

Judge hears Torey Adamcik's plea for new trial or new sentencing in murder of Cassie Jo Stoddart

Idaho State Journal: Oct. 18- Debbie Bryce

POCATELLO — Dennis Benjamin, attorney for convicted murderer Torey Adamcik, argued Friday that his client should be granted a new trial or at least a new sentencing for his role in the murder of Cassie Jo Stoddart in 2006. Bannock County deputy prosecutor Ian Service asked for summary dismissal of the case and said the defense in Adamcik's murder case did not fall below standards. Sixth District Judge Mitchell Brown will now review the motions in the case and will either set an evidentiary hearing or issue a summary dismissal of the claim. There is no set date for the decision. Adamcik was 16 when he and Brian Draper were charged with killing Stoddart, their classmate and friend. Benjamin asserts that Adamcik's defense team was ineffective and the sentence, life in prison without the possibility of parole, is cruel and unusual punishment. Service argued that Adamcik's defense team, which included Aaron Thompson, Greg May and Bron Rammell of Pocatello, acted responsibly and provided a solid, reasonable defense for Adamcik. Service also argued that the Idaho Supreme Court upheld the conviction and sentence of both Adamcik and Draper during the criminal appeal process. Benjamin is a partner in the Boise firm of Nevin, Benjamin, McKay and Bartlett and specializes in criminal defense and post-conviction appeals. Benjamin argued that Adamcik's defense team did not produce expert testimony to show that just one knife was used in the killing of Stoddart and they did not attempt to obtain the two weapons taken into evidence. "Judge Peter McDermott would have granted them access for the experiment," Benjamin argued. Stoddart sustained 29 wounds during the attack, medical reports said all fatal wounds were made with a knife with serrated blade that was associated with Draper. Benjamin said Adamcik's defense did not introduce evidence that could prove that Adamcik was not responsible for the fatal wound. The defense lawyer also noted that there was no accomplice option in the jury instructions and Benjamin contends that a plea offer of 30 years fixed was once on the table, but never presented to Adamcik. Citing precedents set in the matter, Benjamin said juveniles like Adamcik and Draper are less culpable because they have less developed character and are immature. He said McDermott mandated the sentence of life without parole, but there was no substantial evidence that Adamcik stabbed Stoddart, or that if he did, that he inflicted the fatal wound. "Did Draper or (Adamcik) do the actual killing," Benjamin said. Benjamin also stated that evidence collected during a search of Adamcik's home, including a computer tower should have been suppressed. He also suggested that part of an interview with Adamcik, including a segment where he confessed to his father, should not have been admitted as evidence in the case. Service read statements from Rammell who said all plea deals in the case were rejected by Adamcik and his family. "They made it clear, it was acquittal or nothing," Rammell said. Service noted that a video made by Adamcik and Draper following the killing shows Adamcik planning their alibis and telling Draper to get rid of the clothing and knives. It was Draper who led investigators to the stash of evidence buried south of Pocatello. "The Supreme Court upheld the conviction. It is unnecessary for the state to prove that Adamcik inflicted the fatal wound," Service said. He said that four search warrants were issued for the Adamcik house and all were signed by a judge with probable cause. Service said that Idaho provides discretion to judges and considering that Adamcik's sole purpose for killing Stoddart was to achieve fame as a serial killer, the sentence is appropriate. When he handed down the sentence in 2007, McDermott said he believed that if Adamcik and Draper had not been caught and charged in Stoddart's death, they would have killed again. Stoddart's grandparents Paul and Josefina Sisneros said they believe the sentence was appropriate and they are anxious to see the appeal process come to a close. They watched Friday's proceedings flanked by about a dozen friends and supporters — at times fighting back emotions. Paul and Josefina have attended every hearing and every appeal since the conviction in 2007. The new appeal alleges that Adamcik's civil rights were violated during his trial. "Cassie's civil rights were violated permanently," Josefina said. "They just keep torturing us with this." Paul and Josefina met Draper's parents during an appeal hearing, but have had no contact with Adamcik's family. "(The Drapers) told us they were sorry and we are sorry for them too," Paul said. "We hugged them."

Drug Court Keeps Felons Out of Prison

MagicValley.com: Oct. 19- Alison Gene Smith

KIMBERLY • Jennifer Ordaz's drug of choice was meth. "I liked it," she said. After being sober 10 years, she relapsed in April 2013. She was arrested on drug and paraphernalia charges that July. "I knew the only way I would stop was in handcuffs," she said. Ordaz, 36, of Jerome, pleaded guilty to the drug charge and was sentenced to probation on condition that she complete Drug Court. The state Supreme Court started drug courts in 2001 to reduce recidivism and overcrowding of jails and prisons. A recent evaluation shows that 37 percent of Drug Court participants re-offended compared with 49 percent of probationers. Ordaz said the thought of Drug Court terrified her. "At the time, I wanted (the charges) to go away." She'd heard of others who completed the court only to go back to drugs. She was afraid of not being accepted and worried about all the requirements. But, she said, "Once I opened up, I realized I had people that trusted me and people that I could trust. Throughout the whole thing, I found you didn't have to face your addiction or fears alone." Addiction made her feel hopeless. "I thought everything I had worked for prior was gone. I had lost everything. You think, 'Well, this is it. What's the point?' You get that hopeless feeling." Ordaz and more than a dozen others graduated Wednesday night from the 5th Judicial District's Drug Court. Now she realizes she has a chance at life. The assisted living facility where she worked rehired her, and she's trying to rebuild trust within her family. "There's still life out there," Ordaz said. Drug Court requires an addict to plead guilty to a felony. A prosecutor, defense attorney or judge can make a referral. A number of factors go into whether someone is accepted: family history, employment, mental health, home life, associates and the care the person needs. The court can last 12 to 18 months, depending on how long a person needs to move through its five phases. In order to graduate, participants must be six months sober, complete all treatments, have paid the \$1,500 court cost, be employed, have a sponsor and obtain a GED if necessary. In the first phase, the addicts must come to court every week. Slowly, they are allowed to come every other week, then two or three weeks between visits with the judge. At the Oct. 8 session, District Judge John Butler, who is in charge of Drug Court, grilled a man on why he wanted in. The man said he did Drug Court as a juvenile, but it didn't stick. Asked why, he said he wanted to do "kid things," but as an adult, he knows he is responsible for his actions and their consequences. "How I participate is the most important part, I know," he said. Relapses, failing to show up or being late for court, classes or treatment all can lead to sanctions such as jail time, community service or an essay on what led to the relapse, Butler said. "Usually they relapse first in their mind," said Israel Enriquez, the new coordinator and a former probation officer for the court. Honesty is critical to success in Drug Court, all agree. Jesse Belieu Jr., 45, of Hansen, learned that first-hand. He was arrested Aug. 6, 2013, on a charge of possessing meth. He heard about Drug Court in jail. "I wanted to get out of jail," he said. "I didn't want to quit using." He was accepted but within 30 days relapsed and lied about it. Then he relapsed again. And lied about it again. He spent six days in jail, and Butler gave him 100 hours of community service. Within a month, Belieu's mother died. She had been his big supporter. Her death could have driven him back to drinking and drugs. But with the Drug Court's support, he said, he got through it. Belieu often repeats the phrase "rigorous honesty," saying it's the most important thing he took from court. Because of his past relapses and lies, not everyone believes him now when he says he's sober. He used to call his siblings only when he needed something. "Now I call and talk and say, 'How's it going?'" Belieu said he'll keep in touch with his counselors and the sober people he's discovered in treatment. "Not all my family is sober." Honesty is liberating, Belieu said. "You don't have to worry about remembering what you said." Enriquez agreed, saying it's better for participants to let Drug Court staff know when they relapse. "We'd rather hear it from the person than get a failed UA (urinalysis)," Enriquez said. "Show up, be honest and communicate." When Belieu was struggling to find work, the judge told him he had to apply for three jobs a day. He eventually was hired as a cook at Golden Corral. He said his experience doing community service at St. Edward's soup kitchen helped him get the job. The disabled veteran hadn't worked for seven years. He could survive on his disability checks and didn't see the point. Now he takes pride in his work and volunteering. He still goes to the Salvation Army, St. Edwards, 12-step meetings and an after-care program. People in recovery need help dealing with triggers and stress, he said. Being sober also has given Belieu time to enjoy his hobbies. "I'm a pretty good artist," he said. He's started building sculpture with barbed wire. Now he feels he has to make up for lost time. When he puts effort into it, Belieu said, he excels at his hobbies. "I excelled at drinking and drugging, too," he said with a laugh. When Ordaz went to treatment the first time, she said, she completed the inpatient program. This time, she said, being out in the community held her more accountable for her own recovery. "Every morning for the last year, I've had to make a phone call to see if I needed to UA," she said. Now, Ordaz believes she'll make it. "I remember that day," she said of the arrest that traumatized her and her family after 10 drug-free years. Some people call it "clapping court" or "candy court," but Drug Court is in line with goals of the criminal justice system and Justice Reinvestment Act, Enriquez said. Treatment rather than prison is the trend. "Community-based treatment, it's the wave of the future." As a probation officer, he juggled more than 90 cases at once. But Drug Court groups are small enough that things are done case by case, he said. Enriquez remembers one man who was doing well in treatment, but his home was still unfit for his children. Together, the judge, the man and Enriquez made a plan. Rather than someone doing it for him, the man learned to organize his life, Enriquez said.

New York adoption of uniform bar exam could lead other states to follow

Idaho Business Review: Oct. 21- Dolan Media Newswires

New York is considering adopting the uniform bar examination. If it does, the move could prompt others to follow in what could become implementation of a national licensing standard. The uniform bar exam is given in Alabama, Alaska, Arizona, Colorado, Idaho, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington and Wyoming. Those states include some major metropolitan areas such as Denver, Milwaukee and Seattle, but none as large as the number of test takers in New York state. The state Court of Appeals, on recommendation by the New York Board of Law Examiners, is seeking public comments on a proposal to offer a uniform bar exam with a component specific to New York laws and practices. The state could offer the uniform bar exam as early as July 2015, said Chief Judge Jonathan Lippman. "This will allow the results of the bar exam to be portable," said Judge Lippman. "It will give more job opportunities to new lawyers. It will allow them to look at different jurisdictions. In the world we live in, we think it makes a lot of sense." The uniform bar exam, prepared by the National Conference of Bar Examiners, is offered in 14 states. None are as large as New York in terms of the number of people taking the bar exam. New York had more than 15,200 candidates this year. Those passing the uniform bar exam would be able to apply for admission in any of the other jurisdictions using the same exam, expanding job opportunities for recent law school graduates and the pool of potential candidates for law firms. Judge Lippman said some states only require the uniform exam. While other jurisdictions, such as New York, may have additional requirements that would have to be met for admission to the bar, graduates would not have to take the entire test in every jurisdiction; just that state-specific portion and any other requirements, such as a character evaluation. If New York, which Judge Lippman called the gold standard, accepts the uniform bar exam, other large states such as California and Texas are expected to follow. "If we do chose to go forward, we think there will be a uniform bar exam nationally," he said. "I think that this is a major significant step. We're going to look at it very closely, but I am convinced if New York goes, we will have a uniform bar exam nationally." Dianne F. Bosse, chair of the New York Board of Law Examiners, said the uniform exam would help the profession, law firms and clients. She said it allows students to be admitted in multiple jurisdictions without waiting to take another bar exam, not to mention the additional costs of taking multiple bar exams and having employers have to wait for them to pass. She added that the uniform bar exam would give employers a larger pool of graduates to choose from and reduce the delay and uncertainty of waiting for applicants to pass the exam. "The law is really the only discipline that doesn't have a common licensing test across the country," Bosse said, noting there are basic principles, legal reasoning and lawyering skills every lawyer needs.

Barnes & Noble Calls Szanto Request a "Fishing Expedition"

MagicValley.com: Oct. 21- Alison Gene Smith

TWIN FALLS • An attorney for Barnes & Noble called the subpoena of financial, employee and other records in former College of Southern Idaho vice president Edit Szanto's lawsuit against the school a "fishing expedition." The bookseller was outraged at allegations it was conspiring with or attempting to cover up the identity of a person who sent Szanto a threatening email from the store, he said. In April, District Judge Richard Bevan issued a subpoena ordering Google to identify the person who posed as former president Jerry Beck and emailed threatening messages to Szanto. But information from Google didn't clearly identify the person who used the fictitious email account. Szanto, who worked at CSI for 17 years, was put on involuntary paid leave Jan. 2. She was vice president of student services, planning and grant development since 2007 and claims she was the subject of discrimination based on her gender and national origin. Barnes & Noble attorney Scott Randolph said the information Szanto wants to build her case is far too broad. "She doesn't know what she will get from Barnes & Noble," he said at a hearing Monday on a motion to quash the subpoena. "She just believes there is some evidence that could be relevant to the case." The bookseller is a non-party in the case and doesn't have an interest in the details, but doesn't want to set a "dangerous precedent," by releasing sales and employment records among other items, before a suit is even filed, he said. Once Szanto actually files a suit, she can perform discovery in the case and could get the records, Randolph argued. Barnes & Noble agreed to release information if a small list of names was provided, he said, "but it never ever agreed that it could just have this fishing expedition of it's financial records." Szanto's attorney, Tara Martens-Miller said Barnes & Noble asked for a list of three or four people who are suspects in sending the email. "It's impossible because we don't have a list of suspects," she said. She said Barnes & Noble is the only party who might have the information leading to the person's identity. Google and AT&T have turned over all their information but no identification can be made. Identifying people who were in the store, including customers and employees "leads us in the right direction," Martens-Miller. She argued that they have only asked for information from about four hours on two specific days. "It's not a large amount of data," she said. With so many issues at play, Bevan said he would issue a written opinion in the case. He did not give a date for when he would issue the opinion, but noted "time is of the essence."

ACLU Represents Declo High Student in Discrimination Case

MagicValley.com: Oct. 21- Laurie Welch

DECLO • A Declo student and her mother have filed a civil rights complaint against Declo High School and the Cassia County School District alleging discrimination based on sex and religion, the Idaho American Civil Liberties Union said Monday. Senior Sierra Norman and her mother, Janeil Norman, took her complaints to the ACLU after Sierra was denied the opportunity to run for student body president. School officials said she was taking too many dual-credit classes to qualify as a full-time student. Sierra wanted to win the leadership role to help her gain acceptance to Harvard University or another Ivy League school. "I want to make sure no other student has to go through what I did with Declo High School. While I will not be able to positively impact my school as student body president, I can stand up for student's rights and impact schools all across Idaho," Sierra said in a Monday press release from the ACLU. The ACLU is representing the Normans in the complaint. The complaint seeks to remedy the violations of Sierra's rights by the school district for failing to protect her against discrimination, according to the ACLU's release. "Sierra and I thought for sure that we could resolve this easily and amicably with just a candid, proactive conversation," said Richard Eppink, ACLU of Idaho legal director. "We feel forced to now file a civil rights complaint with the school district to make sure Sierra has a fair chance at getting some justice, and to make sure this never happens again." Cassia County School District officials say the School Board met with the Normans and addressed their complaints. The board trustees asked all high schools in the district to form committees to review policies on online classes and student full-time enrollment status. That didn't satisfy the Normans. The civil rights complaint asks for an independent investigation, a meeting with school officials, a written apology, revisions of the school policy and training on fair treatment for school officials. "We're really happy that this is moving forward," Janeil Norman said Monday. The ACLU was "on the fence about the case and I'm not sure what pushed them over in this direction, but we are really pleased." Norman said going to school has been difficult for her daughter since the incident this spring. Sierra wants a written apology and changes in school policy to prevent different treatment of students who take online classes. The complaint also asks the district to change its policies to prevent exceptions or prevent the favoring of students participating in The Church of Latter-day Saints seminary or other non-curricular religious activities. Sierra submitted the necessary paperwork to run for election, but school officials refused to put her name on the ballot because she was not enrolled in at least six on-campus classes. The only other student who petitioned to run for the office was not enrolled in six on-campus classes for credit, according to the ACLU press release. The complaint alleges the difference was that the other student was male and took both online classes and an LDS seminary class. Sierra is female and was not enrolled in a religious-release class. While school officials based their decision to exclude Sierra from the student body ballot, claiming she was not a full-time student, school records show she is a full-time student, and the district receives state funding based on her full-time status, the ACLU release said. Sierra is enrolled in both advanced placement and college credit classes through the Idaho Digital Learning Academy, which she took while at the school library. "Our investigations left us more troubled than when we first heard of this case," said Leo Morales, ACLU of Idaho interim executive director. The ACLU asked to meet with school district officials to discuss the case and concerns over school policies, but district lawyers refused to meet, the ACLU said. "The board will follow the procedures set forth in the complaint," said Debbie Critchfield, spokeswoman for the school district. Critchfield said the district's board visited with Sierra and her mother in executive session regarding the issue last spring. Afterward, Critchfield said the board requested that all high schools form committees that include student representatives to review each school's constitution regarding online classes and what constitutes a full-time student. She said Declo High has already formed a committee to work on updating policy. "With increased academic opportunities for students beyond the traditional classroom setting, a review of student academic requirements is appropriate and timely," Critchfield said in a press release. The school has 10 working days to respond to the complaints and identify actions the school will take or has taken to resolve the issue. An investigation with an issue of finding must be completed within 90 days of the complaint, Morales said.

Osburn murder trial delayed

Coeur d'Alene Press: Oct. 21- David Cole

WALLACE - The first-degree murder trial of a 51-year-old Osburn woman, which was set to begin in one week, has now been moved to January. Jackie Reed, accused of killing her husband, Gregory Reed Sr., in the spring of 2012 and leaving his body in their Osburn trailer home for 15 months, was released after posting her bond in December of last year. She currently is living with family and is subject to electronic monitoring. Shoshone County Prosecutor Keisha Oxendine has said in court that Jackie Reed allegedly shot and killed her husband in April or May of 2012. Authorities discovered his body in July 2013 at the Leisure Acres trailer home community. Police obtained search warrants following missing person reports. Oxendine told The Press Monday that the jury trial planned for Oct. 28 is now scheduled for Jan. 27 in Wallace. Coeur d'Alene attorney Staci L. Anderson filed a request for a continuance on Oct. 10, saying in court documents that she has never been lead defense counsel in a murder trial before. She also said a merger and office move involving her legal firm had affected her preparation, and her now-former paralegal had "performance issues." That paralegal was fired in May 2014, and she didn't hire another one until July. "From May 2014 until July 2014, I did not have my own paralegal, but was having to utilize another partner's paralegal when she was available," Anderson wrote. "Due to the above unforeseen circumstances, I was unable to adequately spend the time needed to prepare for the trial of Ms. Reed," Anderson wrote in her affidavit in support of her motion for a continuance. She went on to say she has not secured any expert witnesses for her client, and she has not prepared the appropriate pretrial motions. "(Reed) is indigent and cannot afford to hire experts needed to properly defend this case," Anderson wrote. "I believe that a continuance is necessary to prevent ineffective assistance of counsel," Anderson wrote. First District Court Judge Fred Gibler granted the request. Anderson couldn't immediately be reached for comment Monday. Oxendine declined to comment about the continuance. Coeur d'Alene defense attorney Anne Taylor has "agreed to assist" Anderson with Reed's defense, according to court documents. "In reviewing the files for Ms. Reed, it is imperative that we hire an investigator and a minimum of two expert witnesses to proceed with effectively defending Ms. Reed," Taylor wrote in her own affidavit on Oct. 10. "At this time I have already made contact with an investigator and one expert witness."

Minor flood causes major havoc at NPC courthouse

Lewiston Tribune: Oct. 24- Joel Mills

Liquids leaking from the third floor onto the second-floor offices of the Nez Perce County Courthouse are collected in wastebaskets at several places Thursday. Some paper records and computers were covered for protection. A plumbing malfunction caused minor flooding Thursday morning at the Nez Perce County Courthouse, another incident in a growing list of problems in the aging building. Commissioner Douglas Havens, who oversees building maintenance for the county, said an unknown person used a toilet that was supposed to be off limits on the decommissioned third floor. The toilet's valve got stuck sometime Thursday morning, causing water to overflow and run through the floor into the 2nd District Court offices below, he said. No courthouse employees admitted to using the toilet, and Havens said it is possible an outside contractor working in the building did. "We think it was a guy that was working on a communications antenna up on the roof," he said. "We're pretty sure it was an isolated incident from that toilet running. The water to it is turned off now. It should have been turned off before. I don't know why it wasn't." Nez Perce County Clerk-Auditor Patty O. Weeks said some of the water from the third floor dampened some court files on one storage shelf. Several wastebaskets were clustered outside 2nd District Judge Jeff M. Brudie's office, collecting water that still dripped from the ceiling hours after the water had been shut off. The office carpet had several large damp areas. Soggy, crumbled ceiling tiles were mounded in trash cans, an indication of the amount of water that spilled from above. There was even a wastebasket catching drips on the judge's bench in Courtroom No. 2, which is down a hall from the clerk's office. The water in the courtroom - combined with the sudden, unexpected presence of water in a toilet in one of the old third-floor jail cells - led Weeks to wonder if more plumbing disasters are coming. And she expressed frustration at the frequency of such incidents. Just two months ago, a sewer backup partially flooded the basement, and an air conditioning failure caused a similar flood in the 2nd District Court office. Havens said the county just spent \$5,000 on a structural inspection of the courthouse, including sending cameras into its sewer lines. But he said the inspection did not include a pipe-by-pipe study of the plumbing system, so it's not known whether future problems are lurking. "Unfortunately, there's no way to shut the water off to just the third floor," Havens said, noting several valves would have to be installed to isolate that part of the building. He said county employees were warned to not use the facilities on the third floor, "But we have all kinds of contractors working on unrelated things, and they don't get our memos." Weeks said a disaster restoration company was on-site Thursday afternoon to extract the water and sanitize affected areas of the building. She also said the Idaho Counties Risk Management Program, the county's insurance provider, would pay for the damage. "They are piggybacking from the previous event, so we will have met our deductible, and we will be able to take care of this," Weeks said.

ACLU says Hitching Post is a religious corporation

Lewiston Tribune: Oct. 24- Kimberlee Kruesi

BOISE - The American Civil Liberties Union of Idaho says it will not challenge a northern Idaho wedding chapel's refusal to conduct gay marriages because the chapel falls under a religious exemption. Interim Executive Director Leo Morales said in a news conference Thursday the Hitching Post became a religious corporation in Idaho nearly a month ago. Morales said the ACLU believes that under its new business classification, the chapel does not have to comply with the city of Coeur d'Alene's ordinance banning discrimination based on sexual orientation because the chapel only provides religious services. Unlike most churches, which are tax-exempt and private organizations, a religious corporation is still considered for-profit. However, the legal organization will reconsider not challenging the chapel if it begins offering secular services, such as providing flowers, cake or holds nonreligious marriage ceremonies. "This situation is very nuanced, it's also very new for us and for most of the attorneys involved in the case," he said. A Christian religious rights legal organization filed a federal lawsuit last week against the city contending the chapel could be compelled to perform gay marriages under the city's anti-discrimination ordinance. In a letter to Alliance Defending Freedom, Coeur d'Alene attorney Mike Gridley said wedding chapel owners Don and Lynn Knapp would be exempt from the city ordinance if they were operating as a nonprofit religious organization. Gay marriage became legal in Idaho Oct. 15. Six days later, Gov. C.L. (Butch) Otter filed a petition asking for an 11-judge review of the federal court's decision to overturn Idaho's ban on same-sex marriage. Otter listed the Hitching Post as a business that would be harmed if the "traditional" definition of marriage was changed in Idaho.

MEET THE PHLEBOTOCOPS Nampa Police Department is one of few in the area whose officers can draw blood from DUI suspects

By JOHN FUNK October 17, 2014 Idaho Press-Tribune

NAMPA — The Nampa Police Department has a tool few other local agencies have to handle driving under the influence offenses: 11 officers trained in phlebotomy at the College of Western Idaho. That, Nampa Police Sgt. Jamie Burns said, means they're qualified to draw blood samples from DUI suspects. Blood draws have some advantages over mandatory alcohol breath tests, Burns said. It's impossible to perform a breath test on an uncooperative subject. Those who don't want to blow into the device just won't do it. "We can't force someone to give us a breath test, obviously," Burns said. "We can't squeeze their stomach and force air out of their lungs and make them give us a breath sample." But with warrant from a Canyon County judge and enough officers to keep the situation under control, NPD's phlebotomists can get a blood sample every time — even if the subject is unwilling. If it takes a pair of handcuffs and multiple officers to hold the suspect down, the judge's order permits that. The process is quick, Nampa Police Officer Doug Harward said. It typically takes about 30 seconds from the moment the vein is pierced until two small tubes — one for the prosecution and one for the defense — are filled via vacuum suction. And it's mostly painless — just a quick, light sting in the crook of the elbow — but that doesn't mean every subject handles it well. "Typically the person that's sitting there doesn't want to be there any more than we want to have them there," Harward said. "But there's really no risk of injury. If we go to one side of your arm, there's a nerve ending that runs in there. It we tap a nerve, that causes pain, but not an injury. We're poking a tiny hole in you, just like any doctor would do, and as soon as it comes out, your body starts recovering. That's its job." Before NPD had its own phlebotomists on staff, Burns said, DUI enforcement officers had two other options for getting blood samples: bringing in an on-call paramedic from the fire department or taking suspected drunk drivers to a local medical clinic. Both were generally willing to perform the service for free, he said, but it had its downsides. First, it was time-consuming. Not only did that mean less time a patrol officer could spend on the streets, but a suspect's blood alcohol level might change significantly between the traffic stop and the blood draw. And second, Burns said, it was potentially dangerous. Paramedics and clinic personnel aren't necessarily trained to safely deal with uncooperative, violent subjects. Doing their own blood draws also affords Nampa officers the opportunity to modify the process to their needs. For NPD's phlebotocops, it's about collecting evidence of a crime, Burns said, and their procedure reflects that. For example, medical personnel will use an alcohol-based cleansing pad to disinfect a subject's arm. It's actually a different kind of alcohol from what is found in beverages — isopropyl, not ethyl — and those who've been through high school chemistry should understand the difference. But if a DUI case goes before a jury, Harward said, it's a point of potential confusion officers would prefer to avoid, so they use a non-alcoholic solution. "We don't want to put it in someone's head that it's alcohol, and we're putting it on an arm, and now we're drawing blood to get alcohol levels out of it," Burns said. "Unfortunately, people aren't educated on the fact that they're two different kinds of alcohol."

Judge orders Alison Yancey held on \$50,000 bond Suspect is being held for her participation in an incident that led to July homicide

By JOHN FUNK October 18, 2014 Idaho Press-Tribune

CANYON COUNTY — Judge Gregory Culet ruled Friburglary charge. Previously, Yancey was held on \$50,000 for the battery charge and an additional \$30,000 for the burglary charge. Yancey is suspected along with James Whitewater, Natalie Whitewater, Joshua Wasserberger women, then struck with a beer bottle by one of the men, who made a comment about hitting women. The witness told police the same man — whom he later identified as James Whitewater — asked him for a 9mm handgun he carried. He refused, he told police, but Whitewater took it anyway without his permission. Investigators found a trail of blood from the site of the initial incident to the Walgreens parking lot, the document states. Two employees of the store, taking a smoke break just outside the front door, told detectives they saw Martin bleeding from the nose and head as he approached the entrance. When they asked Martin what happened, he responded it was "just kids' drama," the employees told police. Martin declined their offer to call police, the documents state. Later, just before 2:45 a.m. Sunday, police dispatch received reports of shots fired near the Walgreens store. The caller reported seeing someone fall down by a garbage can, according to the affidavit. The responding officer found Martin still alive with a gunshot wound to the torso but had labored breathing. Martin was transported to Saint Alphonsus Regional Medical Center in Nampa, where he died from his injuries. Investigators reported finding two spent 9mm shell casings in the store's parking lot, near a trail of blood that led to where Martin was found. and Wayne Canaday of participating in the attack that ended with Martin's death in June. According to court documents, detectives also interviewed a man who described seeing Martin being beaten by two men and two day morning that Alison Yancey, charged with aiding and abetting aggravated battery in connection with the death of Pedro Martin Jr. earlier this year, will be held on a consolidated \$50,000 bond for that charge and an earlier

Caldwell man receives 30 to life for sexual abuse of a minor

By IDAHO PRESS-TRIBUNE STAFF October 18, 2014 Idaho Press-Tribune

CALDWELL — A Caldwell man was sentenced Friday to at least 30 years and up to life in prison for three felony accounts of sexual abuse of a child under 16, one felony count of lewd conduct with a minor under 16, one felony count of attempted rape and two felony counts of manufacturing sexually exploitative material. Margarito Rodriguez, 38, was arrested in December 2013 on a warrant that said Rodriguez had sexual contact with three victims under the age of 16 between January 2009 and October 2013, according to a press release from the Canyon County Prosecuting Attorney. Rodriguez also admitted that he recorded video of the sexual activity without the victims' knowledge. "Mr. Rodriguez used his position of trust with these young girls to take advantage of them for his own sexual gratification," Deputy Prosecutor Erica Kallin said. "He robbed them of their childhood and showed a total disregard for their well-being. He is a predator and a danger to the community. As a pedophile and sexual sadist, there is no doubt in my mind that he belongs behind bars for a long, long time." Rodriguez pleaded guilty to five of the felony charges on his first day in court, and a jury later found him guilty of two more counts of sexual abuse of a child under 16. Judge Christopher S. Nye ordered Rodriguez pay \$5,000 to each victim, register as a sex offender, submit a DNA sample to the Idaho database and have no contact with the victims or any other minor for 40 years.

A sexual assault victim seeks closure after assailant was never brought to trial

Post Register October 19, 2014

EDITOR'S NOTE: This article contains graphic material that may not be suitable for some readers. "Jane" and "John" are not the real names of the victim or the reported perpetrator in this article. The Post Register takes care not to identify victims of sexual assault and "John" has not been charged with a crime. By AUBREY WIEBER awieber@postregister.com

Doubled over from excruciating pain, Jane curled up in the fetal position and blacked out from the blood loss brought on by a sexual assault. She lost a quarter of her blood supply by the time she got to the emergency room. She could have died. Dr. Margaret Huggins was on call that night at Eastern Idaho Regional Medical Center. As medical director for the Sexual Assault Nurse Examiner's eastern Idaho district, Huggins sees a lot of victims. She said she is peripherally involved with about three rape cases per week. Even so, four years later, Huggins recalls Jane's injuries as "right up there with one of the worst that I've seen in an adult." Jane's life has never been the same. The night left a dark scar, both mentally and physically, and medical bills totalling nearly \$20,000. John has not been charged. The case illustrates the difficulties of bringing rape cases to trial. One drink leads to another. The idea was to let loose a little, to have some fun and escape the stress of life and a relationship on the rocks. Jane, 36, is a tall brunette and the mother of a teenage daughter. She met John at the restaurant where she worked. He asked to talk with her and, after her shift ended, the two had Jane left to go home alone at 10:30 p.m. Four minutes later, John called her and asked to have more drinks. They met up again at a hotel bar. In a police report, Jane said the drinks kept coming at John's request. Feeling inebriated, she headed for the bathroom. When she walked out of the stall, John was standing there. Jane said he pushed her back into the stall, started kissing and fondling her forcefully. John said it was reciprocal, that she'd been rubbing her hand on his crotch. According to the incident report, a bar employee walked in and told the two it was time to leave. A friend of Jane's, who also was at the bar, called her a cab, but John asked that the cab be called off. He said he would drive Jane home. "I didn't know what was going on," Jane said. "I just wanted to go home." 'Searing pain' Jane said he drove his truck to a parking lot behind a business on Broadway Street. That's where she says he assaulted her, forcing a foreign object into her vagina. The object caused a laceration more than an inch wide running from her hymen ring to her cervix, a distance of about 4 inches. "There was just so much blood loss and such a big laceration," Huggins said. "You don't usually see that big of a laceration. It definitely is the type of laceration that would come from some foreign object. It just wouldn't come from normal intercourse." Drunk and injured, Jane didn't know what was happening. John told her it was just her period starting and drove her to the hospital. When they arrived there at 2:46 a.m., she was naked except for one black sock and was "covered head to toe in blood," the police investigation report said. Later that day while being interviewed by a Sexual Assault Forensic Examiner nurse, Jane said the assault "felt like a fist or knife going inside her." The evidence builds. The Idaho Falls Police Department launched an investigation April 2, 2010. According to the police report, lead detective Brent Lawrence asked John if he had inserted anything other than his penis into Jane's vagina. He said no, claiming the laceration was caused during consensual intercourse when his penis didn't go in properly. When asked if there was anything in the truck that could have caused the injury, John mentioned his 5-year-old son's Power Rangers toy, which he said could have come in contact with Jane's vagina. With John's consent, detective Jeffery Pratt processed John's truck for evidence. In the report, Pratt said the vehicle showed "an obvious attempt at cleaning a large amount of blood from inside." Pratt collected 24 items from the cab of John's truck which he submitted into evidence. The majority were blood-stained. "Based on the amount of blood pooled and blood stains on items inside the vehicle it appears that severe trauma and injury to (Jane's) vagina occurred," Pratt said in the report. "This did not appear to be consistent with normal intercourse." Lawrence requested a warrant Dec. 7, 2011 for John's arrest on rape charges. It wasn't granted. Wounds that won't heal. As the investigation continued, Jane turned to alcohol to deal with the trauma and was arrested for two DUIs in the following year. The encounter with John became a wound that wouldn't heal. "This is still a huge, gaping demon that's inside of me," Jane said. "I do think about this every day. I carry this with me all the time." Jane said her case wasn't a priority for either police or the prosecutor's office. They would rather go after DUIs and drug busts, she said, than sexual assault cases. Bonneville County Prosecutor Bruce Pickett said sexual assault cases are a top priority for his office. However, he said many of the cases are complicated and that his office has an obligation only to take cases to trial if it can win. Some, he said, are taken to trial and don't end in a conviction. "Those are really tough. I've taken cases to trial and met with a victim after there was a not guilty verdict, and it's crushing," Pickett said. "It's absolutely horrifying for them because they have to come to grips with the fact that these 12 people didn't believe them." In Jane's case, Pickett said the issue was conflicting evidence. Lawrence interviewed a hotel bartender, who said Jane didn't seem intoxicated. But when Jane's friend was interviewed, she said she never had seen her so drunk. Both statements, Pickett said, could be skewed by prosecuting and defense attorneys had the case gone to trial. The burden of proof. Witness statements in the police report say the two were kissing and acting like boyfriend and girlfriend at the hotel bar. "That would be evidence that would come in," Pickett said. "He would have a defense attorney that would put in evidence (and say), 'You guys only had a couple drinks, you were making out, you were doing this and doing that.' All of that goes to the question of was this against the victim's will." Deputy Prosecutor Danny Clark said just because an arrest warrant is requested, doesn't mean the case will hold up in court. "Police work in the terms of probable cause," he said. "So, when they request charges on something, it's always based on the probable cause standard." Probable cause means a crime probably was committed. Both Pickett and Clark agree Lawrence had probable cause to request the warrant. However, Pickett said prosecutors have a higher burden of proof. They must prove the defendant is guilty beyond a reasonable doubt. Both Pratt and Lawrence refused to comment for this article. Pickett said it is difficult to decide not to bring a case to trial. Jane's case remains open and if the prosecutor's office decided to, John still could end up in a courtroom. Four years later, Pickett still recalls specific details of the case. "We feel horrible for victims," he said. "In this case, clearly, there was a lot of blood. There was something that clearly went wrong. I don't think that's even a dispute.... But that doesn't mean we can prove those elements." A struggle for Jane. Jane still is trying to put her life back together. She said she's stopped using alcohol and returned to school. But even as she works to build herself back to what she once was, she struggles to feel comfortable around men and craves closure from that night in 2010. "I haven't dealt with the whole situation," Jane said. "It just flows over. It's like a Band-Aid I'm putting on a wound that just keeps bleeding and bleeding. Part of me died that day."

Bond reduced for man charged with helping to conceal murder

By JOHN FUNK October 18, 2014 Idaho Press-Tribune

CANYON COUNTY — Jorge Garcia, one of three men suspected of helping to conceal the body of Selena Thomas, had his bond reduced from \$200,000 to \$50,000 Friday morning, by order of 3rd District Judge Gregory Culet. Garcia, 21, posted bond shortly after Culet made the ruling. He faces charges of destruction of evidence and failing to report a death to the proper authorities in connection with Thomas' death in August. His attorney, Robert Tilley, pointed out that Garcia has no prior criminal convictions — neither misdemeanors nor felonies — and was likely acting out of fear when he got involved. Garcia knew of primary suspect Alfredo Martin Martinez, Tilley told Culet, but didn't know him personally. He only knew he'd recently been released from prison for a violent felony. So when Martinez interrupted Garcia as he was playing video games with his cousin, demanding that he put on his shoes and get in the car, Garcia was inclined to do as he was told. "He was very afraid," Tilley told Culet. "He was afraid that if he were to say anything, he could be the next victim." Deputy Prosecuting Attorney Monica Morrison argued against the bond reduction, telling Culet that even if Garcia didn't participate in burying Thomas' body — he's suspected only of helping move the body from one home to another prior to its disposal near a Melba cornfield — he was still responsible for reporting what he knew to the police. Culet agreed to lower the bond but acknowledged the prosecution's concerns. Having no prior criminal history, Culet said, indicates Garcia isn't someone who struggles with the rules of society and is likely to comply with pre-trial release conditions. "We know from the probable cause affidavit that the defendant was very scared at the time," Culet said. "But that does not excuse the behavior." Culet also ordered Garcia to wear a GPS monitoring device.

Experts say prosecuting sex crimes can be difficult

By AUBREY WIEBER Post Register October 19, 2014

Intimate partner and acquaintance 'sexual assaults' pose significant challenges From 2007 to 2013, 1,042 sex crimes were reported to the Idaho Falls Police Department and Bonneville County Sheriff's Office. A total of 414 cases were cleared; 175, or about 17 percent, resulted in arrests. Teresa Baker, spokeswoman for the Idaho State Police, which issues annual crime reports for county and city police agencies, said "cleared" means law enforcement no longer is investigating a case. That could include cases turned over to a prosecutor's office, dismissed, or closed for another reason. Since Jan. 1, 2013, the Bonneville County Prosecutor's Office has filed charges on 43 sex crime cases. Twenty-one resulted in a lesser charge as the result of a plea agreement. Eight cases are pending. Deputy Prosecutor Danny Clark said charges can be amended down for several reasons, including for example, when a defendant faces multiple life sentences. Since a life sentence in Idaho means life in prison, multiple life sentences become redundant. Another reason for amending a charge would be to avoid a trial in which a child victim would have to testify. When Clark agrees to reduce a sex-crime charge, he said he tries to make sure the defendant still pleads guilty to a sex crime and therefore placed on the sex offender registry. The only time a sex crime is amended down to a misdemeanor, he said, is when evidence in the case falls apart and a felony conviction isn't plausible, he said. Julie Valentine, a nursing professor for Brigham Young University, did a BYU-funded study in Salt Lake County, Utah, to see how many rape cases ended in trial convictions. The study designated a pool of 1,657 cases where the victim was 18 or older, agreed to a police interview about the assault and had consented to a four-hour forensic examination. The study, which covered the years 2003 to 2011, randomly selected 30 cases a year. Overall, it looked at 270 cases. Ninety-four percent of the cases were not prosecuted. Of the 6 percent that were prosecuted, 5 percent resulted in a plea bargain and 1 percent ended in trial convictions. Law enforcement brought 34 percent of cases to the district attorney's office to request a warrant for arrest. Out of those 92 cases, charges were filed in 24.5 percent. Valentine said the issue of rape cases not going to trial is a result of culture within the communities, as well as juries, law enforcement agencies, prosecutors and judges. "One of the big reasons is not believing victims and victim blaming," she said. "That affects every aspect of this process." A new campaign launched by the White House on Sept. 19 came in response to a national problem with sexual assaults. The "It's On Us" campaign asks people to speak up and intervene should they witness a sexual assault. That includes stepping in when someone appears too intoxicated to consent to sex, or if a situation takes a turn for the worse, as happened in 2010 with John and Jane. (See related article on Page A1.) Bonneville County Prosecutor Bruce Pickett said it is wrong to generalize and say some crimes are more difficult than others to pursue. "It just depends on the evidence," Pickett said. "One crime is not more or less difficult than another." Pickett's view isn't the consensus. Intimate partner and acquaintance "sexual assaults" pose significant challenges for prosecutors. In order to successfully prosecute such cases, prosecutors must overcome cultural bias, victim blaming and domestic and sexual violence myth acceptance," according to Jennifer Gentile Long, director of the National Center for the Prosecution of Violence Against Women. Gentile Long's finding was published in a 2008 article in "The Voice," a newsletter for the American Prosecutors Research Institute — the research and development division of National District Attorneys Association.

Convicted murderer of classmate seeks new trial

Idaho Press Tribune October 19, 2014

POCATELLO (AP) — The lawyer for a man convicted of killing his classmate, Cassie Jo Stoddart, is asking a judge for a new trial. The Idaho State Journal reports that Torey Adamcik's lawyer says he should be given a new trial or a new sentence. Dennis Benjamin says Adamcik's defense team was ineffective and the sentence of life in prison without the possibility of parole is cruel and unusual punishment. Bannock County deputy prosecutor Ian Service says the request should be dismissed. He says Adamcik's defense did its job. Adamcik and Brian Draper were charged with killing Stoddart in 2006. She sustained 29 knife wounds.

Bar Survey shows lawyers rate Hoagland higher than Arnold in judicial race

Posted by Betsy Spokane Eye on Boise Oct. 20, 2014

The Idaho State Bar has released the results of its survey of attorneys on the qualifications of judicial candidates who are on the ballot in November; there are two races, both runoff races for district judge. In the 4th Judicial District contest between Rebecca Arnold and Samuel Hoagland, Hoagland was rated higher than Arnold in every category; 244 attorneys statewide responded, the vast majority of them from the 4th District. You can see [those results here](#). In the 7th Judicial District, Bruce Pickett and Stevan Thompson are in a runoff race; their ratings were closer, with Thompson's slightly higher; 144 attorneys responded. Those results are [online here](#). Attorneys rated the judicial candidates on criteria including integrity and independence, knowledge and understanding of the law, and judicial temperament and demeanor.

Change of plea possible

By LESLIE MIELKE Morning News October 21, 2014

BLACKFOOT — A Blackfoot man appeared before Sixth Judicial District Judge Darren Simpson on Monday to answer to five counts of lewd conduct with a child under 16. Daniel Epps Williams, 35, plead not guilty to each of the five counts. Judge Simpson explained that Williams could face up to life in prison in the Idaho Department of Correction and/or a \$50,000 fine and a \$5,000 civil fine on each count. If convicted on more than one count, Williams could be given consecutive sentences. "We are close to an agreement," said defense attorney Shane Reichert. A status conference and possible change of plea has been set at 11:30 a.m. on Monday, Nov. 3, before Judge Simpson. The no contact order is set to expire in February, said Simpson. Williams is accused of molesting two 7-year-old girls. Court documents say Williams sexually touched the two victims on multiple occasions between July 29 and Aug. 11 at various locations in Blackfoot. The parents of the two girls, who are not related, reported the abuse to Bingham County Sheriff's deputies in August. After a two-week investigation, deputies found Williams in Blackfoot and transported him to the Bingham County Sheriff's Office, where Williams was questioned and then placed under arrest on Aug. 25. Williams remains in custody with a bond set at \$3 million. Asked why Williams' bond is set at that threshold, Bingham County Prosecuting Attorney Cleve Colson said, "Judge [Charles] Roos set the bond based on the nature of the charges and that he [Williams] might be a flight risk."

Brief: 2nd District Bar sponsors Ask-a-Lawyer event in Moscow

October 21, 2014 1:00 am Daily News

The Second District Bar is sponsoring an Ask-A-Lawyer event 9 a.m.-4 p.m. Friday in the bottom floor conference room of the Latah County Courthouse, 522 S. Adams St. Attorneys will be on hand to answer questions from the community. Attorneys also can be reached by telephone by calling (208) 310-2266. This event celebrates Idaho Pro Bono Week, which is Oct. 19-24. The Idaho Pro Bono Commission encourages Idaho lawyers to commit to providing legal help to those who cannot afford it. For information, email Ashley Rokyta, Second District Bar president, at seconddistrictbar@gmail.com.

Judicial runoff pits prosecutor against a local attorney

By BRYAN CLARK Post Register October 22, 2014

During the May primary, three candidates vied for retiring Judge Jon Shindurling's seat on the bench. Bonneville County Prosecutor Bruce Pickett obtained the most support with 49 percent. Attorney Stevan Thompson garnered the second-most votes at 28.6 percent. That set the stage for a runoff election next month between the two lawyers to determine who will become the fifth judge in District 7, which encompasses 10 counties in eastern Idaho. Pickett was hired as a deputy prosecutor in 2003 after serving as a public defender in both Bonneville County and Reno, Nev. He said his 12 years of experience prosecuting crimes has given him unique experience weighing the needs of the public against and the rights of the accused. "I've always tried to be fair, both to the defendants and to the community," Pickett said. "And, in fact, that is probably my greatest strength. For the last 12 years I have been making those decisions already, trying to balance out the needs of the individual versus the needs of the community." Thompson is a founding partner of the Idaho Falls law firm Thompson, Smith, Woolf, Anderson, Wilkinson & Birch, where he practices civil litigation and criminal defense. He previously served as a Bonneville County deputy prosecutor. He also was a contracted public defender before the county had an in-house public defender's office. That breadth of experience makes him the better candidate, Thompson said. "I'm in the point in my career when I'd like to be able to serve on the judiciary," he said. "It's incredibly important that you have dealt with the other side of the law, that you have represented people." Pickett takes pride in support for developing "specialty courts," which deal with subsets of crime such as drug offenses, and often use alternative sentencing measures such as treatment programs rather than simple incarceration. "We like to give people options and give options to the court when they sentence people," he said. Thompson touts his extensive courtroom experience, including arguing several times before Idaho Supreme Court and clerking for District Judge Arnold Beebe in Blackfoot. "I was basically at the courthouse every day all day from 1984 when I left the clerk's office until about 2000," he said. When Pickett graduated from law school, he said had no desire to either practice criminal law or to seek election. What drew him to becoming a prosecutor, Pickett said, was the impact he could have on his community. That's why he is seeking the judgeship. "The desire to be a judge grows from the desire to ... continue to serve," Pickett said. Thompson said the office would give him the opportunity to continue his support for the integrity of the court system. "I think it serves the judiciary and the legal community by being on the bench," he said.

Policing Probable Cause

By ALI TADAYON Post Register October 22, 2014

Lawyer: Drug arrest was result of illegal search Pao Xiong is not a sympathetic figure. He was arrested Jan. 18 in Bingham County after police found 152.3 pounds of marijuana in his car on Interstate 15. Xiong was sentenced last month in Bingham County for felony possession of a controlled substance with intent to deliver. After accepting a plea agreement from the Bingham County prosecutor, he was sentenced Sept. 19 to an underlying prison term of five years. The original charge of trafficking marijuana was amended down. District Judge David Nye retained jurisdiction and placed Xiong on probation for five years. Nye imposed a discretionary jail sentence of 180 days and credited Xiong for 33 days he served in the Bingham County Jail following his arrest. But there is more to Xiong's story than meets the eye. Xiong was driving a rental car from Nevada the day police found the drugs, but it wasn't until the Army veteran had been pulled over three times — once each in Power, Bannock and Bingham counties — for seemingly minor infractions. Drug dogs sniffed his car three times, twice without them finding anything. One-hundred-fifty-two pounds of marijuana off the streets and a drug trafficker in jail has all the appearances of a win for law enforcement, but some local defense attorneys point to the arrest as an example of the erosion of citizens' rights. Xiong's defense attorney, Justin Oleson, was livid when he first read the probable cause affidavit for his client's arrest. "It's the most egregious violation of someone's basic human rights that I have ever seen," Oleson said. Xiong, a 30-year Sacramento, Calif., resident, was driving a rental car from Nevada and headed to Bismark, N.D. After Xiong refused to give his consent for searches at each of the first two stops, Blackfoot Police Cpl. Chad Braswell gained probable cause to search Xiong's car without his consent. Inside, he found the marijuana in four duffels. Although Xiong admitted guilt in accepting the plea deal, Oleson believes the officers infringed on Xiong's constitutional rights by continually stopping him until they found what they were hoping to find. Idaho Falls defense attorney Randall Neal said the issue of law enforcement abusing probable cause laws is a growing problem in eastern Idaho. "There's no question that the police are pushing the limit of constitutionality in this area, some more blatantly than others," Neal said. Third time's the charm Xiong first was pulled over in Power County by Idaho State Police trooper Tyler Scheierman. Scheierman reported Xiong had failed to maintain his lane of travel. Xiong's reportedly nervous demeanor made Scheierman think he had marijuana in the car, so he called Power County prosecutors to get a K-9 to search the car. The prosecutors didn't return his calls, so he sent Xiong on his way because he had no legal reason to hold him. But as soon as Xiong pulled away, Scheierman alerted law enforcement in bordering counties to be on the lookout for him because Scheierman thought Xiong was suspicious. Police dash-cam videos of Xiong being pulled over, show him to be well-dressed, wearing slacks, a button-down shirt and a pullover sweater. He is respectful in addressing the officers and cooperative aside from refusing to give consent for his vehicle to be searched. A few miles farther down the road, Bannock County Sheriff's deputy Matt Lovell pulled Xiong over for driving 74 mph in a 65 mph zone. Lovell started questioning Xiong and called in a K-9 handler to check the vehicle. The K-9 circled the car, but didn't detect any drugs. After hearing that, Scheierman called Braswell. Braswell told Scheierman he would "find (his) own probable cause to stop the car and run a K-9 around it," the affidavit said. Court documents show Braswell followed Xiong's car for several miles before stopping him for driving over the fog line on Interstate 15 near the Firth/ Shelley exit. Watching the dash-cam video, it's difficult to see Xiong crossing the fog line. Braswell initially questioned Xiong for more than 5 minutes. He said he observed Xiong exhibiting "nervous behavior," so he brought out Moxie, his K-9 partner to check the car. Moxie didn't "hit" on the car. Braswell continued questioning Xiong, asking if there were any drugs in the car. He asked again to search the car, but Xiong said no. Braswell brought Moxie out a second time, and this time she indicated that there could be a controlled substance in the car. In all, Braswell questioned Xiong for 19 minutes, including 12 minutes with Xiong standing outside his car without a coat on a night when the overnight low was 12 degrees. Since Moxie is a trained drug-detecting dog, her indication gave Braswell enough probable cause to search the car. That's when he found four duffels, and placed Xiong under arrest. Illegal search? Oleson and Xiong in March filed a motion to suppress the evidence from the search believing it was illegal, but before the hearing took place, Bingham County prosecutors offered a plea deal. It was a pretty good deal — probation vs. five to 15 years for trafficking marijuana — and less risky than going to court in an effort to have the evidence thrown out due to an illegal search. "My client is an honest guy, he said, 'Just because the cops lied and cheated didn't mean what I did was right,'" Oleson said. Idaho's probable cause laws are laid out in the Section 1, Article 17, of the state's Constitution. The wording nearly is identical to the U.S. Constitution's Fourth Amendment: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized." Danny Clark, Bonneville County chief deputy prosecutor, said since the wording is vague, whether an officer has probable cause for a "search and seizure" is determined by years of case law. "There is a whole bunch of gray area," Clark said. "What is probable cause? What exactly does it amount to? You've got miles and miles of pages of cases where the clerks are analyzing this issue." In his years of prosecuting drug cases, Clark said he's seen many defense attorneys make the "fruit of the poisonous tree" defense. If evidence is obtained illegally, it is not admissible in court. So, if a defense attorney can prove a search was performed improperly, then the case basically shuts down. While the defense is commonly used, Clark said he's seen it work only a handful of times. Defense attorney Neal said in order to get a real picture of how often eastern Idaho law enforcement perform improper searches, you would have to look at how many searches go unreported. "When (officers) perform an improper search and no drugs are found, no charges are filed," Neal said. "So, you don't know how many have been pulled out of their car. When there's no judicial review, prosecutors don't hear about it." Since the only searches that go to prosecutors are those that turn up drugs or other illegal materials, Neal said officers who perform improper searches typically get away with it. "Ultimately, there's a price to be paid," Neal said. "Not just in the courts of law, but in the trust that we have in law enforcement. Then there's a price that is paid by that agency. Regardless of how many various tickets and charges that are brought, we don't end up with a safer community, we end up with a community that is nitpicked to death."

Fugitive shot in Oregon gets rider for Idaho theft

By ALI TADAYON Post Register October 22, 2014

Judge sentences Willard to an underlying prison term of five years. A Rexburg woman, who was shot by police in Medford, Ore., earlier this year, was sentenced Monday to a rider stemming from a Jefferson County charge. Shavon Willard, 32, pleaded guilty to one count of theft by receiving, possessing or disposing of stolen property. Pursuant to a plea agreement, four other counts of the same charge were dismissed by prosecutors. Jefferson County prosecuting attorney Steve Dalling said Willard was found to be in possession of three stolen checks and two stolen debit cards in March. District Judge Alan Stephens sentenced Willard to an underlying prison term of two to five years. If she does not successfully complete the program, Stephens could order her to serve the prison term. If successful, however, she would be eligible to serve the rest of her sentence on probation. A rider is a 90-day to year-long treatment program in a minimum security prison. In July, Willard also was sentenced to a rider in Bonneville County after pleading guilty to felony possession of a controlled substance. Dalling said both riders will run concurrently. Willard, who was wanted on arrest warrants in both counties, was found March 6 in Medford, Ore., alongside 29-year-old Wayne Pearson, who was sought by authorities in Bonneville, Jefferson and Bannock counties. Dalling said Willard and Pearson were in a relationship. The two were spotted in a parked 1998 Dodge 2500 truck in a Motel 6 parking lot by an Oregon Department of Justice agent. Law enforcement officers opened fire on the pair after Pearson, who was driving the truck, intentionally struck a parked police vehicle as officers were getting out, a Medford Police news release said. Both Willard and Pearson were shot several times. They were treated at an Oregon hospital before they were booked into Jackson County Jail. Willard pleaded guilty in Oregon to unauthorized use of a motor vehicle and was sentenced to 18 months probation. Pursuant to a plea agreement, a possession of methamphetamine charge was dropped by Jackson County, Ore., prosecutors. Pearson is charged with second-degree assault and nine other felony charges. He will appear in a Jackson County courtroom Oct. 27 for a pretrial conference.

Money for outside expert in Tapp case Approved

By BRYAN CLARK Post Register October 23, 2014

The Bonneville County Commission on Wednesday approved funding for an independent investigation into the 1996 murder of Angie Dodge and the subsequent conviction of Christopher Tapp. The move follows the release of two reports from Judges for Justice, an organization that investigates potential wrongful convictions. Those reports found major flaws in the Idaho Falls Police Department's investigation of the crime, concluding that Tapp had falsely confessed after being threatened with prison or death and offered potential deals for immunity. Bonneville County Prosecutor Bruce Pickett called the reports "well thought-out and impressive," but said an independent investigator was needed to verify whether the reports are "accurate, unbiased and credible." "I feel I do not have sufficient information at this point to proceed with any formal legal action," Pickett said, "However, due to the nature of the allegations and the questions raised by the reports, the Bonneville County Prosecuting Attorney's office requests funds be made available to hire an independent expert." The Commission unanimously approved up to \$25,000. Chairman Roger Christensen said Pickett had shown a track record of frugality and that he is confident Pickett will do his best to minimize the cost to taxpayers. Pickett said he will conduct a "nationwide search" for a person "not previously involved in the case, with no prior knowledge of the facts." He said he would also seek out someone with extensive experience in homicide investigation, suspect interviews and crime scene reconstruction. John Thomas, Tapp's public defender, said he is encouraged by the county's decision. "I think it's a good move for the county," he said. "I think it shows good faith on the part of the prosecutor." Retired Judge Mike Heavey, Angie's mother, Carol Dodge, has long argued that Tapp is innocent co-founder of Judges for Justice, said he felt likewise. "I think it sounds like a reasonable thing to do," Heavey said. "I think a lot of people would have put their head in the sand like an ostrich." Carol Dodge — Angie's mother, who has long argued that Tapp is innocent — was present at the Commission meeting. She expressed mixed feelings about the decision to hire an outside expert. She hopes it will help bring the truth to light. "I think that it's a great idea, and it benefits Chris," she said. "He's been in prison for (18) years. And there is absolutely no scientific, physical evidence putting him there at the crime scene. The only thing that puts Chris there is his confession." But she worries that a long review process could delay justice even further. "I don't know what a second review would do," she said. "I don't know how long it would take." Dodge said she feels a common pain with Vera Tapp, Chris Tapp's mother. "Here you have two mothers, and we have similar situations, all caused by the same situation," she said. "I lost my daughter, my only daughter. And Vera Tapp lost her only son. So that makes us equal. Will she ever see justice in her lifetime? Will I ever see justice in my lifetime?" Vera Tapp declined to comment.