State of Idaho, did violate provisions of a lawfully granted and in effect civil protection order, issued in Ada County, case number CV DV2009-3241, protecting Robyn E. Shea, of which CAREY MITCHELL BAKER had notice, to wit: called by telephone at or about 4:03 pm; all of which constitutes the offense of Violation of Protection Order, a misdemeanor, pursuant to Idaho Code Section 39-6312.” (see Criminal Complaint for CR-09-24916) Mr. Baker pled guilty to and was sentenced to this exact charge in Ada County pursuant to a plea agreement. (Ada County CD of 2-17-10 Hearing) The State of Idaho is therefore seeking prosecution for the same offense in violation of the Double Jeopardy Clause.

Multiple Criminal Punishments for the Same Offense

The audio provided by Coeur d’Alene prosecutor in this case in response to Request for Discovery, is identical to the audio considered for Mr. Baker’s sentencing in Ada County. Prior to the plea of guilty in Ada County, a record was made that defendant would be entering a plea of guilty in return for the State’s agreement no further charges would be pursued against Mr. Baker from sentencing day past for Violation of No Contact Order. Therefore, the Ada County Court took into consideration during sentencing (1) the multiple Violations of No Contact Order prior to the date of sentencing and (2) the State of Idaho would be pursuing no further charges. (Ada County CD of 2-17-10 Hearing)

The Double Jeopardy Clause is triggered in this case in its most elementary form. Mr. Baker has already been punished for all Violations of No Contact Order occurring prior to February 17, 2010. Allowing Kootenai County to prosecute Mr. Baker for the same crime would violate the Double Jeopardy Clauses of the United States and Idaho Constitutions.

II .Prosecution of Mr. Baker in this case violates a binding plea agreement.

“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *State v. Peterson*, 148 Idaho 593, 226 P.3d 535, 537 (2010) quoting *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427, 433 (1971) In the case at hand, there is a clear plea agreement in place between Mr. Carey and the Ada County Prosecutor that encompasses the filed charges in this case. Mr. Baker fulfilled his part of the plea agreement by pleading guilty to “one charge” and accepting his sentence with open recommendations presented by the Ada County Prosecutor. Mr. Baker sacrificed numerous rights including his right to remain silent to give his plea. This Motion to Dismiss is an elementary request for the State of Idaho to fulfill their side of the agreement to “pursue no further charges from anything that has happened in the past to today’s date.”

Because Ada County had jurisdiction to accept Mr. Baker’s plea, the Office of the City Attorney is Bound by the Plea Agreement

The statutory language relating to venue in criminal cases is addressed in chapter 3, title 19 of the Idaho Code. The legislature substantially revised this chapter in 1986 by inserting the word “venue” in lieu of the word “jurisdiction” in appropriate places throughout the statutes. 1986 Idaho Sess. Laws, ch. 289, p. 727. Thereafter, so long as the prosecution proves that the crime occurred within the state of Idaho, the precise location of the crime within any particular county in Idaho is not required as an element to establish that a crime has been committed by the

accused. *State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992). Venue is non-jurisdictional.

§19-301(2)

When a public offense is committed in part in one (1) county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two (2) or more counties, the venue is in either county. §19-304(1) If a crime has been committed in the state of Idaho but it cannot be shown which county properly has venue, then in such case Ada county shall be the proper county of venue. §19-304(3)

The crux of the case at hand is a “civil protection order, issued in Ada County, case number CV DV2009-3241” (see Criminal Complaint for CR-09-24916) and telephone contact. Therefore Ada County clearly had jurisdiction to accept Mr. Baker’s plea. In the case at hand, the Ada County Prosecutor represented the State of Idaho by entering into a binding agreement with Mr. Carey Baker.

Moreover, any ambiguity with regard to this plea agreement must be resolved in favor of Mr. Baker. “[A]mbiguities are construed in favor of the defendant. Focusing on the defendant’s reasonable understanding also reflects the proper constitutional focus on what induced the defendant to plead guilty.” *De la Fuente*, 8 F.3d at 1337 n. 7.

CONCLUSION

For the above mentioned reasons, the defendant requests this case be dismissed.

DATED this 8th day of October, 2010.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

Page 5

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served ~~by placing a copy of the same in the interoffice mailbox~~ on the 9th day of October, 2010, addressed to:

City of Coeur d'Alene County Prosecutor

Samah L. Seard

Court Minutes:

Session: WATSON110510P
Session Date: 11/05/2010
Judge: Watson, Barry
Reporter:

Division: MAG
Session Time: 13:13

Courtroom: Courtroom3

Clerk(s):
Rohrbach, Shari
Mollett, Charmaine

State Attorneys:
Green, Robert
Somerton, Wes
Studor, Josh

Public Defender(s): Szott, Paul

Prob. Officer(s):

Court interpreter(s):

Charmaine Mollett

Case ID: 0004

Case Number: CR2009-24916

Plaintiff:

Plaintiff Attorney:

Defendant: Baker, Carey

Pers. Attorney:

Co-Defendant(s):

State Attorney: Somerton, Wes

Public Defender:

11/05/2010

15:06:45

Recording Started:

15:06:45

Case called

15:07:10

Stop Recording
(Off Record)

15:08:48 Recording Started:

15:08:48 **Record**
Baker, Carey

15:08:50 **Judge: Watson, Barry**
DECISION HEARING. WES SOMERTON PA, MS. SEARS DA.
TELEPHONIC HEARING. HAVE A

15:09:52 MOTION TO DISMISS ARGUED ON THE 8TH OF OCTOBER.

15:10:05 **State Attorney: Somerton, Wes**

15:10:24 **Judge: Watson, Barry**
I REVIEWED THE BRIEFS THAT WERE SUBMITTED.
EXHIBIT A AND B. B WAS A CD

15:11:03 RECORDING OF PHONE MESSAGES THAT WERE LEFT FOR
ROBIN SHAY. A PARTIAL PIECE OF

15:11:40 THAT WAS PLAYED IN EXHIBIT A. INTERESTING CASE.
DOWN IN ADA COUNTY A CHARGE

15:12:09 WAS FILED FOR A CIVIL PROTECTION ORDER FROM
2009. BOISE IS THE PROSECUTING

15:12:31 ATTORNEY FOR THE CITY OF MERIDIAN. IT WAS FILED
9-10-09. MR. BAKER PLEAD TO

15:13:12 THE CHARGE. THEY WERE NOT GOING TO FILE ANY
FURTHER CHARGES. CHARGES HAD

15:13:39 ALREADY BEEN FILED IN KOOTENAI COUNTY. 12-7-09
AN ARREST WARRANT WAS FILED.

15:14:24 HE PLEAD GLTY IN THE MERIDIAN CASSE. HE POSTED
BOND AND HE GOT AN ATTORNEY

15:14:49 HERE. THERE WAS A MOTION TO DISMISS. CHARGES CAN
BE FILED IN MORE THAN ONE

15:15:14 COUNTY. CAN BE PROSECUTED IN ONLY ONE COUNTY.
COUNT 6 WAS A VIOLATION OF A

15:15:46 PROTECTION ORDER. SAME CHARGE HE WAS CHARGED AND
SENTENCED ON THAT CHARGE IN

15:16:20 ADA COUNTY. DISMISS COUNT 6. HAVE 11 OTHER
CHARGES. THE CALL WAS GENERATED

15:17:32 HERE IN KOOTENAI COUNTY AND MADE TO THE VICTEM
IN ADA COUNTY. THE OTHER 11

15:18:20 COUNTS WERE MADE HERE IN KOOTENAI COUNTY. DON'T
HAVE A DOUBLE JEPORDY CASE

15:19:20 HERE. THE CIVIL PROTECTION ORDER WAS ORDERED IN
ADA COUNTY. DENY THE

15:19:42 DISMISSAL IN THE OTHER 11 COUNTS. THE VENUE IS

15:20:12 IN EITHER COUNTY. THE PROPER
VENUE WOULD BE HERE. THE CALLS WERE GENERATED
AND RECIEVED HERE.

15:21:04 **State Attorney: Somerton, Wes**
WE DON'T KNOW WHERE SHE RECIEVED THE CALLS.

15:21:38 **Add Ins: Sears, Sarah**
ARE WE SEPERATING THE COUNTS. COUNT 6 HE ALREADY
PLEAD TO. HE IS A RESIDENT

15:22:15 OF ADA COUNTY. SHE CAN TESTIFY TO ALL THE
COUNTS.

15:22:30 **Judge: Watson, Barry**
I DON'T THINK WE'LL BE ABLE TO BIND THE CITY OF
COEUR D'ALENE. FEEL BAD FOR

15:23:05 MR BAKER. THEY DIDN'T HAVE ALL THE INFORMATION
HE WOULD HAVE LIKED TO HAVE.

15:23:38 **Add Ins: Sears, Sarah**
THERE'S NO WAY FOR HIM TO KNOW WHERE SHE WOULD
BE WHEN HE MADE THE CALLS.

15:24:04 **Judge: Watson, Barry**
NEED TO DO SOME DISCOVERY. DISAGREE WITH THE
MOTION TO DISMISS. MR. SOMERTON

15:25:01 **Add Ins: Sears, Sarah**
WANT IT SET FOR STATUS.

15:25:09 **Judge: Watson, Barry**
SET FOR 12-6-10 AT 8:30/.

15:25:31 THE ISSUE FOR ME IS YOU HAVE ANOTHER COURT DATE.

15:25:54 **Defendant: Baker, Carey**
I COULD DO IT ON THE 10TH.

15:26:07 **Judge: Watson, Barry**
RESET THIS TO 1-31-10 AT 8:30 AND THE TRIAL
AFTER. WE DID DO A WAIVER OF

15:26:53 SPEEDY TRIAL. VACATE THE CURRENT TRIAL DATE. SET
FOR 1-31-10 AT 8:30 AND THE

15:27:41 TRIAL TO FOLLOW .WE DISMISSED COUNT 6. TRIAL
WILL BE SET FOR FEB 1.

15:30:40 **Stop Recording**

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN

UNKNOWN, ID
DL# [REDACTED] ID
DOB: 1 [REDACTED] 1 AGENCY: COEUR D'ALENE PD
CASE # CR-2009-0024916 CITATION #
CHARGE: I39-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER
AMENDED:

JUDGMENT
FILED 11-5-10 AT .m.

CLERK OF THE DISTRICT COURT
BY Charmaine Nollett DEPUTY
BOND:

COUNT 5

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed PLEAD NOT SENTENCED IN ADA COUNTY
- Judgment--Not Guilty
- Judgment on Trial--Guilty
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ _____ which includes costs, and probation fee if applicable. Suspended \$ _____
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____
- Must sign up within 7 days.**
- Reimburse _____
- Restitution _____
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail _____ days, Suspended _____ days, Credit _____ days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail _____ Release _____ Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.** Follow the Labor Program schedule and policies.
- _____

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____ :
To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR _____ YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other _____

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL THIS JUDGMENT WITHIN 42 DAYS

[Signature]

Copies To: Date 11-5-10 Judge # 356
Def. IC Def. Atty. _____ [] Pros. IC [] Other _____ [] Comm. Serv. [] Jail (fax 446-1407)
[] KCSO RECORDS (fax 446-1407) [] NCO Agency _____ fax _____ [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)
Date 11-5-10 Deputy Clerk Charmaine Nollett

AT _____ O'CLOCK _____ M
CLERK, DISTRICT COURT
Charmane Mellett
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO Plaintiff, vs. <u>CAREY M. BAKER</u> Defendant,	CASE NO. CR- <u>09-24916</u> NOTICE OF HEARING / TRIAL
--	---

NOTICE IS HEREBY GIVEN, that a hearing and/or trial is scheduled as follows:

Pretrial conference is set for the _____ day of _____, 20____, at _____ o'clock _____.m. **THE DEFENDANT MUST BE PRESENT.**

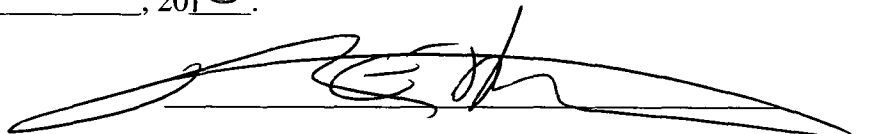
Jury trial ^{STATUS CALL} is set for the 31 day of JAN., 2011, at 8:30 o'clock A.m. **THE DEFENDANT MUST BE PRESENT.**

Sentencing is set for the _____ day of _____, 20____, at _____ o'clock _____.m. **THE DEFENDANT MUST BE PRESENT.**

Probation violation/contempt hearing is set for the _____ day of _____, 20____, at _____ o'clock _____.m. **THE DEFENDANT MUST BE PRESENT.**

_____ hearing is set for the _____ day of _____, 20____, at _____ o'clock _____.m. **THE DEFENDANT MUST BE PRESENT.**

DATED 11-5, 2010.


Magistrate / Court Clerk

Copies distributed in Court to:

Prosecutor FC Defense Counsel FC Defendant
 Pre-Trial Services by FAX 446-1990 AMP by FAX 446-1990

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
Plaintiff,	)	CASE NO. CRM-09-024916
)	
vs.	)	ORDER DENYING DEFENDANT'S
	)	MOTION TO DISMISS
CAREY MITCHELL BAKER,)	
Defendant.)	
_____)	

The Court heard argument by counsel on Defendant's Motion to Dismiss on October 8, 2010. The Court announced his findings and conclusions on November 5, 2010. The Defendant was represented by his attorney, SARAH L. SEARS, Deputy Kootenai County Public Defender; the state was represented by Wes Somerton, Deputy Coeur d'Alene City Attorney, the Honorable Barry Watson, Magistrate presiding.

After consideration of the legal arguments of counsel, and review of the briefs submitted, and evidence presented for consideration as to the Motion to Dismiss, the Court announced its findings and conclusions on the record. Based on the announced findings and conclusions:

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Count VI of the complaint filed on December 7, 2009 is granted.

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Counts I, II, III, IV, V, VII, VIII, IX, X, XI and XII of the complaint filed on December 7, 2009 is denied.

Entered this 9 day of November, 2010.


Barry Watson - Magistrate Judge

Copies to:

Def. _____	Def. Att _____	CDA Pros. _____
CDA PD _____	Jail, CIB _____	Sup. Ct. _____
Aud. _____	Bonding Co. _____	Other _____
Date _____	Dep. Clerk _____	

CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing Order Denying Defendant's Motion, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

SARAH L. SEARS
Attorney for Defendant
FAX: () 446-1701

City of Coeur d'Alene Attorney Office
FAX: 769-2326

this 10 day of November, 2010.

Sarah L. Sears
9156

255 254

354
STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

2011 JAN 28 PM 1:29

CLERK DISTRICT COURT
[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NUMBER CR-09-24916
Plaintiff,)	
)	
V.	)	MOTION TO CHANGE VENUE
)	
CAREY M. BAKER,)	
)	
Defendant.)	
)	

COMES NOW, the above named defendant, by and through his attorney, Sarah L. Sears, Deputy Public Defender, and hereby moves the Court for an Order to Change the Venue in the above referenced matter. The grounds for this Motion are that Mr. Baker was in Ada County on the dates each charge was alleged to have been committed. Pursuant to Idaho Criminal Rule 19 the prosecution shall be had in the county in which the alleged offense was committed. Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 10 minutes.

DATED this 28th day of January, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah L. Sears
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 28th day of January, 2011, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Lisa Beeler

Description	CR 2009-24916 Baker, Carey Mitchell 20110131 Jury Trial Status Call Judge Watson Clerk - Nancy Albers	
Date	1/31/2011	Location <i>Nancy K Albers</i> 1K-COURTROOM4
Time	Speaker	Note
<u>12:00:51 PM</u>	Judge Watson	Calls Case PA/DA/Defendant present
<u>12:00:57 PM</u>	Judge Watson	Can set for trial Tomorrow at 9:00 a.m.
<u>12:01:06 PM</u>	DA - Sarah Sears	Go to trial - I will handle at trial
<u>12:01:42 PM</u>	PA - David Judd (CDA)	Will be Mr Somerton - 2 witnesses
<u>12:01:50 PM</u>	DA - Sarah Sears	One witness - 11 counts
<u>12:02:21 PM</u>	Judge Watson	Submit any proposed jury Instruction to my office by 9 a.m. 2/1/11
<u>12:02:38 PM</u>	End	

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www.fortherecord.com

Sarah Sears, Deputy Public Defender
 Office of the Kootenai County Public Defender
 PO Box 9000
 Coeur d'Alene, Idaho 83814
 Phone: (208) 446-1700; Fax: (208) 446-1701
 Bar Number: 7902

STATE OF IDAHO }
 COUNTY OF KOOTENAI } ss
 FILED 2-1-11
 AT 9:20 O'LOOYA M
 CLERK, DISTRICT COURT
 Spencer K. O'Looney
 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-09-24916
	)	Misd
V.)	
)	
CAREY BAKER,	)	MOTION IN LIMINE
)	
Defendant.)	

COMES NOW, the above named Defendant, by and through his attorney, Sarah L. Sears, Deputy Public Defender, and hereby moves the Court for an Order in Limine to preclude the State from introducing evidence and testimony related to:

1. Testimony by any party that Defendant uses controlled substances and or has a substance abuse problem, as such statement is irrelevant, unfairly prejudicial, and its probative value is outweighed by the danger of unfair prejudice. I.R.E. 401, 402, and 403.
2. Advising counsel and witnesses from making any reference to Defendant's alleged prior bad acts and convictions, if any, and also to his character as no notice has been given of the State's intent to use 404(b) evidence.

Counsel requests that the parties be instructed to advise potential witnesses of the Court's rulings on these requests for exclusion of evidence and argument; further, to advise witnesses not to blurt out or otherwise make statements in the jury's presence that are contrary to the Court's rulings.

MOTION IN LIMINE

Page 1

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 5 minutes.

DATED this 1st day of February, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah L. Sears
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 1st day of February, 2011, addressed to:

City of Coeur d'Alene Prosecutor Sarah L. Sears

hand-delivered

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED 2-1-11
9:20 O'CLOCK A.M.
CLERK, DISTRICT COURT
Amy Kallen
DEPUTY

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208)446-1700; Fax: (208)446-1701
Bar Number: 7902

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-09-24916
)	
vs	)	AFFIDAVIT OF CAREY BAKER
)	
CAREY BAKER,)	
)	
Defendant.)	
_____)	

STATE OF IDAHO)
: ss.
County of Kootenai)

I, CAREY BAKER, being first duly sworn upon oath, deposes and says:

1. I am the Defendant in the above-referenced case.
2. I was located in Ada County, Idaho on May 26, 2009, and no other county.
3. I was located in Ada County, Idaho on June 6, 2009, and no other county.
4. I was located in Ada County, Idaho on July 29, 2009, and no other county.
5. I was located in Ada County, Idaho on August 4, 2009, and no other county.
6. I was located in Ada County, Idaho on August 5, 2009, and no other county.
7. I was located in Ada County, Idaho on August 31, 2009, and no other county.

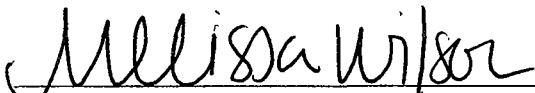
8. I was located in Ada County, Idaho on September 8, 2009, and no other county.
9. I was located in Ada County, Idaho on September 10, 2009, and no other county.
10. I was located in Ada County, Idaho on September 12, 2009, and no other county.
11. I was located in Ada County, Idaho on September 15, 2009, and no other county.
12. I was located in Ada County, Idaho on September 17, 2009, and no other county.

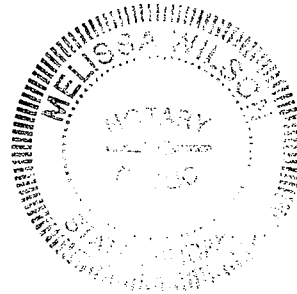
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 1st day of February, 2011.


CAREY BAKER, Affiant

SUBSCRIBED AND SWORN to before me this 1st day of February, 2011


Notary Public in and for the State of Idaho
Commission Expires: 3/28/2014



Description	CR 2009-24916 Baker, Carey Mitchell 20110201 Jury Trial Judge Watson Clerk - Nancy Albers		
Date	2/1/2011	Location	1K-COURTROOM4
Time	Speaker	Note	
<u>08:59:31 AM</u>	Judge Watson	Calls Case - Jury Trial PA/DA/Defendant present -	
<u>09:00:28 AM</u>	PA - Wes Somerton	Ready to Proceed	
<u>09:00:30 AM</u>	DA - Sarah Sears	Ready to Proceed	
<u>09:00:48 AM</u>	Clerk	Calls 14 jurors	
<u>09:04:42 AM</u>	Clerk	Swears Jury Panel to Voir Dire Oath	
<u>09:05:33 AM</u>	Judge Watson	Reads charges to Jury Panel -	
<u>09:08:38 AM</u>	Judge Watson	Court's Voir Dire of Jury Panel	
<u>09:14:32 AM</u>	PA - Wes Somerton	State's Voir Dire of Jury Panel	
<u>09:26:53 AM</u>	PA - Wes Somerton	Passes Jury for Cause	
<u>09:26:55 AM</u>	DA - Sarah Sears	Defense's Voir Dire of Jury Panel	
<u>09:42:15 AM</u>	DA - Sarah Sears	Request juror # 20 Excused for cause	
<u>09:42:26 AM</u>	PA - Wes Somerton	questions in aid	
<u>09:43:08 AM</u>	Juror #20	Can't get past the language	
<u>09:43:39 AM</u>	PA - Wes Somerton	no objection	
<u>09:43:57 AM</u>	Judge Watson	Excuses juror #20	
<u>09:44:17 AM</u>	Clerk	Calls Another Juror	
<u>09:45:19 AM</u>	Judge Watson	Inquires of Juror # 30	
<u>09:45:29 AM</u>	Juror #30	No responses to prior questions	
<u>09:45:55 AM</u>	PA - Wes Somerton	Inquires of Juror #30	

Nancy K Albers

<u>09:46:27 AM</u>	DA - Sarah Sears	Continues Voir Dire of Jury Panel - Moves to Excuse juror # 25 for cause
<u>09:47:18 AM</u>	PA - Wes Somerton	Inquires of Juror #25 -no objection
<u>09:49:10 AM</u>	Judge Watson	Excuses Juror # 25 for cause
<u>09:49:24 AM</u>	Clerk	Calls another juror # 31
<u>09:50:16 AM</u>	Judge Watson	Inquires of juror #31
<u>09:50:21 AM</u>	Juror #31	No responses to prior questions
<u>09:50:35 AM</u>	PA - Wes Somerton	Inquires of Juror #31
<u>09:50:51 AM</u>	DA - Sarah Sears	Continues Voir dire of Jury Panel -
<u>09:52:02 AM</u>		
<u>09:53:42 AM</u>	PA - Wes Somerton/ DA - Sarah Sears	Passes panel for Cause
<u>09:54:08 AM</u>	Judge Watson	Explains Recess to Peremptory Challenges - Admonishes Jury Panel -
<u>09:55:03 AM</u>	Judge Watson	Recess
<u>09:55:12 AM</u>	Judge Watson	Back on the record - Peremptory Challenges done -Announces selected jury
<u>10:12:30 AM</u>	Clerk	Swears selected Jury to Try Cause Oath
<u>10:13:01 AM</u>	Judge Watson	Need to speak with Juror #10
<u>10:13:12 AM</u>		Excuses Balance of jury panel for rest of day
<u>10:14:15 AM</u>	Judge Watson	Excuses selected jury for recess -
<u>10:14:41 AM</u>		Inquires of Juror #10 - Late arrived -
<u>10:14:53 AM</u>	Juror #10	Lost track of date and forgot today was the day - Missed video
<u>10:16:00 AM</u>	Judge Watson	- Make arrangements with Jury Commission to watch video - Call after 4pm tonight to see if needed tomorrow Recess
<u>10:16:13 AM</u>		
<u>10:16:13 AM</u>	Judge Watson	Back on the record - Any Preliminary Issues

<u>10:32:47 AM</u>	PA - Wes Somerton	None
<u>10:32:51 AM</u>	DA - Sarah Sears	Files Jury Instructions with Court and - Motion in Limine - also had a motion to transfer jurisdiction
<u>10:34:13 AM</u>	DA - Sarah Sears	Argues Motion to Transfer jurisdiction - Files Affidavit of Carey Baker
<u>10:35:38 AM</u>	PA - Wes Somerton	Motion was address in Motion to Dismiss hearing - Can be filed in either county - based on victim located in Kootenai County when call recieved
<u>10:36:50 AM</u>	Judge Watson	Now the jury has been selected not appropraite to transfer jurisdiction - Venue can be in either county where calls made from or in county where recieved - Deny Motion to Change Venue
<u>10:37:47 AM</u>	DA - Sarah Sears	Stand on Motion in Limine nothing to add
<u>10:38:05 AM</u>	PA - Wes Somerton	No objection to (1)
<u>10:38:19 AM</u>	Judge Watson	Grant (1)
<u>10:39:20 AM</u>	PA - Wes Somerton	Regarding (2) -
<u>10:39:44 AM</u>	Judge Watson	Grant (2)
<u>10:40:56 AM</u>	Judge Watson	Recess
<u>10:45:43 AM</u>	Judge Watson	Back on the Record
<u>10:46:07 AM</u>	Jury Returns to Courtroom	
<u>10:46:21 AM</u>	Judge Watson	Gives jury panel pre-evidence instructions
<u>10:56:28 AM</u>	PA - Wes Somerton	Opening Statement to Jury Panel -
<u>10:58:15 AM</u>	DA - Sarah Sears	Opening Statement to Jury Panel
<u>11:01:07 AM</u>	PA - Wes Somerton	Calls W#1 - Robyn Shea
<u>11:01:18 AM</u>		
<u>11:02:06 AM</u>	Clerk	Swears W#1

<u>11:02:34 AM</u>	Robyn Shea - W#1	Between May 2009 and Sept 2009 Resided in Coeur d'Alene I moved here in April 2008 - I am a realtor - and had a part-time job at medical office - Unfortunately know Carey Baker - I was briefly married to him - He worked for me in Spring 2005 - With him in 2006 and 2007 Married the end of year 2005 - We were divorced March 2009 - I have spoken with Mr Baker on the telephone - listened to many voice messages from him - I can recognize his voice on a phone message or on a phone call - Identifies Defendant in Courtroom - May 2009- Sept 2009 - I have a verizon cell phone - My phone had voice mail capabilities - I was able to save voice mail messages - explains how saved the messages- March 2009 appeared in Ada County Court - Sought a civil protection order in March 2009 - I was in court 3/4/09
<u>11:08:08 AM</u>	DA - Sarah Sears	Objection
<u>11:08:12 AM</u>	Judge Watson	Sustained - Answer Stricken
<u>11:08:24 AM</u>	Robyn Shea - W#1	I don't recall case number but have a paper can look on - CV DV 2009-03241 that was the order I got after court on that day -
<u>11:09:09 AM</u>	DA - Sarah Sears	Objection
<u>11:09:12 AM</u>	Judge Watson	Sustained- Answer Stricken
<u>11:09:21 AM</u>	Robyn Shea - W#1	I was the Petitioner and Respondent Carey Mitchell Baker - When I was in Court I had to sign the Order- and I did -Mr Baker was at the courthouse that day - but didn't go into court when actual case was before the judge -
<u>11:10:27 AM</u>	Robyn Shea - W#1	Plt Exh #1 - This is a copy of the Protection order issued March 2009 - Last Page - my signature on it - During marriage - saw his signature regularly - We both ran businesses out of home officer - checks and statements needed his signatures - Myself of bookkeeper prepared them - I saw him sign things - I could recognize his signature - Exh #1 last page -
<u>11:12:45 AM</u>	DA - Sarah Sears	
<u>11:12:47 AM</u>	Judge Watson	
<u>11:12:50 AM</u>	Robyn Shea - W#1	I see Carey Baker's signature on that page - Also a judge's signature something I wouldn't recognize
<u>11:13:14 AM</u>	PA - Wes Somerton	Offer Exh #1

<u>11:13:25 AM</u>	DA - Sarah Sears	No objection
<u>11:13:31 AM</u>	Judge Watson	Certified Self Authenticating document - Admits Exh # 1
<u>11:14:30 AM</u>	Robyn Shea - W#1	Since the day Protection Order entered - I have recieved contact from Mr Baker - he dropped things by my work and left things on my phone - Just messages on my phone - lots of messages on my phone - I saved a handful of the messages - I could recognize his voice -
<u>11:15:52 AM</u>	DA - Sarah Sears	Objection
<u>11:15:55 AM</u>	Judge Watson	Overuled
<u>11:16:04 AM</u>	Robyn Shea - W#1	I went to Law Enforcement with messages late in September
<u>11:16:28 AM</u>	DA - Sarah Sears	Objection
<u>11:16:35 AM</u>	Judge Watson	Sustained
<u>11:16:43 AM</u>	Robyn Shea - W#1	Played the messages to law enforcment that day - The Officer Recorded them from my phone onto his tape recorder - I was present when he did that - I recorded I believe 12 messages with the officer that day - Those recordings were from mostly Carey Baker - were a few messages from my kids on the phone but don't think he recorded those -Plt Exh #2 - This is the CD recorded of the voice messages I listened to in your office last summer when preparing to go to trial - You made me sign it 8/12/10 date I signed it. Accurate and true recording of what I played for the officer that day- I had not made any changes to the messages before played for officer and Hadn't been changed after the officer recorded - Messages not in order recieved explains -
<u>11:21:02 AM</u>	PA - Wes Somerton	Offer Plt Exh 2
<u>11:21:15 AM</u>	DA - Sarah Sears	Objection -
<u>11:21:29 AM</u>	Judge Watson	Sustained
<u>11:21:41 AM</u>	Robyn Shea - W#1	The voice messages each have a recorded date and time when recieved - I can't alter those Each message has date and time - On May 26 2009 when recieved call I was in Coeur d'Alene - Next Message - Coeur d'Alene - doing open house at Mill River - 6/6/09 2:12 p.m.

<u>11:24:05 AM</u>	DA - Sarah Sears	Objection - question in aid
<u>11:24:18 AM</u>	Judge Watson	
<u>11:24:38 AM</u>	Robyn Shea - W#1	5/26 didnt' hear phone ring - that is just when I checked my messages - Time and date based on when verizon said recieved
<u>11:25:36 AM</u>	DA - Sarah Sears	Objection
<u>11:25:40 AM</u>	PA - Wes Somerton	Argues -
<u>11:25:59 AM</u>	Judge Watson	Sustained Objection -
<u>11:26:30 AM</u>	Robyn Shea - W#1	I use my phone daily - I check my phone for messages 10 - 15 times a day - Explains - 5/26/09 got a voice message from Mr Baker - when I listened to message at my desk - Listened to it within 15 min - 30 min - When I am working I have a telephone at desk and set my cell phone to vibrate - very in tuned to listen for it - 6/6/09 - Open house at Mill River in Coeur d'Alene Kootenai County Idaho - call appx 2:12 p.m. I was still at my open house - Recognized the voice
<u>11:30:09 AM</u>	DA - Sarah Sears	Objection
<u>11:30:18 AM</u>	Judge Watson	Overuled
<u>11:30:26 AM</u>	Robyn Shea - W#1	Phone message 7/29/09 - only saved 1 - it was 3:38 p.m. -
<u>11:31:00 AM</u>	DA - Sarah Sears	Objection
<u>11:31:08 AM</u>	Judge Watson	Sustained
<u>11:31:31 AM</u>	Robyn Shea - W#1	I have notes with me - my entire life in recorded in notebooks - Explains - 7/29/09 call - I listened to within 1/2 hr - The voice on that message recognized - Carey Baker - I saved that phone call - Recieved message 8/4/09 someone I believe was Mr Baker - I was at the office - I listened to message almost immediately - sometimes he called from his number and sometimes used a restricted
<u>11:35:25 AM</u>	DA - Sarah Sears	Objection - move to strike
<u>11:35:28 AM</u>	Judge Watson	Sustained - Stricken

<u>11:35:54 AM</u>	Robyn Shea - W#1	Listened to message within 15 minutes - August 5, 2009 recieved another message from Mr Baker - very early in the morning - I was on the bike at the Kroc Center - In Coeur d'Alene - At the Kroc Center for appx 1 1/2 hrs - I checked my phone later that day - probably around 10 a.m. - Recognized the voice - Carey Baker - Southabys officer - explains where located - Across parking lot from Outback - in Coeur d'Alene - 8/31/09 got a message from Carey Baker many incoming calls - Showing Condo's to a client - in Coeur d'Alene - Mid - afternoon -1:30 - 2:30 p.m. - My notes indicate we were at the fair -
<u>11:40:49 AM</u>	DA - Sarah Sears	Objection
<u>11:40:57 AM</u>	Judge Watson	Sustained
<u>11:41:01 AM</u>	Robyn Shea - W#1	After reviewed notes - should have been at trial a long time ago - Showed Property in late morning - Then in afternoon at the North Idaho Fair in Horse Barns - I don't recall how many phone calls that day - Recognized the voice Carey Baker - 9/8/09 Message from Mr Baker - First day of school - day I had kids scheduled for physicals to be able to run cross country - The one recorded in the early evening - I was sitting at Jack in the Box - Coeur d'Alene - Recognized voice as Carey Baker - I saved those messages also - 9/10/09 Recieved message from Mr Baker - Kids had early release I was waiting for them at the school - in Coeur d'Alene Recognized called Carey Baker - I saved that recording - 9/12/09 recieved a phone call - I think I was home that day - It was early in morning 6:47 a.m. 4601 E Potlatch Hill Rd - Not in city of Coeur d'Alene in the County - Listened to it later around 8:30 a.m. - Recognized voice Carey Baker
<u>11:47:27 AM</u>		9/15/09 another call from Mr Baker at the office - 2:15 p.m. - I listened to within 15 - 30 min - I leave the office every day at 2:30 to pick up girls no bus service- Dont' let girl hear they say upsetting
<u>11:48:38 AM</u>	DA - Sarah Sears	Objection
<u>11:48:41 AM</u>	Judge Watson	Sustained Stricken
<u>11:48:50 AM</u>	Robyn Shea - W#1	Recognize voice as Carey Baker - 9/17/09 another call - Realtor's Convention at Coeur d'Alene Resort - I was at Convention - middle of afternoon - In Coeur d'Alene - on 9/17/09 tired of being harrassed so went to police station and played the messages for the officer - I listened to the message within 15 m-min to 1/2 hr - of recieving it -
<u>11:51:25 AM</u>	PA - Wes Somerton	Offer Plt Exh #2

<u>11:51:33 AM</u>	DA - Sarah Sears	No objection
<u>11:51:50 AM</u>	Judge Watson	Admits Plt Exh #2
<u>11:52:03 AM</u>	PA - Wes Somerton	Request publish to jury - take appx 20 min -
<u>11:52:15 AM</u>	Judge Watson	Take noon recess - reconvine at 1:10 P.M.
<u>11:53:09 AM</u>	Judge Watson	Recess until 1:10 p.m.
<u>11:53:22 AM</u>	Judge Watson	Back on the record
<u>01:09:12 PM</u>	PA - Wes Somerton	Ready to Proceed
<u>01:09:37 PM</u>	DA - Sarah Sears	Ready to proceed
<u>01:10:05 PM</u>	Jury Returns to Courtroom	
<u>01:10:26 PM</u>	PA - Wes Somerton	Request to Publish Plt Exh # 2
<u>01:10:37 PM</u>	Judge Watson	Granted
<u>01:11:03 PM</u>	Play Plt Exh #2	
<u>01:30:33 PM</u>	PA - Wes Somerton	Continues Direct
<u>01:30:46 PM</u>	Robyn Shea - W#1	I had made contact with Mr Baker by Email - Encouraging him to get over problems - between May and Sept don't recall how many times I communicated with him -
<u>01:32:04 PM</u>	PA - Wes Somerton	Nothing further
<u>01:32:11 PM</u>	DA - Sarah Sears	Cross
<u>01:32:33 PM</u>	Robyn Shea - W#1	I leave office every day to pick up girls
<u>01:33:05 PM</u>	PA - Wes Somerton	Objection
<u>01:33:14 PM</u>	DA - Sarah Sears	Argues

<u>01:33:22 PM</u>	Judge Watson	Sustained
<u>01:33:30 PM</u>	Robyn Shea - W#1	Moved to CDA in April 2008 - filed for Protection in Ada County - In March 2009 - Went to Court for that - Carey was there too didn't go into courtroom - Had to put address on Protection Order- Gave address on Bentley in Meridan - Living there at the time- also gave address in CDA 2nd Street - Other address my mom's
<u>01:35:17 PM</u>	DA - Sarah Sears	Objection
<u>01:35:21 PM</u>	Judge Watson	Sustained
<u>01:35:37 PM</u>	Robyn Shea - W#1	In March 2009 working in Meridian Idaho at Caldwell Banking Office - Didn't have 11 listings at the time - also worked in CDA at the time - Many Protection Orders one you are talking about was in Ada County - could be based off memory from 2005 or 2010 I have nothing off memory - able to look at daytimer and calendar to remember - I have a memory of receiving each message - didn't hear a ring each time to phone rang - What was recorded was just a drop in the bucket of what going on -
<u>01:39:42 PM</u>	PA - Wes Somerton	Objection
<u>01:39:45 PM</u>	Judge Watson	Sustained
<u>01:39:52 PM</u>	Robyn Shea - W#1	From May 2009 - to Sept 2009 contacted Mr Baker many times - sent emails - no other way - Don't know how many times I sent email - Didn't occur of regular basis - don't recall if emailed on 5/21/09 Confirms Email - don't know what Mr Baker's email - he changes that and his number regularly like his addresses - don't know if I sent an email - Most often it came in as a restricted number but times his number came in - I don't know if any of the recorded calls came from restricted or not - Don't know what his number was when called from his phone - Prior to July 2009 Mr Baker called me on a number not restricted enough times is disrupted business and messed with my head - From May 2009 to Sept 2009 Didn't invite him to contact me - Wanted him to get sober and out of the dark place he was - I did love him - Don't know if sent messages telling him that - I needed the Order for my safety - Didn't tell him I was terminating the order DF Exh A - Recognize document - Email from me - and sent to Carey Baker - I wrote this email - 7/29/09 trying to see if Mr Baker was trying to call me - Said I was missing a restricted number on my phone and didn't know if it was him - He called far more times then when left messages called in on other peoples phones and his phone used alot of numbers - I know the messages from Mr Baker because recognize his voice -

<u>01:48:42 PM</u>		I indicated I don't know how to reach you - He did contact me from May 2009 to July 21, 2009 from a number not restricted - I wasn't asking for his phone number - I didn't know how to reach him - feel he is in a bad spot -
<u>01:50:34 PM</u>	PA - Wes Somerton	Objection
<u>01:50:38 PM</u>	Judge Watson	Sustained
<u>01:50:42 PM</u>	Robyn Shea - W#1	
<u>01:50:51 PM</u>	DA - Sarah Sears	Offer Exh DF A
<u>01:50:58 PM</u>	PA - Wes Somerton	Objection
<u>01:51:05 PM</u>	Judge Watson	Sustained DF Exh A Refused
<u>01:52:25 PM</u>	Robyn Shea - W#1	DF Exh B - Recognize document - My email to Carey Baker - I wrote email - dated 7/21/09 Indicated I loved him and missed him - Don't know if emailed on specific dates - What I did was encourage him he had indicated addiction getting best of him - I know I sent emails and what the subject matter - Never indicated to him I was terminating Protection Order -
<u>01:55:12 PM</u>	PA - Wes Somerton	Objection
<u>01:55:16 PM</u>	Judge Watson	Sustained
<u>01:55:25 PM</u>	Robyn Shea - W#1	No interest in wanting Mr Baker to be found guilty today - Believe my safety and peace on mind important - I kept voice mails - for a long time - he has history that doesn't do him any favors and I didn't want to add to his burden -
<u>01:57:03 PM</u>	PA - Wes Somerton	Objection
<u>01:57:05 PM</u>	Judge Watson	Sustained
<u>01:57:15 PM</u>	Robyn Shea - W#1	Didn't indicate to him he was going to pay - per our divorce owe \$60,000
<u>01:57:56 PM</u>	PA - Wes Somerton	Objection
<u>01:58:00 PM</u>	Judge Watson	Sustained

<u>01:58:28 PM</u>	Robyn Shea - W#1	Worked in medical officer part-time - hired Jan 2009 - Worked until May 2010 - I never witnesses Mr Baker sign Protection Order
<u>01:59:47 PM</u>	DA - Sarah Sears	Objection
<u>01:59:53 PM</u>	Judge Watson	Sustained - Stricken
<u>02:00:04 PM</u>	Robyn Shea - W#1	Didn't get protection order in Ada County because he lived there - I did it because what occurred when arrived don't know where he lived and don't care he has been indigent for years -
<u>02:02:51 PM</u>		Df Exh C - I have not read this document - went to CDA Police 9/17/09 - When saw police asked if knew where he was - I indicated was in Boise area - that was my hunch -
<u>02:03:47 PM</u>	PA - Wes Somerton	Objection
<u>02:03:51 PM</u>	Judge Watson	Sustained
<u>02:03:58 PM</u>	Robyn Shea - W#1	
<u>02:05:12 PM</u>	DA - Sarah Sears	Nothing further
<u>02:05:14 PM</u>	PA - Wes Somerton	No Redirect
<u>02:05:33 PM</u>	PA - Wes Somerton	Rests
<u>02:05:38 PM</u>	DA - Sarah Sears	Request Motion Outside presence of Jury
<u>02:05:53 PM</u>	Judge Watson	Excuses jury - Admonishes jury
<u>02:06:02 PM</u>	Jury Retires to Jury Room	
<u>02:06:24 PM</u>	DA - Sarah Sears	Motion for Mis-Trial - Regarding Motion in Limine -
<u>02:07:57 PM</u>	PA - Wes Somerton	Argues Motion - majority of Substance Abuse comments was brought out in questions by Defense counsel - Don't feel defense prejudiced by comments
<u>02:10:14 PM</u>	DA - Sarah Sears	Argues
<u>02:10:41 PM</u>		I would note that the responses of Ms Shea that Ms Sears finds

	Judge Watson	most concerning was related to questions Ms Sears was asking - appears to court that Mr Somerton did admonish Ms Shea and Court advised a couple time to listen and just answer the question - Didn't hear her indicate any substance abuse specifically Indicated Addictions but could have been toward relationship addiction and being in a dark place - When objections weighed by Ms Sears they were sustained and stricken - but don't feel her responses were such that they cause prejudice to give defendant a fair trial - Motion for Mis-Trial Denied -
<u>02:14:43 PM</u>	DA - Sarah Sears	nothing further
<u>02:14:51 PM</u>	PA- Wes Somerton	nothing further
<u>02:15:00 PM</u>	DA - Sarah Sears	like a couple minutes to discuss proceeding with client
<u>02:15:12 PM</u>	Judge Watson	Recess 5 min
<u>02:26:26 PM</u>	Judge Watson	Back on the Record
<u>02:26:39 PM</u>	DA - Sarah Sears	We will not be calling any witnesses
<u>02:26:49 PM</u>	Judge Watson	Lets work on Jury Instructions at this time
<u>02:27:48 PM</u>	Judge Watson	Review Plt's Requested Jury Instructions
<u>02:28:15 PM</u>	DA - Sarah Sears	No objection to #1 - #2 ;
<u>02:33:22 PM</u>	Judge Watson	Regarding indication Judge Reardon - Not signed by that Judge -
<u>02:33:50 PM</u>	DA - Sarah Sears	Suggest to take out the name - and Judge indicate an Ada County Magistrate Judge
<u>02:34:14 PM</u>	PA - Wes Somerton	Agrees
<u>02:34:19 PM</u>	Judge Watson	Will make the changes on all the instructions to indicate that
<u>02:34:39 PM</u>		Mark #2 Modified - #3 same modification
<u>02:34:52 PM</u>	DA - Sarah Sears	No objection to #3 - #4 - 5; 6;7; 8 ; 9 ; 10 ;11; 12 ;
<u>02:36:57 PM</u>	Judge Watson	13 - already covered - 14 -

<u>02:37:47 PM</u>	DA - Sarah Sears	Objectoin 14 -
<u>02:38:18 PM</u>	Judge Watson	# 14 refused
<u>02:38:42 PM</u>	DA - Sarah Sears	No objection #15
<u>02:38:49 PM</u>	Judge Watson	#16 - given
<u>02:39:12 PM</u>	PA - Wes Somerton	Regarding have instruction #17
<u>02:39:46 PM</u>	DA - Sarah Sears	Objection #17
<u>02:41:04 PM</u>	PA - Wes Somerton	Argues #17
<u>02:42:16 PM</u>	Judge Watson	The attorneys can argue elements I don't think 17 is proper instruction - would be more confusing - Rejects #17
<u>02:43:08 PM</u>	DA - Sarah Sears	No objection to verdict forms
<u>02:43:20 PM</u>	Judge Watson	Review of Defendant's Requested Jury Instructions -
<u>02:43:44 PM</u>	PA - Wes Somerton	No Objection to A ;
<u>02:44:00 PM</u>	Judge Watson	Other packet
<u>02:44:11 PM</u>	DA - Sarah Sears	Balance withdrawn already given
<u>02:44:34 PM</u>	Judge Watson	recess to get instructions together
<u>02:45:02 PM</u>		
<u>03:09:36 PM</u>	Judge Watson	Back on the record - Packet of jury Instructions distributed
<u>03:09:58 PM</u>	PA - Wes Somerton	Nothing further
<u>03:10:04 PM</u>	DA - Sarah Sears	Nothing further
<u>03:10:38 PM</u>	Jury Returns to Courtroom	
<u>03:10:59 PM</u>	Judge Watson	State has rested and teh Defense has rested

<u>03:11:11 PM</u>	Judge Watson	Reads Post Evidence Instructions
<u>03:24:05 PM</u>	PA - Wes Somerton	Closing Argument
<u>03:28:58 PM</u>	DA - Sarah Sears	Closing Argument
<u>03:33:15 PM</u>	PA - Wes Somerton	Final Closing Argument
<u>03:36:02 PM</u>	Clerk	Swears Bailiff for Deliberation
<u>03:36:51 PM</u>	Jury Retires to Deliberate	
<u>03:37:13 PM</u>	Judge Watson	Stay within 10 minutes of Courthouse
<u>03:37:45 PM</u>	Judge Watson	Back on the Record - Advised by bailiff Verdicts have been reached
<u>03:59:30 PM</u>	Jury Returns to Courtroom	
<u>03:59:59 PM</u>	Clerk	Reads Verdicts CT 1
<u>04:03:45 PM</u>	Judge Watson	Inquires of jury
<u>04:03:57 PM</u>	Jury	These are our Verdicts
<u>04:04:06 PM</u>	PA - Wes Somerton/ DA - Sarah Sears	Waive Polling of Jury
<u>04:04:08 PM</u>	Judge Watson	Still have trial proceeding tomorrow
<u>04:05:12 PM</u>	Judge Watson	excuses jury
<u>04:07:00 PM</u>	Judge Watson	Inquires on when to do sentencing
<u>04:07:12 PM</u>	DA - Sarah Sears	Like as much time before sentencing as possible - Defendant resides in Ada County - On Supervised Probation there -
<u>04:08:41 PM</u>	Judge Watson	Set sentencing 3/24/11 @ 10:30 a.m .
<u>04:08:54 PM</u>		
<u>04:08:54 PM</u>	End	

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STATE OF IDAHO }cs
COUNTY OF KOOTENAI
FILED: 2-11-11
AT 4:08 O'CLOCK P.M.
CLERK, DISTRICT COURT

Mary K. Allen
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT I
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
 Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Signature]
Presiding Juror

STATE OF IDAHO } ss
COUNTY OF KOOTENAI

FILED: 2-1-11

AT 4:08 O'CLOCK P.M.

CLERK, DISTRICT COURT

Amey K. Allen
CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT II
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
 Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Signature]
Presiding Juror

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED: 2-1-11
4:08 O'CLOCK P M
DISTRICT COURT
Spencer K. Allen

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT III
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

Estanislao

Presiding Juror

STATE OF IDAHO }
 COUNTY OF KOOTENAI } ss
 FILED: 2.15.11
 AT 4:08 O'CLOCK P.M.
 CLERK, DISTRICT COURT
Amy K. Allen
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT IV
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
 BAKER:

____ Not Guilty of VIOLATION OF A PROTECTION ORDER
X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

E. J. ...
 Presiding Juror

FILED: 2-1-11
AT 4:08 O'CLOCK PM
CLERK, DISTRICT COURT

Spencer K. Allie
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT V
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER

X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

Esther Miller
Presiding Juror

STATE OF IDAHO } ss
 COUNTY OF KOOTENAI
 FILED: 2-1-11
 4:08 P.M.
 CLERK, DISTRICT COURT
Spencer K. Allen
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT VII
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
 BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
 X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

Est. M. Miller

 Presiding Juror

STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED: 2-1-11
4:08 O'CLOCK P M
CLERK, DISTRICT COURT

[Handwritten Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT VIII
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
 X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Handwritten Signature]
Presiding Juror

STATE OF IDAHO } ss
COUNTY OF KOOTENAI

FILED: 2-1-11

AT 4:08 O'CLOCK P.M.
CLERK, DISTRICT COURT

[Handwritten Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT IX
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER

 X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Handwritten Signature]
Presiding Juror

STATE OF IDAHO } ss
COUNTY OF KOOTENAI

FILED: 2-1-11

4:08 O'CLOCK P M

DISTRICT COURT

Amy K Allen

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)

Plaintiff.)

CASE NO. CRM-09-024916

vs.)

VERDICT

COUNT X

CAREY MITCHELL BAKER,)

Defendant.)

We, the Jury, unanimously find the defendant, CAREY MITCHELL BAKER:

 Not Guilty of VIOLATION OF A PROTECTION ORDER

 X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Signature]
Presiding Juror

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 2-1-11
AT 4:08 PM
CLERK, DISTRICT COURT

Mary K. Collier
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff.	)	CASE NO. CRM-09-024916
)	
vs.	)	VERDICT
	)	COUNT XI
CAREY MITCHELL BAKER,)	
)	
Defendant.)	
_____)	

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER
 Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

Est M. Miller
Presiding Juror

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }

FILED: 2-1-11

AT 4:08 P.M. COLOSSA

CLERK, DISTRICT COURT

Marcy Allen
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
 Plaintiff.)
)
 vs.)
)
 CAREY MITCHELL BAKER,)
)
 Defendant.)
)
 _____)

CASE NO. CRM-09-024916

VERDICT
COUNT XII

We, the Jury, unanimously find the defendant, CAREY MITCHELL
BAKER:

_____ Not Guilty of VIOLATION OF A PROTECTION ORDER

X Guilty of VIOLATION OF A PROTECTION ORDER

DATED this 1st day of February, 2011.

[Signature]
Presiding Juror

ORIGINAL

356

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ¹⁷SS

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

2011 FEB 17 AM 9:43

CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NUMBER CR-09-24916
Plaintiff,)	
)	
V.)	
	)	MOTION TO STAY EXECUTION OF
CAREY BAKER,	)	SENTENCE PENDING APPEAL
)	
)	
Defendant.)	

COMES NOW, the above named defendant, by and through his attorney, Sarah L. Sears, Deputy Public Defender, and hereby moves the Court pursuant to Idaho Code § 19-2801 for an order staying execution of the judgment entered herein.

This motion is based upon the record and pleadings in this cause, and is further based upon the Eighth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 6 and 13 of the Constitution of the State of Idaho.

Oral argument and leave to adduce testimony are herewith requested if necessary.

DATED this 16th day of February, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah L. SEARS
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 17th day of February, 2011, addressed to:

City of Coeur d'Alene Prosecutor

Lisa Beeler

ORIGINAL

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 FEB 17 AM 9:43

CLERK DISTRICT COURT
Candy O'Beilly
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
Plaintiff/)
Respondent,)
)
V.)
)
)
)
CAREY BAKER)
)
Defendant/)
Appellant.)
)

CASE NUMBER 09-24916

NOTICE OF APPEAL

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

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the District Court of the First Judicial District from the Judgment entered in the Magistrate's Division of said District Court February 1, 2011, the Honorable Barry Watson presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c)(1).

3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

Denial of Motion to Dismiss

Denial of Mistrial

Denial of Admission of Defendant's Exhibit A

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

All Recorded Proceedings

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: Memorandum in Support of Motion to Dismiss

6. I hereby certify as follows:

A. A copy of this Notice of Appeal has been served upon the court reporter.

B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the City of Coeur d'Alene Prosecuting Attorney.

DATED this 15th day of February, 2011.

OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

BY:

Sarah L. Sears

SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of February, 2011, served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

<u> X </u>	Coeur d'Alene Prosecutor	via Interoffice Mail
<u> X </u>	Transcript Department - Kootenai County Courthouse	FAX: 446-1187

Lisa Beeler

Robyn Shea
4601 E. Potlatch Hill Road
Coeur d Alene, Idaho 83814

Honorable Judge John Luster
Kootenai County Courthouse
Coeur d Alene, Idaho 83714

STATE OF IDAHO
COUNTY OF KOOTENAI
3/09
DEPUTY

Re: Case Number 2009-24916/pending sentencing March 24, 2011

February 25, 2011

Dear Honorable Judge Luster,

I want you to be aware of the extreme and consistent malicious behavior of Mr. Carey Mitchell Baker. He is regularly picked up and prosecuted for driving without privileges, driving without insurance, and driving wreckless and inattentive. He is a meth cook, a drug dealer, and an I.V. meth addict. He is very dangerous to society and very manipulative with the court system.

He is a very scary threat to me. He has repeatedly stated that "I am the kind of girl that finds herself at the bottom of the lake!" He has threatened and physically attempted to take my life on multiple occasions. When I was married to him, the fact that I was married to him made it a civil dispute that law enforcement in Ada County had stated they could not get involved in. When I moved to Coeur d Alene and divorced him, the law did actually listen to me when I was persistent with my concern. I could write pages and pages of the extreme and dangerous activity he committed against me. His issues with domestic violence were not new when he began a relationship with me. He had been charged in 1998 with a girl named Darci. He was charged in 2003 & 2004 with a girl named Terri. My first protection order from him was put in place in 2007. I had many protection orders from 2007, 2008, and 2009. Now I just flee him and make sure that he does not know where to find me.

Please review the priors and pending cases of Mr. Baker's driving and criminal activity. He believes that he can manipulate the system and not feel any real consequences. I am only posting his crimes that he has been charged with. I could write a long book of all the particulars of me being in harms way due to his rage against me. Would you like for me to do so? It will take some time, but I would be happy to fill

you in. All of my neighbors would easily testify as well. He is the scariest person I have ever encountered. Certainly, he is a sociopath. Certainly, he has borderline personality disorder. Most likely, he is schizophrenic.

2011-0000848 Nez Perce County guilty of driving without privileges, dismissed no insurance charge

2010-0015146 Ada County guilty of driving w/o privileges & no insurance

2010-003481 Ada county guilty of driving w/o privileges, wreckless driving & probation violation

2010-0055569 Ada County guilty of driving w/o seatbelt

2010-0018836 Canyon county guilty of driving w/o privileges

2009-00200002 Ada county guilty of driving w/o privileges, dismissed excessive speed

2009-001392-C Valley County guilty of excessive speed, guilty of no insurance

2009-002496 Kootenai County guilty of 11 counts of violation of protection order

2009-0016878 Ada County guilty of violating protection order

2009-0007046 Ada County dismissed battery charge because he intimidated the victim, Trion Rollins, who then did not show up for court trial

2007 & 2008 incarcerated at Cottonwood for 8 counts of felony probation violation

2007-0014342 Canyon County negotiated dismissed battery charge pending prosecution for Ada County probation violations.

2007-0052886 Ada county guilty inattentive/careless driving, guilty failure to provide insurance

2007-003858 Valley County guilty excessive speed

I deplore of you, please do not allow him to have light penalties for the continual crime he commits. You can review his driving record and see that he does not take it seriously to abide by Idaho driving laws. He consistently drives without privilege and without insurance...his lack of license has nothing to do with non payment of child support and everything to do with continued malicious driving activity. He consistently drives in very excessive speeds and drives others off the road.

These charges that he has been picked up for are very slight in relation to the crime that he continually and regularly commits. He is a risk to the good people of our society. He has not learned his lesson nor curbed his bad behavior. Please give him penalty for his repeated criminal activity. He has served 5 prison sentences since 1997. And still is as active as ever in his drug and criminal activity. His criminal behavior began in 1985, but the crimes from 1985 to 1989 were dismissed because his twin brother was killed and he petitioned that his crimes were placed under the wrong name, so they were eliminated with his brother's death. He has been on probation from the age of 13. His troubles are deep seeded

and need some sort of intervention. He is threatening, volatile, and consistent. He is cunning and manipulative and understands the system well.

His rapport sheet includes, battery and domestic violence

Drug trafficking & possession

Many many traffic citations

Malicious injury to property, etc.

Burglary

As you can view by his current charges, his criminal activity has not slowed down in the slightest. He just becomes more and more honed at manipulating the system.

Please take his sentencing seriously. Something needs to stop his malicious and violent behavior.

Sincerely,

Robyn Shea

Description	CR 2009-24916 Baker, Carey Mitchell 20110324 Sentencing Judge Watson Clerk Wanda Butler <i>Wanda Butler</i>		
Date	3/24/2011	Location	1K-COURTROOM4
Time	Speaker	Note	
<u>10:35:20 AM</u>	Carey Baker, DF		
<u>11:51:28 AM</u>	Judge Watson	Mr. Baker here with Ms. Sears and Mr. Somerton present. Had a jury trial on 2/1/11. Jury verdicts of guilty on each count 1-12 6 is missing.	
<u>11:51:57 AM</u>	Mr. Somerton	Correct. Case been lengthy case getting it to jury trial 1 day. Did come back with guilty 1-5 and 7-12. All civil protection order violations. Recall listened to the telephone calls, motion to dismiss and published to jury. Counts 1-5 concurrent fine and cc \$1000 none suspended. Concurrent jail 365 none suspended. Counts 7-12 requesting fines concurrent 7-12 but consecutive 1-5 fine \$1000 all suspended. Jail 365 all suspended. 2 years. Request term of condition NCO entered prohibiting any contact with Ms. Shay. Request Mr. Baker be ordered to reimburse PD for representation through sentencing and filing. Preservation of that issue for appeal.	
<u>11:54:02 AM</u>	Ms. Sears	No jail time and no probation. Just for court costs. Its not something we normally ask for. It is a fair resolution. Reason we feel that way, this case was looked at in Ada county. Don't think she heard the last couple of messages. She asked if rest was the same PA said yes. She said ok got point. Ordered to do jail, restitution, pay fines he's paid. Still on probation in Ada county. 2 Hill factors already looked at and taken care of. He has 11 counts of violation of NCO on record. Not a good thing. Didn't get benefit of plea bargain in Ada county. Had to make several trips here, paid a lot of money, lost work, problems with probations. Looked at letter he received changed probation to today - I called her saying he has court here. Having legal proceedings is a punishment in itself going on for a long time. Hoping state wouldn't meet burden, but it did and are here to deal with it. Interest of fairness. Ask not to receive any more punishment. Problems with Robin Shay. Read her 100's of email. She was seeking to talk to him. Contacted his niece and family. Says horrible things. She owes Mr. Baker \$60,000 she refuses to pay. Talked to private attorney about that. Mr. Baker has foolish has stepped into each trap she left open. It doesn't make hiim not guilty of what he's done. She has set him up many time. He is doing well, treatment, 2 children, pays \$840 a month in c/s and struggles with his bills. Does work - same job last 6 months. Close with family, Mom works for city of Boise. Goes to Eagle Christian	

		Church. Starting to move on with his life. No contact with Ms. Shay other than in court. She is suing him for \$85,000 now. He would like to move away from her and move on with his life. Fair for no jail. Already on probation in Ada county. Voicemails left 2 years ago. Good job moving on with his life.
<u>11:59:42 AM</u>	Carey Baker, DF	This has been dragging on for quite some time. I take responsibility for my actions. It wasn't right to leave anybody voicemails like that. Issues I feel like I was punished in Ada County they are the same voice mails, hard time with being punished twice in two different counties. Taken care of daughter her mother in hospital. No children with Ms. Shay.
<u>12:01:02 PM</u>	Judge Watson	Bonded out on 4/2/10 in Ada County
<u>12:01:38 PM</u>	Carey Baker, DF	Just a few hours. Yes, I listened to the recordings of the voicemails. I was disgusted.
<u>12:01:54 PM</u>	Judge Watson	Why the up and down in messages?
<u>12:02:04 PM</u>	Carey Baker, DF	I was watching my life being taken away from me. Everthing was slipping away. No didn't help with how I acted. For quite some time, I took welbutrin for depression. I hadn't taken any meds going through divorce and moving back and forth between Ada. Dual diagnosis for depression and addiction related to drugs - meth. Doing good with that.
<u>12:03:12 PM</u>	Ms. Sears	From the time I first met him, there is a very clear difference in who he is. Its a positive thing in his life from when I first met him and today.
<u>12:03:44 PM</u>	Judge Watson	If woman in life that doesn't want anything to do with you, why do this? Why not walk away?
<u>12:04:05 PM</u>	Carey Baker, DF	I would go out of town and take my vehicles. She would contact me. Living at RV park. Served with Protection Order. She was knocking on my door before cops left the park. I have totally moved on.
<u>12:04:45 PM</u>	KCPA Wes Somerton	Speaking with PO in Ada County. He is working, 30 hours not full time. He is in intensive outpatient with Afinity concern PO has repeatedly misses the random UA's issue they are addressing. Does have significant criminal history out of Ada county. Many are traffic. DWP repeated charge in history not related to why he's here today. Felony conviction of drugs in 03. Consistent with him being addicted to meth. Violations of NCO or civil protection order.
<u>12:06:28 PM</u>	Ms. Sears	He missed a UA while here in trial.
<u>12:06:38 PM</u>		ok Count I find you guilty \$1000 fine and cc 30 days to pay or payment plan. Reimbursement to KC for \$500 of partial costs of defense. 7/1/11 or as arranged. Bond exonerated. 365 days jail suspend 335 days jail. CTS 1 - 29 days to serve. Give you report

	Judge Watson	date. Understand your attorney is appealing the courts decision, may be a stay of that. Let Ms. Sears address that with DC judge. Report date of 4/16/11at 6 pm. Fully understanding may be stayed on appeal. Release 29 days later. 2 year unsupervised probation. Terms and conditions fine, costs, resitution, be paid, report to jail on time unless stayed. No nlv, no similar offenses, change of address, Initiate No direct or indirect contact with Ms. Robyn Shea. Stay 300 ft away from her.
<u>12:09:50 PM</u>	Carey Baker, DF	Understand those terms.
<u>12:09:56 PM</u>	KCPA Wes Somerton	We'll all play fair. There are some civil proceedings. Can we filter that out. We won't file.
<u>12:10:17 PM</u>	Judge Watson	Clearly in court, not a violation of that.
<u>12:10:24 PM</u>	Carey Baker, DF	Understand that.
<u>12:10:29 PM</u>	Judge Watson	Count II jury verdict of guilty. No additional court costs \$1000 fine suspended. Bond exonerated. Order 365/335 Jail CTS 1 day same report and release date. Concurrent 2 year probation same terms and conditions of the first.
<u>12:11:39 PM</u>	Carey Baker, DF	Understand those terms.
<u>12:11:46 PM</u>	Judge Watson	Count III guilty verdict on that one. \$1000 fine suspended waive court costs. Bond exonerated. Same jail sentence as other two and same report dates. Concurrent 2 year probation same terms as others. Count IV. Verdict of guilty waive costs \$1000 fine suspended. Bond exonerated. Same jail as 1-III same report dates. Concurrent 2 year probation same terms and conditions as others.
<u>12:13:50 PM</u>	Judge Watson	Count V verdict guilty costs waived \$1000 fine suspended. Bond exonerated. Same jail as first 4 and same report dates. Concurrent 2 year probation same terms as 1-4.
<u>12:15:08 PM</u>	Judge Watson	Counts 7, 8, 9, 10, and 11 and 12. would be similar finding of guilt waive court costs 365 days jail cts 1 day 364 suspended 2 year concurrent probation.
<u>12:15:44 PM</u>	Carey Baker, DF	Understand.
<u>12:15:54 PM</u>	Ms.Sears	Not regarding the judgment.
<u>12:16:03 PM</u>	Mr. Somerton	No.
<u>12:16:21 PM</u>	Judge Watson	Back on the record.

<p><u>12:21:47 PM</u></p>	<p>Ms. Sears</p>	<p>Motion to stay and I believe Mr. Somerton doesn't have objection I referenced wrong law - I put Idaho code section where should be Idaho Criminal Rule 54.5 what I would like to change the law to in my motion. Bail Mr. Somerton will have request. Everything be stayed the fine and the jail.</p>
<p><u>12:22:57 PM</u></p>	<p>Mr. Somerton</p>	<p>Under 54.5 they have a right to request a stay, court can set reasonable bond or bail as justified under rule 46 same criteria designed to ensure prosecuted in timely matter not frivolous proceedings, we objection, if court is inclined to stay, ask to not stay the restitution for the PD fees. Reasonable thing not stay. Ask bail to cover costs of what court has imposed as fines and costs including that of PD. Don't know factual basis. Mr. Baker has indicated this case drug on long enough. Ready for trial in Aug 2010. Then set in December , no trial dates available, not his fault. Request court to deny motion and impose bail or bond of \$1500 pending the appeal so that this is moving forward and not done frivolously. Reasonable, he is working, Ms. Sears filed notice of appeal doesn't mean he shouldn't have financial responsibility for this. Tax payers footing bill for someone able to work. Think some compensation to pay tax payers at least for the transcript. They are appealing hearings gone in in this case. Motions to dismiss and trial - lengthy. Fair to taxpayers, he should pitch in and contribute.</p>
<p><u>12:26:49 PM</u></p>	<p>Ms. Sears</p>	<p>Think everybody acknowledged this is a fair legal question. Some issues that are not frivolous in this case. Mr. Baker paid all fines in last case. He'll pay the fines in this case as required. He'll do it in this case. We have same request at this point.</p>
<p><u>12:27:38 PM</u></p>	<p>Judge Watson</p>	<p>Would enter stay of execution of the jail sentence pending appeal. But the fine costs and restitution shall still be due. Appeal bond \$1500 posted by Mr. Baker by 4/15/11 for appeal. Clerk will fax order on stay and the ex parte letter from Ms. Shae to J. Luster that I have not reviewed.</p>

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FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

DL# [REDACTED] ID [REDACTED]
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

CASE # CR-2009-0024916 CITATION #

CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER

AMENDED:

JUDGMENT FILED 3/24/11 AT 12:10 P.M.

CLERK OF THE DISTRICT COURT

BY [Signature], DEPUTY BOND: CT 1

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty SWRT - 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID:

A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ _____
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

- Reimburse KC \$500.00 COSTS OF DEFENSE THRU CLERK OF CT BY 2-1-11
- Restitution
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 335 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail 4-16-11 6PM Release 29 DAYS LATER Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by 6 P.M. Must sign up within 7 days. Follow the Labor Program schedule and policies.
-

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____ To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other REPORT TO JAIL ON TIME
 INITIATE NO DIRECT OR INDIRECT CONTACT WITH ROBYN SHEA + STAY 300' AWAY FROM HER

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL THIS JUDGMENT WITHIN 42 DAYS

Copies To: Date 3-24-11 Judge # 356
Def. Te Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)
[] KCSO RECORDS (fax 446-1407) [] Agency fax _____ [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] FAX 446-1990
Date 3/24/11 Deputy Clerk Wanda Butler 3/28/11 #2290

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 1216 ^Pm.

DL# [REDACTED] ID
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

CLERK OF THE DISTRICT COURT
BY Wanda Butler, DEPUTY
BOND:

CASE # CR-2009-0024916 CITATION #
CHARGE: I39-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER ST, 2
AMENDED: _____

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed _____
- Judgment--Not Guilty
- Judgment on Trial--Guilty SNAY 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 335 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail 4-16-11 6 P.M. Release 29 DAYS LATER Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by 6 P.M. **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS: Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other SAME AS COUNT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL THIS JUDGMENT WITHIN 42 DAYS



Copies To: _____ Date 3-24-11 Judge # 356

Def. TC Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)

[] KCSO RECORDS (fax 446-1407) [] Agency _____ fax _____ (fax 446-1990) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)

Date 3/24/11 Deputy Clerk Wanda Butler 3/28/11 290

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

DL# [REDACTED] ID [REDACTED]
DOB [REDACTED] AGENCY: COEUR D'ALENE PD

CASE # CR-2009-0024916 CITATION #

CHARGE: I39-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER
AMENDED:

JUDGMENT
FILED 3/24/11 AT 12:16 P.M.

CLERK OF THE DISTRICT COURT

BY Wanda Butler, DEPUTY
BOND: CT 3

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty SWK 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____
- Must sign up within 7 days.**
- Reimburse _____
- Restitution _____
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 335 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail 4-16-11 6 PM Release 29 DAYS LATER Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by 6 PM **Must sign up within 7 days.**
- Follow the Labor Program schedule and policies.
-

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____
- To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.**

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other SAME AS COUNT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

[Signature]

Copies To: _____ Date 3-24-11 Judge # 356
Def. TC Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)
[] KCSO RECORDS (fax 446-1407) [] Agency fax _____ (fax 446-1990) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)
Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

DL# [REDACTED] ID [REDACTED]
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD
CASE # CR-2009-0024916 CITATION #
CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER
AMENDED:

JUDGMENT
FILED 3/24/11 AT 12:16 P.m.

CLERK OF THE DISTRICT COURT
BY [Signature], DEPUTY
BOND: CT 4

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty only 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00

Pay within 30 days of today, or enroll in time payment program **BEFORE** due date.

Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 335 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail 4-16-11 6PM Release 89 DAYS LATER Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by 6PM **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS: Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other SAME AS CT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 3-24-11 Judge # 356

Def. TC Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)

[] KCSO RECORDS (fax 446-1300) [] Agency _____ (fax _____) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)

Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

DL# [REDACTED] ID [REDACTED]
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

CASE # CR-2009-0024916 CITATION #

CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER

AMENDED:

JUDGMENT
FILED 3/24/11 AT 1216 P.m.

CLERK OF THE DISTRICT COURT

BY [Signature], DEPUTY

BOND: CRS

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty 2-1-11 JURY
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

- Reimburse
- Restitution
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 335 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail 4-16-11 6 PM Release 29 DAYS LATER 6 PM Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ Must sign up within 7 days. Follow the Labor Program schedule and policies.
-

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____
To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other SAME AS CT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 3-24-11 Judge # 356
 Def. IC Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)
 [] KCSO RECORDS (fax 446-1407) [] Agency fax _____ (fax 446-1990) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)
 Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 12:16 P.M.

DL# [REDACTED] ID
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

CLERK OF THE DISTRICT COURT
BY [Signature], DEPUTY
BOND: 17

CASE # CR-2009-0024916 CITATION #
CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER
AMENDED: _____

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed _____
- Judgment--Not Guilty
- Judgment on Trial--Guilty Subj 2-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS: Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other SAME AS CT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL

THIS JUDGMENT WITHIN 42 DAYS

[Signature]

Copies To: _____ Date 3-24-11 Judge # 356

Def. IC Def. Atty. Sears Pros. Somerton [] Other _____ [] Comm. Serv. [] Jail (fax 446-1407)

[] KCSO RECORDS (fax 446-1407) [] Agency _____ fax _____ (fax 446-1990)

Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

DL # IF4 ID
DOB: AGENCY: COEUR D'ALENE PD

CASE # CR-2009-0024916 CITATION #

CHARGE: I39-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER

AMENDED:

JUDGMENT
FILED 3/24/11 AT 12:16 P.M.

CLERK OF THE DISTRICT COURT

BY Wanda Butler, DEPUTY
BOND: 58

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty 5 MAY 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

- Reimburse
- Restitution
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail _____ Release _____ Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ Must sign up within 7 days. Follow the Labor Program schedule and policies.
-

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____
To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other SAME AS CT T

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To:

Def. IC Def. Atty. Sears Pros. Somerton Other _____ Comm. Serv. Jail (fax 446-1407)

[] KCSO RECORDS (fax 446-1307) [] Agency _____ fax _____ 3987 (NCO) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)

Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 12:16 P.m.

CLERK OF THE DISTRICT COURT

DL# [REDACTED] ID [REDACTED]
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

BY [Signature], DEPUTY
BOND:

CASE # CR-2009-0024916 CITATION #

CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER CT 9

AMENDED:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Judgment--Not Guilty
- Judgment on Trial--Guilty July 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

- Reimburse
- Restitution
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail _____ Release _____ Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ Must sign up within 7 days. Follow the Labor Program schedule and policies.
- _____

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____
To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other SAME AS CT 1

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 3-24-11 Judge # 356
 Def. TC Def. Atty. Sears Pros. Coasomerton Other _____ [] Comm. Serv. [] Jail (fax 446-1407)
 [] KCSO RECORDS (fax 446-1307) (re: NCO) [] Agency _____ fax _____ 39877 (re: NCO) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMF (fax 446-1990)
 Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 12:16 P.m.

CLERK OF THE DISTRICT COURT

DL# [REDACTED] ID
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

BY [Signature], DEPUTY
BOND:

CASE # CR-2009-0024916 CITATION #
CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER ST 10
AMENDED: _____

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed _____
- Judgment--Not Guilty
- Judgment on Trial--Guilty only 2-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR TWO YEAR(S) ON THE FOLLOWING CONDITIONS: Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other SAME AS ST 1

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL THIS JUDGMENT WITHIN 42 DAYS

Copies To:
Def. IC Def. Atty. Sears COA Somerton [] Pros. [] Other [] Comm. Serv. [] Jail (fax 446-1407)
[] KCSO RECORDS (fax 446-1407) [] NCO [] Agency [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)
Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 12:16 P.m.

DL# ID
DOB: AGENCY: COEUR D'ALENE PD

CLERK OF THE DISTRICT COURT

CASE # CR-2009-0024916 CITATION #

BY Annie R, DEPUTY
BOND:

CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER CT 11
AMENDED: _____

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed _____
- Judgment--Not Guilty
- Judgment on Trial--Guilty SWJ 2-1-11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS: Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.

Other SAME AS CT 1

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN
THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 3-24-11 Judge # 358

Def. IC Def. Atty. Sears Pros. Somerston Other _____ Comm. Serv. Jail (fax 446-1407)

[] KCSO RECORDS fax 446-1407 (for NCO) [] Agency _____ fax _____ (for NCO) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP fax 446-1990

Date 3/24/11 Deputy Clerk Wanda Butler # 2290 3/28/11

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE IDAHO 83816-9000

STATE OF IDAHO V
CAREY MITCHELL BAKER
UNKNOWN
UNKNOWN, ID

JUDGMENT
FILED 3/24/11 AT 1216 P.m.

DL# [REDACTED] ID
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD

CLERK OF THE DISTRICT COURT

CASE # CR-2009-0024916 CITATION #

BY [Signature], DEPUTY
BOND:

CHARGE: 139-6312 DOMESTIC VIOLENCE-VIOLATION OF PROTECTION ORDER CT. 12
AMENDED: _____

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed _____
- Judgment--Not Guilty
- Judgment on Trial--Guilty 5/11/11
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment.

- Fine / Penalty \$ 1,000.00 which includes costs, and probation fee if applicable. Suspended \$ 1,000.00
- Pay within 30 days of today, or enroll in time payment program BEFORE due date.
- Community Service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Must sign up within 7 days.

- Reimburse _____
- Restitution _____
- Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution +/- or infractions from bond.
- No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

- Jail 365 days, Suspended 364 days, Credit 1 days, Unscheduled Jail _____ days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.
- Report to Jail _____ Release _____ Work Release Authorization (if you qualify).
- Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ Must sign up within 7 days. Follow the Labor Program schedule and policies.
- _____

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

- Temporary Driving Privileges Granted commencing _____
- To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.**

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS:

Supervised - See Addendum

- Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.
- Maintain liability insurance on any vehicle that you drive.
- Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.
- You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.
- Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.
- Enroll in & complete _____ program. File proof of completion within _____ days.
- Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.
- Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.
- Other SAME AS CT I

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 3-24-11 Judge # 355-358
 Def. IC Def. Atty. Sears Pros. Somerton [] Other _____ [] Comm. Serv. [] Jail (fax 446-1407)
 [] KCSO RECORDS (fax 446-1407) [] NCO [] Agency fax _____ 3907 (NCO) [] Dr. Serv. fax 208-334-8739 [] Auditor fax 446-1661 [] AMP (fax 446-1990)
 Date 3/24/11 Deputy Clerk Wanda Butler #2290 3/28/11

ORIGINAL

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: 3/24/11
AT 12:27 O'CLOCK A.M.
CLERK, DISTRICT COURT
Shawn R.
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**


STATE OF IDAHO,)	
	)	CASE NUMBER CR-09-24916
Plaintiff,)	
)	
V.	)	ORDER TO STAY EXECUTION OF JAIL
	)	SENTENCE PENDING APPEAL
CAREY BAKER,)	
)	
)	
Defendant.)	

The Court having before it the Motion To Stay Execution of Judgment and good cause appearing, now, therefore

IT IS HEREBY ORDERED that execution of judgment be stayed pending appeal.

ORDERED this 24 day of ~~February~~ ^{MARCH}, 2011.

RE JAIL ONLY
APPEAL BOND OF \$1,500.00
IS REQUIRED TO BE
POSTED BY 4-15-11


DISTRICT JUDGE 356

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the inter office mailbox on the 28th day of ~~February~~ ^{MARCH}, 2011, addressed to:

Kootenai County Public Defender 446-1701
City of Coeur d'Alene Prosecutor 769-2326

Wanda Butler

2290 Jail 446-1407

2289

ORIGINAL

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: LSS

2011 APR 13 PM 2:39

[Handwritten signature]
DISTRICT COURT
[Handwritten signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
Plaintiff/)
Respondent,)
)
V.)
)
)
)
CAREY BAKER)
)
Defendant/)
Appellant.)
)

CASE NUMBER 2009-24916

AMENDED NOTICE OF APPEAL

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

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the District Court of the First Judicial District from the Judgment entered in the Magistrate's Division of said District Court March 24, 2011, the Honorable Barry Watson presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c)(1).

3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

Denial of Motion to Dismiss

Denial of Mistrial

Denial of Admission of Defendant's Exhibit A

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

All Recorded Proceedings

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: Memorandum in Support of Motion to Dismiss

6. I hereby certify as follows:

A. A copy of this Notice of Appeal has been served upon the court reporter.

B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the City of Coeur d'Alene Prosecuting Attorney.

DATED this 13th day of April, 2011.

OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

BY: Sarah L. SEARS
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

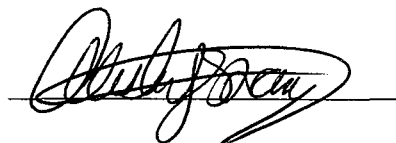
I HEREBY CERTIFY that I have this 13 day of April, 2011, served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

 X Coeur d'Alene Prosecutor

fax
via Interoffice Mail

 X Transcript Department - Kootenai County Courthouse

FAX: 446-1187



ORIGINAL

Sarah L. Sears, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 7902

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 3SS

2011 APR 18 PM 2:44

CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff/	)	CASE NUMBER 2009-24916
Respondent,)	
)	
V.)	
)	
	)	SECOND AMENDED NOTICE OF
	)	APPEAL
)	
CAREY BAKER)	
)	
Defendant/)	
Appellant.)	
)	

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

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the District Court of the First Judicial District from the Judgment entered in the Magistrate's Division of said District Court March 24, 2011, the Honorable Barry Watson presiding.

2. That the party has a right to appeal to the District Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c)(1).

3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

Denial of Motion to Dismiss

Denial of Mistrial

Denial of Admission of Defendant's Exhibit A

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

All Recorded Proceedings not included in the original Notice of Appeal

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: Memorandum in Support of Motion to Dismiss

6. I hereby certify as follows:

A. A copy of this Notice of Appeal has been served upon the court reporter.

B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the City of Coeur d'Alene Prosecuting Attorney.

DATED this 15th day of April, 2011.

OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

BY: Sarah L. SEARS
SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of April, 2011, served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

- Coeur d'Alene Prosecutor via Interoffice Mail
- Transcript Department - Kootenai County Courthouse FAX: 446-1187

Lisa Beiler

ORIGINAL

196

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

**OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER**

500 GOVERNMENT WAY SUITE 600
COEUR D'ALENE, IDAHO 83816-9000

Phone: (208) 664-1347

Fax: (208) 769-4475

✓ D.P.

2011 JUL -5 PM 3:49

CLERK DISTRICT COURT

W. Watson
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
V.)
)
CAREY M. BAKER,)
)
Defendant/Petitioner.)
_____)

CASE NO. CR-09-24916

APPELLANT'S BRIEF

Appeal from the Magistrate's Court of the First Judicial District of the State of Idaho, in
and for the County of Kootenai County. Honorable Barry E. Watson presiding.

ATTORNEY FOR THE PLAINTIFF:

WES SOMERTON
DEPUTY PROSECUTING ATTORNEY
P.O. BOX 9000
COEUR D' ALENE, ID 83816

Attorney for Plaintiff/Respondent

ATTORNEY FOR DEFENDANT

SARAH SEARS
DEPUTY PUBLIC DEFENDER
400 NORTHWEST BLVD.
COEUR D' ALENE, ID 83816

Attorney for Defendant/Appellant

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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a judgment of conviction and sentence for eleven counts of the misdemeanor offense of violation of a no contact order, I.C. § 39-6312. On appeal, Appellant Carey Baker challenges the denial of his motion to dismiss the complaint charging him with eleven counts of violating a no contact order which was brought on the grounds that the prosecution of these violations was contrary to Mr. Baker's binding plea agreement with the Ada County District Attorney. Mr. Baker also challenges the denial of his motion for mistrial which was brought on the grounds that inadmissible evidence was heard at trial that tainted the jury.

B. Course of Proceedings & Statement of Facts

In December, 2005, Mr. Baker married Robin Shea (Tr p. 82, L. 19-20). They split up in 2007 and were completely divorced in March of 2009 (Tr p. 82, L. 12 and p. 83, L. 2). On March 4, 2009, Ms. Shea sought and the Ada County Court granted a civil protection order. (Tr p. 84, L. 21-23, p. 85, L.1-2, and p. 88, L. 16-18). On May 26, June 6, July 29, August 4, 5, and 31, September 8, 10, 12, 15, and 17, 2009, Ms. Shea while in Coeur d'Alene, received phone messages from Mr. Baker (Tr p. 96, L. 4-5, p. 97, L. 25, p. 101, L. 4, 8, p. 102, L. 24, p. 105, L. 4-5, p. 106, L. 14, p. 107, L. 10, p. 108, L. 10-11, p. 109, L. 15-16). Ms. Shea also received a phone message from Mr. Baker on August 24, 2009, while in Ada County (Tr p. 24, L. 11-12, and p. 48, L. 14-25).

On August 24, 2009, Ms. Shea informed the Boise City Attorney's Office in the City of Meridian, which filed a one count charge of violation of a no contact order (Tr p. 42, L. 16-3).

On September 10, 2009, the Boise City Attorney's Office filed formal charges (Tr p. 42, L. 23-24). On September 17, 2009, the Coeur d'Alene Police Department met with Robyn Shea and contacted Laurie Fortier, Deputy City Attorney, about the allegations. See Report of J. Alleman. The City of Coeur d'Alene County Prosecutor Office filed 12 counts of violating a no contact order on December 8, 2009 (Tr p. 44, L. 11-13). No notice was given to Mr. Baker and he had no knowledge of the charges in Kootenai until April 2, 2010 (Tr p. 44, L. 7-8, 21-22). On February 17, 2010, the Boise City Attorney's Office and Mr. Baker entered a plea deal to the one count in Ada County before Judge MacGregor Irby (Tr p. 44, L. 1-3).

Mr. Baker had agreed to plead guilty in exchange for a promise that the state would file no further charges dealing with violations of Mr. Baker's no contact order that occurred prior to February 17, 2010 (Tr p. 44, L. 4-7). During sentencing in Ada County, the judge heard all 12 messages that made up the 12 counts in Kootenai County (Tr p. 50, L. 14-15). Ada County sentenced Mr. Baker to 180 days with 170 suspended for one year and to pay a fine of \$1000 with \$1000 suspended, as well as court costs. See MD- 09-16878 Judgment of Conviction sheet.

April 2, 2010 Mr. Baker was arrested for the outstanding charges in Kootenai County (Tr p. 44, L. 7-8, 21-22). On October 8, 2010, Mr. Baker moved to dismiss the charges against him for placing him in double jeopardy and violating his plea agreement. The honorable Barry Watson heard short oral arguments, accepted briefs, and reviewed an audio CD containing the phone messages that make up the 12 counts as well as a recording of the February 17, 2009, hearing in Ada County when Mr. Baker pled guilty. On November 5, 2010, the honorable Barry Watson dismissed count 6 against Mr. Baker for placing him in double jeopardy (Tr p. 45, L. 12-18). Judge Watson denied the dismissal as to the other 11 counts because there was no proof that

Ada County had venue and therefore the prosecuting attorney did not have authority to bind the state in Kootenai (Tr p. 46, L. 6-15, 20-22). Judge Watson went on to state that it was incumbent on Mr. Baker and his counsel to check with other jurisdictions to see if other charges existed and to get them bound by the plea agreement in Ada County (Tr p. 46, L. 22-25 and p. 47, L. 1-2). Judge Watson also found that the fact that the civil protection order originated in Ada County did not give Ada County authority to bind the state (Tr p. 47, L. 6-10).

Mr. Baker's case proceeded to trial on February 1, 2011 before Judge Watson (Tr p. 60, L. 2-3). The defense introduced an affidavit by Mr. Baker stating that he was in Ada County when he made all eleven calls that made up the charges against him (Tr. p. 64, L. 11-23). The defense moved in limine for a bar on prior bad acts evidence and the Court granted the motion. (Tr p.68, L.2-12) During trial, Ms. Shea was the only witness to give testimony. The defense objected to Ms. Shea's testimony on a number of occasions for violating the motion in limine:

MR. SOMERTON: So did you listen to it before you went and got the girls?

MS. SHEA: Before, yeah. My kids would say he's upsetting. I don't ever let them hear –

MR. SOMERTON: That –

MS. SHEA: - anything from him.

MR. SOMERTON: That's fine.

MS. SEARS: Objection. Nonresponsive. Move to Strike.

THE COURT: Sustained. Stricken.

Tr. p. 109, L. 3-10

MR. SOMERTON: Did you invite him to contact you back –

MS. SHEA: No.

MR. SOMERTON: - based on these communications?

MS. SHEA: No. He leaves all these messages continually saying how hopeless he is, how desperate he is, what a bad spot he's in. And all I can say is people who – You guys don't want me to talk about it in the courtroom, but people who do that–

MS. SHEA: You reap what you sow.

Tr. p. 115, L. 10-19

MS. SEARS: Okay. You also indicated another address, 1124 Camelot in Boise?

MS. SHEA: That's my mom's address. That's where Carey was um, doing violent acts, when I was at my mother's house.

MS. SEARS: Objection. Nonresponsive as to the second portion.

THE COURT: Sustained. That will be stricken.

Tr. p. 118, L. 15-21

MS. SEARS: Okay so you're – you can't testify today as to any of these voice messages exactly when the ring occurred, is that true?

MS. SHEA: Especially considering that what's recorded for longevity was a drop in the bucket in relation to what was really going on, so no.

MS. SEARS: Okay. Between May of 2009 and September of 2009, uh, you contacted Carey Baker yourself many times. Is that true?

MS. SHEA: I think it's awful to watch someone struggle and –

MS. SEARS: I'm gonna object. Nonresponsive.

THE COURT: Sustained.

Tr. p. 121, L. 23-25 and p. 122, L. 1-3

MS. SEARS: Between May of 2009 and September of 2009, uh, you invited contact with
Mr. Baker, is that true?

MS. SHEA: I wouldn't say that, no. I – I would say that I wanted him to get sober. I
would say that his messages made me just realize where he was at, which is a
really dark place.

Tr. p. 125, L. 1-6

MS. SEARS: You also indicated – Not only did you ask if that was Mr. Baker in your
email, but you also asked um, how you could reach him, correct?

MS. SHEA: I'm just saying I don't know how to reach you. So you want to give me a
plea, there's not a darn thing I can do for somebody who won't help themselves.

Tr. p. 128, L. 3-8

MS. SEARS: Well, you didn't know how to reach him at that time, correct?

MS. SHEA: That's true. And it's – it's a good thing. I don't know how to reach him, and
I think he's in a bad spot and I feel for the grief he's inflicting, but really, it's his
deal.

Tr. p. 129, L. 3-8

MS. SEARS: June 23rd of 2009 you contacted Mr. Baker several times via email?

MS. SHEA: I really don't know. I do know that what I did was encourage him. He made it clear that his addiction was getting the best of him, and I think that's just a sad thought for anybody.

Tr. p. 131, L. 14-19

MS. SEARS: Do you remember sending him any emails at all?

MS. SHEA: I know I sent him emails and I know what the subject matter was when I sent 'em, and it really was to help him with what you guys don't want me to talk about.

Tr. p. 131, L. 25 and p. 132, L. 1-3

During trial, Ms. Shea also indicated that when she approached the Coeur d'Alene police about the contact order violations, she believed Mr. Baker was living in the Boise area (Tr. p. 135, L. 24-25 and p. 136, L. 1).

After the defense rested and the jury had left, the defense moved for a mistrial due to statements made by Ms. Shea while testifying (Tr p. 137, L. 16-18.) Ms. Shea had commented on the defendant's substance abuse, his violent behavior, and told the jury she was not supposed to talk about certain things. (Tr p. 137, L. 18-25 and p. 138, L. 1-4). The Court held that her responses and testimony were not "so outlandish and overbearing and in violation of the directives of the Court that . . . they unduly cause[d] prejudice such that the . . . defendant [did] not get a fair trial" (Tr p. 141, L. 8-12).

Defendant timely filed a motion to appeal the denial of the motion to dismiss and for deprivation of Mr. Baker's due process rights to a fair trial, owing to admission of impermissible evidence.

ISSUES ON APPEAL

- I. Whether the Coeur d'Alene Prosecutor Office was bound by the no further prosecution term of the plea deal between Mr. Baker and the Boise City Count Attorney.
- II. Whether Mr. Dunnagan was deprived of his due process rights to a fair trial by Ms. Shea's violations of the motion in limine during her direct and cross examinations.

ARGUMENT

I.

A. Introduction

The Boise City Attorney's Office originally charged Mr. Baker with one count arising from the incidents in this case. Mr. Baker pled guilty to that charge in exchange for a promise that the state would file no further charges. At that time, unbeknownst to Mr. Baker but known to the Boise City Attorney, the Coeur d'Alene Prosecutor Office had filed 12 counts including the count charged in Ada County against him.

Jurisdiction and venue were proper in Ada County as to all the counts on which the jury found Mr. Baker guilty. Therefore, the plea agreement Mr. Baker made with the State in Ada County should be found binding on the state as a whole. In addition, Mr. Baker and the Ada

County Court reasonably believed that he was exchanging his rights for a guarantee that the guilty plea would be the end of the matter. The State must honor the agreement and the charges against Mr. Baker must be dropped. Furthermore, the burden was on the state to be candid with Mr. Baker in its dealings. In allowing Mr. Baker and the Ada County Court to erroneously believe that his guilty plea would be the end of charges arising from the no contact order, the State committed prosecutorial misconduct.

For these reasons, Mr. Baker's conviction should be vacated.

B. Standard of Review

An appellate court exercises free review over questions of law. *Powell v. Sellers*, 130 Idaho 122, 125 (Ct. App. 1997).

C. The magistrate's court erred in denying that venue was proper in Ada County for all counts arising from the facts in this case

Venue for a public offense is controlled by I.C. § 19-304. When a public offense is committed partly in one county and partly in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in multiple counties, the venue is proper in any of the involved counties. I.C. § 19-304(1).

In this case, the no contact order providing the basis for all the charges brought against Mr. Baker originated in Ada County. The no contact order is "an act or effect . . . constituting or requisite to the consummation of" the crime of violating said no contact order. I.C. § 19-304(1); see also I.C. § 18-920(5) (allowing a court to find a substantially conforming foreign criminal violation). Otherwise, when the Court gives someone a no contact order, that person would have no assurance that the Court's order could be relied on for protection if that person and their

attacker left either Idaho or the county. In Idaho in particular, it cannot have been the legislature's intent to leave someone on a trip to Canada without recourse should their no contact order be violated. In point of fact, Ms. Shea brought all of her phone messages to Ada County, which made the recording thereof that would be heard once by the Court in Ada County and then again by the jury in Kootenai. Additionally, the defense provided the Court at trial with an affidavit signed by Mr. Baker and never challenged by the State that Mr. Baker, who lives and works in Ada County, was in Ada County when he made all of the phone calls that are the basis of all the charges in this case.

Since the no contact order originated in Ada County, the Ms. Shea assumed correctly that she could bring her complaint to that County, and Mr. Baker has admitted to making all the calls in Ada County, venue was proper in Ada County for all the 11 counts upon which Mr. Baker was convicted.

D. The magistrate's court erred in denying that the Boise City Attorney's Office had authority to make a plea deal binding on the state as to all the counts against Mr. Baker arising from these facts

The Idaho constitution divides governmental power into three branches: legislative, judicial, and executive. Const. Art. II § 1. The judicial branch consists of a unified court system. Const. Art. II § 2. A prosecuting attorney in the State of Idaho is elected in each County as a member of the judicial branch. *State v. Wharfield*, 41 Idaho 14 (1925); Idaho Const. Art. V § 18. A prosecuting attorney is charged with the duty to prosecute all criminal actions in which his county is interested, and if the place of trial is changed, he must proceed in that county. I.C. § 39-2604. Prosecutors have "always had the authority to reduce the charges against a particular

suspect, and in deciding whether to charge a suspect at all.” *State v. Puetz*, 129 Idaho 842, 844 (1997). Where procedure is not enumerated for a particular judicial power, such as plea bargaining, I.C. § 1-1622 confers on a judicial officer all authority necessary to carry out the power. I.C. § 39-6312 is a general law. When a public offense is committed venue may be in any county involved, but not multiple counties at once. I.C. § 19-304. Furthermore, I.C. § 19-304(2) states: When more than one (1) felony is committed in more than one (1) county pursuant to a continuing criminal transaction or a common scheme or plan, venue shall be in any county in which one or more of such offenses has occurred. The right to a fair trial and due process is guaranteed by the federal constitution Amend. XIV and the Idaho Constitution Art. I § 13.

The State contends that the Boise City Attorney’s Office did not have authority to bind Coeur d’Alene’s Prosecutor’s Office. This argument flies in the face of the Idaho Constitution, judicial economy, federal due process, and common sense. This case is about 12 phone calls made in violation of a no contact order. All of them were appropriate to be tried in Ada County where the no contact order originated under § 19-304. The Idaho Constitution created in Article V. §2 a unified court system. Venue is a matter of convenience and economy. Essentially, the Court system acts as one in dealing with a particular public offense. To do otherwise would actually deprive a prosecutor of his power to plea bargain in any case where the offense has proper venue in more than one county, as his ability to make a deal would have no binding authority in other counties. Prosecutors have the power to plea bargain by reducing penalties and not pursuing certain charges. The State’s argument and the belief of the Magistrate that the prosecutor in one county cannot bind another where both have venue is clearly erroneous as that would effectively deprive a prosecutor of the power to plea bargain whenever a charge could be

made in more than one county. The Legislature could not have deprived the prosecutor of this power by enacting § 19-304. See *State v. Puetz*, 129 Idaho 842, 844 (1997).

In this case, the State's argument, that venue should be split up, is either predicated on the idea that each county operates as an entirely separate legal entity, or that there is no issue with splitting up charges so that various counties can have a bite at the apple. The expense of trial alone should cause the State pause. The State's position requires two counties to pay for and expend valuable and limited resources on essentially the same matter when it is perfectly acceptable to adjudicate the entire matter in one place.

Further, federal and state due process mandates that the State not make its criminal system unduly burdensome to the defendant so as to deprive him of the ability to defend himself. Here, the prosecution desires to be able to split up charges arising out of one set of circumstances, thereby forcing the defendant and any witnesses he may have to appear in two different courts for what is substantially the same matter. There is no sufficient reason to burden the defendant and witnesses with the time and expense of two trials.

And finally, it is a matter of general knowledge that forcing a person to travel up and down the state of Idaho to answer for a crime he can be tried for in one place is abjectly unreasonable and contemptuous of the dignity of the people of Idaho.

E. The State should be bound by the plea deal in Ada County

i. The State should be bound because Mr. Baker reasonably believed the plea deal in Ada County was the end of the matter before the Court

Because plea agreements are contractual in nature, they generally are examined by courts in accordance with contract law standards.
State v. Doe, 138 Idaho 409, 410 (Ct.App.2003); State v.

Fuhriman, 137 Idaho 741, 744 (Ct.App.2002). See also Puckett v. U.S., — U.S. at —, 129 S.Ct. 1423, 1430, (2009). (“[P]lea bargains are essentially contracts. When the consideration for a contract fails—this is, when one of the exchanged promises is not kept ... we say that the contract was broken.”) In determining whether the state has breached a plea agreement a court must examine the language of the plea agreement, and where the language of that plea agreement is ambiguous, those ambiguities shall be resolved in favor of the defendant. State v. Peterson, 148 Idaho 593, 595 (2010); Fuhriman, 137 Idaho at 745. The burden of proving the existence of a contract and the fact of its breach is upon the moving party. Peterson, 148 Idaho at 595. Focusing on the defendant's reasonable understanding also reflects the proper constitutional focus on what induced the defendant to plead guilty. Id. at 596. Contractual terms that are implied by the plea agreement, as well as those expressly provided, must be considered by the court. Doe, 138 Idaho at 410–11.

State v. Gomez, No. 36545 WL 1085989, *3 (Idaho App. 2011)

In *Gomez*, the defendant made a plea deal in which he believed he would not be ordered to give restitution. *Id.* at *4. The Court agreed with the defendant that the written plea agreement did not include mention of restitution and that therefore the State could not ask for it as he had not been given notice. *Id.* In *U.S. v. De la Fuente*, 8 F.3d 1333, 1339 (1993), the defendant made a plea deal in which he believed he would receive a recommendation for a lighter sentence but the government did not in fact recommend that. The 9th Circuit agreed with the District Court that the defendant had received nothing for his bargain, and that to hold that the plea agreement was unambiguous would mean “[the Court] would have to decide that the parties entered into a contract with no consideration offered in exchange.” *Id.*

The Boise City Attorney’s Office promised Mr. Baker on the record in exchange for his guilty plea that no further claims arising out of violations of the no contact order would be filed. The Boise City Attorney’s Office knew that Mr. Baker was unaware of the charges filed in

Kootenai County by the Coeur d'Alene Prosecutor's Office. The State not only did not inform him of the charges, but allowed the entire recording of all 12 calls to be played for the Ada County Court judge to be used as a basis for sentencing. To call the bargain the State made with Mr. Baker ambiguous would stretch that term to its limit. As in *De la Fuente*, Mr. Baker received nothing for his bargain, and in fact was harmed by it as he would later be arrested and taken to Kootenai County, where he would then have to travel to multiple times to take care of the same matter a second time. Mr. Baker's more than reasonable belief that his guilty plea was in exchange for an end to the matter must be honored by the Court and the State. Mr. Baker gave up numerous rights in exchange, he believed, for closure. His subsequent arrest on charges arising from the same set of facts clearly violated his expectations, and those of the Ada County Court.

The magistrate's belief that the burden was on Mr. Baker and his counsel to check and make sure that all the counties would be bound by the agreement is clearly erroneous. Just as vague wording must be avoided in plea agreements, the government must not mislead or lie to a defendant in order to get a guilty plea. See *De la Fuente*; *Gomez*. Furthermore, to place a burden on a defendant to call every county in Idaho before pleading would place a strain on the entire system and make pleading much more difficult to do. This Court should give Mr. Baker relief in this matter by reversing his convictions and dismissing the charges with prejudice in honor of the plea agreement Mr. Baker made with the State in Ada County.

II.

A. Introduction

Prior to Mr. Baker's trial, the defense made a motion in limine to prevent prior bad acts evidence from coming in during trial. The magistrate granted the motion.

In spite of this, the State's only witness Ms. Shea repeatedly mentioned Mr. Baker's drug use, the violence of their relationship, and that there were things that she was not allowed to talk about. Ms. Shea's utterances infected the proceeding and deprived Mr. Baker of a fair trial. Therefore, Mr. Baker's convictions should be overturned.

B. Standard of Review

[T]he question on appeal is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made. Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record. Thus, where a motion for mistrial has been denied in a criminal case, the "abuse of discretion" standard is a misnomer. The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.

State v. Urquhart, 105 Idaho 92, 95 (Ct.App.1983); *State v. Huntsman*, 146 Idaho 580 (Ct. App. 2009).

C. The magistrate court erred denying Mr. Baker's motion for mistrial

A "mistrial may be declared upon motion of the defendant, when there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, which

is prejudicial to the defendant and deprives the defendant of a fair trial.” I.C.R. 29.1(a).

In the case at bar, Ms. Shea injected prejudicial evidence in violation of the granted motion in limine. Ms. Shea’s repeated violations irreparably infected the jury with the topic of Mr. Baker’s drug abuse. Furthermore, Ms. Shea attempted to manipulate the jury by telling them that she had been ordered not to talk about the drug abuse even as she was mentioning it. Finally, Ms. Shea inserted testimony about violent acts of Mr. Baker in violation of the motion in limine. Due to Ms. Shea’s continual violations, the trial became a referendum on Mr. Baker as a violent drug addict, rather than one focused on whether the no contact order had been violated. In spite of evidence that Ms. Shea had difficulty recognizing the voice of the person calling her, the jury convicted. It is impossible to know whether the jury chose to believe Ms. Shea at the hearing but not in her emails at the time to Mr. Baker, or if the jury was impermissibly motivated to punish someone who had been painted as a violent drug abuser by Ms. Shea’s continual violations.

Mr. Baker’s convictions should be reversed and the case remanded for a new trial because of Ms. Shea’s many violations of the motion in limine with which she manipulated the jury and the Court into trying Mr. Baker for charges not properly before it.

CONCLUSION

The executive branch of the State of Idaho violated a plea agreement with Mr. Baker when they prosecuted him for the eleven charges for which he was convicted. The State does not exist in completely independent and unconnected entities in each county, but rather each county is merely held to limits on its powers for the sake of judicial economy and the convenience of the

parties. The State's plea bargain in Ada County was misleading and fraudulent to both Mr. Baker and the Ada County Court.

It is the burden of the State to prove guilt beyond a reasonable doubt based on substantially competent evidence by which a jury could have found guilt beyond a reasonable doubt. The State produced evidence through the testimony of Ms. Shea, whose claims were controverted by her own prior communications with Mr. Baker. Furthermore, Ms. Shea sought to and succeeded in turning the trial into a prosecution for bad acts not properly before the Court in violation of a granted motion in limine.

For these reasons the State brought charges in violation of a plea agreement for violation of a no contact order and Mr. Baker was deprived of his due process right to a fair trial by repeated insertions of prior bad acts evidence in violation of the magistrate's rulings. The Defendant requests this court to remand to the Magistrate with instructions to grant the motion to dismiss or, in the alternative, to remand for a new trial.

DATED this 5th day of July, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Sarah I. Sears
SARAH SEARS, ISB 7902
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 5th day of July, 2011, addressed to:

City of Coeur d'Alene Prosecutor

Lisa Bauer

COPY

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT
Cindy D. Kelly
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
Plaintiff/Respondent,	)	CASE NO. CRM-09-024916
)	
vs.	)	STATE'S REPLY BRIEF
)	
CAREY MITCHELL BAKER,)	
Defendant/Appellant.)	
_____)	

APPEAL TO THE DISTRICT COURT,
HONORABLE JOHN PATRICK LUSTER, DISTRICT JUDGE.

Appeal from the Magistrate's Court, Kootenai County,
Honorable Barry Watson Magistrate

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STATEMENT OF THE CASE

Nature of the Case

Mr. Baker brings this appeal from his conviction after a jury in Kootenai County found him guilty of 11 counts of Violation of a Civil Protection Order. Appellant alleges that the City of Coeur d'Alene prosecutor was obligated to dismiss their criminal case against Mr. Baker after he entered into a plea agreement with the Boise City prosecutor acting in their capacity as contract Meridian City prosecutor. Appellant alleges that the plea agreement in the Ada County court was binding on all other prosecuting agencies in the State of Idaho.

Mr. Baker challenges the Magistrate Court's denial of his motion for mistrial alleging that inadmissible evidence was heard at trial that tainted the jury decision.

History of the case:

The City of Coeur d'Alene police department received allegations and instituted an investigation in September 2009. These allegations related to phone messages Mr. Baker had left on the victim's, Robyn Shea's, voice mail. The investigation revealed that a Civil Protection Order was entered protecting Robyn Shea from Mr. Baker on March 4, 2009 in Ada County, Idaho. See: CPOR CV-09-3421. Formal charges were filed by the City of Coeur d'Alene on December 7, 2009, with an Arrest warrant issued on 12/7/2009, the allegations are 12 violations of a civil protection order by leaving voice messages on the victim's cell phone voice mail between May 2009 and September 2009. Defendant was arrested on Warrant on April 12, 2010.

On September 10, 2009 the Boise City Attorney's Office acting as in their capacity as contract Meridian City prosecutor filed a single count of Violation of a Civil Protection Order alleged to have occurred on August 24, 2009 wherein Mr. Baker had telephoned Ms. Shea and left a voice mail message, Ada County Case No. CR-MD-2009-16878. Mr. Baker eventually entered a guilty plea to that charge on February 17, 2010. In the plea bargain for his guilty plea the Meridian City Attorney agreed the "State agreed not to file any additional violations of this NCO, protective order from this date past . . ." "they will pursue no further charges from anything that has happened in the past from today's date." [Ada County Audio] A partial audio recording of the phone messages by Baker to Shea was played during the sentencing phase of that hearing. Some, but not all, of the phone messages were the same phone messages alleged in the City of Coeur d'Alene, Kootenai County criminal complaint filed December 7, 2009. At no time during the Meridian plea change and presentation of the plea agreement does the attorney for Baker or the Meridian City Attorney indicate

any other prosecution agency had been consulted or agreed to such a plea agreement.

Mr. Baker was arrested on the Coeur d'Alene, Kootenai County warrant on April 2, 2010. Jury trial was scheduled for August 2010 but was continued so that he could have his motion to dismiss heard. Appellant brought the motion to dismiss alleging violations of double jeopardy and violations of his plea agreement in Ada County. The Kootenai Magistrate Court heard oral argument, accepted briefs, and reviewed 2 audio recordings – one of the alleged phone calls and one of the Ada County Court hearing where Baker's guilty plea was accepted and the terms of the Meridian City Attorney's plea bargain were placed on the record.

The Kootenai County Court granted the motion to dismiss as to the Coeur d'Alene City's complaint count VI, as it alleged a violation on August 24, 2009. The State conceded that count was proper for dismissal based on double jeopardy. The Kootenai Magistrate Court denied the motion to dismiss on the remaining 11 counts. Judge Watson denied the dismissal because there was no proof that Ada County had venue and there was not proof that the Meridian City Attorney had the authority to bind any other prosecuting agencies to that plea agreement. Tr. p 43, L. 7 to p 47, L. 25.

During the City of Coeur d'Alene jury trial Ms. Shea was the only witness to testify. The audio tape of the phone messages was admitted and played for the jury Tr. p 114, L. 20. The Court prior to the evidentiary phase of the trial granted Baker's motion in limine to prohibit prior bad act evidence from being presented.

ISSUES PRESENTED

- I. Whether the City of Coeur d'Alene Attorney's Office was bound by the plea deal between Mr. Baker and the Meridian City Attorney's Office.
- II. Whether Ms. Shea's testimony violated the Court's motion in limine order which denied Baker's due process rights to a fair trial.

ARGUMENT

The Appellant has provided proof that he entered into a binding plea agreement with the Meridian City prosecutor in Ada County Case No. CR-MD-2009-16878, however, he has not presented any proof that the City of Coeur d'Alene City Attorney's Office was a party to that contract. There has not been any proof or evidence that the City of Coeur d'Alene knew of, was part of or consented to be bound by the plea agreement between Baker and the Meridian City prosecutor in Ada County Case No. CR-MD-2009-16878.

Standard of Review for Plea Bargains

“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427, 433 (1971). “Whether a plea agreement has been breached is a question of law to be reviewed by this Court *de novo*, in accordance with contract law standards.” *State v. Jafek*, 141 Idaho 71, 73, 106 P.3d 397, 399 (2005) (citing *United States v. Bunner*, 134 F.3d 1000, 1003 (10th Cir.1998)); *see also Puckett v. U.S.*, --- U.S. ----, ----, 129 S.Ct. 1423, 1430, 173 L.Ed.2d 266, 276 (2009) . . . “The burden of proving the existence of a contract and the fact of its breach is upon the plaintiff.” *O'Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991); *see also Johnson v. Nasi*, 50 Wash.2d 87, 309 P.2d 380, 382 (1957) (“The burden of proving a contract, whether express or implied, is on the party asserting it, and he must prove each essential fact, including the existence of a mutual intention.”). The determination that a plea agreement is ambiguous is a question of law; however, interpretation of an ambiguous term is a question of fact. *State v. Allen*, 143 Idaho 267, 272, 141 P.3d 1136, 1141 (Ct.App.2006). Factual determinations made by a trial court shall not be set aside on review unless they are clearly erroneous. *Bramwell v. S. Rigby Canal Co.*, 136 Idaho 648, 650, 39 P.3d 588, 590 (2001); *State v. Peterson*, 148 Idaho 593, 226 P.3d 535 (2009).

No Contract Exits Between City of Coeur d'Alene and Appellant

Defendant asserts that the plea agreement with the Meridian City prosecutor in Ada County Case No. CR-MD-2009-16878 barred the City of Coeur d'Alene prosecutor from proceeding with its prosecution in this matter. The City of Coeur d'Alene filed its criminal case against Appellant on December 7, 2009. Appellant entered his guilty plea to the Meridian criminal case on February 17, 2010. “Because plea agreements are contractual in nature, they generally are examined by court in accordance with contract law standards *State v Doe*, 138 Idaho 409, 410 (Ct. App. 2003). The burden

of proving the existence of a contract and the fact of its breach is upon the moving party *State v Peterson* 148 Idaho at 595 *O'Dell v Basabe*, 119 Idaho 796, 813 (1991). Appellant must prove each essential fact of a contract, including the existence of a mutual intention by parties to form a contract *State v Peterson*, 148 Idaho @ 595. Appellant has failed to show there was a mutual assent by the City of Coeur d'Alene to be a party to the Meridian City plea bargain. No contract ever existed between the Appellant and the City of Coeur d'Alene. "The basic elements of a contract are subject matter, consideration, mutual assent by all the parties to all the terms, and an agreement that is expressed plainly and explicitly enough to show what the parties have agreed." *Williston on Contracts* (4th ed.) §§3:1 to 3:5; 17A *Am.Jur.2d Contracts* § 19 (2d ed.2009). "The formation of contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." *Restatement (Second) of Contracts*, §17 Requirement of a Bargain, 2011.

In the instant case neither the Meridian City prosecutor nor the Appellant attempted to contact the Coeur d'Alene City prosecutor to agree to the Ada County plea agreement. There never was a manifestation of mutual assent by the City of Coeur d'Alene to contract with the Appellant. The Appellant has not presented any proof the City of Coeur d'Alene was a party to the Meridian City prosecutor plea offer. The Appellant has not presented any proof that the City of Coeur d'Alene even knew of the plea offer or was consulted in any way concerning a plea bargain that would include both the Meridian City charge and the Coeur d'Alene City charges. Without the knowledge of the plea offer there can not be mutual assent to the contract. The City of Coeur d'Alene was not an essential party to the plea offer and can not be bound by the plea agreement with the City of Meridian. The Kootenai Magistrate Court was correct that Defendant's relief may be best suited to the court in Ada County claiming breach of his understanding of the Meridian plea agreement. The plea agreement by the Meridian City prosecutor in Ada County Case No. CR-MD-2009-16878 does not make a binding contract on any other prosecution agency. A contract did not exist between Appellant and the City of Coeur d'Alene.

City Attorneys are Prosecutors with Limited Jurisdiction and Authority.

The criminal charge filed in the Magistrate Division of the Fourth Judicial District, Ada County Case No. CR-MD-2009-16878 by the Boise City Attorney who was acting as the contract city prosecutor for the City of Meridian. City Attorneys have limited authority within their respective municipal limits.

§50-208A(2)Idaho Code – Duties of city attorney: (2) The city attorney, his deputies, or contract counsel shall prosecute those violation of county or city ordinances, state traffic infractions, an state misdemeanors committed within the municipal limits. In so doing, the city attorney, his deputies, or contract counsel shall exercise the same powers as the county prosecutor including, but not limited to, granting immunity to witnesses.

The authority granted to city attorneys is not a broad as the authority granted to County Prosecuting Attorneys, §31-2604 Idaho Code, or the Attorney General. City attorneys are public attorneys with limited jurisdiction to bring prosecutions §50-208A I.C. City Attorneys can not file felony charges, or prosecute juvenile crimes, or empanel a grand jury, nor file and prosecute crimes occurring outside of their respective municipal boundaries or city limits. As a practical point, Defendants routinely request that probation violations will not be filed by one prosecuting agency as part of plea resolutions with a second prosecuting agency. If the powers of the various prosecuting agencies is as broad as the Appellant asserts, this practice of providing information between prosecuting agencies to get binding plea agreements is meaningless. That is, any prosecuting agency could make a plea deal with binds all other city, county and State prosecuting agencies without those agencies specific agreement or knowledge. This is an absurd result which ignores the constitutional and legislative limitations established for the various prosecuting agencies.

Many Idaho cases have addressed the issue of a plea bargain being breached by the some action by the prosecution or court. Plea bargains are breached when the prosecution has agreed to make certain recommendations during sentencing then fail to do so *State v. Rollins* WL 2803621 (Ct. App July 19, 2011), *State v Jafek* (2005); see *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) where the plea agreement was breached by the same prosecuting agency during sentencing recommendations; or requesting restitution when that was not part of the plea agreement, *State v. Gomez*, WL 1085989 (Ct. App. March 25, 2011), or when the prosecutor agrees to not file additional charges but later files additional charges, *State v Peterson* (2010). These cases all deal with the alleged breaches occurring within the same prosecution agency. In the Meridian prosecution at the plea change and sentencing hearing on February 17, 2011 the Meridian prosecutor offered, for the first time, a promise to file no additional charges from February 17, 2011 back. There is no discussion on the audio tape at that hearing that any other charges were pending locally or statewide. The audio of that hearing does not have any discussion that any other prosecution agencies had been advised and agreed to such a plea agreement.

In Baker's case charges were filed by two separate limited jurisdiction prosecuting agencies in two geographically different locations for similar but different criminal conduct of Baker. Meridian in the Fourth Judicial District in southwest Idaho and Coeur d'Alene in the First Judicial District in north Idaho. Meridian filed their complaint in September 2009, Coeur d'Alene filed their complaint December 2009. Unlike the plea agreement in *State v. Rutherford*, 107 Idaho 910, 693 P.2d 1112 (Ct. App. 1985) where the Jerome County and Twin Falls county prosecutors both agreed to the plea deal, the Meridian prosecutor did not notify the Coeur d'Alene prosecutor of any proposed plea agreement, nor did they obtain permission to make a binding plea agreement wherein the City of Coeur d'Alene would be required to dismiss its criminal complaint. Meridian did not possess the authority to bind any other prosecuting agency Tr. p 46, L.10-15, including the City of Coeur d'Alene, without their specific knowledge of any such plea bargain.

Jurisdiction and Venue are Properly Sited in City of Coeur d'Alene.

Appellant argues that the audio tape played at the sentencing hearing in the Meridian prosecution case is proof the charge should belong in Ada County. The Meridian Court did not hear the same evidence as the Coeur d'Alene jury and the Meridian criminal complaint was for a specific date and time, not presented as an allegation to the Coeur d'Alene jury. The Coeur d'Alene City Attorney had the affirmative duty to prove jurisdiction and venue was proper in the Kootenai County Courts. The Coeur d'Alene City Attorney proved the victim was in fact in Coeur d'Alene for each of the phone calls that made up the charges in counts I – V, and VII – XII.

the State must prove subject matter jurisdiction by showing that an essential element of the offense occurred within Idaho, however jurisdiction, like other elements of an offense, may be proven by circumstantial evidence. *State v. Dietrich*, 2001, 26 P.3d 53, 135 Idaho 870.

In a criminal case, the court acquires both personal and subject matter jurisdiction in order to properly proceed. *State v. Rogers*, 2004, 91 P.3d 1127, 140 Idaho 223. Direct or circumstantial evidence may be used to establish venue. I.C. § 19-301(2). *State v. Wimer*, 1990, 118 Idaho 732, 800 P.2d 128.

Without an eye witness to the Appellant making the phone calls and the voice messages the only way the Coeur d'Alene City prosecutor could prove jurisdiction and venue were the locations of the victim when each of the calls were received. The prosecution through the victim provided sufficient foundation to admit the audio tape of the phone calls and those calls were played to the jury Tr. p 114 L. 20. Ms. Shea presented a detailed account of her actions and locations and circumstances

surrounding each phone call charged in the City of Coeur d'Alene's complaint Tr. 92 L. 12 to p 111 L. 6. She initiated contact with the Coeur d'Alene police department to file the complaint on September 17, 2009 Tr. p 110 L. 9 to L. 17.

On the day of the Coeur d'Alene jury trial, after the jury was chosen to hear this matter Appellant presented a motion that was essentially an oral motion for change of venue. At that time Appellant filed an affidavit in support of a change of venue that for the first time Appellant made an admission that during the phone calls he was at all times in Ada County. This motion to change venue was not properly before the court as no pleadings had been filed with the court nor served on the prosecution. The State objected to the motion and affidavit as untimely and that jurisdiction was proper in Kootenai County as the State was prepared to prove the victim was in Coeur d'Alene when she received the numerous phone calls. The Appellant's actions of providing the self serving affidavit was to get the criminal case back in Meridian. Appellant ignores in his argument that he filed a brief and argued his Motion to Dismiss well before the jury trial and never before tendered any such admission as to his whereabouts when making the phone calls.

The Kootenai County Magistrate Court did not Error by Allowing the Case to Proceed.

Appellant argues that by his submitting an affidavit in support of his motion to change venue is sufficient to remove venue from the Kootenai County Court. Idaho code §19-304 (1) provides that:

“When a public offense is committed in part in one (1) county and in part in another, or the acts or effects thereof constitution or requisite to the consummation of the offense occur in two (2) or more counties, the venue is in either county.”

Question of which county should be the situs for prosecution of a crime occurring in the State is not a jurisdictional question; it is simply a question of venue. I.C. § 19-301(2). *State v. Magill*, 1991, 119 Idaho 218, 804 P.2d 947. Venue is nonjurisdictional. I.C. § 19-301(2). *State v. Wimer*, 1990, 118 Idaho 732, 800 P.2d 128. “Criminal actions are to be brought in particular counties as matter of appropriate venue, but not because of any jurisdictional requirement.” I.C. § 19-301(1, 2); *Criminal Rule 19*. *State v. Amerson*, 1996, 925 P.2d 399, 129 Idaho 395, *petition for review denied, certiorari denied* 117 S.Ct. 2519, 521 U.S. 1123, 138 L.Ed.2d 1020.

Chapter 3 of title 19 of the Idaho Code contains the statutory provisions relating to venue in criminal actions. From statehood until 1986, these statutes focused on the county in which various criminal actions must be brought, addressing that location in terms of “jurisdiction” of the forum. Thus it appeared necessary to prove that the alleged crime was committed in a particular county, in

order to satisfy jurisdictional requirements. However, in 1986 the legislature substantially revised this chapter, inserting the word “venue” in lieu of the word “jurisdiction” in appropriate places throughout the statutes. 1986 *Idaho Sess. Laws*, ch. 289, p. 727. The result is that the various criminal actions are to be brought in particular counties as a matter of the appropriate venue, but not because of any “jurisdictional” requirement. So long as the prosecution proves that the crime occurred within the state of Idaho, the precise location of the crime within any particular county in Idaho is not required as an element to establish that a crime has been committed by the accused. *See, e.g., State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992). Indeed, the 1986 legislation inserted this concept into *section 19-301* by adding two important provisions. The first, added to subsection 1 of 19-301, reads:

Evidence that a prosecutable act was committed within the state of Idaho is a jurisdictional requisite, and proof of such must be shown beyond a reasonable doubt.

The second provision was codified as subsection 2 of 19-301, and reads:

Venue is nonjurisdictional. Proof that venue is proper under this chapter is satisfied if shown by a preponderance of the evidence.

Thus, under *section 19-301(1)*, the prosecution must allege and prove, beyond a reasonable doubt, that the interdicted act constituted a crime and that it occurred in Idaho. Proof that the crime occurred in any particular county does not come into play except where there appears a dispute about the county in which the criminal action must be prosecuted. As a matter of course, such disputes may be forestalled by application of *Idaho Criminal Rule 19* which provides that:

“Except as otherwise permitted by statute or these rules, the prosecution shall be had in the county in which the alleged offense was committed.” But the fact that the action is commenced in the wrong county does not mean that the state will be unable to prove the guilt of the accused. It simply means that, if a dispute arises as to the proper venue for prosecution of the action, resolution of the dispute may include transfer of the action to the appropriate location. The proper location for the proceeding can be established by a preponderance of the evidence. Once the venue question is resolved, then the prosecution of the criminal action may proceed. *State v. Amerson*, 129 Idaho 395,401, 925 P.2d 399, 406 (Ct. App. 1996).

The Magistrate Court properly concluded that if Ms. Shea was present in Coeur d’Alene when she received the phone calls the proper location for the criminal charges is in Coeur d’Alene. In Appellant’s voicemail message dated May 26, 2009 he states his is “. . . totally loaded and on the freeway, leaving my storage and stuff behind . . .” With this message the State can only prove jurisdiction and venue through the location of Ms. Shea when she received the call. It is speculation

at best to guess where the appellant was located when this call was made. Appellant's self serving affidavit does not relieve the City of Coeur d'Alene of its burden of proof. Prior Idaho cases have discussed jurisdiction and venue for purposes of which county is proper for filing the criminal charges. Where element of intent to "keep or conceal" a child was committed in Idaho, defendant could be charged with kidnapping in Idaho, even though actual concealment occurred outside the state. *State v. Chapman*, 108 Idaho 841, 702 P.2d 879 (1985). Where defendant forged signature to note in Clark County and uttered the forged note in Bingham County, district court sitting in Bingham County had jurisdiction over the entire crime. *State v. May*, 93 Idaho 343, 461 P.2d 126 (1969). Defendant who allegedly aided in loading stolen steer in truck in Bingham county, dressing it out, and transporting it into Bonneville county with intent to deprive owner of his property could be tried for larceny either in Bingham county or Bonneville county. I.C. §§ 18-204, 19-309. *State v. Bassett*, 86 Idaho 277, 385 P.2d 246 (1963). Where a defendant acting as agent for a foreign corporation engaged in buying wool executed a fictitious contract of sale of wool and, on basis of such fictitious contract, foreign corporation honored defendant's sight draft, defendant was properly tried for obtaining money by false pretenses in county where sight draft was drawn and paid, and from which contract was sent. Code 1932, §§ 17-202, 19-304. *State v. Dunn*, 60 Idaho 568, 94 P.2d 779 (1939). When conversations were handled in B. county, and money was paid over on checks in P. county, venue of crime of obtaining money under false pretenses was in either B. or P. counties (C.S. § 8688). *State v. Stevens*, 48 Idaho 335, 282 P. 93 (1929). Therefore the Kootenai Magistrate court did not error by determining that venue was proper in Coeur d'Alene.

Standard of Review on Motion for Mistrial

"The question on appeal is not whether the trial judge reasonably exercised his discretion in light of the circumstances existing when the mistrial motion was made, rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record . . . The standard, more accurately stated, is one of reversible error. Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. The trial judge's refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error." *State v. Urquhart*, 105 Idaho 92, 95, 665 P.2d 1102, 1105 (Ct. App. 1983); *State v. Atkinson*, 124 Idaho 816, 864 P.2d 654 (Ct. App. 1993). *Cert. denied*, 511 U.S. 1076, 114 S. Ct. 1659, 128 L.Ed.2d 376 (1994); *State v. Harrison*, 136 Idaho 504, 37 P.3d 1 (Ct. App. 2001); *State v. Gutierrez*, 143 Idaho 289, 141 P.3d 1158 (Ct. App. 2006); *State v*

Huntsman, 146 Idaho 580, 199 P.3d 155 (Ct. App. 2009). The decision whether to grant a mistrial rests within the sound discretion of the district court and will not be disturbed on appeal absent an abuse of discretion. *State v Barcella*, 135 Idaho 191, 16 P.3d 288 (Ct. App. 2000), quoting *State v. Shepherd*, 124 Idaho 54, 57, 855 P.3d 891, 894 (Ct. App. 1993); *State v. Atkinson*, 124 Idaho 816, 864 P.2d 654 (Ct. App. 1993), *cert. denied*, 511 U.S. 1076, 114 S. Ct. 1659, 128 L.Ed.2d 376 (1994). The error will be deemed harmless if the appellate court is able to declare, beyond a reasonable doubt, that there was no reasonable possibility that the event complained of contributed to the conviction. *Shepherd*, 124 Idaho at 58, 855 P.2d at 895, citing *State v. LePage*, 102 Idaho 387, 630 P.2d 674 (1981); *State v. Morgan*, 141 Idaho 861, 864, 172 P.3d 1136, 1139 (Ct. App. 2007).

“[A]ppellant has the burden to show prejudicial error, and absent such a showing, error will be deemed harmless.” *State v. Rodriquez*, 106 Idaho 30, 33, 674 P.2d 1029, 1032 (Ct. App. 1983); *State v. Fluery*, 123 Idaho 9, 843 P.2d 159 (Ct. App. 1992). Admission of improper evidence does not automatically require the declaration of a mistrial. *State v. Hill*, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004). However, error in the admission of evidence does not require the reversal of a judgment if, in the context of the entire trial, the error was harmless. I.R.E. 103; I.C.R. 52; *State v. Goerig*, 121 Idaho 108, 111, 822 P.2d 1005, 1008 (Ct.App.1991); *State v. Stoddard*, 105 Idaho 169, 171, 667 P.2d 272, 274 (Ct.App.1983). An evidentiary error is harmless if the reviewing court “can find beyond a reasonable doubt that the jury would have reached the same result without the admission of the challenged evidence.” *State v. Moore*, 131 Idaho 814, 821, 965 P.2d 174, 181 (1998); *State v. Slater*, 136 Idaho 293, 300, 32 P.3d 685, 692 (Ct.App.2001).

Appellant has not shown any reversible error occurred at trial.

In the present case the Trial Court analyzed the testimony and determined that when timely objections were tendered, and when they were sustained the offending testimony was stricken from the record and limiting instructions were then given to the jury. Tr. p141, L. 1-4. It is important to note that most of the testimony challenged by Appellant were responses to Appellant’s questions during cross examination and were providing clarification to the form and direction of Appellant’s questions, Tr. p 140, L.5-8.

In *Hill*, the reclamation document did not present the jury with any information that had not already been introduced through the testimony of other witnesses. . . . The reclamation document was therefore merely cumulative evidence. Consequently, we conclude that the error in the admission of this document was harmless. *State v. Hill*, 140 Idaho 625, 629, 97 P.3d 1014, 1018 (Ct. App. 2004).

. . . [a] comment by the prosecutor, referring to defendant's presence in jail during questioning by a detective, was not grounds for a mistrial since given that defendant was on trial for a criminal offense. Even in absence of the prosecutor's comment, any reasonably knowledgeable juror likely would have surmised that the defendant had at some point been in jail. *State v. Hill*, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004).

In *State v. Morgan*, 141 Idaho 861, 172 P.3d 1136 (Ct. App. 2007), Morgan challenged the prosecution's statements in opening that Morgan would testify thereby forcing Morgan to testify. The court held - This is not a case where the prosecutor attempted to create an inference of guilt by presenting evidence that the defendant exercised his right to remain silent during a police interrogation after having received *Miranda* warnings, *see, e.g., State v. Poland*, 116 Idaho 34, 773 P.2d 651 (Ct.App.1989), or where the prosecutor in closing comments to the jury points to a defendant's failure to testify in the matter as an indication of guilt, *e.g., State v. McMurry*, 143 Idaho 312, 143 P.3d 400 (Ct.App.2006). Rather, Morgan claims that he was denied a fair trial because the prosecutor's comments placed him in a posture that he was *required* to testify, thereby involuntarily giving up his right to remain silent. The *Morgan* court denied the motion for mistrial.

In *State v. Keyes*, -- P.3d ---, 2011 WL 198018 (January 24, 2011, Ct. App. 2011), the court stated error is harmless and not reversible if the reviewing court is convinced "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Citing *State v. Perry*, - -- Idaho ----, 245 P.3d 961 (Ct. App. Dec. 7, 2010). In *Keyes* the witness, Deputy Fire Chief testified about the arson and presented his opinion that the defendant was the perpetrator of the charged crime. "Where improper testimony is inadvertently introduced into a trial and the trial court promptly instructs the jury to disregard such evidence, it is ordinarily presumed that the jury obeyed the court's instruction entirely. *State v. Grantham*, 146 Idaho 490, 498, 198 P.3d 128, 136 (Ct.App.2008). The Court went on to hold "In light of the overwhelming evidence that the fire was intentionally set and that *Keyes* had been purposefully burning D.E.'s possessions in a fit of anger, we are convinced beyond a reasonable doubt that the deputy chief's improper testimony did not contribute to the verdict obtained. Therefore, the district court did not err in denying *Keyes*'s motion for a mistrial." In *State v. Pickens*, 148 Idaho 554, 224 P.3d 1143 (Ct. App. 2010), The Court stated "Applying this standard of review, we have no difficulty in concluding that reversible error has not been shown. We will assume, *arguendo*, that it was improper for the prosecutor to mention, during opening statement, *Pickens*' comment to R.I. because of the statement's implicit admission of prior misconduct that was

inadmissible under *I.R.E. 404(b)*. “Viewed in the context of the full record,” however, the error was harmless. As noted above, testimony about Pickens' statement was later presented at trial without objection, (emphasis added) so it is impossible to attribute independent harm to the prosecutor's revelation of this testimony in her opening statement. Even if we were to disregard the witnesses' testimony concerning Pickens' statement that it was not his fault “this time,” we would still conclude that the trial court did not commit reversible error in denying the motion for mistrial, for the evidence of Pickens' guilt of the charged offenses was extensive and compelling. On this record we are confident beyond a reasonable doubt that the jury would have reached the same verdict *State v. Pickens*, 148 Idaho 554, 558, 224 P.3d 1143, 1147 (Ct. app. 2010).

Appellant argues that by Ms. Shea's testimony deprived him of a fair trial. The above authorities provide the guideline to analyze Mr. Shea's testimony. The audio tape played to the jury with each of the 11 phone messages was extensive and compelling and was played before the cross examination of Ms. Shea. The Magistrate Court did not error in denying the motion to dismiss.

Appellant cites a number of instances where the victim would not be responsive to Appellant's questions during cross examination. However, these statements by the victim were reiterations of the voice mail messages on the audio tape that had already been played to the jury. The Magistrate Court ruled on Appellant's Motion to Dismiss after the evidentiary phase of the trial ruling:

“ . . . I would note that the responses of Ms. Shea that - - Ms. Sears finds most concerning related to questions that Ms. Sears was asking” Tr. p 140 L. 5 to L. 8 . . .

“To be honest with you, I really – I didn't really hear any testimony that she had that related to the defendant's use of controlled substances or substance abuse problems. I – I heard her use the term addictions, um, and I almost took that as being addictions related to a relationship, um, not --- I didn't necessarily read that as um, related to controlled substances or substance abuse problems. She also used terms like being in a bad place or dark place, things of that sort” Tr. p 140 L. 15 to 23.

The Court noted :

“and at any time that uh, counsel objected to her response and moved to strike, when I felt that that was appropriate we did that. And um, for the most part Ms. Sears was making timely objections to that and we struck her responses if they were inappropriate and instructed the jury to disregard it” Tr. p 140 L. 24 to p 141 L. 4.

The Court further stated:

“Weighing it all out, you know, I – I do wish that Ms. Shea just answered the questions yes or no or just very succinctly. It’s – It’s difficult to get all witnesses to do that. But I don’t think that her responses and her testimony were so outlandish and overbearing and in violation of the directives of the Court that – that they unduly cause prejudice such that the uh, defendant cannot get a fair trial. I would -- I disagree with that. I feel that the jury will follow the instructions of the Court, and when they -- when something was stricken and they were instructed to disregard it, I feel that they will follow that and will not be prejudiced by that. So the motion for mistrial is denied Tr. p 141 L. 7 to L. 17.

Testimony was Presented at Trial Without Objection.

Appellant asserts that at various times Ms. Shea exceeded the limitations of her testimony as ordered by the Order granting the motion in limine Tr. p 68 L. 4 to L. 23. However, the objectionable statements by Ms. Shea appear to have occurred after the audio tape was played to the jury. The items Ms. Shea commented on were in the voice messages left by the appellant and presented to the jury.

Appellant’s voice message on May 26, 2009 stating: “...I’m totally loaded and I’m on the freeway, and I’m leaving behind all my storage and all that other stuff . . .” “. . . I’m sick, I’m not ok . . .” “. . . I’m not really ok, and I’m not. . .”

Appellant’s voice message of September 8, 2009 stating: “. . . I’m the same fucking drug addict that you knew that I was when you married me . . .” “I’m still the same person . . . you act like oh that’s a drug addict, a fucking surprise really, you knew who I was before you ever even married me . . .”

These audio recordings of the Appellant’s voice messages were presented to the jury before Ms. Shea’s testimony concerning these issues. Appellant in his brief objects the responses by Ms. Shea at Tr. p 115, L. 10 – 19; at Tr. p 125, L. 1-6; at Tr. p 128, L. 3-8; Tr. p 129, L. 3-8; Tr. p 131, L. 14-19; Tr. p 131 L. 25 to p 132, L. 3. All of these complained of statements were responses to the line of questioning by the Appellant and came in without objection by Appellant. Those statements related to some of the statements made by the Appellant on the voice messages that had already been heard by the jury. The responses do not mention prior bad acts; they do not mention anything new that has not been introduced to the jury through the phone messages earlier in the trial. The Appellant spoke first of drug addiction, the Appellant first mentions that he is sick and that he is not ok.

Ms. Sears: Between May of 2009 and September of 2009, uh, you invited contact with Mr. Baker, is that true?

Ms. Shea: I wouldn't say that, no. I – I would say that I wanted him to get sober. I would say that his messages made me just realize where he was at, which is a really dark place. Tr. p 125 L. 1 to L. 6.

Ms. Sears: you also indicated – Not only did you ask if that was Mr. Baker in your email, but you also asked um, how you could reach him, correct?

Ms. Shea: I'm just saying I don't know how to reach you, So you want to give me a plea, there's not a darn thing I can do for somebody who won't help themselves. Tr. p 128 L. 3 to 8.

The Magistrate Court properly weighted the evidence and the statements; the trial court properly balanced the factors and exercised his discretion in denying the motion to dismiss. The cumulative effect of the few complained of responses do not out weight the impact and evidence of the audio recordings. Appellant cannot complain when testimony is objected to and stricken, then presents questions that invites similar responses but Appellant remains silent and does not object to those comments coming in.

Appellant did have some comments stricken from the record with limiting instructions given at the same time. However Appellant did not seek a jury instruction addressing those issues. “Where improper testimony is inadvertently introduced into a trial and the trial court promptly instructs the jury to disregard such evidence, it is ordinarily presumed that the jury obeyed the court's instruction entirely. *State v. Grantham*, 146 Idaho 490, 498, 198 P.3d 128, 136 (Ct.App.2008). The Magistrate Court properly ruled in denying the motion to dismiss. The cumulative effect of the alleged inappropriate testimony does not constitute reversible error.

CONCLUSION

The Appellant has failed to prove the essential elements of a contract and especially the lack of mutual assent by the Coeur d'Alene City Attorney to be a part of the Meridian City plea offer. No contract existed that would bind the City of Coeur d'Alene City Attorney's office to the plea offer in the Meridian criminal case.

The Magistrate court was correct in denying the motion to dismiss based on the overwhelming admissible evidence proving Appellant violated the no contact order. The testimony of Ms. Shea did not violate the motion in limine nor did it improperly influence the jury.

The Kootenai County Magistrate Court's determinations regarding these issues should be sustained.

Dated this 5th day of August, 2011.



Wes Somerton
Coeur d'Alene City Deputy Attorney

CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing State's Reply Brief, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

SARAH L. SEARS
Attorney for Defendant
FAX: 446-1701

Hon. J.P Luster
District Court Judge
Courthouse Mail
Kootenai County Courthouse

this 5th day of August, 2011.

Kadams

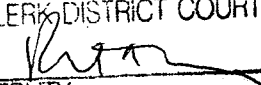
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STATE OF IDAHO
COUNTY OF KOOTENAI }SS
FILED

Sarah L. Sears, Deputy Public Defender
OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

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2011 AUG 24 PM 12:08

CLERK DISTRICT COURT

DEPUTY

Sarah L. Sears, Bar #7902

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
V.)
)
CAREY BAKER,)
)
Defendant/Appellant.)
_____)

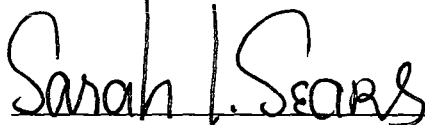
CASE NO. CRM 2009-24916

**MOTION FOR EXTENSION
OF TIME FOR FILING REPLY BRIEF**

COMES NOW the above named Appellant, by and through the Office of the Kootenai County Public Defender, and hereby moves this Honorable Court for an Order extending the time in which the Appellant's Reply Brief will not be due until September 28, 2011. The above motion is based on the affidavit of the undersigned attorney. Said affidavit is attached hereto and incorporated herein by reference.

DATED this 24th day of August, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER



SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

MOTION FOR EXTENSION FOR FILING BRIEF - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of August, 2011, served a true and correct copy of the attached via interoffice mail or as otherwise indicated upon the parties as follows:

X Coeur d'Alene Prosecutor

via Interoffice Mail

Lisa Beeler

MOTION FOR EXTENSION FOR FILING BRIEF - 2

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	CASE NO. CRM 2009-24916
)	
V.	)	AFFIDAVIT OF SARAH L. SEARS IN
	)	SUPPORT OF MOTION FOR EXTENSION
CAREY BAKER,)	
)	
Defendant/Appellant.)	
)	

STATE OF IDAHO)
 : ss.
County of Kootenai)

J. SARAH L. SEARS, being first duly sworn upon oath, deposes and says:

1. The date on which the Reply Brief is due is August 24, 2011.
2. No extension of time has been previously granted.
3. The undersigned requests an extension on the grounds that she has been busy with new files in the last several weeks and has been unable for that reason to devote the time necessary to effectively review and research the issues presented herein.
4. Counsel deems necessary an extension of 35 days whereupon the Brief would be due on September 28, 2011. Counsel further assures the Court that every effort will be made to ensure that the brief will be filed within that time.
5. Although attempts have been made, Counsel for Respondent has not been contacted.

AFFIDAVIT OF SARAH L. SEARS IN SUPPORT OF MOTION FOR EXTENSION

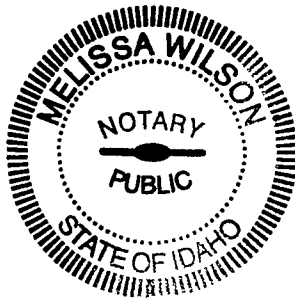
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 24th day of August, 2011.

Sarah L. Sears

SARAH L. SEARS
DEPUTY PUBLIC DEFENDER

SUBSCRIBED AND SWORN to before me this 24th day of August, 2011



Melissa Wilson

Notary Public in and for the State of Idaho

Commission Expires:

3/28/2014

AFFIDAVIT OF SARAH L. SEARS IN SUPPORT OF MOTION FOR EXTENSION

ORIGINAL

Sarah L. Sears, Deputy Public Defender
OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER
400 NORTHWEST BOULEVARD
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Phone: (208) 446-1700
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STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 8/29/11
AT 10:00 O'CLOCK A.M.
CLERK, DISTRICT COURT
DEPUTY

Sarah L. Sears, Bar #7902

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
V.)
)
CAREY BAKER,)
)
Defendant/Appellant.)
_____)

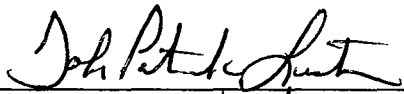
CASE NO. CRM 2009-24916

ORDER EXTENDING
TIME FOR FILING REPLY BRIEF

Defendant having filed a Motion to Extend Time for Filing Reply Brief, and good cause appearing thereby,

IT IS HEREBY ORDERED, that the deadline for filing the Reply Brief is September 28, 2011.

DATED this 29th day of August, 2011.



JUDGE MITCHELL HASTER

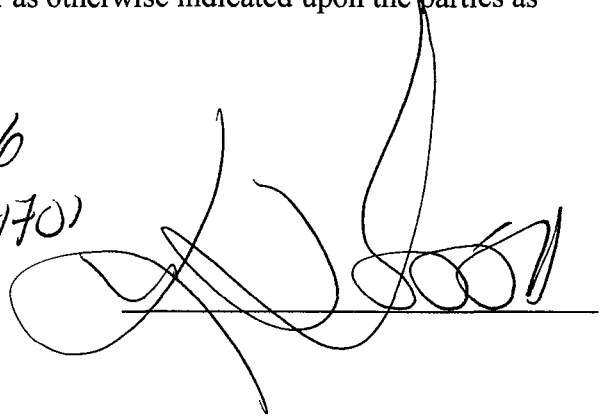
ORDER EXTENDING TIME FOR FILING REPLY BRIEF - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29 day of August, 2011, served a true and correct copy of the attached via interoffice mail or as otherwise indicated upon the parties as follows:

Coeur d'Alene Prosecutor 769-2326

Kootenai County Public Defenders 446-7701

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher.

#763

ORDER EXTENDING TIME FOR FILING REPLY BRIEF - 2

ORIGINAL

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

**OFFICE OF THE KOOTENAI COUNTY
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Bar No: 7902

2011 SEP 28 PM 2:49

CLEK DISTRICT COURT
[Signature]
DEPUTY
A

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
V.)
)
CAREY M. BAKER,)
)
Defendant/Petitioner.)
_____)

CASE NO. CR-09-24916
APPELLANT'S REPLY BRIEF

Appeal from the Magistrate's Court of the First Judicial District for Kootenai County.
Honorable Barry E. Watson presiding.

ATTORNEY FOR THE PLAINTIFF:

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COEUR D' ALENE, ID 83816

ATTORNEY FOR DEFENDANT

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Garcia v. State Tax Com'n of State of ID, 136 Idaho 610 (2002) -----	4
Powell v. Sellers, 130 Idaho 122 (Ct.App.1997)-----	1
State v. Allen, 143 Idaho 267 (Ct.App.2006) -----	1
State v. Chapman, 111 Idaho 149 (1986) -----	4, 5
State v. Corbus, 151 Idaho 368, 256 P.3d 776 (Ct.App.2011) -----	4
State v. Fuhriman, 137 Idaho 741 (Ct.App.2002) -----	1
State v. Gomez, No. 36545, 2011 WL 1085989 (Idaho App. 2011) -----	1, 2
State v. McKeeth, 136 Idaho 619 (Ct.App.2001) -----	4
State v. Peterson, 148 Idaho 593 (2010) -----	1, 2
State v. Puetz, 129 Idaho 842 (1997) -----	2, 3
State v. Thorngren, 149 Idaho 729 (2010) -----	6
U.S. v. Mejia-Alarcon, 995 F.2d 982 (9th.Cir.1993) -----	6

CONSTITUTIONAL PROVISIONS

Idaho Constitution, Article I § 13 -----	3
U.S. Constitution, Amend. X-----	3

ISSUES PRESENTED

- I. Mr. Baker's plea bargain with the Boise City Attorney is binding on the Respondent.
 - a. Respondent has misconstrued the Standard of Review for Plea Bargains
 - b. Respondent's contention that the Limited Jurisdiction and Authority of City Attorneys has bearing on the scope of their Authority when Making Plea Bargains is in error

- II. Ms. Shea's prejudicial testimony is reversible error.
 - a. Mr. Baker's motion in limine constitutes a standing objection to Ms. Shea's testimony made in violation of that motion
 - b. Respondent's brief does not accurately reflect the nature of Ms. Shea's attempts to prejudice the jury

ARGUMENT

I.

A. *Respondent has misconstrued the Standard of Review for Plea Bargains*

In its reply brief, the State has misconstrued the standard of review for plea bargains by ignoring the Constitutional issues involved and that the Court's focus should be on the defendant's understanding. An appellate court exercises free review over questions of law. *Powell v. Sellers*, 130 Idaho 122, 125 (Ct.App.1997). The State has cited *State v. Allen*, 143 Idaho 267, 272 (Ct.App.2006) for the proposition that interpretations of ambiguous terms in plea agreements are a question of fact. The State fails to consider, however, that "[i]n determining whether the state has breached a plea agreement a court must examine the language of the plea

agreement, and where the language of that plea agreement is ambiguous, those ambiguities shall be resolved in favor of the defendant.” *State v. Gomez*, No. 36545, 2011 WL 1085989, *3 (Ct.App.2011), citing *State v. Peterson*, 148 Idaho 593, 595 (2010); *State v. Fuhriman*, 137 Idaho 741, 745 (Ct.App.2002). As a result, the State’s brief completely ignores the fact that “[f]ocusing on the defendant’s reasonable understanding . . . reflects the proper constitutional focus on what induced the defendant to plead guilty.” *Id.*, citing *Peterson*, 148 Idaho at 596.

B. *Respondent’s contention that the Limited Jurisdiction and Authority of City Attorneys has bearing on the scope of their Authority when Making Plea Bargains is in error*

The State in its brief contends that the constraints placed on City Attorneys regarding the scope of their jurisdiction for bringing charges is related to their ability to bind the state when making plea agreements. The State thus appears to be arguing that Idaho’s individual cities and counties are individual sovereigns to whom the normal standards of due process and double jeopardy do not apply. The State is clearly in error.

The State did not respond in its brief to most of the practical reasons why its argument fails. For example:

1. The cost of a prosecution is not a burden that the State would wish to assume in multiple counties. Add to this the cost of imprisoning a defendant repeatedly as they await each trial, and the obvious impracticality of the State’s approach is inescapable.
2. Creating a policy whereby every defendant needs to contact the offices of every prosecutor he could be charged by would place unnecessary strain on the Court system.

The State also chose not to respond to the separation of powers issue that its argument

inherently represents. Prosecutors have “always had the authority to reduce the charges against a particular suspect, and in deciding whether to charge a suspect at all.” *State v. Puetz*, 129 Idaho 842, 844 (1997). Where procedure is not enumerated for a particular judicial power, such as plea bargaining, I.C. § 1-1622 confers on a judicial officer all authority necessary to carry out that power. I.C. § 39-6312 (Violation of Protective Order) is a general law. The State’s argument would deprive a prosecutor of his power to plea bargain in any case where the offense has proper venue in more than one county, as his ability to make a deal would have no binding authority in other counties. Prosecutors have the power to plea bargain by reducing penalties and not pursuing certain charges. The Legislature could not have deprived the prosecutor of this power by enacting I.C. § 19-304 (Offenses Committed in Different Counties). See *Puetz*, 129 Idaho at 844.

The State also ignored the Due Process issue of forcing a defendant to pay for the expense of multiple prosecutions for the same crime. Federal and state due process mandates that the State not make its criminal system unduly burdensome to the defendant so as to deprive him of the ability to defend himself. Here, the prosecution desires to be able to split up charges arising out of one set of circumstances, thereby forcing the defendant and any witnesses he may have to appear in two different courts for what is substantially the same matter. There is no sufficient reason to burden the defendant and witnesses with the time and expense of two prosecutions. Since a defendant may plead up until the verdict, the State’s argument would support having multiple trials going on at once in an apparent race to see which jury came back first. Further, in cases where a defendant is able to hire his own counsel, it strains credulity to assume that they will be able to afford a private attorney in each successive prosecution. Eventually, the State will

pauperize the defendant and begin paying for his defense itself.

Finally, the Constitution of the State of Idaho, as well as the federal Constitution, forbids double jeopardy. See Idaho Const. Art. 1 § 13, U.S. Const. Amend. V.

The Double Jeopardy Clause of the Idaho and United States Constitutions affords a defendant three basic protections. It protects against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple criminal punishments for the same offense.

State v. Corbus, 151 Idaho 368, 256 P.3d 776, 778 (Ct.App.2011) citing *Schiro v. Farley*, 510 U.S. 222, 229 (1994); *State v. McKeeth*, 136 Idaho 619, 624 (Ct.App.2001).

However, double jeopardy does not apply when different sovereigns try a defendant for the same crime. *Bartkus v. Illinois*, 359 U.S. 121, 131 (1959). The Doctrine of Dual Sovereignty, however, applies when different states and/or the federal government are prosecuting, not different City Attorneys. See *Garcia v. State Tax Com'n of State of ID*, 136 Idaho 610, 614 (2002). Simply because the jurisdiction of a particular attorney is limited does not mean he has the power to ignore the ban on double jeopardy. In the same sense, he may not ignore a plea bargain made for the same offense where a Court has already reviewed the same evidence when coming up with its sentence.

The State also contends that

[a]s a practical point, Defendants routinely request that probation violations will not be filed by one prosecuting agency as part of plea resolutions with a second prosecuting agency. If the powers of the various prosecuting agencies is as broad as the Appellant asserts, this practice of providing information between prosecuting agencies to get binding plea agreements is meaningless.

Respondent's Brief at 9.

This argument reflects a profound misunderstanding of probation.

Revocation of probation constitutes neither a multiple trial nor a multiple punishment; it does not involve a new trial to consider the guilt or innocence of matters already decided, and it does not involve an additional punishment, because the revocation of probation involves only the enforcement of conditions already imposed.

State v. Chapman, 111 Idaho 149, 155 (1986).

A probationer must ensure that his probation in various localities is not violated not because prosecutors are empowered with the ability to punish multiple times for the same offense but because probation is a sentence already imposed for a past crime. It is the nature of probation that the probationer is in jeopardy of incarceration when he violates its terms. The State's argument is inapplicable to this case.

Mr. Baker would also like to point out that the State has conceded in its brief that he was misled as to what he was pleading to when he pled in Ada County. On page 9 of the State's brief, the State writes

In the Meridian prosecution at the plea change and sentencing hearing on February 17, 2011[,] the Meridian prosecutor offered, for the first time, a promise to file no additional charges from February 17, 2011 back. There is no discussion on the audio tape at that hearing that any other charges were pending locally or statewide.

The State is correct. Mr. Baker was not informed of the charges pending in Kootenai and had no way to expect such charges since he was an Ada County resident, pleading guilty to violation of an Ada County no contact order with the violation consisting of telephone messages. Essentially, the Boise City Prosecutor misled him. Not only did Mr. Baker receive nothing for his bargain, he

was actually forced through the indignity of a rearrest and transport to Kootenai and the expense of a second prosecution hundreds of miles from home. Moreover, the Boise City Prosecutor and the Coeur d'Alene Prosecutor made contact regarding the prosecution of Mr. Baker and arguable worked together. Mr. Baker was being prosecuted for violation of an Ada County no contact order and the Coeur d'Alene Prosecutor included an Ada County police report as part of discovery in the Coeur d'Alene case. Prosecution was proper in either county but not both counties. This case should be barred as a clear violation of Mr. Baker's rights, the separation of powers, and for all the practical reasons listed above and in Mr. Baker's original brief previously filed with this Court.

II.

A. *Mr. Baker's motion in limine constitutes a standing objection to Ms. Shea's testimony made in violation of that motion*

The State points out in its brief that Mr. Baker did not object to Ms. Shea's testimony made in violation of motion in limine granted by the Court. The Court's ruling in Mr. Baker's favor on the motion in limine preserved an objection to all the statements Ms. Shea made in violation of that order. See *State v. Thorngren*, 149 Idaho 729, 735 (2010), citing *U.S. v. Mejia-Alarcon*, 995 F.2d 982, 985-85 (9th.Cir.1993).

B. *Respondent's brief does not accurately reflect the nature of Ms. Shea's attempts to prejudice the jury*

The State also asserts that the topic of Mr. Baker's drug addiction was already displayed in the phone messages played to the jury and that Ms. Shea's comments only clarified the defense's questions. Ms. Shea manipulated the jury by telling them that she had been ordered not to talk about

the drug abuse even as she was mentioning it. Ms. Shea also inserted testimony about violent acts of Mr. Baker in violation of the motion in limine. Due to Ms. Shea's continual violations, the trial became a referendum on Mr. Baker as a violent drug addict, rather than one focused on whether the no contact order had been violated.

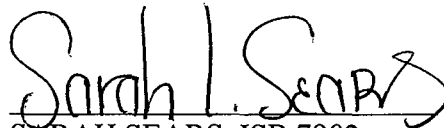
CONCLUSION

For these reasons the State unlawfully prosecuted Mr. Baker in violation of the plea agreement when it brought charges against Mr. Baker. Moreover, Mr. Baker was deprived of his due process right to a fair trial by repeated insertions of prior bad acts evidence in violation of the magistrate's rulings. The Defendant requests this Court to remand to the Magistrate with instructions to grant the motion to dismiss, or, in the alternative, to remand for new trial.

DATED this 28th day of September, 2011.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:



SARAH SEARS, ISB 7902
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 28 day of September, 2011, addressed to:

Coeur d'Alene Prosecutor — I/O Mail

Missy Wilson

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL
OF THE STATE OF IDAHO

2011 SEP 28 AM 11:10

ADMINISTRATIVE ORDER
B11-DW.1

CLERK DISTRICT COURT
[Signature]
DEPUTY

CR09-24916

RE: Assignment of District Court Cases for Kootenai County

IT IS HEREBY ORDERED that cases listed below assigned to the other First Judicial District Judges as listed below, be reassigned to the **Honorable Jeff Brudie**, Administrative District Judge for the Second Judicial District, for re-assignment to a District Judge for the Second Judicial District for all further proceedings.

IT IS FURTHER ORDERED all proceedings presently scheduled before a First District Judge are **VACATED**, to be rescheduled by the re-assigned to a Second District Judge.

IT IS FURTHER ORDERED that a copy of all pleadings filed after the date of this Administrative Order, must be sent by Counsel (or the party if self-represented) to the assigned Second District Judge in chambers.

CASES ASSIGNED TO JUDGE MITCHELL

CR2008-9095 State of Idaho v. Michael Southern (Appeal from Magistrate Division)
Oral Argument 10-25-11

CV2009-10686 Stephanie Reed v. Scott Reed (Appeal from Magistrate Division)
Motions Set Before Judge Wayman 9/28/11 & 11/7/11

CV2010-9175 Marianne Bendell v. Timothy Baumgartner (Appeal from Magistrate Division)
Nothing Set

ASSIGNMENT OF CASES TO JUDGE BRUDIE

CV2010-9797 Yvonne Mellick v. David Mellick (Appeal from Magistrate Division)
Nothing Set

CR 2011-730 State of Idaho v. Scott Cardwell (Appeal from Magistrate Division)
Nothing Set

CV2011-3442 James Moen v. State of Idaho (Post Conviction Relief)

CV2011-6093 Anthony Cruz v. State of Idaho (Post Conviction Relief)
Nothing Set

CV2011-4814 In the Matter of Randall Phillip Bottum (Petition Release from Sex
Offender Registration Requirements)
Nothing Set

CV2009-3827 Steven C. Lloyd v. TWC Digital Phone – To be set for Jury Trial

CV2010-6090 Kristina Allen v. Kevin Johnson MD – To be set for Jury Trial
Motion to Withdrawn Set for 11/2/11

CV2011-4529 Beth Nelson v. Seven Oaks Community – To be set for Jury Trial

CASES ASSIGNED TO JUDGE HAYNES

CV2011-4810 Sid Wurzburg v Kootenai County Board of Commissioners
(Administrative Appeal)
Oral Argument 12-12-11

CV2011-2977 Keith Daniels v. Idaho Trans Dept. (Administrative Appeal)
Nothing Set

CV2011-5166 John Rocchio v. Idaho Dept. of Lands (Administrative Appeal)
Motion Augment Record 10-14-11

CR2011-5064 State of Idaho v. Valerie Posey (Appeal from Magistrate Division)
Restitution Hearing Set before Judge Watson on 9/30/11

CV2006-3033 Estate of Lebsock (Appeal from Magistrate Division)
Hearing with Judge Wayman on 9-26-11

CV2007-7092 Jeffrey Harris v. Wendi Harris (Appeal from Magistrate Division)
Motions Set Before Judge Peterson on 9/29/11; Oral Argument 1/6/12

CV2009-9480 Beard v Wylie (Appeal from Magistrate Division)
Oral Argument Set 10-3-11

ASSIGNMENT OF CASES TO JUDGE BRUDIE

CV2011-1286 Howard Willis v. State of Idaho (Post Conviction Relief)
Court Trial 1-17-12

CV2011-2288 John Warren v. State of Idaho (Post Conviction Relief)
Court Trial 2-21-12

CV2011-2943 Jeremy Pogue v. State of Idaho (Post Conviction Relief)
Court Trial 3-19-12

CV2011-7510 Cecil Daniels v. State of Idaho (Post Conviction Relief)
Nothing Set

CASES ASSIGNED TO JUDGE LUSTER

CR2009-24916 State of Idaho v. Carey Baker (Appeal from Magistrate Division)
Appeal Hearing 10-28-11

CR2010-6294 State of Idaho v. Gary Haight (Appeal from Magistrate Division)
Appeal Hearing 10-21-11

CR2010-24279 State of Idaho v. David Odenthal (Appeal from Magistrate Division)
Appeal Hearing 12-18-11

CV2008-2590 Paul Driggers v. Karen Vassallo (Appeal from Magistrate Division)
Status Conference Set 10-20-11; Appeal Hearing 11-18-11

JV2011-235 Interest of Blehm, Brandon (Appeal from Magistrate Division)
Nothing Set

CV2011-3984 Vincent Ashinger v. State of Idaho (Post Conviction Relief)
Evidentiary Hearing Set 3/1/12

CV2011-6401 David Lonn v. State of Idaho (Post Conviction Relief)
MSJ Set 11/10/11

~~CV2001-5504 Gerald Barocella v. State of Idaho
Briefing Pending/Under Advisement~~

ASSIGNMENT OF CASES TO JUDGE BRUDIE

CASES ASSIGNED TO JUDGE SIMPSON

- CV2009-2079 Tall Pines v Kootenai County (Administrative Appeal)
Stayed on 2-1-2010
- CV2011-5388 Tom Hamilton v Board of Trustees of CDA School District
(Administrative Appeal) MSJ Set 10-11-11
- CV2010-3790 Sherry Brooks v Keith Brooks (Appeal from Magistrate Division)
Status Conference Set 10-4-11
- JV2010-10109 Interest of Kacie Klundt (Appeal from Magistrate Division)
Nothing Set
- CR2011-4956 State of Idaho v. Kelli Ann Klawitter (Appeal from Magistrate Division)
Nothing Set
- CV2008-6552 Ronald Henry v. State of Idaho (Post Conviction Relief)
PTC 10-6-11; Court Trial 10-11-11
- CV2011-3570 James Burke v. State of Idaho (Post Conviction Relief)
Nothing Set
- CV2011-3571 James Burke v. State of Idaho (Post Conviction Relief)
Nothing Set

CASES ASSIGNED TO JUDGE VERBY

B ONNER COUNTY

- CR2011-737 State of Idaho v. Suane Gale Wooden (Appeal from Magistrate Division)
Nothing Set
- CR2010-6140 State of Idaho v. Tracy Dawn Jenkins Appeal from Magistrate Division)
Nothing Set
- CV2011-575 Paul Douglas Johnson v. State of Idaho, Department of Transportation
(CV2010-598 Consolidated with CV-2011-575) (Administrative Appeal)
Nothing Set
- CV2011-536 Lon Peckham v. Idaho State Board of Dentistry, et al. (Administrative
Appeal)
Nothing Set

ASSIGNMENT OF CASES TO JUDGE BRUDIE

- CV2011-1489 Stacy Jene Baker v. State of Idaho, Department of Transportation
(Administrative Appeal) Nothing Set
- CV2010-338 Brian Keith Heffling v. State of Idaho, Department of Transportation
(Administrative Appeal)
Nothing Set
- CV2010-1534 Frank Leonard Arnold v. State of Idaho, Department of Transportation
(Administrative Appeal)
Nothing Set
- CV2010-36 James Crumble v. State of Idaho (Post Conviction Relief)
Nothing Set
- CV2010-2301 Kenneth D. Rawley v. State of Idaho (Post Conviction Relief)
Nothing Set
- CV-2011-135 Pacific Capital Bank, N.A. v. Pend Oreille Bonner Development, LLC, JV
LLC, Dan S. Jacobson, Sage Holdings LLC, Timberline Investments,
LLC, an Idaho limited liability. Steven G. Lazar, Amy Korengut, HLT
Real Estate LLC, Panhandle State Bank, an Idaho corporation, R.E. Loans
LLC, a California Limited Liability Co., Wells Fargo Capital Finance
LLC, a Delaware LL Co., North Idaho Resorts LLC, an Idaho limited
liability, Pend Oreille Bonner Development Holdings, Inc., Pensco Trust
Co., Mortgage Fund '08 LLC, B-K Lighting Inc., Frederick J. Grant,
Christine Grant, Russ Capital Group LLC, Joseph Dussich, Mountain
West Bank, State of Idaho Department of Revenue and Taxation,
Montaheno Investments LLC, a Nevada limited liability, Toyon
Investments LLC, Charles W. Reeves, Ann B. Reeves, ACI Northwest
Inc., an Idaho corporation
TO BE SET FOR TRIAL
- CV2010-2211 ACI Northwest Inc., an Idaho corporation v. BAR-K, Pensco Trust Co.
Custodian fbo Barney Ng, R.E. Loans LLC, a California Limited Liability
Co., Wells Fargo Foothill LLC, a Delaware limited liability, Mortgage
Fund '08 LLC
TO BE SET FOR TRIAL
- CV2010-2142 Sage Holdings LLC v. Pend Oreille Bonner Development, LLC, Charles
W. Reeves, Ann B. Reeves, Chip L. Bowlby, Thomas J. Mershcel, Pend
Oreille Development LLC, Pend Oreille Bonner Development Holdings,
Inc., Reeves Family Trust, Montaheno Investments LLC, a Nevada limited
liability, Toyon Investments LLC, North Idaho Resorts LLC, an Idaho
limited liability, R.E. Loans LLC, a California Limited Liability Co.,
Wells Fargo Capital Finance LLC, a Delaware LL Co., Bar K, Inc., ACI

ASSIGNMENT OF CASES TO JUDGE BRUDIE

Northwest Inc., an Idaho corporation, Pensco Trust Co., Mortgage Fund '08 LLC, R.C. Worst & Co. Inc., Genesis Golf Builders, Inc., T.O. Engineers Inc., Interstate Concrete & Asphalt Co., Idaho Club Homeowner's Association, B-K Lighting Inc., timothy J. Feehan, Kimberly A. Feehan, Kenneth Paul Schmidt, Tracy Franklin Schmidt, Richard A. Lazar, Laura Finney, Ted W. Palmer, Elizabeth A. Palmer, Trustees of the Ted W. & Elizabeth A. Palmer Trust, Northern Lights, Inc.
TO BE SET FOR TRIAL

CR2009-1810 Genesis Golf Builders, Inc. v. Pend Oreille Bonner Development, LLC., R.E. Loans LLC, a California Limited Liability Co., Dan Jacobson, Sage Holdings LLC, Steven G. Lazar, Pensco Trust Co. Custodian fbo Barney Ng, Mortgage Fund '08 LLC, VP Inc., an Idaho Corporation, JV, LLC, an Idaho Limited Liability Company, Wells Fargo Foothil LLC, a Delaware limited liability, Interstate Concrete and Asphalt Company, an Idaho, T-O- Engineers Inc., Pucci Construction, Inc., ACI Northwest Inc., an Idaho corporation, Lumbermens Inc., Robert Plaster, North Idaho Resorts, LLC, an Idaho limited liability, RC Worst & Company Inc., an Idaho corporation, Does I through X, Inclusive, Panhandle State Bank, Panhandle State Bank, an Idaho corporation
TO BE SET FOR TRIAL

BOUNDARY COUNTY

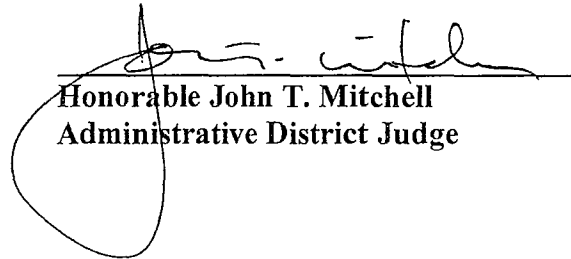
- CV2009-52 Stanley Phillip Sweet, etal. v. Rebecca Lee Vineyard Foreman, teal.
(Appeal from Magistrate Division)
Nothing Set
- CV2010-137 James R. Evans v. Sunrise Transport LTD (Appeal from Magistrate Division)
Oral Argument Set for 10-5-11
- CR2010-2013 State of Idaho v. Jennifer I. Myers (Appeal from Magistrate Division)
Nothing Set
- CR2011-493 State of Idaho v. Cary J. Slominski (Appeal from Magistrate Division)
Nothing Set
- CV2011-261 Ronald Abraham v. Idaho State Police, Alcohol Beverage Control
(Administrative Appeal)
Nothing Set

ASSIGNMENT OF CASES TO JUDGE BRUDIE

IT IS FURTHER ORDERED that a copy of this Order shall be placed in each case file listed above.

IT IS FURTHER ORDERED that a copy of this Order Assigning Cases to Honorable Jeff Brudie, Administrative District Judge Second Judicial District, shall be mailed to all attorneys of record in the cases listed above.

DATED this 27th day of September, 2011.



Honorable John T. Mitchell
Administrative District Judge

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the order were transmitted September 21 2011, by the following method, to:

Hon. Jeff Brudie
Fax: (208) 799-3058

Hon. Barry Watson
Fax: 446-1114

Hon. Lansing L. Haynes
Interoffice

Hon. Scott Wayman
Fax: 446-1121

Hon. John P. Luster
Fax: 446-1119

Hon. James Stow
Fax: 446-1114

Hon. Benjamin R. Simpson
Interoffice

Hon. Penny Friedlander
Interoffice

Hon. John T. Mitchell
Interoffice

Hon. Clark Peterson
Interoffice

Hon. Steve Verby
Fax: (208) 265-1468

Hon. Robert Caldwell
Interoffice

Hon. Fred M. Gibler
Fax: (208) 753-3581

Patricia Tobias
Administrative Director of the Courts
(208) 334-2616

Karlene Behringer
Trial Court Administrator
Fax: 446-1224

Diana Meyer
Court Services Director
Interoffice



Jeanne Clausen, Deputy Clerk

CERTIFICATE OF DELIVERY

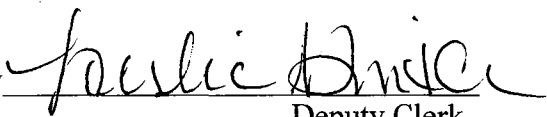
I hereby certify that on the 29 day of September, 2011, a true and correct copy of the foregoing Order was mailed in the U.S. Mails, postage prepaid, sent by facsimile, or delivered by interoffice mail to the following:

Private Counsel: Sarah L Sears, Deputy PD
Interoffice Mail
Coeur d'Alene ID 83816-9000
Mailed _____ Hand Delivered _____ [] Faxed (208) 446-1701

Prosecutor: Coeur d' Alene Prosecutor
Mailed _____ Hand Delivered _____ [] Faxed (208) 769-2326

#773

CLIFFORD T.HAYES
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2011 NOV -7 PM 2: 17

CLERK DISTRICT COURT FILED November 1, 2011 AT
DEPUTY Carey Mitchell A.M. 3:12 P.M. LEWISTON, IDAHO
BY Carl B. Kerrick
CARL B. KERRICK

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR09-24916
)	
vs.	)	ORDER FOR TELEPHONIC
	)	SCHEDULING CONFERENCE
CAREY M. BAKER,)	
)	
Defendant.)	

IT IS HEREBY ORDERED that Wednesday, the 30th day of November, 2011, at the hour of 11:15 A.M. Pacific Time in the District Court Chambers of the Nez Perce County Courthouse, Lewiston, Idaho, is the time and place set for a Telephonic Scheduling Conference in the above-entitled matter with THE COURT initiating the call.

DATED this 1st day of November, 2011.

Carl B. Kerrick
CARL B. KERRICK- District Judge

ORDER FOR TELEPHONIC
SCHEDULING CONFERENCE

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER FOR TELEPHONIC SCHEDULING CONFERENCE was:

_____ hand delivered via court basket, or

mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 4th day of November, 2011, to:

Sarah L. Sears
Deputy Public Defender
400 Northwest Blvd
Coeur d'Alene ID 83816

Kootenai County Prosecutor
P O Box 9000
Coeur d'Alene ID 83816

PATTY O. WEEKS, Clerk

By: *P. O. Weeks*
Deputy



ORDER FOR TELEPHONIC
SCHEDULING CONFERENCE

ORIGINAL

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: [Signature]
AT 1:20 O'CLOCK PM
CLERK, DISTRICT COURT
[Signature]
DEPUTY

Filed November 30, 2011 AT
3:51 [Signature] LEWISTON, IDAHO
BY [Signature]
CARL B. KERRICK

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

STATE OF IDAHO,)	
)	
)	
Plaintiff,	)	CASE NO. CR09-24916
)	
vs.	)	NOTICE OF HEARING
)	
CAREY M. BAKER,)	
)	
Defendant.)	

IT IS HEREBY ORDERED that the above-entitled case be set for Oral Argument on Tuesday the 10th day of January, 2012 at the hour of 9:00 a.m. This hearing will be telephonic and the Court will initiate the call.

DATED this 30th day of November, 2011.

[Signature]
CARL B. KERRICK-District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing NOTICE OF HEARING was:

_____ hand delivered via court basket, or

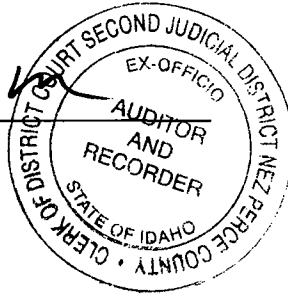
mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 30th day of November, ~~2012~~, to:
2011

Kootenai County Prosecutor
Wes Somerton
P O Box 9000
Coeur d'Alene ID 83816

Lynn Nelson
Deputy Public Defender
400 Northwest Blvd
Coeur d'Alene ID 83816

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



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

COURT MINUTES

Presiding Judge
CARL B. KERRICK
Reporter
Nancy Towler
Date January 10, 2012
Time: 9:03 A.M.

STATE OF IDAHO,)	
)	
Plaintiff,	)	Docket No. CR09-24916
)	
vs.	)	APPEARANCES:
)	
CAREY BAKER,)	
	)	WES SOMERTON
	)	For, State
Defendant,)	
	)	SARAH SEARS
	)	For, Defendant

SUBJECT OF PROCEEDINGS: ORAL ARGUMENT


BE IT KNOWN, THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO-WIT

90349	Wes Somerton and Sarah Sears present on the telephone.
90414	Court addresses counsel.
90440	Ms. Sears presents argument.
91022	Court addresses Ms. Sears.
91039	Ms. Sears responds.
91124	Mr. Somerton presents argument.
92951	Ms. Sears presents rebuttal argument.
93333	Court takes matter under advisement and will issue written decision.
93344	Court recess.

TERESA DAMMON

Deputy Clerk
1 Page of 1 Pages

APPROVED:


Presiding Judge

COURT MINUTES JANUARY 10, 2012

original

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 3/21/12
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CARL B. KERRICK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NO. CR 2009-24916
Plaintiff/Respondent,)	
)	
v.)	
	)	APPELLATE OPINION
CAREY MITCHELL BAKER,	)	AND ORDER
)	
Defendant/Petitioner.)	
_____)	

This matter came before the Court on appeal of the Judgment entered by the Honorable Barry Watson, on March 24, 2011. The Court heard oral argument on this matter on January 10, 2012. The Petitioner was represented by Sarah Sears, Deputy Kootenai County Public Defender. The State of Idaho was represented by Wes Somerton, Deputy Prosecuting Attorney for the City of Coeur d'Alene. The Court, having heard the argument of counsel and being fully advised in the matter, hereby renders its decision.

FACTS AND PROCEDURAL HISTORY

The Petitioner was married to Robyn Shea in 2005; the couple later divorced in 2009. On March 4, 2009, Ms. Shea sought a civil protection order, which was granted by the Ada County Court. From May 26, 2009 to September 17, 2009, Ms. Shea received a series of phone messages from the Petitioner, in violation of the civil protection order. Ms. Shea received eleven phone messages from the Petitioner while she was located in Kootenai County. One message was received by Ms. Shea while she was in Ada County, on August 24, 2009.

On September 10, 2009, the prosecutor in Ada County¹ filed a misdemeanor complaint against the Petitioner for one count of violation of the no contact order—specifically, the phone message left for Ms. Shea while she was in Ada County on August 24, 2009. *Ada County Case CR-MD-2009-0016878*. On December 7, 2009, the prosecutor in Kootenai County filed charges against the Petitioner for twelve counts of violation of the no contact order for phone messages to Ms. Shea from May 26, 2009 to September 17, 2009. In addition, an arrest warrant was issued in Kootenai County on the same day. The Petitioner claims he was unaware of the charges in Kootenai County until April 2, 2010.

On February 17, 2010, the Petitioner entered into a plea agreement with the prosecutor in Ada County regarding the single count of violation of the no contact order arising from the August 24, 2009 phone call. The Petitioner agreed to plead guilty to the single count against him in exchange for the promise that the State would file no other charges for violation of the no contact order for any calls that were made by the Petitioner to Ms. Shea prior to February 17,

¹ This Court recognizes that the criminal matter in Ada County was prosecuted by the Boise City Attorney, acting on behalf of the City of Meridian. Further, the Court recognizes that the criminal matter in Kootenai County was prosecuted the City of Coeur d'Alene Prosecuting Attorney. For purposes of consistency, the Court will refer to the Ada County case as prosecuted in Ada County, and the Kootenai County case as prosecuted in Kootenai County.

2010. During sentencing, the Ada County magistrate judge was presented with a recording of the August 24, 2009 phone message which was the basis of the charge against the Petitioner, as well as the other eleven phone messages which were left for Ms. Shea while she was in Coeur d'Alene.

On April 2, 2010, the Petitioner was arrested on the warrant for the outstanding charges in Kootenai County. On October 8, 2010, the Petitioner filed a motion to dismiss the charges, claiming double jeopardy and violation of the plea agreement the Petitioner entered into on February 17, 2010. On November 5, 2010, the Honorable Barry Watson dismissed Count 6, finding this charge was identical to the charge in Ada County which placed the Petitioner in double jeopardy on that count. Judge Watson denied the motion to dismiss the remaining eleven counts.

A jury trial was held on the remaining eleven counts on February 1, 2011. Prior to trial, the defense moved in limine for a bar on prior bad acts evidence, and the motion was granted. The Petitioner sought a motion for a mistrial following the conclusion of the presentation of evidence, arguing that Ms. Shea violated the motion in limine. This motion was denied. The jury ultimately found the Petitioner guilty on all eleven counts of violation of the no contact order.

ISSUES ON APPEAL

1. Whether the Coeur d'Alene Prosecutor's Office was bound by the no further prosecution term of the plea deal between the Petitioner and the Boise City Attorney.
2. Whether the Petitioner was deprived of his due process rights to a fair trial by Ms. Shea's violations of the motion in limine during her direct and cross examination.

ANALYSIS

1. **Whether the Coeur d'Alene Prosecutor's Office was bound by the no further prosecution term of the plea deal between the Petitioner and the Boise City Attorney.**

The Petitioner argues the magistrate court erred when it denied the Petitioner's motion to dismiss the case on the basis that the plea agreement the Petitioner made with the prosecuting attorney should be binding on prosecuting attorneys in other counties of the state.

a. **Standard of Review**

"[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427, 433 (1971). "Whether a plea agreement has been breached is a question of law to be reviewed by this Court *de novo*, in accordance with contract law standards." *State v. Jafek*, 141 Idaho 71, 73, 106 P.3d 397, 399 (2005) (citing *United States v. Bunner*, 134 F.3d 1000, 1003 (10th Cir.1998)); *see also Puckett v. [United States]*, — U.S. —, —, 129 S.Ct. 1423, 1430, 173 L.Ed.2d 266, 276 (2009) ("[P]lea bargains are essentially contracts. When the consideration for a contract fails—this is, when one of the exchanged promises is not kept—... we say that the contract was broken.").

In determining whether the State has breached a plea agreement a court must examine the language of the plea agreement, and where the language of that plea agreement is ambiguous, those ambiguities shall be resolved in favor of the defendant. *State v. Fuhrman*, 137 Idaho 741, 745, 52 P.3d 886, 890 (Ct.App.2002). "The burden of proving the existence of a contract and the fact of its breach is upon the plaintiff." *O'Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991); *see also Johnson v. Nasi*, 50 Wash.2d 87, 309 P.2d 380, 382 (1957) ("The burden of proving a contract, whether express or implied, is on the party asserting it, and he must prove each essential fact, including the existence of a mutual intention.").

The determination that a plea agreement is ambiguous is a question of law; however, interpretation of an ambiguous term is a question of fact. *State v. Allen*, 143 Idaho 267, 272, 141 P.3d 1136, 1141 (Ct.App.2006). Factual determinations made by a trial court shall not be set aside on review unless they are clearly erroneous. *Bramwell v. S. Rigby Canal Co.*, 136 Idaho 648, 650, 39 P.3d 588, 590 (2001).

State v. Peterson, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010); *see also State v. Schultz*, 150 Idaho 97, 99-100, 244 P.3d 241, 243 - 244 (Ct. App. 2010).

b. Venue for prosecution was appropriate in either Ada County or Kootenai County.

The Petitioner was charged with multiple violations of a no contact order, as a result of several phone calls he made to the protected person, Robyn Shea, over a period of five months in 2009. It is undisputed that the Petitioner was located in Ada County during the time the calls were made; the protected person was located in Kootenai County where eleven of the calls were received and she was in Ada County where one of the calls was received.

The appropriate venue for the prosecution of these cases is set forth in I.C. § 19-304(1).

When a public offense is committed in part in one (1) county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two (2) or more counties, the venue is in either county.

I.C. § 19-304(1). Offenses committed by the use of a telephone occur both in the county where the phone call originated, as well as the county where the phone call was received, thus, I.C. § 19-304(1) is applicable to the facts of this case.

With respect to the twelve phone calls which resulted in charges against the Petitioner, the crimes were ultimately prosecuted in the county where the protected person received the phone calls. One charge was first filed in Ada County, then three months later, twelve counts were filed in Kootenai County, without the knowledge of the Petitioner. The Ada County case was resolved on February 17, 2010, after the Petitioner entered into a plea agreement with the prosecutor in Ada County.

c. Does the plea agreement made by a prosecutor and the defendant in one county bind a prosecutor from a different county?

The magistrate judge in Kootenai County was presented with the issue of whether the City of Coeur d'Alene Prosecutor's Office was bound by the plea agreement which was entered into by the Boise City Attorney and the Petitioner. The magistrate made the following determination on the record when he denied the Petitioner's motion to dismiss:

And I would agree with the defense's motion to dismiss uh, if it were clearly shown that uh, the - - the call was generated let's say up here in Kootenai County, received by the alleged victim down there in Ada County, uh, and we had the prosecutor down there indicating he's not gonna be pursuing any other charges prior to that February 17 date. But the um, prosecuting attorney down there really did not have any authority to um, bind any other counties for charges that uh, could only be prosecuted in those other counties.

My review of the information in the file uh, seems to indicate that um, the other 11 counts of the complaint that the Coeur d'Alene City Prosecuting Attorney's Office has filed relate to the phone calls received by the alleged victim here while she was here in Kootenai County. The uh, prosecuting attorney in Ada County had no authority to bind the state up here. I think it was incumbent upon the defendant and his counsel, um, to make an inquiry uh, of the other jurisdictions, including the Coeur d'Alene City's Prosecutor's Office, Kootenai County, to see if there were any charges up here and to get them bound by the agreement. But having failed to do that, uh, I don't feel that we have a double jeopardy issue here, I don't think that there is a due process issue, um, and I -- I do feel that the State is able to proceed with the prosecution on the other 11 counts. But again, if -- if it can be shown that um, the phone call was generated here, received here by the victim -- Now, I understand that the civil protection order was issued in Ada County. That -- I don't feel that matters one way or the other. Um, but I would deny the motion to dismiss the other 11 counts and would just grant the one on Count No. VI.

The -- the uh, statutory authority that's in -- in issue here, we have 19-304(1) that indicates when a public offense is committed in part in one county and in part in another where the acts or effects thereof occur in two or more counties, the venue is in either county. But if you have an allegation as I believe that we have here were [sic] it just occurs in one county, that being Kootenai County or the City of Coeur d'Alene, I think the proper venue would be here. And I don't think that the assertions of not pursuing any further counts down there in Ada County would be binding on the City of Coeur d'Alene.

So the motion to dismiss on the other counts would be denied.

Transcript of Proceedings, Decision on Motion to Dismiss, November 5, 2010, at 46-47. The magistrate court recognized that venue for the charges could be either in the county where the call was generated, or in the county where the call was received, pursuant to I.C. § 19-304(1).

Whether one prosecutor in the State of Idaho can bind other prosecutors of different counties in the state by entering into a plea agreement with a defendant is a novel issue, not currently addressed by Idaho case law. However, similar issues have been considered.

In *State v. Rutherford*, 107 Idaho 910, 693 P.2d 1112 (Ct. App. 1985), the Idaho Court of Appeals determined that prosecutors who were employed by the same office were bound by a plea agreement even though the prosecutor who entered into the agreement was a different individual than the prosecutor who presented the case at the sentencing hearing. The *Rutherford* Court recognized the importance of the plea bargaining process to the system of justice.

The disposition of criminal charges by agreement between the prosecutor and the accused has been recognized by the United States Supreme Court as an important component of our system of justice. *Santobello v. New York*, 404 U.S. 257, 260, 92 S.Ct. 495, 497, 30 L.Ed.2d 427 (1971). Since a guilty plea waives certain constitutional rights, “a defendant is constitutionally entitled to relief when the state breaches a promise made to him in return for a plea of guilty.” *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir.1980), *cert. denied*, 451 U.S. 984, 101 S.Ct. 2316, 68 L.Ed.2d 840 (1981). This rule is based upon the principle that a guilty plea, to be valid, must be both voluntary and intelligent. “Thus, only when it develops that the defendant was not fairly appraised of its consequences can his plea be challenged under the Due Process Clause.” *Mabry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, 2547, 81 L.Ed.2d 437 (1984). In other words, “when the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand.” *Id.*

Id. at 913, 693 P.2d at 1115. In *Rutherford*, the Court recognized that the breach of the plea agreement may have been inadvertent as a result of two different individuals handling the case at different stages of the prosecution. In addition, the defendant did not object to the breach at the sentencing hearing. However, the *Rutherford* Court held that the prosecutor’s breach of the plea

agreement affected the voluntariness of the plea, and thus, was fundamental error which did not waive the right to raise the issue for the first time on appeal. *Id.* at 916-917, 693 P.3d at 1117-1118.

In *Santobello*, like the present case, the breach of the agreement by the state may have been inadvertent because the prosecutor who appeared at the sentencing hearing was different from the prosecutor who represented the state in the earlier plea negotiations. However, “*Santobello* holds that a criminal defendant is deprived of a constitutional right if the prosecutor's promise in a plea bargain agreement is not kept, even where the breach is inadvertent.” *Pierre v. Thompson*, 666 F.2d 424, 426 (9th Cir.1982); *Matter of Palodichuk*, 22 Wash.App. 107, 589 P.2d 269 (1978).

A guilty plea involves the waiver of several fundamental rights, but only a knowing and voluntary plea will constitute such an important waiver. Mere silence or the failure to object will not suffice. Since *Santobello* a myriad of state and federal courts have in one way or another agreed with the statement of Justice Marshall that, “[w]hen a prosecutor breaks the bargain, he undercuts the basis for the waiver of constitutional rights implicit in the plea.” *Santobello v. New York*, 404 U.S. at 268, 92 S.Ct. at 502 (concurring and dissenting opinion of Justice Marshall).

Id. at 915, 693 P.2d at 1117.

More recently, the Idaho Supreme Court affirmed the *Rutherford* determination that a defendant is constitutionally entitled to relief when the State breaches a plea agreement.

A defendant is constitutionally entitled to relief when the State breaches a promise made to him in return for a plea of guilty. *Berg v. State*, 131 Idaho 517, 519, 960 P.2d 738, 740 (1998) (citations omitted). When the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise and hence, his conviction cannot stand. *Id.* (citations omitted).

State v. Jafek, 141 Idaho 71, 74, 106 P.3d 397, 400 (2005).

In *State v. Lampien*, 148 Idaho 367, 223 P.3d 750 (2009), the Idaho Supreme Court addressed the narrow issue of whether law enforcement officers were bound by a prosecutor's promises made pursuant to a plea agreement. The *Lampien* Court looked to the unique facts of that case, where officers were injured as a result of being shot by a harbored felon, and

determined that the officers were permitted to present victim impact statements which were different than the prosecutor's sentencing recommendation. *Id.* at 377, 223 P.3d at 760. The plea agreement stated that the prosecutor would recommend no jail time be imposed. *Id.* at 378, 223 P.3d at 761. The *Lampien* Court ultimately concluded that the officers were not acting as agents of the state, but instead as victims of the crime. While lengthy, the analysis is guidance for the issue pending in the matter at hand.

This Court has not previously considered the narrow issue of whether a prosecutor's promises made pursuant to a plea agreement bind officers of law enforcement departments who were victims of the defendant's crime, thereby prohibiting them from making victim statements under I.C. § 19-5306.

The terms of Lampien's plea agreement were as follows:

COMES NOW the parties in this action, the State of Idaho, represented by the Bannock County Prosecuting Attorney, Vic Pearson, Defendant, MELANIE LAMPIEN, and her attorney, Craig W. Parrish, and do agree as follows, pursuant to Rule 11(d)(1)(C), Idaho Criminal Rules:

1. The Defendant, MELANIE LAMPIEN, hereby enters a plea of guilty to one count of Harboring a Fugitive, a violation of I.C. 18-205;
2. The State and Defendant agree to be bound to following sentence agreement:
 - that defendant be granted a Withheld Judgment;
 - that no jail time be imposed;
 - that Defendant be placed on probation for a term at the court's discretion;
3. That the terms of probation and fines be at the discretion of the Court;
4. That this agreement is binding on the parties but not the Court.

From this, Lampien argues that the officers' recommendations that she receive a term of imprisonment violated the language of the plea agreement that binds "the State" to recommend a withheld judgment and probation.

We find that the prosecution did not breach the terms of the plea agreement by permitting the officers to make victim statements at the sentencing hearing. The record is clear that the prosecuting attorney followed the explicit terms of the agreement and made the agreed-upon recommendation. We find that the officers were exercising their rights under Idaho Code section 19-5306 and not acting as agents of the State, and therefore were not bound by the terms of the plea

agreement. There is nothing in the record to suggest that the prosecutor improperly influenced the officers, called the officers to subvert the plea agreement, or otherwise acted to undermine the State's sentencing recommendation.

Id. at 376-377, 223 P.3d at 759 – 760. The *Lampien* Court also looked to cases from other jurisdictions in consideration of the issue whether a law enforcement agency is bound by a prosecutor's plea agreement. The Court noted a split of authority.

Both *Lampien* and the State ask this Court to look to cases from other jurisdictions to resolve this issue. Those cases show a split of authority on the issue of whether a law enforcement agency is bound by a prosecutor's plea agreement and, thus, whether the agency's failure to adhere to the terms of the plea agreement constitutes good cause for withdrawal of a guilty plea. *See, e.g., Duke v. State*, 209 P.3d 563, 569-71 (Wyo.2009); *State v. Rogel*, 116 Ariz. 114, 568 P.2d 421 (1977); *State v. Thurston*, 781 P.2d 1296 (Utah Ct.App.1989); *but cf. State v. Bowley*, 282 Mont. 298, 938 P.2d 592, 601 (1997); *State v. Matson*, 268 Wis.2d 725, 674 N.W.2d 51, 57 (Ct.App.2003). However, these cases all deal with a state agency acting in its investigative capacity, while the case at bar deals with members of law enforcement agencies acting in their individual capacities as victims under the protections of Article I, Section 22 of the Idaho Constitution and the provisions of Idaho Code section 19-5306. Absent a showing that the prosecutor improperly influenced the officers, called the officers to subvert the plea agreement, or otherwise acted to undermine the State's sentencing recommendation, this Court holds that a plea agreement is not breached when such officers testify contrary to the plea recommendation as victims pursuant to their individual statutory and constitutional rights.

Id. at 377, 223 P.3d at 760.

In addition to claiming the prosecutor violated the plea agreement when the officer's testified at the sentencing hearing, *Lampien* also claimed the plea agreement was violated by the State at a Rule 35 motion, wherein the State objected to a reduction of *Lampien*'s sentence. *Id.* at 378, 223 P.3d at 761. The *Lampien* Court held that the State's objection to the Rule 35 motion was "tantamount to the State's recommendation that *Lampien* should receive jail time for her crime. The recommendation of jail time is in obvious contravention of the plea agreement." *Id.*

The Court then addressed the prosecutor's argument that he was representing the Department of Probation and Parole at the Rule 35 motion hearing.

The prosecutor's contention that he was representing the Department of Probation and Parole at the motion hearing and was therefore obligated to advocate its position on the matter needs to be addressed. The prosecutor is obligated to represent the people of the State of Idaho in criminal proceedings. *See* I.C. § 31-2604. He is not authorized to represent government agencies or their employees in criminal proceedings, nor is he obligated to advocate their positions in such proceedings. The prosecutor may not excuse himself from observing the terms of a plea agreement by claiming to represent, or to be acting on behalf of, law enforcement agencies.

Therefore, we find that, while the State did not violate the plea agreement at the sentencing hearing, it did violate the agreement at the Rule 35 hearing. Thus, we hold that the district court's denial of the Rule 35 motion should be vacated and the case remanded to the district court for proceedings consistent with this opinion.

Id. (footnote omitted).

The *Lampien* Court noted there was a split of authority regarding the issue of whether a law enforcement agency is bound by a prosecutor's plea agreement. There is also a split of authority on the issue of whether one prosecuting attorney can enter into a plea agreement which is binding upon prosecutors of other jurisdictions in a state. For example, the Missouri appellate courts have determined that the actions of one prosecutor are binding on prosecutors in other jurisdictions, *State v. Burson*, 698 S.W.2d 557 (Mo.App.Ed. 1985). In Florida, "once a plea bargain based on a prosecutor's promise that the state will recommend a certain sentence is struck, basic fairness mandates that no agent of the state make any utterance that would tend to compromise the effectiveness of the state's recommendation." *Lee v. State*, 501 So.2d 591, 593 (Fla.,1987). In *People v. Wantland*, 78 Ill.App.3d 741, 397 N.E.2d 548 (1979), the Illinois Court of Appeals determined that a plea agreement that was reached between the defendant and the State was binding on the state where the county prosecuting attorney functioned as an agent of

the state. *Id.* at 96, 397 N.E.2d at 552. In Ohio, however, the opposite is true. A plea agreement is only binding upon the individuals directly involved in the plea process. *State v. Barnett*, 124 Ohio App. 3d. 746, 707 N.E.2d 564 (Ct. App. 1998).

Guidance on this issue can be gleaned from the federal courts, wherein it has been determined that whenever a United States Attorney negotiates and enters a plea agreement, it is the government which is bound to the agreement, unless otherwise specified. *Allen v. Hadden*, 57 F.3d 1529 (10th Cir. 1995).

In order to determine whether the plea agreement binds the government as a whole or a specific agency, we must examine what the defendant reasonably understood when the plea was entered. *See, e.g., Robertson*, 45 F.3d at 1442, *Shorteath*, 887 F.2d at 256. Additionally, as the Fourth Circuit observed:

Whenever a United States Attorney negotiates and enters a plea agreement, it is the Government that “agrees” to whatever is agreed to. Of course, the Government may-and quite readily can-“agree” through its agents that only certain of its agents are to be obligated in particular respects, or that the Government's obligation is otherwise qualified.

United States v. Harvey, 791 F.2d 294, 303 (4th Cir.1986). Absent an express limitation on the government's obligations, a plea agreement entered on behalf of the government binds the government as a whole. *See id.* (“It is the Government at large . . . that is bound by plea agreements negotiated by agents of Government.”).

Id. at 1535-1536. *See also United States v. Carter*, 454 F.2d 426 (4th Cir. 1972)(holding government in one district is bound by the terms of a plea bargain made in another district.

- d. **Based upon the specific facts of this case, the plea agreement reached in Ada County encompassed the eleven counts of violation of a no contact order filed in Kootenai County.**

In the case at hand, the magistrate court determined that the plea agreement reached in Ada County was not binding beyond its effect in that county. First, this Court must examine the language of the plea agreement. If the agreement is ambiguous, the ambiguities shall be resolved in favor of the defendant. *State v. Fuhriman*, 137 Idaho 741, 745, 52 P.3d 886, 890 (Ct.App.2002). It is the Petitioner's burden to prove the existence of the contract, and the breach

of that contract. *O'Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991). In the case at hand, there has been no challenge to the fact that there was a plea agreement reached in Ada County.

Based upon the unique facts of this case, it is apparent there was an ambiguity in the contract, specifically with respect to the extent of the power of the prosecuting attorney. There are factors which support the Petitioner's argument that the prosecutor's authority is not limited solely to the county where the plea agreement was reached. First, I.C. § 19-504 addresses the parties to a criminal action. "A criminal action is prosecuted in the name of the State of Idaho, as a party, against the person charged with the offense." *Id.* I.C. § 31-2604 sets forth the duties of prosecuting attorneys:

To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people, or the state, or the county, are interested, or are a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county.

I.C. § 31-2604(1). Based upon this statute, the duties of prosecuting attorneys in this state are not strictly limited to county boundary lines or judicial districts. Further, since 1986, the precise location of a crime occurring within a particular county in Idaho is not required as an element to establish that a crime has been committed by the accused.

Chapter 3 of title 19 of the Idaho Code contains the statutory provisions relating to venue in criminal actions. From statehood until 1986, these statutes focused on the county in which various criminal actions must be brought, addressing that location in terms of "jurisdiction" of the forum. Thus it appeared necessary to prove that the alleged crime was committed in a particular county, in order to satisfy jurisdictional requirements. However, in 1986 the legislature substantially revised this chapter, inserting the word "venue" in lieu of the word "jurisdiction" in appropriate places throughout the statutes. 1986 *Idaho Sess. Laws*, ch. 289, p. 727. The result is that the various criminal actions are to be brought in particular counties as a matter of the appropriate venue, but not because of any "jurisdictional" requirement. So long as the prosecution proves

that the crime occurred within the state of Idaho, the precise location of the crime within any particular county in Idaho is not required as an element to establish that a crime has been committed by the accused. *See, e.g., State v. Doyle*, 121 Idaho 911, 828 P.2d 1316 (1992).

State v. Amerson, 129 Idaho 395, 401, 925 P.2d 399, 405 (Ct. App. 1996). Further, although the State has asserted the Boise City prosecutor, in its contract role for the City of Meridian acts in a limited fashion, there is no evidence from the record of this case that the Petitioner was apprised of this limitation.

The magistrate court found that it was incumbent upon the Petitioner and his counsel to inquire as to whether there were other outstanding charges that the Petitioner may be facing, especially in light of I.C. § 19-304(1), and the knowledge of the parties that Ms. Shea had residences in both Kootenai and Ada County.² However, recent case law which dealt with the enforcement of a plea agreement, *State v. Peterson*, 148 Idaho 593, 226 P.3d 535 (2010), suggests this burden does not lie only with defense counsel.

Here the prosecution understood what Peterson believed the plea agreement to be, and took the benefit of that contract in allowing Peterson to plead guilty and complete his probation. Having taken that benefit with the knowledge that Peterson believed the guilty plea was in resolution of all charges arising from the August 20, 2003, arrest, the prosecution cannot now deny Peterson his benefits under that contract. As was noted by the Ninth Circuit Court of Appeals in *United States v. Krasn*, 614 F.2d 1229, 1234 (9th Cir.1980), in some cases the duty of the prosecutor to act in good faith throughout the plea bargaining phase includes an obligation to inform the defendant of other charges which may be filed. In light of the fact that the felony charge had previously been dismissed, and the statement made by Peterson's counsel about the scope of the plea agreement, this was clearly such a case.

Id. at 593, 597, 226 P.3d 535, 539 (2010). *Peterson* is distinguishable from the case at hand because the charges against Peterson were all filed from one prosecuting attorney's office.

² This Court is not in disagreement with this statement insofar as it does appear that the initial defending attorney in this matter could have acted in a manner that potentially could have prevented the case currently before the Court. However, this Court does not find that this duty lies with defense counsel alone.

However, in light of the facts of this case and the application of I.C. § 19-302(1), the prosecutor in Ada County may have had a duty to inform the defendant of the fact that other charges could be filed or be pending in Kootenai county regarding the Petitioner's pattern of behavior which involved five months of phone calls that violated the no contact order.

There is not adequate case law in the State of Idaho to say with distinction that all prosecutors in this state are bound by plea agreements made by different prosecutors and deputy prosecutors in the various offices located in different counties in this State.³ However, based upon the specific facts and circumstances of this case, it is clear that there was an ambiguous term in the plea agreement reached in Ada County.

The record establishes the Petitioner's actions involved five months of continuous phone calls made by the Petitioner to the protected person and recordings of all twelve phone calls were provided to the Ada County Court at sentencing. Thus, it is understandable that when the Petitioner entered into the plea agreement, he believed it would resolve any potential criminal liability for the totality of his actions. It is reasonable that the Petitioner would have considered the plea agreement to bind all prosecutors in the State of Idaho. Thus, limited to the facts and circumstances of this case, the ambiguity must be interpreted in favor of the Petitioner.

Ambiguities in a plea agreement are to be interpreted in favor of the defendant. "As with other contracts, provisions of plea agreements are occasionally ambiguous; the government 'ordinarily must bear responsibility for any lack of clarity.'" *United States v. De la Fuente*, 8 F.3d 1333, 1338 (9th Cir.1993) (quoting *United States v. Read*, 778 F.2d 1437, 1441 (9th Cir.1985)). "[A]mbiguities are construed in favor of the defendant. Focusing on the

³ The broader issue of whether one prosecutor in the state can bind other prosecutors in a plea agreement is a determination which must be left to the higher courts of this State. This Court recognizes that the plea agreement process is unique to each criminal case and each defendant, thus, due care must be taken in making such a broad assertion. The facts of this case are unique because the crime involved, violation of a no contact order as a result of placing phone calls, can involve more than one venue. The determination of this Court is limited to the unique circumstances of the case at hand.

defendant's reasonable understanding also reflects the proper constitutional focus on what induced the *defendant* to plead guilty.” *De la Fuente*, 8 F.3d at 1337 n. 7.

State v. Peterson, 148 Idaho 593, 596, 226 P.3d 535, 538 (2010)(emphasis in original).

“Contractual terms that are implied by the plea agreement, as well as those expressly provided, must be considered by the Court.” *State v. Doe*, 138 Idaho 409, 410-411, 64 P.3d 335, 336-337 (Ct. App. 2003), *citing United States v. Bunner*, 134 F.3d 1000, 1003 (10th Cir. 1998).

The Petitioner is entitled to relief, based upon the determination that there was an ambiguity in the plea agreement, and construing this ambiguity in favor of the Petitioner. In similar cases, relief is typically in the form of either specific performance of the plea agreement, or allowing a defendant to withdraw the guilty plea.

It is well established that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 499, 30 L.Ed.2d 427, 433 (1971). This principle is derived from the Due Process Clause and the fundamental rule that, to be valid, a guilty plea must be both voluntary and intelligent. *Mabry v. Johnson*, 467 U.S. 504, 508–09, 104 S.Ct. 2543, 2546–47, 81 L.Ed.2d 437, 442–43 (1984); *State v. Rutherford*, 107 Idaho 910, 913, 693 P.2d 1112, 1115 (Ct.App.1985). If the prosecution has breached its promise given in a plea agreement, whether that breach was intentional or inadvertent, it cannot be said that the defendant's plea was knowing and voluntary, for the defendant has been led to plead guilty on a false premise. *State v. Jones*, 139 Idaho 299, 301–02, 77 P.3d 988, 990–91 (Ct.App.2003). In such event, the defendant will be entitled to relief. *Fuhriman*, 137 Idaho at 744, 52 P.3d at 889. As a remedy, the court may order specific performance of the agreement or may permit the defendant to withdraw the guilty plea. *Santobello*, 404 U.S. at 263, 92 S.Ct. at 499, 30 L.Ed.2d at 433; *Jones*, 139 Idaho at 303, 77 P.3d at 991.

State v. Wills, 140 Idaho 773, 775, 102 P.3d 380, 382 (Ct. App. 2004). The appropriate remedy in this case requires that specific performance of the plea agreement be applied.

The Petitioner entered into the guilty plea in CR-MD-2009-0016878 with the intent of resolving all potential criminal charges which had arisen from the Petitioner's course of conduct

which involved making numerous telephone calls to Ms. Shea, in violation of the no contact order. Thus, the charges filed in Kootenai County should be dismissed, and the judgment against the Petitioner vacated. The decision of the magistrate court is reversed and the matter is remanded to the magistrate court for purposes of carrying out this directive.⁴

CONCLUSION

The Petitioner engaged in a course of conduct which involved several violations of a no contact order which was in place to protect Robyn Shea, and issued in Ada County, Idaho. Specifically, the Petitioner repeatedly attempted to contact Ms. Shea by telephone, and left messages for Ms. Shea on her cell phone. These phone calls were placed over a period of five months. Eleven of the phone calls were received when Ms. Shea was in Kootenai County, and one of the phone calls was received while Ms. Shea was in Ada County. The Protection Order was filed in Ada County on March 4, 2009. One count charging violation of the protection order was filed in Ada County on September 10, 2009. Twelve counts charging violation of the protection order were filed in Kootenai County on December 7, 2009. The Ada County case was resolved by way of plea agreement on February 17, 2010.

The issue before this Court is whether the prosecutor in Kootenai County was bound by the no further prosecution term of the plea deal between the Petitioner and the prosecutor in Ada County. There is an ambiguity in the case, namely, whether the party "State of Idaho" is limited only to the prosecutor who entered into the plea agreement. Construing the ambiguity in favor of the Petitioner, the appropriate remedy in this case is requiring specific performance of the plea agreement.

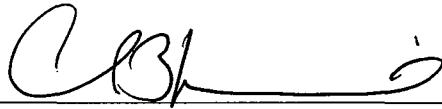
⁴ Because the matter has been reversed based upon the first issue on appeal, it is unnecessary for this Court to consider the second matter.

ORDER

The magistrate's determination in the foregoing matter is hereby REVERSED and REMANDED, with direction to vacate the judgment entered in the foregoing misdemeanor matter.

IT IS SO ORDERED.

Dated this 17th day of March 2012.

A handwritten signature in black ink, appearing to read 'C B Kerrick', written over a horizontal line.

CARL B. KERRICK - District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing APPELLATE OPINION AND ORDER was:

_____ hand delivered via court basket, or

~~faxed~~ and mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 20th day of March, 2012, to:

Sarah Sears
Deputy Public Defender
400 Northwest Blvd
Coeur d'Alene ID 83814

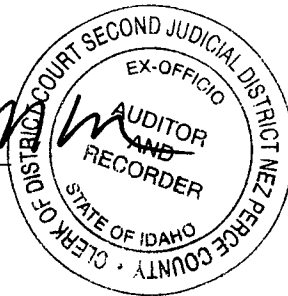
Wes Somerton
Deputy Prosecutor
816 Sherman Ave, Suite 4
Coeur d'Alene ID 83814

Honorable Barry E. Watson
P O Box 9000
Coeur d'Alene ID 83816

PATTY O. WEEKS, CLERK

By


Deputy



original

STATE OF IDAHO } ss
 COUNTY OF KOOTENAI }
 FILED: 4/10/12
 AT 10:55 O'CLOCK A.M.
 CLERK, DISTRICT COURT
Aileen Hoffman
 DEPUTY

LOGGED April 9, 2012 AT
10:31 P.M. LEWISTON, IDAHO
Carl B. Kerrick
 CARL B. KERRICK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NO. CR 2009-24916
Plaintiff/Respondent,)	
)	
v.)	
	)	REMITTITUR
CAREY MITCHELL BAKER,)	
)	
Defendant/Petitioner.)	
_____)	

TO: MAGISTRATE'S DIVISION, FIRST JUDICIAL DISTRICT, COUNTY OF
 KOOTENAI

This Court issued an Appellate Opinion on the appeal in this case on March 19, 2012. It
 has now become final. Therefore,

It is HEREBY ORDERED that the Magistrate's Division shall forthwith comply with the
 directive of the Appellate Opinion, if any action is required.

Dated this 9th day of April 2012.

Carl B. Kerrick

 CARL B. KERRICK—District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing REMITTITUR was:

_____ hand delivered via court basket, or

~~faxed~~ and mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this day of 4-9 2012, to:

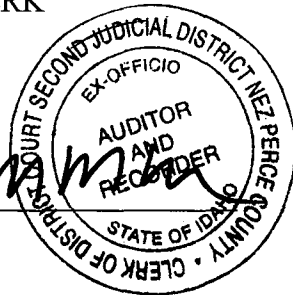
Sarah Sears
Deputy Public Defender
P O Box 9000
Coeur d'Alene ID 83816

Wes Somerton
Deputy Prosecutor
916 Sherman Ave, Suite 4
Coeur d'Alene ID 83814

PATTY O. WEEKS, CLERK

By _____

Deputy



STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ¹⁷SS

LAWRENCE G. WASDEN
Attorney General
State of Idaho

2012 APR -9 PM 2:00

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

CLERK DISTRICT COURT
[Signature]
DEPUTY

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

3/31

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO)	
)	
Plaintiff-Respondent-Appellant,	)	Case No. CR-2009-24916
)	
vs.	)	NOTICE OF APPEAL
)	
CAREY MITCHELL BAKER,)	
)	
Defendant-Appellant-Respondent.)	
)	

TO: CAREY MITCHELL BAKER, THE ABOVE-NAMED RESPONDENT, SARAH SEARS, KOOTENAI COUNTY PUBLIC DEFENDER'S OFFICE, 400 NORTHWEST BLVD., COEUR D'ALENE, IDAHO 83816, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

- The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the APPELLATE

NOTICE OF APPEAL - 1

[Handwritten notes]
4-23-12

OPINION AND ORDER, entered in the above-entitled action on the 19th day of March 2012, by the Honorable Carl B. Kerrick.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. Preliminary statement of the issue on appeal: Did the district court err on intermediate appeal by reversing eleven convictions for violating a no-contact order on the basis that a prior plea agreement in a different case in a different county had resolved the charges at issue?

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

5. The appellant requests that the transcript prepared for the intermediate appeal be supplied to the Idaho Supreme Court.

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

7. I certify:

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

NANCY TOWLER
Court Reporter
Nez Perce District Court
PO Box 896
Lewiston, ID 83501


(b) Arrangements have been made with the Office of the Kootenai County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

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

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

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

DATED this 9th day of April 2012.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 9th day of April 2012, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE CARL B. KERRICK
Nez Perce District Court
PO Box 896
Lewiston, ID 83501

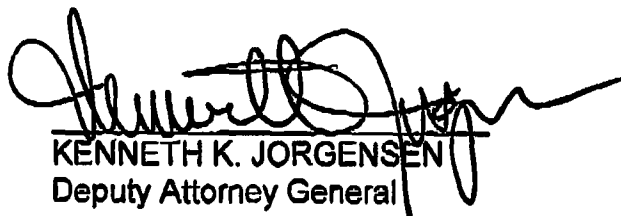
THE HONORABLE BARRY E. WATSON
Kootenai County Magistrate Court
PO Box 9000
Coeur d'Alene, ID 83816-9000

WES SOMERTON,
Deputy Coeur d'Alene City Attorney
710 E. Mullan Avenue
Coeur d'Alene, Idaho 83814

SARAH SEARS
Kootenai County Public Defender's Office
400 Northwest Blvd.
Coeur d'Alene, Idaho 83816

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

NOTICE OF APPEAL - 4

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO	)	SUPREME COURT
	)	39877
Defendant/Appellant	)	CASE NUMBER
	)	CR 2009-24916
VS.	)	CLERK'S CERTIFICATE
)	
)	
Carey Mitchell Baker)	
<u>Plaintiff/Respondent</u>)	

PLAINTIFF'S EXHIBIT NO. 1 (FILED ON 10-8-10)
 PLAINTIFF'S EXHIBIT NO. 2 (FILED ON 10-8-10)
 DEFENDANT'S EXHIBIT A & B CD'S (FILED 10-8-10)
 DEFENDANT'S EXHIBIT A (FILED ON 2-1-11)
 DEFENDANT'S EXHIBIT B (FILED ON 2-1-11)
 DEFENDANT'S EXHIBIT C (FILED ON 2-1-11)
 PLAINTIFF'S EXHIBIT NO. 1 (FILED ON 2-1-11)
 PLAINTIFF'S EXHIBIT NO. 2 CD (FILED 2-1-11)
 TRANSCRIPT – FIRST APPEARANCE, MOTIONS HEARING, JURY STATUS
 HEARING, AND JURY TRIAL “EXCLUDING JURY VIR DIRE” (FILED 3-30-11)
 TRANSCRIPT – SENTENCING HEARING (FILED 5-10-11)

I, Amanda McCandless Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28. I further certify that the following will be submitted as exhibits to this Record on Appeal:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this day of May 23, 2012

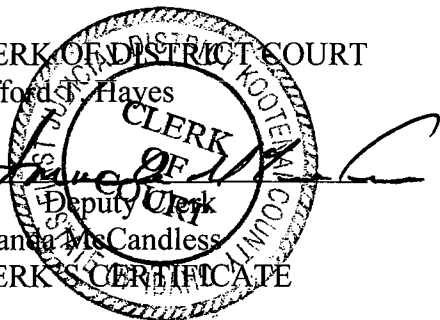
CLERK OF DISTRICT COURT

Clifford J. Hayes

By:

Amanda McCandless

CLERK'S CERTIFICATE



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO
Defendant/Appellant

VS.

Carey Mitchell Baker
Plaintiff/Respondent

SUPREME COURT 39877

CASE CR2009-24916

CERTIFICATE OF SERVICE

I, Amanda McCandless, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the Clerk's Record to each of the attorneys of record in this cause as follows:

Ms. Sara Sears
Public Defender
400 Northwest Blvd.
Coeur d'Alene, ID 83814

Attorney for Appellant

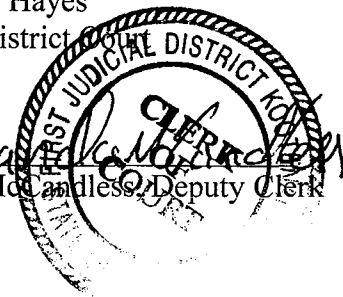
Mr. Lawrence Wasden
Attorney General
State of Idaho
700 W. Jefferson # 210
Boise ID 83720-0010

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 23rd day of May 2012.

Clifford T. Hayes
Clerk of District Court

By 
Amanda McCandless, Deputy Clerk



CERTIFICATE OF SERVICE