

**APPENDIX A**  
**IN THE SUPREME COURT OF THE STATE OF**  
**IDAHO**

**Docket No. 47800**

<b>STATE OF IDAHO,</b>	) <b>Boise, June 2020 Term</b>
<b>Plaintiff-Respondent</b>	) <b>Opinion Filed: October</b>
	) <b>2, 2020</b>
<b>v.</b>	) <b>Melanie Gagnepain,</b>
	) <b>Clerk</b>
<b>DARIUS WAYNE</b>	) <b>THE COURT'S PRIOR</b>
<b>HAWS,</b>	) <b>OPINION DATED</b>
<b>Defendant-</b>	) <b>SEPTEMBER 9, 2020</b>
<b>Appellant.</b>	) <b>IS HEREBY</b>
	) <b>AMENDED.</b>

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Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Fremont County. Gregory M. Moeller, District Judge.

The appeal from the sentences imposed is dismissed. The district court's decision to relinquish jurisdiction over Haws is affirmed.

Eric D. Frederickson, State Appellate Public Defender, Boise, for appellant Darius Wayne Haws. Kimberly Coster argued.

Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent State of Idaho. Kenneth Jorgensen argued.

STEGNER, Justice.

Darius Haws appeals from the judgments of conviction entered against him upon his guilty pleas

to delivery of a controlled substance and battery on a police officer. Haws' guilty pleas were entered pursuant to plea agreements in which he waived his right to appeal his convictions or sentences. The district court sentenced Haws to two years fixed, with four years indeterminate, for the delivery charge; and one year fixed, with three years indeterminate, for the battery charge. The sentences were ordered to run consecutively. Additionally, the district court retained jurisdiction over Haws. However, after Haws performed poorly during the period of retained jurisdiction, the district court relinquished jurisdiction over Haws and ordered that the original sentences be served by Haws.

Haws appealed, arguing that the district court abused its discretion in relinquishing jurisdiction and that his sentences were excessive. In response, the State sought to have Haws' appeal dismissed because Haws expressly waived his right to appeal his sentences in the plea agreements he signed. The Court of Appeals agreed, dismissing Haws' challenge to his sentences and affirming the district court's decision to relinquish jurisdiction over Haws.

Haws filed a petition for review with this Court, arguing that the Court of Appeals incorrectly held that he had forfeited the right to address the validity of his plea agreements by not raising an issue of validity of those waivers in his opening brief. Instead, Haws contends that it was the State's obligation to assert the applicability of the appellate waiver, and that he should have had the opportunity to respond in his reply brief. Additionally, Haws contends that his appellate waiver was not made knowingly, intelligently, and voluntarily because the district

court made a statement that conflicted with the written plea agreements by noting that Haws had the right to appeal his sentences.

For the reasons set out in this opinion, we dismiss Haws' appeal from the sentences imposed. Further, we affirm the district court's decision to relinquish jurisdiction.

### **I. FACTUAL AND PROCEDURAL BACKGROUND**

Fremont County law enforcement used confidential informants to make several purchases of controlled substances from Haws and his brother between April and May of 2015. While a number of sales were made, only three are relevant to this appeal. On April 21, 2015, Haws sold twelve hydrocodone pills to a confidential informant. On May 11, 2015, Haws' brother sold a confidential informant morphine pills. That same day, Haws' brother also sold marijuana to a confidential informant. During these two latter sales, Haws acted as the lookout.

Haws was arrested and charged by the State with three counts related to the sales of controlled substances between April and May of 2015. The State charged Haws with delivery of a controlled substance, related to the sale of the twelve hydrocodone pills on April 21, 2015. The State also charged Haws with two counts of aiding and abetting the delivery of a controlled substance for acting as the lookout during his brother's sale of morphine pills and marijuana.

While out on bond, Haws committed other crimes. On February 28, 2017, Haws went to the residence of a female acquaintance. The woman called the police to report that Haws was trespassing. The police

responded to the woman's call. As a law enforcement officer approached Haws, the officer could "smell a strong odor of alcohol coming from [Haws'] breath." When the officer attempted to arrest Haws, Haws resisted, swinging his arm and hitting the officer. Based on this altercation, the State charged Haws with battery on a police officer, resisting and obstructing an officer, criminal trespass, and disturbing the peace.

On April 26, 2017, Haws entered into two plea agreements, one on the controlled substance charges, and the second on the battery and resisting charges. According to the plea agreement related to the controlled substance charges, Haws agreed to plead guilty to delivery of a controlled substance in exchange for the dismissal of the remaining aiding and abetting charges. Additionally, the State agreed to recommend that Haws be incarcerated for two years fixed with three years indeterminate. Further, the State would recommend that the district court retain jurisdiction over Haws. Similarly, according to the plea agreement relating to the battery charge, Haws agreed to plead guilty to battery on a police officer in exchange for the remaining charges to be dropped. The State would recommend that Haws be sentenced to two years fixed and three years indeterminate, to run consecutive with the sentence imposed in the controlled substance case. Again, the State would recommend that the district court retain jurisdiction over Haws.

Both plea agreements contained language regarding a waiver of certain rights. Among other rights, the plea agreements provided that Haws would waive his "right to appeal [his] conviction and

the sentence[s] imposed.” Further, both agreements contained language to the effect that the agreements were entered into intelligently, knowingly, and voluntarily.

Following a sentencing hearing, Haws was sentenced for both delivery of a controlled substance and battery of a police officer. The district court sentenced Haws to two years fixed, with four years indeterminate,<sup>1</sup> for the delivery charge. As for the battery charge, the district court sentenced Haws to one year fixed, with three years indeterminate. The district court ordered the sentences to run consecutively.

The district court retained jurisdiction over Haws. Additionally, the district court ordered that Haws be placed on a “treatment rider” to address his alcohol abuse and history of criminal behavior. Haws arrived at the facility at the end of July 2017. During the period of retained jurisdiction, Haws had few corrective actions, although his overall performance was poor. According to the addendum to the PSI, “Haws . . . struggled in groups to meet the basic standard and continue[d] to have difficulty identifying appropriate new thinking, instead replacing it with yet more risky thinking.” He was “passively resistant to doing the work, claiming he [could not] hear, [could not] see the board, [did] not understand the role-plays,” and failed to properly participate in the role-playing assignments. “While

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<sup>1</sup> Without explanation, the district court sentenced outside the State’s recommendation by adding a year to the indeterminate portion of Haws’ sentence. However, the district court was operating within its discretion in doing so, given the specific terms of the plea agreement.

Mr. Haws did for a short time increase his participation, his increased performance was not on a consistent basis[.]” “Haws . . . struggled a great deal with engagement in his own recovery and [did] not appear to be motivated to complete even voluntary treatment options.”

In late November 2017, the Department of Correction recommended that the district court relinquish jurisdiction over Haws. The recommendation was the result of Haws failing to obey a direct order to move to another bunk. Haws stated that “he would rather go to the hole than move where he had people on both sides” of him. His conduct resulted in responders being called to the facility.

Following a Rider Review Hearing, the district court entered an order on April 2, 2018, relinquishing jurisdiction over Haws based on the recommendation from the Department of Correction. The effect of the district court relinquishing jurisdiction was imposition of the original sentences.

Haws timely appealed from his sentences in both cases, and from the order relinquishing jurisdiction. The appeal was assigned to the Court of Appeals. On appeal, Haws argued that the district court abused its discretion in imposing an excessive sentence and by relinquishing jurisdiction. In response, the State argued that Haws’ appeal should be dismissed because he waived his right to appeal his sentences when he entered into the plea agreements. The Court of Appeals agreed, and dismissed Haws’ appeal from his sentences. *State v. Haws*, No. 46225, 2019 WL 8017375, at \*1 (Idaho Ct. App. Oct. 25, 2019). Notwithstanding the dismissal of Haws’ appeal, the

Court of Appeals addressed the arguments regarding the order relinquishing jurisdiction, concluding that the district court did not abuse its discretion in relinquishing jurisdiction. *Id.*

Haws filed a petition for review, arguing that the Court of Appeals incorrectly held that he had forfeited the right to address the validity of his plea agreements by not raising an issue of validity of those waivers in his opening brief. Instead, Haws contends that it was the State's obligation to assert the applicability of the appellate waiver, and Haws should then have had the opportunity to respond in his reply brief. Additionally, Haws contends that his appellate waiver was not made knowingly, intelligently, and voluntarily because the district court made a statement that conflicted with the written plea agreements by noting that Haws still had the right to appeal his sentences.

This Court granted the petition for review.

## II. STANDARD OF REVIEW

“When considering a case on review from the Court of Appeals, we do ‘not merely review the correctness of the decision of the Court of Appeals.’” *State v. Glodowski*, 166 Idaho 771, 774, 463 P.3d 405, 408 (2020) (quoting *State v. Young*, 138 Idaho 370, 372, 64 P.3d 296, 298 (2002)). Rather, “this Court acts as though it is hearing the matter on direct appeal from the decision of the trial court; however, this Court does give serious consideration to the decision of the Court of Appeals.” *Id.* (quotation omitted).

### III. ANALYSIS

**A. Haws was not obligated to raise the validity of the waiver of his right to appeal in his opening brief in order for the validity of the agreement to be reviewed by this Court.**

In his opening brief, Haws does not challenge the validity of the waiver of his appellate rights. Instead, Haws addressed the validity of his appellate waiver in his reply brief after the State asserted that his appeal should be dismissed based on that appellate waiver. The Court of Appeals declined to address Haws' argument regarding the validity of the appellate waiver because Haws failed to raise the issue in his opening brief. *Haws*, 2019 WL 8017375, at \*1. As a result, the Court of Appeals dismissed Haws' appeal from his sentences. *Id.*

In his petition for review, Haws argues that “[b]ecause it is the State’s obligation to assert and prove the enforceability of the waiver, and because the State would forfeit its waiver argument by failing to raise it, there is no reason to require a defendant to address the waiver issue, anticipatorily, in his opening brief.” The State did not respond to the petition for review.<sup>2</sup>

“Plea agreements are essentially bilateral contracts between the prosecutor and the defendant.” *McKinney v. State*, 162 Idaho 286, 296, 396 P.3d 1168, 1178 (2017) (quoting *State v. Guess*, 154 Idaho 521,

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<sup>2</sup> Idaho Appellate Rules do not allow for a response to a petition for review unless this Court requests a party to respond before it grants or denies the petition. I.A.R. 118(c)(1). The Court did not request the State to respond to Haws' petition for review and consequently no response to the petition was filed.



524, 300 P.3d 53, 56 (2013)). Therefore, this Court reviews plea agreements using general contract principles. *State v. Cope*, 142 Idaho 492, 495, 129 P.3d 1241, 1244 (2006) (citation omitted). “The interpretation of a contract’s meaning and legal effect are questions of law to be decided by the Court if the terms of the contract are clear and unambiguous.” *Dunlap v. State*, 141 Idaho 50, 63, 106 P.3d 376, 389 (2004) (quotation omitted).

Generally, “a party may waive a provision in a contract made exclusive for [the party’s] benefit.” *Ulery v. Routh*, 107 Idaho 797, 799, 693 P.2d 443, 445 (1984) (alteration in original) (quoting *Schmidt v. Village of Kimberly*, 74 Idaho 48, 59-60, 256 P.2d 515, 521 (1953)); see also 13 Williston on Contracts § 39:36 (4th ed.) (“The general view is that a party to a written contract can waive a provision of that contract by conduct . . .”). This rule would equally apply to plea agreements because this Court reviews plea agreements using general contract principles. See *Cope*, 142 Idaho at 495, 129 P.3d at 1244. Likewise, the United States Supreme Court has held that the prosecution may forfeit an appellate waiver by failing to raise the applicability of the waiver. See *Garza v. Idaho*, 139 S. Ct. 738, 744-45 (2019) (citation omitted) (“[E]ven a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver.”); see also *United States v. Story*, 439 F.3d 226, 231 (5th Cir. 2006) (“In the absence of the government’s objection to [the defendant’s] appeal based on his appeal waiver, the waiver is not binding because the government has waived the issue.”).

This Court has also recognized that defendants should be afforded the opportunity to respond to the

State's assertion of the applicability of an appellate waiver. *See McKinney*, 162 Idaho at 296, 396 P.3d at 1178. In *McKinney*, this Court stated,

[i]f a defendant files an appeal and has waived the right to appeal the only issue(s) that the defendant seeks to raise on appeal, and that fact is brought to our attention before oral argument, we will issue an order conditionally dismissing the appeal in order to give the defendant an opportunity to show good cause why the appeal should not be dismissed. If the defendant cannot do so, we will dismiss the appeal. . . .

If the defendant has challenged the validity of the waiver of the right to appeal, we will address that issue and, if it is decided against the defendant, we will dismiss the appeal without addressing the other issue(s).

*Id.*

When presented with the same question, federal circuit courts have held similarly. *See, e.g., United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004) (creating a procedure in which the State must assert the applicability of an appellate waiver, then allowing the defendant the opportunity to respond); *United States v. Goodson*, 544 F.3d 529, 534 (3d Cir. 2008) (“[I]t is incumbent upon the government to invoke the [appellate] waiver’s applicability in the first instance” because the government is the party who bargained for and benefits from the waiver).

In this case, Haws was not obligated to raise the issue regarding the validity of his appellate waiver in his opening brief. As the State is the sole beneficiary of an appellate waiver, it is the State's obligation to invoke the applicability of that waiver. *See Ulery*, 107 Idaho at 799, 693 P.2d at 445. Further, a defendant should have the opportunity to respond once the waiver is invoked because there are many situations in which an appellate waiver might not be applicable to an immediate appeal or the waiver might be invalid. *See Garza*, 139 S. Ct. at 744. Finally, this Court has recognized that a defendant should have the opportunity to respond to the State's invocation of an appellate waiver, whether it is through a brief following a conditional dismissal of the appeal or in the reply brief. *See McKinney*, 162 Idaho at 296, 396 P.3d at 1178. In other words, while an appeal may be subject to dismissal based on an appellate waiver, the State is the party who must invoke the application of the waiver, and the defendant must be afforded an opportunity to respond. *See id.*

We want to emphasize that the better and preferred practice would be for the State to file a motion to dismiss the appeal rather than invoke the appellate waiver in its response brief. It was noted during oral argument that the State was not aware of the appellate waiver until after the briefing had been scheduled. However, the State could have filed a motion to dismiss the appeal and sought to stay the briefing. This would be the preferred procedure.

We conclude Haws should be afforded the opportunity to respond to the State's appellate waiver arguments in his reply brief; as a result, given the procedural posture of this case, the issue has not been

forfeited by Haws because he did not address this issue in his initial brief. Accordingly, this Court will address whether Haws made a knowing, intelligent, and voluntary waiver of his appellate rights.

**B. Haws made a knowing, intelligent, and voluntary waiver of his appellate rights. Accordingly, his appeal will be dismissed.**

In his reply brief, Haws argued that the waiver of his appellate rights were not mentioned at the plea hearing, notwithstanding the exhaustive discussion concerning all of the rights Haws would be waiving.

During the plea hearing, the district court inquired into Haws' understanding of the plea agreements. This inquiry included questions regarding whether Haws understood that he would be waiving certain rights. Relevant to this appeal, the district court and Haws engaged in the following discussion:

THE COURT: Do you understand that if you plead guilty, you're giving up any and all other rights that you may have as a defendant in a criminal case, including those that I may not have mentioned here in court today?

[HAWS]: Yes.

THE COURT: Do you understand that if you plead guilty, you're giving up all your defenses to this case and basically only reserving your right to appeal the sentences that will come down later?

[HAWS]: Yes.

Although the Court of Appeals did not explicitly address this argument, it stated, "during the plea

colloquy, Haws affirmed that he understood the terms of the plea agreement before he entered guilty pleas.” *Haws*, 2019 WL 8017375 at \*1 (citations omitted). In reaching this conclusion, the Court of Appeals cited *State v. Cope*, 142 Idaho at 495-99, 129 P.3d at 1245-49, in which this Court rejected a defendant’s argument that a district court’s oral pronouncement invalidated an appellate waiver. Accordingly, it appears the Court of Appeals concluded that the district court’s apparent misstatement that Haws had reserved his right to appeal the sentences did not invalidate Haws’ written waiver of his right to appeal. *See Haws*, 2019 WL 8017375 at \*1.

In his petition for review, Haws argued that his appellate waiver should not be enforced because the record demonstrated that his waiver had not been made knowingly, intelligently, and voluntarily because the district court stated in court that Haws had the right to appeal his sentence.<sup>3</sup> Further, Haws argues that the Court of Appeals’ reliance on *Cope* was misplaced. Instead, Haws argues that *Cope* stands for the proposition that a district court’s statements made *at sentencing* could not *retrospectively* alter the defendant’s understanding at the time he entered his guilty plea. In contrast, Haws contends that this case involves statements made *during* the plea colloquy, prior to the entry of his guilty pleas but after the plea agreements had been signed.

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<sup>3</sup> The Court notes that Haws does not challenge the voluntariness of his plea, but instead disputes the applicability of the agreement itself, specifically whether it barred his right to pursue an appeal based on his colloquy with the trial judge.

Generally, this Court will uphold a waiver of a defendant's appellate rights if the record shows the waiver was made knowingly, intelligently, and voluntarily. *Cope*, 142 Idaho 496, 129 P.3d 1245; *see also State v. Lee*, 165 Idaho 254, 259, 443 P.3d 268, 273 (Ct. App. 2019). The question in this case is whether the misstatement by the district court that Haws had reserved his right to appeal his sentence, in direct conflict with the written plea waiver, demonstrated that Haws did not understand he was waiving his appellate rights. We conclude that it does not.

This Court addressed a similar question in *Cope*, 142 Idaho at 497, 129 P.3d at 1246. In *Cope*, this Court considered whether “the district court’s oral reference to [a defendant’s] right to appeal made at the sentencing hearing” nullified *Cope*’s appellate waiver made in a plea agreement. *Id.* While the Court ultimately decided the case on the basis that the statements made by the district court did not conflict with the written plea agreement, the Court reviewed the legal landscape of statements made by district courts that conflict with written plea agreements.

The Ninth Circuit addressed this question, and stands alone in its conclusion that a statement by a district court may nullify an appellate waiver. In *United States v. Buchanan*, 59 F.3d 914, 917-18 (9th Cir. 1995), the defendant orally moved to withdraw his guilty plea at the sentencing hearing. *Id.* at 916. During the argument, the district court stated that Buchanan “could appeal the sentencing findings.” *Id.* at 916. Instead of Buchanan withdrawing his guilty plea, the parties filed a modification to the plea agreement. *Id.* The modified plea agreement

stipulated that Buchanan waived his right to appeal his sentence, as long as his sentence was within the applicable sentencing guidelines. *Id.* Despite that waiver clause, the district court, during sentencing, again informed Buchanan that he could appeal his sentence. *Id.* at 917. Regarding Buchanan's right to appeal, the Ninth Circuit held:

[H]ere, the oral pronouncement must control. The district court twice stated that Buchanan had a right to appeal his sentence. Indeed, Buchanan's answer of "Yes, sir" to the district court's question of whether he understood that he had a right to appeal indicates Buchanan's expectation that he could appeal his sentence and evinces a misunderstanding of the substance of his plea agreement. We note also that the government did not object to the district court's erroneous statements. Thus, Buchanan could have no reason but to believe that the court's advice on the right to appeal was correct.

*Id.* at 917-18.

Following *Buchanan*, the Ninth Circuit clarified and narrowed its position regarding oral pronouncements by district courts in *United States v. Lopez-Armenta*, 400 F.3d 1173 (9th Cir. 2005). In *Lopez-Armenta*, the defendant pleaded guilty and waived his right to appeal. *Id.* at 1174. Later at the sentencing hearing, the district court informed Lopez that he had the right to appeal. *Id.* at 1175. On appeal, Lopez cited to *Buchanan*, arguing that the court's statement informing him that he had a right

to appeal trumped his appellate waiver. The Ninth Circuit did not accept Lopez's argument, and explained how *Buchanan* is to be applied:

*Buchanan* addresses the situation in which confusion regarding appellate rights *arises contemporaneously with the waiver*, while [*United States v. Floyd*, 108 F.3d 202 (9th Cir. 1997), *overruled on other grounds by United States v. Jacobo Castillo*, 496 F.3d 947, 949 (9th Cir. 2007)] applies where the defendant attempts to have later confusion “relate back” to his waiver. Accordingly, we hold that Lopez knowingly and voluntarily waived his right to appeal the suppression ruling, and his waiver was not affected by the district court's ambiguous statement three months later at the sentencing hearing.

*Lopez-Armenta*, 400 F.3d at 1177 (italics added).

However, as this Court noted in *Cope*, almost every federal circuit court has criticized the holding in *Buchanan*. See, e.g., *United States v. Fisher*, 232 F.3d 301, 303-04 (2d Cir. 2000); *United States v. Atterberry*, 144 F.3d 1299, 1301 (10th Cir. 1998); *United States v. Michelsen*, 141 F.3d 867, 872-73 (8th Cir. 1998); *United States v. Ogden*, 102 F.3d 887, 888-89 (7th Cir. 1996); *United States v. Melancon*, 972 F.2d 566, 568 (5th Cir. 1992); see also *United States v. Arrellano*, 213 F.3d 427, 431 (8th Cir. 2000) (quotation omitted) (“Any statement by the court at the sentencing hearing could not have affected [the defendant's] decision, made nearly three months earlier, to plead guilty and waive his appellate rights.”).



For example, the Sixth Circuit noted in *Fleming*:

[W]e expressly decline to adopt the Ninth Circuit's rule [Buchanan], and add our voice to the chorus of criticism of that decision. . . .

No other circuit has adopted the rule of *Buchanan*, but several have spoken on the issue. The Eighth Circuit declined to follow *Buchanan* on the basis that "[a]ny statement by the court at sentencing could not have affected [the defendant's] decision ... to plead guilty and waive his appellate rights." *United States v. Michelsen*, 141 F.3d 867, 872 (8th Cir.1998), *see also*, *United States v. Arrellano*, 213 F.3d 427 (8th Cir.2000). . . .

. . . It is sufficient to say that any pronouncement from the bench that seeks unilaterally to amend a plea agreement exceeds the court's authority under the Criminal Rules and is without effect.

*Fleming*, 239 F.3d 761, 765 (6th Cir. 2001). In other words, it appears that the concern of those circuits that have rejected the Ninth Circuit's approach is that the statement made by the district court cannot *retrospectively* negate the defendant's knowing, intelligent, and voluntary waiver because it did not influence the defendant's decision to plead guilty and waive his appellate rights.

We agree with the majority of federal courts that a misstatement by the district court cannot, by itself,

invalidate a plea agreement which is made knowingly, intelligently, and voluntarily. Instead, we hold that any misstatement by the district court should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights.

Here, we hold that the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights. Both plea agreements contained language that the plea agreements were entered into knowingly, intelligently, and voluntarily. Further, during the plea colloquy, the district court asked about Haws' understanding of the agreements multiple times. For example, the district court had the following exchange with Haws:

THE COURT: Now, Mr. Haws, I've looked at both plea agreements carefully; and they both bear your signature. Is that not true?

[HAWS]: Yes.

THE COURT: And by signing the agreement, can I conclude that that means that you've read through the agreement?

[HAWS]: I have, Your Honor.

THE COURT: By signing the agreement, can I conclude that that means that you understood what you read?

[HAWS]: Yes.

THE COURT: And by signing the agreement, can I conclude that that

means you agree to all the terms contained therein?

[HAWS]: Yes, Your Honor.

Based on the conversations during the plea colloquy and the language in the plea agreements, the district court found that Haws “understood and consented to the terms of the plea agreements.” Therefore, there is no doubt that Haws made a voluntary, knowing, and intelligent waiver of his appellate rights. Here, the district court’s misstatement did not affect Haws’ decision to plead guilty or to waive his appellate rights. Accordingly, the district court’s conflicting statement did not invalidate Haws’ knowing, intelligent, and voluntary waiver of his appellate rights.

**C. The district court did not abuse its discretion in relinquishing jurisdiction.**

As a preliminary matter, this Court reaches this issue because the district court’s decision to relinquish jurisdiction over Haws is outside the scope of Haws’ appellate waiver. In his plea agreements, Haws waived his right to appeal his convictions and the sentences imposed. However, the decision to relinquish jurisdiction is outside the applicability of the appellate waiver. Accordingly, we will address the issue on its merits.

Following the district court’s pronouncement of Haws’ sentence, the district court retained jurisdiction over him. The district court placed Haws on a “treatment rider” to address his history of alcohol abuse and criminal behavior. Haws performed poorly during the period of retained jurisdiction. According to the addendum to the PSI, “Haws . . . struggled in

groups to meet the basic standard and continue[d] to have difficulty identifying appropriate new thinking, instead replacing it with yet more risky thinking.” He was “passively resistant to doing the work, claiming he [could not] hear, [could not] see the board, [did] not understand the role-plays,” and failed to properly participate in the role-playing assignments. “While Mr. Haws did for a short time increase his participation, his increased performance was not on a consistent basis[.]” Eventually, the Department of Correction recommended that the district court relinquish jurisdiction over Haws after a dispute in which Haws refused to switch bunks. The district court entered an order relinquishing jurisdiction over Haws based on the recommendation from the Department of Correction.

On appeal, Haws argues that the district court abused its discretion in relinquishing jurisdiction. Haws contends that his mental and physical challenges were improperly interpreted as “resistance.” Further, Haws argues that his mental struggles were not taken into consideration regarding the bunk dispute, asserting that Haws’ mental state was challenged by being crowded. The State responds, arguing that Haws did not perform well during the period of retained jurisdiction. Further, the State contends that the district court articulated and applied the correct legal standard applicable to the decision to relinquish jurisdiction.

“The decision to relinquish jurisdiction . . . is committed to the district judge’s discretion.” *State v. Le Veque*, 164 Idaho 110, 113, 426 P.3d 461, 464 (2018) (quoting *State v. Coassolo*, 136 Idaho 138, 143, 30 P.3d 293, 298 (2001)); *see also* I.C. § 19-2601. When

reviewing a district court's decision for an abuse of discretion, this Court analyzes "whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *State v. Bodenbach*, 165 Idaho 577, 591, 448 P.3d 1005, 1019 (2019) (quoting *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)). Finally, a district court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the district court has "sufficient information to determine that a suspended sentence and probation would be inappropriate under [I.C. § 19-2521]." *State v. Brunet*, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (alteration in original) (quoting *State v. Statton*, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

The district court did not abuse its discretion in relinquishing jurisdiction over Haws. The district court reviewed the applicable standards, including the factors under Idaho Code section 19-2521. The district court ultimately concluded that "there [was] an undue risk that during any period of suspended sentence or probation that the defendant [would] commit another crime." While the district court recognized that mitigating factors existed in the case, the district court concluded that it could not "find that [the mitigating factors] are present to the degree that it would cause the [c]ourt to feel differently" about imposing a prison sentence.

Further, the district court had sufficient information to believe that there was an undue risk that Haws would commit another crime if he were

granted probation. For example, the district court noted that Haws had fourteen misdemeanors, three prior felonies, and approximately eight probation violations. Further, when presented an opportunity for treatment, Haws failed to adequately participate in his treatment or demonstrate that he had changed the behavior that had previously led him to frequently commit crime.

Haws is asking this Court to reweigh evidence regarding Haws' mental illnesses and how that evidence impacted his performance during the period of retained jurisdiction. This Court will not overturn a district court's factual findings regarding aggravating and mitigating factors unless those decisions are clearly erroneous. *See Bodenbach*, 165 Idaho at 592, 448 P.3d at 1020. Here, the district court adequately considered these concerns and exercised reason in deciding to relinquish jurisdiction. Accordingly, the district court did not err in relinquishing jurisdiction, and we affirm its decision to do so.

#### IV. CONCLUSION

For the foregoing reasons, Haws' appeal from the sentences imposed is dismissed. Further, the district court's decision to relinquish jurisdiction over Haws is affirmed.

Chief Justice BURDICK, Justices BRODY, BEVAN and TROUT, J. Pro Tem, CONCUR.

**APPENDIX B**

**IN THE COURT OF APPEALS OF THE STATE  
OF IDAHO**

**Docket No. 46225**

<b>STATE OF IDAHO,</b>	)
	) <b>Filed: October 25, 2019</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Karel A. Lehrman,</b>
	) <b>Clerk</b>
<b>v.</b>	)
	) <b>THIS IS AN</b>
<b>DARIUS WAYNE</b>	) <b>UNPUBLISHED</b>
<b>HAWS,</b>	) <b>OPINION AND SHALL</b>
	) <b>NOT BE CITED AS</b>
<b>Defendant-Appellant.</b>	) <b>AUTHORITY</b>
_____	)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Fremont County. Hon. Gregory Moeller, District Judge.

Appeals from judgments of conviction and sentences, dismissed; and orders relinquishing jurisdiction, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kim A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Chief Judge; HUSKEY, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

In two separate cases, Darius Wayne Haws pleaded guilty pursuant to a plea agreement to delivery of a controlled substance, Idaho Code § 37-2732(a)(1)(A), and battery on a police officer, I.C. § 18-915(3). A term of the plea agreement required Haws to waive his right to appeal his sentence. Respectively, the district court imposed a unified six-year sentence, with two years determinate, and a unified three-year sentence, with one year determinate, with the sentences to run consecutively. The district court retained jurisdiction, and Haws was sent to participate in the rider program. Subsequently, the district court relinquished jurisdiction. Haws appeals, claiming the district court erred by relinquishing jurisdiction. He also argues his sentences are excessive and constitute an abuse of discretion.

In his opening brief, Haws does not challenge the validity of his guilty plea or that his waiver of his appellate rights was not knowing, intelligent, and voluntary, but instead raises that issue for the first time in his reply brief. Issues not raised in the opening brief are waived for purposes of appeal. I.A.R. 35(a)(6); *State v. Hawkins*, 159 Idaho 507, 517, 363 P.3d 348, 358 (2009). Moreover, during the plea colloquy, Haws affirmed that he understood the terms of the plea agreement before he entered guilty pleas. Now, Haws contends that his sentences are excessive and constitute an abuse of discretion. We hold that



Haws' appellate challenges to excessive sentences have been waived by his plea agreement. See I.C.R. 11(f)(1); *State v. Cope*, 142 Idaho 492, 495-99, 129 P.3d 1241, 1245-49 (2006); *State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). Accordingly, we dismiss Haws' claims that the district court abused its discretion by imposing excessive sentences.

The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion by relinquishing jurisdiction. Therefore, the orders relinquishing jurisdiction are affirmed.

**APPENDIX C**

MARCIA MURDOCH, P.A. (ISB No. 8198)  
BROCK H. BISCHOFF, Deputy P.A. (ISB No. 9006)  
OFFICE OF THE FREMONT COUNTY  
PROSECUTING ATTORNEY  
22 West 1st North  
St. Anthony, Idaho 83445  
T: (208) 624-4418  
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*Attorneys for the State of Idaho*

**IN THE DISTRICT COURT OF THE SEVENTH  
JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF  
FREMONT**

STATE OF IDAHO,  
Plaintiff,  
vs.  
DARIUS WAYNE  
HAWS,  
Defendant.

CR-2016-1756  
**PLEA AGREEMENT**  
I.C.R. 11(f)(1)(B)

The State of Idaho ("STATE"), by and through counsel, Marcia Murdoch, Fremont County Prosecuting Attorney, and the Defendant, DARIUS WAYNE HAWS ("DEFENDANT"), by and through his counsel, Joshua Garner, Esq., hereby agree and stipulate as follows:

**A.**

**AGREEMENT AND STIPULATION**

1. **Guilty plea.** The DEFENDANT agrees to, and shall, plead guilty to the following charge

contained in the Information: **COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE, Idaho Code §37-2732(a)(1)(A), felony.**

2. **No additional criminal charges.** In exchange for the guilty plea described in paragraph 1, above, the STATE agrees to, and will, file no additional criminal charges arising out of the same facts and circumstances as the pending matter. Further, the State agrees to dismiss **COUNT II: AIDING AND ABETTING DELIVERY OF A CONTROLLED SUBSTANCE, Idaho Code §37-2732(a)(1)(A), 18-204, a felony, and COUNT III: : AIDING AND ABETTING DELIVERY OF A CONTROLLED SUBSTANCE, Idaho Code 37-2732(a)(1)(B), 18-204, a felony,** part of this agreement.
3. **Sentencing.** The STATE shall recommend, with the understanding that such recommendation shall not be binding upon the court, that DEFENDANT be sentenced to serve the following specific sentence:
  - a. Incarceration: Two years (2) fixed; three years (3) indeterminate for a total unified sentence of five years (5).
  - b. Fines: criminal fine of two thousand five hundred dollars (\$2,500.00), and civil penalties shall be left to the discretion of the court.
  - c. Retain Jurisdiction: the court retain jurisdiction of the Defendant for a period of time to be determined by the court.
  - d. Restitution: Order full restitution on all charges contained in the complaint. (The

STATE shall be allowed thirty (30) days within which to file a motion for restitution; and the DEFENDANT may either agree to same, or file written objection. If objection is filed, then a court hearing shall be held to determine amount or restitution.)

4. **Restitution.** The DEFENDANT agrees to, and shall pay, any and all reasonable restitution amounts on all drugs tested arising out of the facts and circumstances underlying all charges contained in the information of the crime.
5. **Other argument.** As to any other conditions not expressly agreed upon in this written plea agreement, the parties are free to argue as they see fit.
6. **Entire agreement.** This agreement is the complete and only agreement between the parties. There are no other agreements written or oral. No promises, agreements, or conditions have been entered into other than those set forth herein. This agreement supersedes prior understanding, if any, of the parties, whether written or oral. This agreement may not be modified other than by a written memorandum signed by the parties or on the record during Court proceedings.

## **B.**

### **NON-BINDING AGREEMENT**

This agreement is made pursuant to Idaho Criminal Rule 11(f)(1)(B), and shall not be binding upon the Court. The DEFENDANT acknowledges that if the court does not accept the terms and conditions of this agreement, that he shall have no right to withdraw his guilty plea.

**DEFENDANTS ACKNOWLEDGEMENT AND  
CONSENT**

DEFENDANT in the above-entitled case, by executing this plea agreement, acknowledges and consents to the following:

1. **Understanding of the potential punishment.**  
I understand that the crime to which I am pleading guilty is a felony punishable as follows: (a.) imprisonment of up to life; (b.) fine up to twenty-five thousand dollars (\$25,000.00); or (c.) both.
2. **Consequences for non-United States citizens.** I understand that if I am not a citizen of the United States of America, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States of American, or denial of an application for United States' Citizenship.
3. **Parties affected by the agreement.** I understand that this plea agreement is only between the STATE and me; and therefor, this plea agreement does not affect the rights of any other persons or parties.
4. **Intelligent, knowing, and voluntary agreement.** I, represent each of the following is true and correct:
  - a. I am signing this agreement with full knowledge of the facts, my legal rights, and the consequences of entering the guilty plea to a misdemeanor, as described above;

- b. No unlawful threats have been made to secure my guilty plea, nor have any promises been made to get me to plead guilty, other than those promises made by the STATE as set forth herein; and
  - c. I am signing this agreement willingly, without force or duress, and of my own free will and choice.
5. **No other promises or agreements.** I understand and acknowledge that no other agreements or conditions have been made or represented to me, except those terms of the plea agreement set forth herein.
6. **Waiver of constitutional rights.** I understand that I am waiving the following rights guaranteed by the United States Constitution and the Constitution of the State of Idaho:
- a. My right to a jury trial;
  - b. My right against self-incrimination, including my right not to testify against myself;
  - c. My right to require the STATE to call witnesses against me and my right to call witnesses in my defense;
  - d. My right to require the STATE to prove my guilt beyond a reasonable doubt; and
  - e. My right to appeal my conviction and the sentence imposed.
7. **Changes in circumstances.** I understand that the STATE has made this agreement contingent on the condition that the circumstances under which the agreement was made is in accordance with my representations and that such

circumstances will remain unchanged prior to sentencing. These circumstances include, but are not limited to, my representations concerning my past criminal record, my compliance with bail release conditions (such as appearing at the sentencing hearing), and my compliance with the law prior to sentencing. I understand that changes in these circumstances could amount to a breach of this agreement, and in that case the STATE would be excused from performing under this agreement.

8. **Understanding of the agreement.** I acknowledge the following:
- a. I have read this written plea agreement and understand its terms and the consequences of my entering into this plea agreement;
  - b. I agree to be bound by all of the terms and conditions of this agreement;
  - c. Prior to entering into this agreement, I have had sufficient opportunity and time to discuss the terms, conditions, and consequences of entering into it, with my attorney; and
  - d. I am satisfied with the legal services and legal advice provided by my attorney of record in this matter.

**DATED** effective as of the date set forth below.

**DEFENDANT'S ACKNOWLEDGEMENT**

I have read this plea agreement in its entirety and discussed it with my attorney of record. I acknowledge that it fully sets forth my agreement with the State of Idaho. I further state that there have been no additional promises or representations made to me by

any officials of the STATE in connection with this matter.

**DEFENDANT:**

[Signature omitted] Dated this 26 day of April, 2017.

DARIUS WAYNE HAWS, Defendant

**DEFENSE COUNSEL CERTIFICATION**

I certify that I am the attorney of record for the DEFENDANT, and that he has read and understands the terms and conditions of this plea agreement.

[Signature omitted] Dated this 26 day of April, 2017.

JOSHUA GARNER, Esq.,

Attorney for the Defendant

**STATE OF IDAHO**

[Signature omitted] Dated this 25 day of April, 2017.

MARCIA MURDOCH, P.A.

Attorney for the State of Idaho



**APPENDIX D**

MARCIA MURDOCH, P.A. (ISB No. 8198)  
 BROCK H. BISCHOFF, Deputy P.A. (ISB No. 9006)  
 OFFICE OF THE FREMONT COUNTY  
 PROSECUTING ATTORNEY  
 22 West 1st North  
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 T: (208) 624-4418  
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*Attorneys for the State of Idaho*

**IN THE DISTRICT COURT OF THE SEVENTH  
 JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF  
 FREMONT**

STATE OF IDAHO,  
                     Plaintiff,  
 vs.  
 DARIUS WAYNE  
 HAWS,  
                     Defendant.

CR-2017-285  
**PLEA AGREEMENT**  
 I.C.R. 11(f)(1)(B)

The State of Idaho (“STATE”), by and through counsel, Marcia Murdoch, Fremont County Prosecuting Attorney, and the Defendant, DARIUS WAYNE HAWS (“DEFENDANT”), by and through his counsel, Joshua Garner, Esq., hereby agree and stipulate as follows:

**A.**

**AGREEMENT AND STIPULATION**

1. **Guilty plea.** The DEFENDANT agrees to, and shall, plead guilty to the following charge

contained in the Information: **COUNT I: BATTERY ON A POLICE OFFICER, Idaho Code §18-915(3), 18-903, a felony.**

2. **No additional criminal charges.** In exchange for the guilty plea described in paragraph 1, above, the STATE agrees to, and will, file no additional criminal charges arising out of the same facts and circumstances as the pending matter. Further, the State agrees to dismiss **COUNT II: RESISTING AND OBSTRUCTING OFFICER, Idaho Code §18-705, a misdemeanor; COUNT III: CRIMINAL TRESPASS, Idaho Code §18-7008, a misdemeanor; and COUNT IV: DISTURBING THE PEACE, Idaho Code §18-6409, a misdemeanor**, part of this agreement.
3. **Sentencing.** The STATE shall recommend, with the understanding that such recommendation shall *not* be binding upon the court, that DEFENDANT be sentenced to serve the following specific sentence:
  - a. Incarceration: Two years (2) fixed; three years (3) indeterminate for a total unified sentence of five years (5).
  - b. Fines: criminal fine of two thousand five hundred dollars (\$2,500.00), and civil penalties shall be left to the discretion of the court.
  - c. Retain Jurisdiction: the court retain jurisdiction of the Defendant for a period of time to be determined by the court. **The State further recommends that this sentence run consecutive with the sentence set in Fremont County Court Case No. CR-2016-1756, as required by Statute.**

- d. No-Contact Order: A No-Contact Order shall remain in effect for the victims in the Information of a distance of at least five hundred yards (500), until the defendant completes any probation on this charge.
  - e. Restitution: Order full restitution on all charges contained in the complaint. (The STATE shall be allowed thirty (30) days within which to file a motion for restitution; and the DEFENDANT may either agree to same, or file written objection. If objection is filed, then a court hearing shall be held to determine amount or restitution.)
4. **Restitution.** The DEFENDANT agrees to, and shall pay, any and all reasonable restitution amounts arising out of the facts and circumstances underlying all charges contained in the information of the crime.
  5. **Other argument.** As to any other conditions not expressly agreed upon in this written plea agreement, the parties are free to argue as they see fit.
  6. **Entire agreement.** This agreement is the complete and only agreement between the parties. There are no other agreements written or oral. No promises, agreements, or conditions have been entered into other than those set forth herein. This agreement supersedes prior understanding, if any, of the parties, whether written or oral. This agreement may not be modified other than by a written memorandum signed by the parties or on the record during Court proceedings.

**B.****NON-BINDING AGREEMENT**

This agreement is made pursuant to Idaho Criminal Rule 11(f)(1)(B), and shall not be binding upon the Court. The DEFENDANT acknowledges that if the court does not accept the terms and conditions of this agreement, that he shall have no right to withdraw his guilty plea.

**C.****DEFENDANT'S ACKNOWLEDGEMENT AND  
CONSENT**

DEFENDANT in the above-entitled case, by executing this plea agreement, acknowledges and consents to the following:

1. **Understanding of the potential punishment.** I understand that the crime to which I am pleading guilty is a felony punishable as follows: (a.) imprisonment of up to life; (b.) fine up to twenty-five thousand dollars (\$25,000.00); or (c.) both.
2. **Consequences for non-United States citizens.** I understand that if I am not a citizen of the United States of America, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States of American, or denial of an application for United States' Citizenship.
3. **Parties affected by the agreement.** I understand that this plea agreement is only between the STATE and me; and therefor, this

plea agreement does not affect the rights of any other persons or parties.

4. **Intelligent, knowing, and voluntary agreement.** I, represent each of the following is true and correct:
  - a. I am signing this agreement with full knowledge of the facts, my legal rights, and the consequences of entering the guilty plea to a misdemeanor, as described above;
  - b. No unlawful threats have been made to secure my guilty plea, nor have any promises been made to get me to plead guilty, other than those promises made by the STATE as set forth herein; and
  - c. I am signing this agreement willingly, without force or duress, and of my own free will and choice.
5. **No other promises or agreements.** I understand and acknowledge that no other agreements or conditions have been made or represented to me, except those terms of the plea agreement set forth herein.
6. **Waiver of constitutional rights.** I understand that I am waiving the following rights guaranteed by the United States Constitution and the Constitution of the State of Idaho:
  - a. My right to a jury trial;
  - b. My right against self-incrimination, including my right not to testify against myself;
  - c. My right to require the STATE to call witnesses against me and my right to call witnesses in my defense;

- d. My right to require the STATE to prove my guilt beyond a reasonable doubt; and
  - e. My right to appeal my conviction and the sentence imposed.
7. **Changes in circumstances.** I understand that the STATE has made this agreement contingent on the condition that the circumstances under which the agreement was made is in accordance with my representations and that such circumstances will remain unchanged prior to sentencing. These circumstances include, but are not limited to, my representations concerning my past criminal record, my compliance with bail release conditions (such as appearing at the sentencing hearing), and my compliance with the law prior to sentencing. I understand that changes in these circumstances could amount to a breach of this agreement, and in that case the STATE would be excused from performing under this agreement.
8. **Understanding of the agreement.** I acknowledge the following:
- a. I have read this written plea agreement and understand its terms and the consequences of my entering into this plea agreement;
  - b. I agree to be bound by all of the terms and conditions of this agreement;
  - c. Prior to entering into this agreement, I have had sufficient opportunity and time to discuss the terms, conditions, and consequences of entering into it, with my attorney; and

39a

- d. I am satisfied with the legal services and legal advice provided by my attorney of record in this matter.

**DATED** effective as of the date set forth below.

**DEFENDANT'S ACKNOWLEDGEMENT**

I have read this plea agreement in its entirety and discussed it with my attorney of record. I acknowledge that it fully sets forth my agreement with the State of Idaho. I further state that there have been no additional promises or representations made to me by any officials of the STATE in connection with this matter.

**DEFENDANT:**

[Signature omitted] Dated this 26 day of April, 2017.

DARIUS WAYNE HAWS, Defendant

**DEFENSE COUNSEL CERTIFICATION**

I certify that I am the attorney of record for the DEFENDANT, and that he has read and understands the terms and conditions of this plea agreement.

[Signature omitted] Dated this 26 day of April, 2017.

JOSHUA GARNER, Esq.,

Attorney for the Defendant

**STATE OF IDAHO**

[Signature omitted] Dated this 25 day of April, 2017.

MARCIA MURDOCH, P.A.

Attorney for the State of Idaho

**APPENDIX E**

[1] IN THE SUPREME COURT OF THE STATE OF  
IDAHO

THE STATE OF IDAHO,	*
Plaintiff/Respondent	*
	*
vs.	* DOCKET NOS. 46225-
	* 2018,
	* AND 46226-2018
DARIUS WAYNE HAWS,	*
Defendant/Appellant.	*

PLAINTIFF/RESPONDENT  
LAWRENCE G. WASDEN, ESQ.  
STATE OF IDAHO ATTORNEY GENERAL  
APPELLATE DIVISION  
700 WEST STATE STREET  
P.O. BOX 83720  
BOISE, IDAHO 83720-0010  
  
DEFENDANT/APPELLANT  
ERIC D. FREDERICKSEN, ESQ.  
STATE APPELLATE PUBLIC DEFENDER'S  
OFFICE  
322 E. FRONT STREET, SUITE 570  
BOISE, IDAHO 83702

Reported by:  
Jack L. Fuller, Idaho CSR #762  
Official Court Reporter



41a

[2] THE DISTRICT COURT OF THE SEVENTH  
JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF FREMONT

THE STATE OF IDAHO,	*
Plaintiff	*
	*
vs.	* CASE NOS. CR-2016-
	* 1756
	* AND CR-2017-285
DARIUS WAYNE HAWS,	*
Defendant.	*

\*\*\*\*\*

CHANGE OF PLEA

APRIL 27, 2017

\*\*\*\*\*

HONORABLE JUDGE GREGORY W. MOELLER  
PRESIDING

\*\*\*\*\*

JACK L. FULLER, CSR  
Official Court Reporter  
605 N. Capital  
Idaho Falls, Idaho 83402  
Phone: (208) 529-1350 Ext. 1138  
E-Mail: jfuller@co.bonneville.id.us

[3] APPEARANCES:

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mmurdoch@co.fremont.id.us

**FOR THE DEFENDANT:** Joshua A. Garner, Esq.  
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Defender  
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**[4] CHANGE OF PLEA****APRIL 27, 2017**

THE COURT: We are on the record. It is the 27th day of April of 2017. We are here in Fremont County for what was supposed to be one of maybe four trials that was scheduled today. I understand three of them, which were my cases, have resolved and the fourth, which was Judge Stephens' case, apparently has been continued. We felt that it would be proper to use today, then, as the time to have plea changes entered on all three cases.

So first we're going to take up the two cases of State of Idaho vs. Darius Wayne Haws. The first is Case CR-2016-1756, the second case being 2017-285. The record should reflect that Marcia Murdoch, prosecuting attorney for Fremont County, is here on behalf of the State. We have Mr. Joshua Garner, who's the public defender for Fremont County, on behalf of Mr. Haws; and Mr. Haws is seated next to his attorney.

Counsel, the Court has been advised that there's been a plea agreement reached. I have had a chance to review the plea agreement in both cases. Which one of you would like to summarize it for the record in just general fashion?

MS. MURDOCH: Sure. Yes, Your Honor. This was an attempt to reach a global agreement on both -- on the two various cases. On CR-2016-1756 the defendant is agreeing to plead guilty to Count I, Delivery of a Controlled Substance, a felony, and the [5] State has agreed to dismiss Count II and Count III as part of that agreement. The State's agreed to recommend the following: That there be a five-year

unified sentence, two years fixed, three years indeterminate; a \$2,500 fine and civil penalties to be left to the discretion of the Court; and that the State would recommend that the Court retain jurisdiction in this matter; and that the State would be able to request restitution within 30 days after the sentencing.

THE COURT: Okay. And then on the second case, 17-285?

MS. MURDOCH: Yes. On the second one the defendant agrees to plead guilty to Count I, Battery on a Peace Officer, a felony, and the remaining misdemeanors -- remaining charges are misdemeanors. Count II, III, and IV will be dismissed by the State; and the State again would recommend a five-year unified sentence, two years fixed, three years indeterminate, \$2500 fine. The Court -- the State would also recommend jurisdiction, but we'd also recommend that --

THE COURT: Would recommend retained jurisdiction?

MS. MURDOCH: Yeah, retained jurisdiction. Sorry. And that the State would further recommend that this run consecutive to the sentence in CR-16-1756 per --

THE COURT: By --

MS. MURDOCH: -- Idaho statute.

THE COURT: Yeah, I was going to say, by statute [6] that has to be consecutive, correct?

MS. MURDOCH: Yes.

THE COURT: Okay.

MS. MURDOCH: Also that the no-contact order that's currently in place would remain in effect until the defendant completes any probation that would be given on this charge and that the State again would have the ability to request restitution.

THE COURT: Just so I'm clear, then, since this would be a consecutive sentence -- and this may go without saying; but I've learned through sad experience, it's good to say things that should go without saying sometimes -- the Riders would run concurrently; but then the -- if I place the defendant on probation, the probation would run consecutive. Is that your understanding? In other words, he's not going to do two back-to-back Riders, correct?

MS. MURDOCH: I believe so. Yeah, that's my understanding.

THE COURT: Okay.

MS. MURDOCH: It would be kind of hard to do two back-to-back Riders.

THE COURT: Okay. And if there were any prison time that he had to serve, that would be consecutive?

MS. MURDOCH: Yes, Your Honor.

THE COURT: Okay. And is the State free to [7] request any local jail time or is it because of the Rider, that's going to be unnecessary?

MS. MURDOCH: Because of the Rider we're not requesting that.

THE COURT: Okay. Very good. Mr. Garner.

MR. GARNER: We agree with that recitation, Your Honor. The only addition we'd make is that this is a nonbinding plea agreement on both cases.

THE COURT: Okay. That was going to be my next question. Thank you.

Mr. Haws, you've been seated next to your attorney as he's explained the terms of this plea agreement on both of your cases. Do you understand what he's told the Court here today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And is that how you'd like to see your cases resolved?

THE DEFENDANT: Yes.

THE COURT: Do you feel like you fully understand what's been going on?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. We'll talk with you more in just a moment, then.

Mr. Garner -- and again, I'll be referring to both cases here -- have you had sufficient time to discuss these cases [8] with your client?

MR. GARNER: Yes, Your Honor.

THE COURT: And have you done all you believe you should have done to protect his rights and interests in this matter?

MR. GARNER: Yes.

THE COURT: Have you conducted all the necessary investigation and discovery; shared the discovery with your client; and, if proper, filed any necessary motions?

MR. GARNER: Yes, Your Honor.

THE COURT: And have you explained to your client his rights and defenses in this action as well as the consequences of his guilty pleas?

MR. GARNER: Yes, I have.

THE COURT: Do you believe he understands all of those matters?

MR. GARNER: Yes.

THE COURT: And do you believe he's competent to plead guilty?

MR. GARNER: I do.

THE COURT: As his attorney, then, do you consent to his entry of pleas today?

MR. GARNER: I do, Your Honor.

THE COURT: Okay. Very well. Thank you.

Now, Mr. Haws, when I very first met you -- and [9] I've met you a couple of times now actually

THE DEFENDANT: Yes.

THE COURT: -- I've advised you that you have a right to remain silent. However, if you wish to plead guilty today, you'll have to partially waive that right and answer some questions from the Court under oath. I'm not doing this to cause more troubles for you; but before I can accept your plea, I have to verify that you're competent to plead guilty; there's a factual basis for your plea; and that you're doing so knowingly, intelligently, and voluntarily. However, since you will be under oath, you have to be honest with the Court or you could be in more trouble. In fact, you could face perjury charges. Therefore, if I ask you any questions that you don't want to answer or you

don't know how to answer, I'll let you visit with your attorney before you give me any answer. Agreed?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Additionally, I need to remind you that anything you tell me while pleading guilty could be used against you in a later trial if for some reason I can't accept your plea or if you're later permitted to withdraw your plea. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, given all those stipulations, is it still your desire to take the oath so that you can plead guilty?

[10] THE DEFENDANT: Yes.

THE COURT: If that's the case, then, sir, I'd invite you to please stand and raise your right hand.

Madam Clerk, would you please place the defendant under oath.

(Defendant sworn)

THE COURT: Okay. Please be seated, sir. I invite you to pull the microphone up a little closer. Pull the microphone up a little closer and aim it right at your chin. A little closer than that. No. Just so you're comfortable, pull the mike -- you can actually move it. There you go. Okay.

Thank you, Counsel.

Would you please state your full name for the record.

THE DEFENDANT: Darius Wayne Haws.



THE COURT: Okay. And maybe you should move it back just a little bit. And have you had any difficulty in hearing me today?

THE DEFENDANT: A little bit, Your Honor.

THE COURT: I can tell. Have you had any problems hearing me at any other proceedings?

THE DEFENDANT: Yes.

THE COURT: Okay. And have you ever advised the Court before that you've had problems hearing things?

THE DEFENDANT: I don't think I have, Your Honor.

[11] THE COURT: Have you told your attorney you've had any difficulty in hearing things?

THE DEFENDANT: No.

THE COURT: Okay. Well, let me let you visit with your attorney about this; and if there's any rights and plea options that I need to review with you, we need to make sure we do that.

Mr. Garner, would you visit with your client for a moment.

MR. GARNER: Thank you, Your Honor.

THE COURT: We'll be off the record.

(Pause)

THE COURT: Okay. Let's go back on the record. The record should reflect that Mr. Garner had a visit with his client.

Do you have any concerns about proceeding at this point, Mr. Garner?

MR. GARNER: No, Your Honor. I've asked my client if he's understood everything so far today, and I believe he has. I've also asked him if he would like the aid of headphones to assist him today, and he does not want those. He just explained that he has to just listen carefully and focus and he'll understand what's being said. If he doesn't understand what's being said today, he's told me that he'll let me know and I can let the Court know.

[12] THE COURT: Okay. Sir, I'll try to speak loudly so that you can hear me. Can you hear me now?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, at the date that you were arraigned in both cases, one of the questions I asked you, because I always ask this question, is if you've had any difficulty hearing me; and on those dates you said no. So was that a truthful answer when you told me that on both days you were arraigned?

THE DEFENDANT: Well, there's times I can hear really good; but I have to focus a lot.

THE COURT: Okay. And so it requires you to focus, then, correct?

THE DEFENDANT: Yes.

THE COURT: And you're focused now?

THE DEFENDANT: Yeah.

THE COURT: So do I need to repeat any of your rights or plea options that I gave you before?

THE DEFENDANT: No.

THE COURT: Okay. Now, I'm going to probably go over a lot of those similar things here in just a moment and make sure you understand. But if at any

time you feel uncomfortable with going forward and feel like that we need to review some things with you or talk to your attorney further about your constitutional rights and your plea options, I will let you do [13] so. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. And again, at the time you were originally arraigned on both cases, you pled not guilty. So again, I don't think you gave up any rights at that time. Today is the hearing when you're giving up your rights, and so today is the day that is the most important day for you to understand. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. If I at any time say something you don't catch or can't hear, raise your hand and tell me. Okay?

THE DEFENDANT: Yes.

THE COURT: Sir, would you state your full name for the record.

THE DEFENDANT: Darius Wayne Haws.

THE COURT: And are you hearing me clearly now?

THE DEFENDANT: Yes.

THE COURT: Sir, would you state your full name

THE DEFENDANT: Darius Wayne Haws.

THE COURT: And are you hearing me clearly now?

THE DEFENDANT: Yes.

THE COURT: How old are you?

THE DEFENDANT: 51.

THE COURT: And how much education have you received?

THE DEFENDANT: I graduated.

THE COURT: From?

THE DEFENDANT: South Fremont and Boise.

[14] THE COURT: What year did you graduate from South Fremont?

THE DEFENDANT: I didn't fully graduate there. I only had a couple of credits left, and it was like ninety -- or eighty -- '82.

THE COURT: Okay. Do you have any difficulty reading, writing, speaking, or understanding the English language?

THE DEFENDANT: No.

THE COURT: Are you feeling well today?

THE DEFENDANT: Yes.

THE COURT: Are you thinking clearly?

THE DEFENDANT: Yes.

THE COURT: Are you currently addicted to alcohol, drugs, or any controlled substances?

THE DEFENDANT: No.

THE COURT: Are you currently under the influence of alcohol, drugs, controlled substances, prescription medications, or over-the-counter medications?

THE DEFENDANT: Just one prescription medication.

THE COURT: And what's that?

THE DEFENDANT: Hydrocodones for my back.

THE COURT: Okay. And when did you take the Hydrocodone for your back?

THE DEFENDANT: Yesterday.

[15] THE COURT: And is that affecting you today in any --

THE DEFENDANT: No.

THE COURT: -- way?

THE DEFENDANT: No.

THE COURT: Is it relieving pain from you today?

THE DEFENDANT: Yes.

THE COURT: So does that drug, when you take it properly, allow you to participate fully and meaningfully in a hearing like this?

THE DEFENDANT: Yes.

THE COURT: And do you feel like you're fully able to communicate with your attorney and understand what we're talking about in court today?

THE DEFENDANT: Yes.

THE COURT: Any other substances you've taken in the last 48 hours like the ones I indicated?

THE DEFENDANT: No.

THE COURT: Are you currently diagnosed with a mental illness, disease, or disorder?

THE DEFENDANT: Yes.

THE COURT: What have you been diagnosed with?

THE DEFENDANT: ADHD. Always depressed unless I take two medications.

THE COURT: And you're not taking those [16] medications right now?

54a

THE DEFENDANT: I took them this morning.

THE COURT: Okay. Earlier I asked you if you'd taken any prescription drugs. So are those prescription drugs you took this morning?

THE DEFENDANT: Yes.

THE COURT: Okay. What did you take this morning?

THE DEFENDANT: Celexa and bupropion.

THE COURT: And those were for depression?

THE DEFENDANT: Yes.

THE COURT: And are they helping you to function better today?

THE DEFENDANT: Yes.

THE COURT: And they're not in any way keeping you from perceiving reality clearly?

THE DEFENDANT: No.

THE COURT: Is there anything else you've taken in the last 48 hours by way of over-the-counter or prescription drugs?

THE DEFENDANT: No.

THE COURT: Or any other controlled substances?

THE DEFENDANT: No, Your Honor.

THE COURT: Any alcohol?

THE DEFENDANT: No.

THE COURT: Are you currently on probation or [17] parole?

THE DEFENDANT: No.

THE COURT: I need to advise you, sir, if you're not a U.S. citizen, pleading guilty to a crime like this could have serious consequences to your immigration status. It could result in possible deportation, loss of your privilege to reenter the country, or loss of your right to seek citizenship. If any of that concerns you, I will allow you some additional time to visit with an immigration attorney if you'd like. Would you like to do so?

THE DEFENDANT: No, sir.

THE COURT: Okay. Let's talk first about the older case, Case CR-16-1756. Sir, there's been an Amended Information filed in this case by the State of Idaho. Do you have that in front of you?

THE DEFENDANT: I do now, Your Honor.

THE COURT: Okay. And what are you charged with in that case?

THE DEFENDANT: Delivery of a controlled substance.

THE COURT: And what are the maximum punishments available to the Court on that charge?

THE DEFENDANT: Life or 25,000 or both.

THE COURT: So that means the Court could send you to prison for life and give you a \$25,000 fine. Do you [18] understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand, you may have to pay restitution and cost of prosecution?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, what are you pleading guilty to in the other case, Case 17-285?

THE DEFENDANT: Battery on a police officer.

THE COURT: And what's the maximum punishments for that?

THE DEFENDANT: Five years, \$50,000.

THE COURT: That's correct. And do you understand, you could receive either or both of those maximums?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand, you could also have to pay restitution?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, has there been plea agreements entered in this case?

THE DEFENDANT: Yes.

THE COURT: Can you tell me, first of all, what the plea agreement is on the 2016 case? That's the delivery-of-a-controlled-substance case. What have you agreed to do and what has the State of Idaho agreed to do?

THE DEFENDANT: I'm pleading guilty as described [19] in the paragraph above, which is I'm pleading guilty to delivery of a controlled substance.

THE COURT: Okay. And if you plead guilty to delivery of a controlled substance, what does the State of Idaho agree to do?

THE DEFENDANT: Dismiss the remaining counts.

THE COURT: Okay. And then what will they recommend at your sentencing?



57a

THE DEFENDANT: Two years fixed, three years indeterminate, and a fine of \$2,500, and a recommendation of retained jurisdiction.

THE COURT: Okay. Now, do you know what retained jurisdiction means?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What's retained jurisdiction?

THE DEFENDANT: It means that they're going to hold all my time above me; and if I don't do the Rider right, then I have to do the time.

THE COURT: Okay. So you'll go on a Rider.

THE DEFENDANT: Yes.

THE COURT: And on that Rider you'll be in the custody of the Department of Corrections, but you won't be in the main prison population. You'll be in a treatment unit, where you'll get treatment for whatever the PSI indicates you need treatment for. You'll be evaluated somewhere between six months [20] to a year from now, and the Court then will have you come back and then will decide whether to send you to prison or whether to put you on probation. Do you understand?

THE DEFENDANT: Yes.

THE COURT: And how the Court determines that will be largely based on your performance. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So just because you're going on a Rider doesn't mean you may not later go back to prison. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. And do you also understand that you may have to -- you've agreed to pay restitution?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, is that agreement binding on the Court? Do you know what that means when I say it's a nonbinding plea agreement?

THE DEFENDANT: No.

THE COURT: Okay. I'll let you visit with your attorney about that.

(Pause)

THE DEFENDANT: That it's nonbinding.

THE COURT: Right. So what does nonbinding mean? What does it mean that the Court can or cannot do?

THE DEFENDANT: It's up to your decision.

[21] THE COURT: Okay. That's right. It means I'm going to listen to the attorneys' recommendation, but I don't have to take Ms. Murdoch's recommendation. If I think you need more than five years, I could give you up to life in prison. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, let's talk about the second case, Case 2017-285. That's the battery-on-an-officer case. What's the plea agreement on this case?

THE DEFENDANT: Pleading guilty to battery on an officer.

THE COURT: That's correct. And if you do that, what does the State agree to do?

THE DEFENDANT: The remaining charge will be dismissed.

THE COURT: Okay. So Counts II, III, and IV will be dismissed.

THE DEFENDANT: Yes.

THE COURT: And what will they recommend at your sentencing?

THE DEFENDANT: Two years fixed, three years indeterminate for a total unified sentence of five.

THE COURT: Okay. And what about the fine?

THE DEFENDANT: \$2,000 or 2500 civil penalties.

THE COURT: And are they going to ask me to put [22] you on probation or are they going to ask me to retain jurisdiction?

THE DEFENDANT: Retain jurisdiction.

THE COURT: Okay. So they are going to ask you to do a Rider, just like in the other case, correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And my understanding is, this agreement is, is that the sentence will be consecutive. Do you know what that means when I say this sentence will be consecutive?

THE DEFENDANT: Yes.

THE COURT: What does that mean?

THE DEFENDANT: It means that both of them are together.

THE COURT: Okay. But it means you won't be serving them at the same time. You'll serve the time on one, then you'll have to serve the time on the other. Do you understand?

60a

THE DEFENDANT: Oh, okay. Yes, I do.

THE COURT: So, for example, let's say I followed the plea agreement and I gave you five years on Count I. Then I would give you five years on Count II, and you would be serving ten years total. Do you understand?

THE DEFENDANT: Yes.

THE COURT: However, that's if I follow the plea [23] agreement. If I don't, in theory I could give you a life sentence, and then I know this sounds ridiculous, but I could tack five years onto your life sentence. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, do you understand that even though it's consecutive, you'd only be doing one Rider on both cases; but if I do place you on probation, then your probation would run consecutive. So you might get five years' probation on one case and then five years' probation on the next case for a total of ten years probation. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. Do you understand that the no-contact order that was issued will continue to remain in effect until you complete your probation or your sentence?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Now, that's a nonbinding plea agreement too, is it not?

THE DEFENDANT: Yes.

THE COURT: Okay. And so you understand, then, that the Court doesn't have to follow the recommendations on this case either, correct?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, is there anything about your plea agreement you feel like you don't understand?

THE DEFENDANT: No.

[24] THE COURT: Counsel, are you confident that your client understands the plea agreement?

MR. GARNER: Yes, Your Honor. We've reviewed this several times, gone over it together. I believe he understands what he's signed.

THE COURT: Now, Mr. Haws, I've looked at both plea agreements carefully; and they both bear your signature. Is that not true?

THE DEFENDANT: Yes.

THE COURT: And by signing the agreement, can I conclude that that means that you've read through the agreement?

THE DEFENDANT: I have, Your Honor.

THE COURT: By signing the agreement, can I conclude that that means that you understood what you read?

THE DEFENDANT: Yes.

THE COURT: And by signing the agreement, can I conclude that that means you agree to all the terms contained therein?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Now, have you had sufficient time, sir, to visit with your attorney about this case?

THE DEFENDANT: I have.

THE COURT: And have you told Mr. Garner everything he needs to know as a defense attorney in order to properly represent you in this case?

[25] THE DEFENDANT: Yes.

THE COURT: Have you told him about all of the evidence and witnesses and any potential defenses that you might have?

THE DEFENDANT: Yeah.

THE COURT: Have you had a chance to see the State's discovery in this case and see the evidence?

THE DEFENDANT: I have, Your Honor.

THE COURT: And have you made your attorney aware of any mental health issues, disabilities, or substance abuse issues that you might have?

THE DEFENDANT: I don't have it any more, Your Honor, except for the prescriptions.

THE COURT: Okay. And you've told him about that?

THE DEFENDANT: Yeah.

THE COURT: Have you discussed your constitutional rights with your attorney?

THE DEFENDANT: Yeah.

THE COURT: And do you feel like your constitutional rights have been violated in any way?

THE DEFENDANT: No, Your Honor.

THE COURT: Is there anything you've asked Mr. Garner to do that he's failed or refused to do?

THE DEFENDANT: No.

THE COURT: Are you fully satisfied with his [26] performance as your attorney in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, do you understand that no one can make you plead guilty to this charge if you don't wish to?

THE DEFENDANT: Yes.

THE COURT: And so has anyone forced you or coerced you or pressured you to get you to plead guilty to either of these charges?

THE DEFENDANT: No.

THE COURT: Has anyone threatened or intimidated you or someone close to you to get you to plead guilty to these charges?

THE DEFENDANT: No Your Honor.

THE COURT: Has anyone promised you I'd be more lenient on you or place you on probation or give you any kind of favorable treatment if you pled guilty to these charges?

THE DEFENDANT: No.

THE COURT: Has anyone offered you a reward of any kind other than the plea agreements to get you to plead guilty to these charges?

THE DEFENDANT: No.

THE COURT: Would I be correct, then, if I conclude that you're entering both pleas freely and voluntarily, of your own choice?

THE DEFENDANT: Yes, Your Honor.

[27] THE COURT: Do you understand that before I sentence you, you'll be participating in a presentence investigation?

THE DEFENDANT: Yes.

THE COURT: At this time I advise you that the presentence investigation will disclose to the Court a lot of information about your background and history, including any criminal record that you might have. Additionally, you would have a right to visit with the presentence investigator about this case. In fact, she may ask you some questions about these cases. You have a right to say as much or as little about the crimes that you're pleading guilty to. You need to know that anything you tell the investigator will likely be reported to the Court, and I could use that as a factor even for you or against you at your sentencing. You also have a right to visit with your attorney about how much or how little you should say to the investigator about these crimes. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Now, do you understand, if you plead guilty, we're not going to have a trial. In fact, the trial today has been cancelled because by pleading guilty, you are admitting your guilt under oath and essentially waiving your right to a trial by jury.

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you plead [28] guilty, I'm not going to presume that you're innocent of these charges any longer and the State no



longer has to prove it to a jury beyond a reasonable doubt?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you plead guilty, you give up your Sixth Amendment rights to confront and have your attorney question your accusers and your right to show evidence of your innocence to a jury?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you plead guilty, you're waiving your Fifth Amendment right to remain silent to the Court about the charges that you're pleading guilty to today?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you plead guilty, you're giving up any and all other rights that you may have as a defendant in a criminal case, including those that I may not have mentioned here in court today?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you plead guilty, you're giving up all your defenses to this case and basically only reserving your right to appeal the sentences that will come down later?

THE DEFENDANT: Yes.

THE COURT: Do you understand, finally, that if [29] you plead guilty, that makes you a convicted felon; and as a convicted felon you won't be able to vote; serve on a jury; hold an elected office; or purchase, possess, or carry a firearm. Do you understand?

66a

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, given all of those consequences, do you want to talk your decision about pleading guilty over with your attorney any further?

THE DEFENDANT: No, Your Honor.

THE COURT: You still want to go ahead?

THE DEFENDANT: Yes.

THE COURT: Okay. Would you please rise, sir.

THE DEFENDANT: (Complying).

THE COURT: Mr. Darius Wayne Haws, how do you plead to the charge in Case CR-1 6-175 6, which alleges that you, on or about the 21st day of April of 2015, in Fremont County, Idaho, unlawfully delivered a controlled substance, to wit, a number of Hydrocodone pills, a Schedule II controlled substance, to a confidential informant?

THE DEFENDANT: Yes.

THE COURT: Do you plead guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Okay. And tell me why you pled guilty to that.

THE DEFENDANT: I was with my brother, but I [30] wasn't the one that was there, but I kind of got caught in the middle. So it's like I got that and aiding and abetting.

THE COURT: Okay. But you're not pleading guilty to aiding or abetting. You're pleading guilty to delivering. Do you understand?

THE DEFENDANT: Yes.

THE COURT: So let me ask you what you did, then. First of all, did you have Hydrocodone pills in your possession?

THE DEFENDANT: No. It was my brother's.

THE COURT: Okay. Well, where were the Hydrocodone pills?

THE DEFENDANT: It was in his trunk.

THE COURT: The trunk of his car?

THE DEFENDANT: His car.

THE COURT: Okay. And what happened to the Hydrocodone pills?

THE DEFENDANT: He sold them and some other ones to the confidential informant.

THE COURT: Did you know that he had the Hydrocodone pills?

THE DEFENDANT: I didn't, not until later when I got arrested.

THE COURT: Well, obviously, Counsel, if he won't admit that he delivered them and he won't admit that he knew they were being delivered, I'm not sure we could accept even an [31] aiding-and-abetting plea at this time. Do you want to visit with your client for a moment, Mr. Garner?

MR. GARNER: I will, Your Honor.

(Pause)

THE COURT: Okay. We are back on the record. Mr. Garner.

MR. GARNER: For the record, Your Honor, I just reviewed the police reports with my client to help refresh his memory.

THE COURT: Okay. Very well. Now, before we go any further, I want to be clear with you, Mr. Haws. It's not my intent to allow someone to plead guilty in my court if they don't think they committed the crime. Do you understand?

THE DEFENDANT: Yes.

THE COURT: And so therefore, I'm not trying to force you to plead guilty or try to convince you to plead guilty. In fact, we had a jury scheduled to be here today so that you could tell your story to a jury; but your attorney told me that you had agreed to plead guilty. So that's why we're doing this today. Do you understand?

THE DEFENDANT: Yes.

THE COURT: So again, this is up to you. But I need to know whether or not there's a factual basis for your plea. So let me ask you again, why did you plead guilty -- would you stand, sir. You need to stand.

[32] THE DEFENDANT: (Complying).

THE COURT: Why did you plead guilty to delivery of a controlled substance?

THE DEFENDANT: Because it was me that did deliver the other little pills.

THE COURT: Okay. And so tell me what you did.

THE DEFENDANT: The CI come to the house. I walked out, met him, and he handed me 50 bucks, and then he left. But it was all on video and pictures and stuff.

THE COURT: So the video shows you handing the drugs to the CI?

THE DEFENDANT: Apparently. But I've never seen the footage.

THE COURT: Okay. I asked you before if you'd seen the discovery, and you said that you had.

THE DEFENDANT: No, but I have -- I've read the discovery, but I haven't seen the videos.

THE COURT: Okay.

THE DEFENDANT: But I do remember delivering it to him.

THE COURT: Mr. Garner, are there videos he hasn't seen?

MR. GARNER: I don't know if he's seen that video. I have seen the video; and he's reviewed the reports, Your Honor.

THE COURT: Okay. Presumably you're in the video, [33] Mr. Haws. So do you know what you did that day?

THE DEFENDANT: Yes.

THE COURT: Okay. And so did you deliver drugs to a confidential informant?

THE DEFENDANT: I did, Your Honor.

THE COURT: And you're not saying this -- I mean, earlier, when I asked you what you did, you said that you didn't know there were drugs and you didn't deliver them. So I'm trying to figure out why you're telling me a different story now.

MR. GARNER: Your Honor, I think he was confused. There were several buys that were done. One was done at a park, I believe, where he was kind of the middleman.

THE COURT: Okay. I'll accept that as a fair answer and I won't draw any inferences therefrom. Mr. Haws, then, so you're telling me you did know that there were -- there was Hydrocodone pills and you did deliver them to a CI; is that correct?

THE DEFENDANT: Yes, I did.

THE COURT: And did you do that on or about the 21st day of April of 2015?

THE DEFENDANT: Yes.

THE COURT: And did you do that here in Fremont County, Idaho?

THE DEFENDANT: I did, Your Honor.

THE COURT: And did you have any legal right to be [34] delivering Hydrocodone pills to the confidential informant?

THE DEFENDANT: No.

THE COURT: Okay. Let's go to the next charge, then. The next charge is a charge of battery on an officer in Case CR-17-285. How do you plead to the charge that you, on or about the 28th day of February, 2017, in Fremont County, Idaho, actually, intentionally, and unlawfully used force and/or violence upon the person of Officer Miguel Rivera, Jr., by striking him in the shoulder and neck with a closed fist where you knew or had reason to know that Officer Miguel Rivera, Jr., was a peace officer, sheriff, or police officer and did commit said battery while Officer Miguel Rivera, Jr., was engaged in the performance of his duties? How do you plead to that charge?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: And why are you guilty of that, sir?

THE DEFENDANT: Because I did strike him.

THE COURT: Who did you strike?

THE DEFENDANT: That Miguel.

THE COURT: Rivera?

THE DEFENDANT: Rivera.

THE COURT: And did you know he was a police officer?

THE DEFENDANT: Yes.

THE COURT: Was he wearing his uniform at the time?

[35] THE DEFENDANT: Yes, Your Honor.

THE COURT: And did you intentionally strike him?

THE DEFENDANT: Yeah.

THE COURT: And did you have any legal right to strike him?

THE DEFENDANT: No.

THE COURT: And was this an actual strike?

THE DEFENDANT: Yes.

THE COURT: And did this occur -- I may have asked this before; but just to be clear, did this occur while he was doing his duty as a police officer?

THE DEFENDANT: Yes.

THE COURT: And did this occur in Fremont County, Idaho?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And did it occur on or about the 28<sup>th</sup> day of February of 2017?

THE DEFENDANT: Yes.

THE COURT: Ms. Murdoch, will the -- does the State agree there's a factual basis for both these pleas?

MS. MURDOCH: Yes, Your Honor.

THE COURT: And Mr. Garner, do you concur?

MR. GARNER: Yes, Your Honor.

THE COURT: Thank you. One last question, sir. And this pertains to both cases. Are you pleading guilty to [36] these charges because you really are guilty or are you pleading guilty for some other reason?

THE DEFENDANT: I'm pleading guilty because I did it.

THE COURT: In both cases?

THE DEFENDANT: Yes.

THE COURT: Okay. Thank you. You can return to your seat.

Counsel, thank you for your assistance in getting through that.

At this time the Court makes the following findings: The Court finds that the defendant was competent to plead guilty. The Court finds that the defendant understood the nature of the offenses and the consequences of pleading guilty to both. I also find that he understood and consented to the terms of the plea agreements. Additionally, I find he's set forth a factual basis for the guilty pleas in both cases.



Therefore, I'm going to conclude that he's made his guilty pleas knowingly, intelligently, and voluntarily with full knowledge of the consequences. I accept the pleas and would ask Madam Clerk to please enter the pleas into the record effective today. We'll schedule this matter for a sentencing.

I'm going to order, pursuant to 19-2524, a presentence investigation and a Core-I Assessment. Those will need to be completed prior to sentencing. The defendant has 48 [37] hours to contact the presentence investigator. It's imperative that you do that, sir. You'll be given information on how to do that. You'll also need to contact -- you'll also need to fill out the GAIN-I Core Assessment cover sheet before you leave the courtroom today. We'll set this hearing for about six weeks out, assuming that works with our difficult calendar in June. Madam Clerk.

THE CLERK: June 23rd.

THE COURT: It would probably be pushing it to schedule it for the end of May, wouldn't it? Let's see. That would be one, two, three -- that wouldn't even be four weeks. Okay. We'll have to set sentencing -- I apologize we can't do this sooner, but June 23rd at 2:00 p.m. will be the sentencing. June 23rd.

MR. GARNER: June 23rd. Okay. Thank you, Your Honor.

THE COURT: And just make special note of that if you would, Counsel. That's on a Friday.

MR. MURDOCH: What time did you say?

THE COURT: 2:00 p.m. on Friday, June 23rd. That'll be a special law-and-motion day since I'm going to be gone both of my Tuesdays I'm scheduled

to be here in June. One time I'll be in Arizona and the other time I'll be in Coeur d'Alene. Is there anything else we need to discuss at this time?

MR. GARNER: No. Thank you, Your Honor.

[38] MS. MURDOCH: I have nothing, Your Honor.

THE COURT: Okay. If there is nothing else, then, we will be in recess pending sentencing.

Mr. Haws, it's imperative that you stay in contact with your attorney and let him know where you are and that you're doing well. Okay?

THE DEFENDANT: Yes. Yes, Your Honor.

THE COURT: And additionally, you need to make sure you show up for your appointments with the presentence investigator. If you don't, they ask me to issue a warrant; and you'll be taken into jail until you're sentenced. Do you understand?

THE DEFENDANT: Yes. I'll get it done.

THE COURT: Okay. Very well, then. If there's nothing else, we're in recess on this case.

THE DEFENDANT: All right. Thank you, Your Honor.

MR. GARNER: Thank you, Your Honor.

THE COURT: On both cases.

(Proceedings concluded)