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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, V. THOMAS R. ROUSSEAU, Defendant.	CASE NUMBER CR28-22-8737 **REPLY/SUPPLEMENT BRIEF ON MOTIONS TO COMPEL AND FOR INDEPENDENT ANALYSIS**

COMES NOW, Defendant, Thomas R. Rousseau ("Rousseau"), by and through his attorney, Kinzo H. Mihara, of the firm, Mihara Law PLLC, appointed conflict public defender, and hereby offers this supplemental/reply brief to the *State's Objection to Defendant's Motions to Compel and for Independent Analysis of Evidence* ("State's Obj.") filed June 26, 2023.[1] This reply is supported by the exhibits hereto, and others referenced herein, which are incorporated herein by reference as if expressly set forth.

[1] This brief is supplied well in advance of fourteen (14) days prior to the hearing of this matter. *See Not. of Hearing* (filed June 29, 2023).

In this case, Rousseau has sought via legitimate and timely discovery requests; and seeks an order of this Court compelling disclosure of, *inter alia*:

(1) Correspondence between local, state, and federal law enforcement agencies related to the electronic information seized;

(2) Unredacted copies of search warrant(s) related to the electronic information seized from Rousseau as well as any alleged co-conspirators on the date of their arrest;

(3) All photographs taken by law enforcement officers during the date of the Defendant's arrest.

Decl. Counsel, Exh. A at 1-2 (request dated Feb. 11, 2023).[2]

The State complains that Rousseau's instant motions are akin to those filed by a similarly-situated defendant, Mr. Tucker, in Kootenai County Case No. CR28-22-8764 and requests the Court take judicial notice of filings in that case. *State's Obj.* at 1.[3] The State casts aspersions upon defense counsel accusatorily insinuating that the defense is not giving the Court the entire picture.[4] *Id.* at 1-2. Importantly, the State claims it has "not even seen the sealed federal warrant." *Id.* at 2 (emphasis added). The State goes on to allege that Rousseau is collaterally estopped from pursuing his motions because those very issues were decided in a similar case with another defendant. *Id.* The State complains that because Rousseau did not adequately describe the "quantity, nature, relevance, or probative value" of the sought-after discovery, his instant motions must fail. *Id.*

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[2] The prosecution has not obtained the chain of custody documents and provided them to the defense; but, rather directs the defense to "make an appointment" with the Coeur d'Alene Police Evidence Department. **Exhibit A.**

[3] Likewise, pursuant to I.R.E. 201, the Court should take judicial notice of the documents appended hereto and referenced herein as to other "Patriot Front/UHaul" cases.

[4] The use of the terms, "conspicuously and troublingly missing…" and "quite troubling that he would do so for the pedantic purpose…" and "Defendant's failure to include these critical facts… suggests a lack of candor…" is highly inflammatory and unnecessary – especially without any factual evidence. *State's Obj.* at 1-2 (main body and FN 1).

The State goes on to allege that the Court should take for granted that a robust extraction was completed of all of the information contained on the device in question because the Federal Government's employees are "extensively experienced" and "highly qualified analysts." *State's Obj.* at 2-3. This is notwithstanding the State has not offered any declarations of any of such persons mentioned attesting to the fact that they did anything with such materials.

Importantly, the State does not object and claim that the device and/or information and data sought are privileged. *See, e.g.*, I.R.E. 508 (privilege against revealing State secrets).

NOTICE IS GIVEN that the video previously produced by the State, 1985932.mp4, will be played for the Court at the hearing on the instant motions; as well as review of the 103 photographs produced by the State.[5] For the reasons set forth below, the State's objection should be overruled; and, the Court should compel the State to produce the discovery previously asked for by the Defendant.

I. Rousseau Identified and Articulated Specific Reasoning for the Discovery Sought.

The State complains that Rousseau has failed to articulate what he seeks and why he seeks it; specifically, the "quantity, nature, relevance, or probative value" of the sought-after discovery."

Defendant Rousseau has a due-process right under the Fifth Amendment and simple fundamental fairness to access relevant and material evidence which is necessary for him to prepare his defense. *U.S. v. Herndon*, 536 F.2d 1027, 1029 (1976). Whether Mr. Rouseau has been deprived of this right of due process depends on the materiality of the evidence, the

[5] The Court can compare the video showing a uniformed Coeur d'Alene Police Officer walking around taking photographs of the various accused persons with the actual 103 photographs produced by the State. The context showing the photographs being taken do not match the photographs produced.

likelihood of mistaken interpretation of it by government witnesses or the jury, and the reasons for its nonavailability to the defense. *Id.*

In this matter, while Rousseau also seeks to compel discovery of additional photographic evidence, he noted in his motion that he incorporated the declarations of Counsel as well as Mr. Roloff, along with their contents. *Motion to Compel* at 2 (motion supported by *Declaration of Counsel* and *Declaration of Josiah Roloff*). The declarations make clear that Rousseau seeks a video and/or other media files which are likely contained on the phone of Mr. Whitson which would be relevant to the determination of the defendants' intent. *Decl. Counsel* at 1-2; *Decl. J. Roloff* at 2.

Mr. Roloff goes further to explain to the Court that mobile devices, such as the one sought here, are often "key evidence" in these types of cases; and, that what can be found on the devices can often expose a very different view of the case that what has previously been known. *Decl. J. Roloff* at 2, ¶ (6) a. Mr. Roloff goes on to explain to the Court that often, two different examiners working on the same mobile device can obtain different pieces of relevant evidence because of differences in experiences, tools, and methodology. *Id.* at 3, ¶ (6) d. Further, he explains that law enforcement agents often just do cursory analyses of the devices in question. *Id.* at ¶ (6) e. Mr. Roloff goes on to explain to the Court as to the different methods of data extraction and the potential data which can be extracted by those methods. *Id.* at 3-5.

Importantly, Mr. Roloff is able to explain to the Court that the data provided by the State did not provide the data to the device in question's "unprotected areas" of its memory. *Decl. J. Roloff* at 5, ¶ (8). The data provided by the State did not give any of the device's call logs, text

messages, or user-created multimedia files.[6] *Id.* In fact, the **VOLUMINOUS** data provided by the State "contains almost no user-generated content and almost exclusively irrelevant system files." *Id.* Mr. Roloff posits to the Court that an "AFU" system extraction is possible for the device in question which would allow access to protected areas of the device's memory. *Id.* at 5-6, ¶ (8). Here, Mr. Roloff has given a sworn declaration to the Court that he would need the physical device to confirm or deny that there were videos and/or other content of the phone which would be relevant to the defendants' intent in this case. *Id.* at 6, ¶ (9).

Tellingly, the State casts aspersions upon Counsel and Mr. Rousseau to specifically articulate the contents of a device which has been intentionally cast away by the State and which neither Counsel, Mr. Rousseau, nor Mr. Roloff have ever seen. That is the entire point – the defense hired Mr. Roloff to review the alleged evidence, but he cannot because the evidence was not preserved by the State and was not allegedly provided[7] until months after its alleged seizure.

Investigation into the other aspects of this case have pinpointed data from one single device which is believed to contain highly exculpatory material.[8] The rhetorical question is: why is the State so adamant about precluding its production? Another rhetorical question is: why would the State turn over to the federal government evidence in an active case pursuant to an alleged warrant which no attorney has reviewed? Yet another would be, why did the State itself not invoke the doctrine of sovereign immunity to preserve the evidence in this case for a state-court prosecution and/or produce a true, accurate, and correct copy of the items in its possession

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[6] The State is constitutionally obligated to turn over all exculpatory, and even potentially-exculpatory, material in its possession, custody, and/or control. I.C.R. 16(a); *see also State v. Pierce*, 107 Idaho 96, 685 P.2d 837 (Ct. App. 1984).

[7] The term "allegedly provided" is used because nobody has ever certified that what was originally seized by the federal government is actually that which has been disclosed to the defense.

[8] The instant motions are not a "fishing expedition" as characterized by the State. Rather, they are precision requests targeted and zeroed-in on one piece of physical evidence containing data reasonably believed to be highly exculpatory to Rousseau (and others).

– or at least preserve such evidence in its native state? The State offers no cogent answers to those questions. Indeed, the State fails to articulate what actions it has taken to reasonably attempt to retrieve the material evidence it intentionally set adrift beyond its control.

Here, Mr. Rousseau is unable to present expert testimony to lay a foundation as to what is believed to be a video showing the day prior to the arrest of a walk-through demonstration adducing a non-violent intent to merely exercise his First Amendment right to peacefully protest and constitutional right to peacefully assemble with other like-minded individuals... because the expert is unable to review the device in question. In the absence of an expert, Mr. Rousseau would be unconstitutionally forced to take the stand to proffer such testimony at trial.

II. The Instant Motions are not Barred by *Collateral Estoppel.*

The State criticizes counsel and in so many words accuses and argues that the undersigned is incompetent for not knowing that Rousseau's motion is barred by the doctrine of collateral estoppel. *State's Obj.* at 2-3. The State's accusatory tone and *ad-hominem* attacks expose the weakness of its argument and its fundamental lack of understanding of the concept of collateral estoppel.

It is well-established in Idaho that the doctrine of collateral estoppel has five necessary elements; all of which must be proven: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior action; (4) there was a final judgment on the merits in the prior litigation; and, (5) the party against whom the issue is asserted was a party or in privity with a party in the litigation. *Picati v. Miner*, 165 Idaho 611, 617, 449 P.3d 403, 409 (2019).

In this case, Rousseau did not have a full and fair opportunity to litigate; he was not a party and did not appear in the *Tucker* litigation. Next, the declarations of counsel as well as Mr. Roloff were absent from the record, so the factual foundation for the issue in this case was not present in the prior case. There has been no final judgment on the merits in the *Tucker* litigation, as that litigation continues to be on-going. Finally, as noted above Rousseau was not a party to the litigation and the State has proffered no explanation as to why he should be held in privity with Mr. Tucker.

Back in law school, Professor Craig Lewis, the bedrock of Idaho evidentiary jurisprudence, once stated that when your opponent begins to proffer *ad-hominem* attacks, you have won the argument. Simply put, the doctrine of collateral estoppel does not apply here.

III. There is No Evidence that Any Agent of the Federal Government Extracted Data.

Despite its strenuous argument that the Court should just trust that everything has been turned over, the State fails to support the argument with any evidence. There is no declaration from any federal agent, employee, contractor, etc., which asserts that they were the one(s) who attempted the extractions, the alleged methodology used or attempted, or any other of the when, where, why, and how such attempted extractions were allegedly conducted. In fact, the actual evidence in this case reveals that it was Coeur d'Alene Police Officer J. Welch, and not federal forensics agents, *who prepared and manipulated* the data ultimately produced by the State. **Exhibit B.**

A critical examination of the State's argument reveals that, at its core, the substance is "just trust that it was done right" without anything more. The substance is lacking; and Mr. Rousseau and his defense team have every right to examine the evidence seized in this case.

IV. Other Rulings of Judges of this Court on Patriot Front Cases Should be Considered.

The State complains that the defense has failed to apprise the Court of pertinent facts related to other "Patriot Front/UHaul" cases. *State's Obj.* at 1, 3. It is interesting that the State would make such an argument in light of the fact that while it did apprise and disclose to the Court and the State that another Judge of this Court (upon information and belief is Judge Peterson) ordered the multiple terabytes produced pursuant to a *Motion to Compel* in another "Patriot Front/UHaul" case (giving rise to its production in this case). It never apprised the Court or the defense that Judge Pittman in found there was no probable case for local law enforcement officers to arrest the "Patriot Front/UHaul" defendants. *See Decision on Defendant's Motion to Dismiss and Motion to Suppress* (entered Feb. 14, 2023 - Kootenai County Case No. CR28-22-8602 (*State v. Brown*)). Likewise, the State has not apprised the Court or the defense that Judge Randles ruled that the agents/law enforcement officers who engaged in the cellular device extraction is not work product and entered an order compelling some of the material sought by Rousseau's instant motion. **Exhibit C** - *Order on Motion to Compel* at 1-3 (filed June 8, 2023 – Kootenai County Case No. CR28-22-8596 (*State v. Jessop*)). The State has not informed the Court or the defense that Judge Payne entered an order in the *Jessop* case sanctioning the State for not previously complying with a previous *Motion to Compel.* **Exhibit D** - *Order Re: Motion for Sanctions* (filed June 5, 2023 – Kootenai County Case No. CR28-22-8596 (*State v. Jessop*)).

Certainly, the State's argument is the pot calling the kettle black. Undoubtedly, there are other adverse rulings to how the State has been prosecuting the "Patriot Front/UHaul" cases. The Court should confer with the other judges of this Court in the interest of judicial economy and in the interests of justice.

V. The Legal Authority Cited by the State is not Apropos.

The State cites to 5 U.S.C. § 301, *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), *Kasi v. Angelone*, 300 F.3d 487, 504-06 (4th Cir. 2002), *United States v. Williams*, 170 F.3d 431, 433-34 (4th Cir. 1999); and, *Louisiana v. Sparks*, 978 F.2d 226, 236 (5th Cir. 1992) for the proposition that a State cannot be compelled to turn-over a tangible item of evidence if that item is in the possession and control of the federal government. *State's Obj.* at 2 (FN 3).

The State's reading of the foregoing statute and cases is misplaced. Neither the statute in question, *Ragen*, *Kasi*, *Williams*, or *Sparks* stand for the proposition championed by the State.

The portion of the U.S. Code cited by the State reads in pertinent part:

> The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of **its** records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

5 U.S.C. § 301 (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379) (emphasis added). The problem with the State's reliance on this portion of the U.S. Code is that it is not the federal government's property which is being sought – it is the property of Mr. Whitsom; who is acknowledged by the State as a co-defendant in this case; and the property itself has been acknowledged as "evidence." *Decl. Counsel*, **Exh. C**. Mr. Whitsom's phone did not magically become the property of the federal government when it was seized by local law enforcement officers. Nor did it become the property of the federal government when it was allegedly turned over to the federal government by the State – **upon an alleged warrant the State now acknowledges that it has never seen.** *See State's Obj.* at 2 (...that [State] is not the federal government, is not in possession of and has not even seen the sealed federal warrant... (emphasis added)). Again,

without providing any modicum of evidence, the State wishes the Court and Rousseau to "just trust" that an alleged sealed, signed federal warrant even exists.[9]

Contrary to the State's proffer that it turned over the materials to the federal government pursuant to a warrant; but, does not have a copy of the warrant because it is sealed flies against hornbook principles of Constitutional and federal criminal practice. It is axiomatic that due process requires that evidence seized upon a suspected crime be via a warrant or a warrant exception. *Citations omitted.* However, it is equally axiomatic that if property is seized via a warrant that the person being relieved of the property be given a copy of the warrant at the time of seizure. F. Rule Crim. P. 41; see also I.C.R. 41 (both noting that a law enforcement officer serving a valid search/seizure warrant give a copy of the warrant - as well as giving an inventory of the property seized to the person being relieved of the property). It is incredulous that a law enforcement agent of the State would, without receipt and without a copy of a valid warrant, simply give away evidence in an active criminal case.[10] The actual information received was that the Federal Bureau of Investigation ("FBI") had "written" a warrant – however, there is no evidence in the record of this case that any such alleged warrant had ever been filed with the federal courts or signed by any federal judge. *See* **Exhibit B**. (Supplemental Report of Coeur d'Alene Police Officer J. Welch).[11]

The cases of *Ragen*, *Kasi*, *Williams*, and *Sparks* likewise provide no assistance to the State in this matter.

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[9] It is a ludicrous proposition that the State would turn over evidence to federal law enforcement absent even being served with a federal warrant.

[10] This very concerning aspect of potentially intentional severing of custody of evidence without proper legal authority gives rise to *Brady v. Maryland* issues which should be inquired of the State and its agents.

[11] This report reveals that, contrary to the arguments/proffer from the State that it was federal forensic law enforcement agents who created the data, it was really Coeur d'Alene Police Officer J. Welsh who did so.

Ragen was a case whereby a federal agent refused to hand over papers to the Court under the express instruction of the Attorney General in accordance with Department Rule No. 3229. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462, 465 (1951). Here, there is no proffer that the Attorney General, or any of his delegates have invoked U.S. Department of Justice rules. Further, as noted above, the item sought is not the property of the United States government.

Likewise, *Kasi v. Angelone* , 300 F.3d 487 (2002), offers the State no relief. *Kasi* was a case whereby a foreign national, accused of murdering Central Intelligence Agency ("CIA") agents outside of the CIA's headquarters in Langley, Virginia. 300 F.3d at 490-91. The foreign national fled the United States to Afghanistan/Pakistan and was ultimately abducted by FBI agents in Pakistan. *Id.* at 491. He was ultimately returned to the United States and stood trial in a Virginia state court where he attempted to subpoena the FBI's records of his abduction and interrogation. The trial court refused to enforce the subpoena based upon a FBI representative showing up at court and asserting the records the FBI created were exempt under 5 U.S.C. § 301 as well as the doctrine of sovereign immunity. *Id.* at 501. The trial court agreed, and refused to enforce the subpoena. *Id.* In this case, Rousseau does not seek to compel production of documents, data, or information owned by the United States. He seeks to compel production of what has been acknowledged by the State as "evidence" which is owned by Graham Whitson. In addition, it was not the federal government which seized the phone – it was the State of Idaho through the Coeur d'Alene Police Department and other local and state law enforcement agencies. Here, it was the State which GAVE, or rather sheltered, this highly-likely exculpatory evidence with the federal government. *Kasi* is distinguishable.

U.S. v. Williams, 170 F.3d 431 (4th Cir 1999) is distinguishable, again, by the fact that it was decided upon the federal "Housekeeping Statute" 5 U.S.C. § 301 which allows federal agencies to shield, "the custody, use, and preservation of **its** records, papers, and property."

(emphasis added). Further, the doctrine of sovereign immunity shields federal agents acting pursuant to federal agency guidance. *Id.*, 170 F.3d at 433. Again, *Williams* is distinguishable because here, Rousseau is not seeking to compel the federal government or any of its agents to do anything. He is seeking to compel the State to get the property of Graham Whitson and turn it over to Mr. Roloff. That the State may have problems doing so is of no avail – the fact that the property may be in the custody of the federal government is a problem of the State's own making by turning it over to the federal government without first obtaining a copy of the alleged warrant upon which it is being held.

Lastly, *Louisiana v. Sparks,* 978 F.2d 226 (5th Cir. 1992), was similar to *Williams* in that the federal agent receiving the subpoena in his official capacity removed the matter to federal court and asserted a defense of sovereign immunity to a state-court subpoena. *Sparks*, 978 F.2d at 235-36. Again, here, Rousseau is not seeking to compel the federal government or any of its agents to do anything. He is seeking to compel the State to get the property of Graham Whitson and turn it over to Mr. Roloff. The State should be made to bear the burden of its actions; not the defense.

The State's argument in this case is dangerous. Any time it wishes to shield exculpatory evidence from a criminal defendant, the State merely needs to have a law enforcement officer "park" the evidence with a federal law enforcement colleague and claim that it cannot produce such evidence… taking it out of reach of a criminally-accused defendant. This is antithetical to due process and embodies the very tyranny our forefathers saw in their British masters.

The State has caused this predicament; the Court should order the State to fix it.

VI. The State has not Turned over all of the Photographic Evidence Collected.

As noted above; and, as will be shown to the Court via video and 103 photographs, the State has not turned over all of the photographic evidence created by law enforcement on the day

in question. The Court will see for itself a video showing a law enforcement agent (CDA Police Officer) walking around taking multiple pictures which do not comport with the 103 photos produced by the State.[12]

Law enforcement should not be able to develop photographic evidence of an alleged crime; and, then not turn such photographic evidence over to the defense once a citizen is charged with a crime. Such photographs should be disclosed and the State should be sanctioned for their non-production.

VII. The State's Response Reveals the Proper Remedy is a Spoilation Instruction.

In this case, the State concedes that what data remains on Mr. Whitson's phone is unknown. *State's Obj.* at 3-4. However, it also acknowledges that it has never even seen the alleged sealed federal warrant that Mr. Whitson's phone was purportedly turned over to the federal government pursuant to. The State has also made oral representations to this Court, in open court, that the over four (4) terabytes of information and data disclosed between January, February, and March of this year were disclosed because of an order compelling the disclosure in another case.[13] The State also concedes that this information is now beyond its reach and cannot be compelled to be disclosed. *Id.* at 2-4.

Normally, a spoilation instruction is limited to civil cases that provides upon a showing of intentional destruction of evidence by an opposing party, an inference arises that the missing evidence was adverse to that party's position. *Stuart, infra*, 127 Idaho at 816. However, in a criminal case, the application of a favorable inference under the spoilation doctrine is the

[12] File No. 1985932.mp4 will show that at between timestamps 00:36:00 and 00:47:00 a Coeur d'Alene Police Officer is videotaped walking around taking various pictures during the arrest of the "Patriot Front/UHaul" defendants. This is not the only video evidence; but is proffered in support of the allegation that there are photographs outstanding which have not been produced.

[13] Upon information and belief Judge Peterson made such order in either (or both) *State v. Garland*, Kootenai County Case No. CR28-22-8601 and/or *State v. Buster*, Kootenai County Case No. CR28-22-8732.

appropriate remedy for a *Youngblood* due process violation. *Id.* (citing *State v. Dulaney*, 493 N.W.2d 787, 791-92 (Iowa 1992).

In *Stuart v. State*, 127 Idaho 806, 907 P.2d 783 (1994), the Supreme Court of Idaho followed the jurisprudence of the United States Supreme Court in *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988) in holding that the State's intentional loss of evidence of unknown evidentiary value results in a violation of the Due Process Clause and a spoilation instruction is proper if the defendant can prove there was bad faith on the part of the State. *Stuart*, 127 Idaho at 815-16. The presence or absence of bad faith by the police for the purposes of such a motion necessarily turns on the police's knowledge of the exculpatory value of the evidence at the time it is lost or destroyed. *Id.* at 816. The Court noted that the concealment of the evidence by the State from the Defendant is one method of proving the exculpatory value of the evidence was known to the government prior to its destruction. *Id.*

In this case, the police obviously knew the potentially-exculpatory value of Mr. Whitson's phone: they seized it immediately upon arresting Rousseau, Whitson, along with the other "Patriot Front/UHaul" defendants. In addition, bad faith in the phone's alleged loss can be inferred from the lack of production of the alleged search warrant (contrary to both F. Rule Crim. P. 41 and I.C.R. 41) at all, and then the several months of lack of production of the multiple terabytes of information which were ultimately produced. Certainly, local law enforcement knows they are entitled to a copy of a warrant if property is being seized from them. F. Rule Crim. P. 41; I.C.R. 41. Yet, apparently, local law enforcement turned over the data without ever even seeing a copy of the alleged warrant – thus, not even knowing whether there was truly an active, legitimate warrant which was signed by a federal judge. The State did not even attempt to preserve the evidence and had to rely upon the benevolence of the federal government to make

them an alleged copy.[14] **Exhibit B**. Rousseau and others were charged with the crime of conspiracy to riot in June of 2022; yet, the State concealed the existence of this data and information until January of 2022 when it notified this Court, Rousseau, and others similarly situated that it had been ordered to produce the material in another case and felt compelled to produce it here.

CLOSING

In this case, the State is alleging a conspiracy. The State must prove beyond all reasonable doubt that there was an agreement between Rousseau and the other "Patriot Front/UHaul" defendants to commit the criminal act charged. *See* 15A C.J.S. Conspiracy § 112 (June 2008); *see also State v. Rolon*, 146 Idaho 684, 691 (Ct. App. 2008). In such cases, there can be no evidence more relevant and material than the cellular telephones and media devices of those criminally-accused. *Decl. J. Roloff* at 3, ¶ (6)b.

This case should be dismissed by the State in the interests of justice; but the State persists by denying Rousseau and others similarly situated due process of law and fundamental fairness. This is a case whereby the State turned over, wholesale, highly-likely exculpatory evidence to a third-party, non-party based upon an alleged warrant which the State has never seen – and now it cannot get the evidence back. This is certainly a *Youngblood* violation and highly-likely tantamount to a *Brady v. Maryland* one as well. Given the multiple, adverse rulings from other judges of this Court, the continued prosecution of Rousseau and others similarly situated, upon such facts, borders on a malicious prosecution if not crosses into prosecutorial misconduct.

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[14] Again, there has not a single declaration from any law enforcement officer attesting to the chain of custody, or what materials/information was originally turned over to the federal government; and, what methodology was used to extract the data, information, and/or materials was gleaned from the original information; and, then what information came back.

The Court should grant Rousseau's motions; or, in the alternative order a spoilation instruction at trial.

DATED this 3rd day of July, 2023.

MIHARA LAW PLLC

//s// Kinzo H. Mihara

BY: _____

Kinzo H. Mihara, Of the Firm
Counsel for the Defendant

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 3rd day of July, 2023 addressed to:

Coeur d'Alene City Prosecutor's Office- Via Odyssey: cdaprosnotices@cdaid.org

//s// Kinzo H. Mihara

_____

Kinzo H. Mihara