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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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|---------------------------------------|---|---------------------------------------|
| RICHARD A. LEAVITT, |) | CASE NO. CV-93-0024-S-BLW |
| |) | |
| Petitioner, |) | CAPITAL CASE |
| |) | |
| vs. |) | AFFIDAVIT OF DAVID Z. NEVIN IN |
| |) | SUPPORT OF MOTION TO |
| A.J. ARAVE, Warden of the Idaho State |) | RECONSIDER EMERGENCY |
| Maximum Security Prison, |) | MOTION FOR ORDER TO SUBMIT |
| |) | EVIDENCE FOR TESTING AND FOR |
| Respondent. |) | ORDER SHORTENING TIME FOR |
| _____ |) | RESPONSE |

David Z. Nevin, being duly sworn, deposes as follows:

1. I am one of the attorneys of record for the Petitioner, Richard A. Leavitt.
2. On Wednesday, May 23, 2012, counsel for the Respondent, Mr. Lamont Anderson, sent to me by fax a report from Idaho State Police Forensic Services, P.O. Box 700, Meridian, ID 83680-0700 (attached as Exhibit A). These reports apparently document testing performed

at the request of the Blackfoot Police Department between April 17, 2001 and April 23, 2001 on evidentiary items related to this case. The testing indicates that a number of items were tested for the presence of semen, which was negative. The report also recites that blood was found on certain items, and this sentence follows: “[p]lease consult the laboratory if DNA testing is required on these items.” Exhibit A, p. 2. It is therefore apparent that DNA testing was not performed on the blood found on these items.

3. On Wednesday, May 23, 2012, I also visited Mr. Leavitt where he is being held at the Idaho Maximum Security Institution’s “F Block,” a special isolation area removed from his usual housing unit in anticipation of his execution presently set to occur on June 12, 2012. At F Block Mr. Leavitt is actively observed 24 hours per day by the prison guard force.

4. At the time I met with Mr. Leavitt I was accompanied by Charles R. Honts, Ph. D., a psychology professor at Boise State University with an expertise in polygraphy. Dr. Honts accompanied me pursuant to this Court’s Order granting Petitioner’s Emergency Motion for Access to Petitioner by Expert (Dkt. 329), and for the purpose of administering a polygraph examination to Mr. Leavitt. Pursuant to the Order we had arranged in advance with the IMSI Warden’s office for Dr. Honts to administer the polygraph exam, including describing in detail each item of equipment to be relied upon by Dr. Honts during administration of the exam.

5. Dr. Honts is perhaps the foremost polygrapher in the United States. His Curriculum Vitae is attached as Exhibit B to this affidavit. Dr. Honts reports that he posed three questions to Mr. Leavitt: Did you stab Danette Elg? Did you remove Danette Elg’s internal genitals? Were you present when Danette Elg was stabbed? To each of these questions Mr. Leavitt

answered, “no.” *See*, Report of Charles R. Honts, Ph. D., 23 May 2012, attached as Exhibit C to this Affidavit, at p. 2. Dr. Honts used a Stoelting CPSPRO digital polygraph instrument running CPSPRO software, Ver. 1.02, and he also evaluated the examination with the “numerical scoring criteria and procedures developed and validated at the University of Utah. That method of evaluation was the subject of numerous scientific studies and represents the evaluation method with the strongest scientific validation.” *Id.*

6. Dr. Honts concluded that Mr. Leavitt’s answer to each question was truthful, with a probability of truthfulness of 0.927, meaning a statistical likelihood of 927 out of 1000. *Id.*

7. Dr. Honts’s polygraph was not in any sense private or secret. Dr. Honts is well known as a polygrapher, and the fact that he was administering a polygraph was known to the State, both before and after Dr. Honts openly conducted the exam at F Block. If counsel had not immediately made the test results available, this would have provided silent confirmation that Mr. Leavitt had failed. Particularly for this reason, Mr. Leavitt’s passing the polygraph examination provides eloquent confirmation that he is not Danette Elg’s killer, and that he is, on the contrary, innocent.

This ends my affidavit.

DATED this 24th day of May, 2012.

/s/

David Z. Nevin

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