

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	Case No. CR14-20-07840
	)	
Plaintiff,	)	
	)	<b>Court's Ruling on</b>
vs.	)	<b>Defense Motion to</b>
	)	<b>Suppress</b>
DAVID ALLEN DALRYMPLE,	)	
	)	
Defendant.	)	
_____	)	

**EXCERPT OF TRANSCRIPT OF PROCEEDINGS**

Held on May 3, 2024,  
before the Honorable Thomas W. Whitney  
District Court Judge

TRANSCRIPTION BY:

Kimberly R. Hofkins, RPR, CSR #703  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

kim.hofkins@canyoncounty.id.gov

I N D E X

A P P E A R A N C E S

For the State: CANYON COUNTY PROSECUTORS OFFICE  
CANYON COUNTY COURTHOUSE  
By: **Theodore Lagerwall**  
**Virginia Bond**  
**Karson Vitto**  
**Peter Donovan**  
1115 Albany  
Caldwell, Idaho 83605

For the Defendant: CANYON COUNTY PUBLIC DEFENDERS  
OFFICE  
CANYON COUNTY ADMINISTRATION BLDG.  
By: **David Delyea**  
**Scott James**  
111 N. 11th Ave, Suite 120  
Caldwell, Idaho 83605

**REPORTER'S CERTIFICATE**

STATE OF IDAHO        )  
                              )  ss.  
COUNTY OF CANYON    )

I, KIMBERLY R. HOFKINS, RPR, CSR #703, one of the duly appointed qualified and acting official reporters of the Third Judicial District of the State of Idaho, do hereby certify that the foregoing transcript made of the proceedings in the matter of the motion hearing before the Honorable Thomas W. Whitney is complete a transcription as I was able to make.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of June 2024.

  
\_\_\_\_\_  
KIMBERLY R. HOFKINS, RPR, CSR #703

1 CALDWELL, IDAHO

2 May 3, 2024, 9:00 a.m.

3  
4 THE COURT: Go ahead and be seated. Thank you.  
5 All right. Let's go on the record, please. This is  
6 State of Idaho versus David Dalrymple. It's Case  
7 CR14-20-7840. Mr. Dalrymple is here with his  
8 attorneys, Mr. James and Mr. Delyea. Ms. Bond and  
9 Mr. Lagerwall and Mr. Vitto -- and he did such a good  
10 job on the brief.

11 MR. DONOVAN: Donovan.

12 THE COURT: Mr. Donovan is here -- thank you very  
13 much. I need to have placards here. I'll have that  
14 for the trial. I don't have it yet -- is here for the  
15 state.

16 This is the date and time set for several  
17 things. One is the time set for ruling on the  
18 Defendant's Motion to Suppress that was filed on  
19 April 5th, 2024. And I'll be addressing that today  
20 first.

21 Also noticed for hearing today was the  
22 State's Motion in Limine that was filed on April 26th,  
23 2024. I have met in chambers with counsel today, and  
24 it appears that that's not going to be addressed today.

25 Mr. Lagerwall, that was your motion. Are

1 you going to be re-noticing that for May 16th at 9:00  
2 a.m.?

3 MR. LAGERWALL: Judge, we are going to take a  
4 look at it and then either file a notice for that date  
5 or deal with it at trial. But I will take a look at  
6 those, yes, and respectfully ask that it be -- actually  
7 I guess just because it's before the court I'll re-file  
8 and then have it for the 16th. Would that be the best  
9 for the court or -- because my motion is deficient in  
10 the request. And so I need to either amend it or --  
11 I'm sorry. The actual motion is deficient. I guess  
12 the notice of the hearing is okay. But however the  
13 court wants me to do it.

14 THE COURT: I think procedurally I think it would  
15 make the most sense just to withdraw it today, and then  
16 you can re-file it. And it's not -- you don't have to  
17 file an amended one because it's still a motion in  
18 limine. And there's no limit to either side how many  
19 motions in limine you can file. So how would you like  
20 to proceed?

21 MR. LAGERWALL: Yes, Judge. I'll proceed in that  
22 manner. We will ask to withdraw these at this point.

23 THE COURT: Okay. So the State's Motion in  
24 Limine filed April 26th, 2024, that is withdrawn. But,  
25 again, either side there's no limit on how many motions

1 in limine you file.

2 We did discuss in chambers -- and I'm glad  
3 this came up. We did discuss in chambers a couple of  
4 things. We will set aside May 16th at 9:00 a.m. for  
5 any other motions in limine from either side. So we  
6 will have that as a hearing for any other motions in  
7 limine.

8 And we did discuss in chambers the time  
9 required for voir dire and getting the jury selected in  
10 the case. The first day of evidence -- and hopefully  
11 the first week of trial we'll get through jury  
12 selection and the jury sworn and then have opening  
13 statements. But the first day of evidence will be  
14 Monday, May 20th, Monday, May 20th.

15 And so, Mr. Lagerwall, Ms. Bond, is that  
16 going to work for the state?

17 MS. BOND: Yes.

18 THE COURT: Okay. So Monday, May 20th, that will  
19 be the first day of evidence.

20 And, Mr. Delyea, is that going to work for  
21 the defense?

22 MR. DELYEA: Yes.

23 THE COURT: All right. And so I'm doing that so  
24 that we can have convenient scheduling and preparation  
25 for both sides.

1           So there's one other thing that is going to  
2 be addressed today, and that is Mr. Dalrymple's April  
3 25th, 2024, Motion for Appointment of Conflict Counsel.

4           Mr. Dalrymple, we're going to address that  
5 today. I'm going to rule on the Motion to Suppress  
6 first. And something I want you to be thinking about  
7 is whether or not you want me to have the courtroom  
8 vacated. And essentially that means no one would be  
9 watching from the gallery, and the state's attorneys  
10 would not be present when you tell me again why it is  
11 that you want to have different lawyers representing  
12 you.

13           So you don't have to do that. And I'll  
14 discuss it again in a few minutes. But I just want you  
15 to have a chance to think it through. Because if you  
16 want that, if you want a chance to speak without the  
17 opposing attorneys listening to you, I'm going to give  
18 you that opportunity.

19           THE DEFENDANT: I've thought it through. We  
20 would like to do that.

21           THE COURT: Like to do that. Okay. We'll come  
22 back to that. And that portion of the hearing will be  
23 closed.

24           All right. So, Ms. Bond, then, the only  
25 things remaining today are the Motion for Conflict

1 Counsel and the ruling on the Motion to Suppress. Is  
2 there anything else that the state wanted to address  
3 today?

4 MS. BOND: We had talked to counsel just before  
5 you came in about viewing Courtroom 140 because we have  
6 kind of an idea of which table we want. But we want to  
7 make sure that everybody is there plus security so they  
8 can say yes or no. We'll deal with that. So we were  
9 going to ask you for a date next week where you and all  
10 of us and security can go down there.

11 THE COURT: Why don't -- let's see if there's  
12 time today we can just all -- we're all here. We can  
13 just all walk downstairs today.

14 I mean, Mr. Delyea, how do you feel about  
15 that?

16 MR. DELYEA: Judge, the hardest part for us is we  
17 have asked the jail not to transport Mr. Dalrymple  
18 until after noon so that we have time to speak with him  
19 while he's here. Because at Idaho Department of  
20 Corrections we don't get a private room, and here we  
21 would get a private booking room. But secondly we also  
22 have a call with our experts at noon. And so we're  
23 kind of on a short timeline for this morning. We would  
24 be available this afternoon, though.

25 THE COURT: Sure. Well, Counsel, let's do this



1       then.

2                       Ms. Bond, why don't you email my judicial  
3       assistant and then of course copy opposing counsel, and  
4       we can set up a time later next week to do that.

5                       MS. BOND:   Okay.  And I'm going to have to know a  
6       mechanism to notify security so they know to go down  
7       there.

8                       THE COURT:  Well, I'll take care of that part.

9                       MS. BOND:  Okay.

10                      THE COURT:  All you've got to do is lineup a time  
11       for the court and opposing counsel, and I'll take care  
12       of communicating with the jail staff.

13                      MS. BOND:  Thank you very much.  Your Honor,  
14       Mr. Lagerwall has two things to put on the record.

15                      THE COURT:  Go ahead, Mr. Lagerwall.

16                      MR. LAGERWALL:  Judge, just so the record is  
17       clear, we did file our witness list and mentioned the  
18       exhibit list.  We tendered a copy of the exhibit list  
19       to the defense.  We also gave a copy to the court.  We  
20       will have a complete list right before we start trial,  
21       but that we believe is the 99 percent -- just throwing  
22       out a number -- but the vast majority of everything  
23       that we're going to introduce.  I just wanted to put  
24       that on the record.

25                      The court also wanted us to give a list of

1 our video witnesses to the defense. We gave our list  
2 this morning. And then they're working with us --  
3 they're still talking to their experts. And so we're  
4 on notice and agreement to whatever they want as well.  
5 So that was completed.

6 And then -- sorry, there is three things.  
7 Lastly, the jury instructions, we're not going to be  
8 asking for anything outside of, you know, the murder,  
9 rape, kidnapping. However, we're looking at it closely  
10 because we want to be sure that the law as it was on  
11 the books from 1982 and the verbiage that was used is  
12 used in the jury instructions just because of ex post  
13 facto law. So we're going through that. We will  
14 submit that to the defense as well as to the court just  
15 as an aid for that purpose. But we're not asking for  
16 anything beyond that.

17 THE COURT: Okay.

18 MR. LAGERWALL: And that was it.

19 THE COURT: And to be clear, I mean, what I'm  
20 expecting is a stipulation regarding witnesses that  
21 would testify by video. And it's your choice -- and  
22 when I say you, I mean you both plural, the parties.  
23 It's your choice if you want to stipulate to video  
24 witnesses.

25 If either side objects to a witness

1     testifying by video, I can tell you with near certainty  
2     that objection is going to be sustained, and the  
3     witness would have to brought in and testify in person  
4     in front of the court and, you know, all the members of  
5     the jury panel. But I understand from prior  
6     discussions there's going to be an agreement about  
7     video testimony, and that's your choice. But it does  
8     need to be in writing so we don't have confusion about  
9     what's agreed upon and what's not agreed upon.

10           MR. LAGERWALL: Yes, Your Honor. Understood.

11           THE COURT: Okay. All right. So in terms of the  
12     list of things to be discussed today, anything else  
13     from the state?

14           MS. BOND: No, Your Honor.

15           THE COURT: All right. Mr. Delyea, anything from  
16     the defense that you're expecting to cover today?

17           MR. DELYEA: Judge, just since we brought up jury  
18     instructions, we have filed a jury instruction. The  
19     court can hear that whenever. I believe the court  
20     likely got that I assume.

21           THE COURT: I haven't seen it. It may be there.

22           MR. DELYEA: Okay.

23           THE COURT: I mean, I'm not planning to give an  
24     elements instruction with, you know, the introductory  
25     instructions, you know, with the pre-proofs. We'll

1 cover the elements of course before we instruct the  
2 jury at the end of the trial.

3 MR. DELYEA: And it doesn't go towards elements.  
4 It's actually a separate jury instruction, a special  
5 one that was created in the State v. Fain case at the  
6 Supreme Court level. So we will be requesting that.

7 And as far as the court's ruling on the  
8 Motion to Suppress, something did come to our  
9 attention. We received the information from the state  
10 regarding all the Touhy material. The only thing that  
11 we need to bring to the court's attention is the fact  
12 that the terms of service of the website used in the  
13 data matching was the terms of service disallowed the  
14 government or any FBI agent from accessing it for  
15 criminal investigative purposes. I don't know if  
16 that's going to affect the court's ruling in any way.  
17 But if it would, we can get our expert to write another  
18 affidavit to that effect. But at the time that it was  
19 used the FBI was not allowed to use that website for  
20 that purpose.

21 THE COURT: All right. Okay, Mr. Delyea. The  
22 motion is going to be denied. I'm about to do that.  
23 But if you want to file a motion to have the court  
24 reconsider the denial based upon that new information,  
25 just go ahead and file a motion and affidavit, and then

1 I'll take a look at that when it's filed.

2 MR. DELYEA: Thank you, Judge.

3 THE COURT: But I appreciate you bringing that to  
4 my attention, but I'm not considering that today.  
5 Okay. It's got to be in the record, and a motion has  
6 to be filed and then noticed for hearing.

7 So anything else then from the defense?

8 MR. DELYEA: No, Judge.

9 THE COURT: Okay. So let's go to the Defendant's  
10 Motion to Suppress that was filed on April 5th, 2024.  
11 The motion is going to be denied, but I'm going to  
12 address the issues one at a time.

13 Looking at the Defendant's Motion to  
14 Suppress that was filed on April 5th, 2024, there are  
15 three issues raised, and I'm going to read from page 1  
16 of the motion. And the relevant sentence is this,  
17 quote, "This motion is for the reason that the state's  
18 evidence, including the genealogic database SNP profile  
19 of Mr. Dalrymple and search warrant to obtain DNA from  
20 Mr. Dalrymple were seized without a warrant and in  
21 violation of the Fourth Amendment of the United States  
22 Constitution and Article 1, Section 17, of the Idaho  
23 Constitution," unquote.

24 And again I'm reading there from the first  
25 page of the Defense Motion to Suppress filed on

1 April 5th, 2024.

2 And so the court perceives the issue as  
3 targeted three matters. One is the government's use of  
4 the publically available genealogic databases. Second,  
5 the search warrant for Mr. Dalrymple's DNA -- because  
6 of course it's undisputed that a search warrant was  
7 obtained, and an additional DNA sample, not the  
8 standard one obtained from everyone who is convicted of  
9 a felony in Idaho, but an additional DNA sample was  
10 obtained from Mr. Dalrymple while he was in prison.  
11 And third is the defense motion targeting the use of  
12 the S-N-P or SNP profile of Mr. Dalrymple's DNA.

13 The facts are largely undisputed. I'm not  
14 going to repeat the facts in exhaustive detail. They  
15 are largely undisputed. They have been well laid out  
16 in the parties' filings.

17 In essence, going to the first issue,  
18 Mr. Dalrymple challenges the government's use of  
19 genealogic databases to essentially track him down and  
20 link him to this crime. I will note that any DNA  
21 material taken from the victim's body at the scene of  
22 the crime, or at the scene where the victim's body was  
23 found, that's abandoned DNA. Mr. Dalrymple does not  
24 assert any claim of ownership to the hairs that were  
25 found on the body of the victim.

1           Next, and critically, the government's use  
2 of publically available DNA information is not a search  
3 under either the Idaho Constitution or the United  
4 States Constitution. And additionally, Mr. Dalrymple  
5 has no standing to address -- to address whether or not  
6 the government's actions even constituted a search. He  
7 simply has no standing regarding the government's  
8 accessing the genealogic databases that are publically  
9 available information that were used to track down  
10 Mr. Dalrymple as the government's idea of the person  
11 who committed this crime.

12           Now, as to what is a search, I'm going to  
13 read relevant language from the United States Supreme  
14 Court case United States versus Jones, 565 U.S. 400;  
15 132 S. Ct 945; 181 L.Ed.2d 911. And that is a 2012  
16 case from the United States Supreme Court.

17           Now, in that case the U.S. Supreme Court  
18 addressed what is a search, that is the Fourth  
19 Amendment, in terms of evolving technology. Now, it's  
20 not particularly aimed at DNA, but it is aimed at  
21 evolving technology. And it's also the court's  
22 analysis of evolving technology in relation to the  
23 well-settled principles of search and seizure law,  
24 particularly search law, the definition of a search,  
25 set out in the landmark case Katz versus United States.

1 That's Katz, K-a-t-z, versus United States, 389 U.S.  
2 347; 88 S. Ct 507; 19 L.Ed.2d 576. That's a 1967  
3 United States Supreme Court case.

4 So reading from the majority opinion in the  
5 Jones case written by Justice Scalia there are a few  
6 quotes that are especially helpful to the court's  
7 analysis of this issue. And I'm going to start on page  
8 406 of the United States Reporter. And there the  
9 United States Supreme Court stated, quote, "We said  
10 that, quote -- and now let me back up a second. This  
11 is the United States Supreme Court emphasizing its  
12 earlier language from the Katz decision, K-a-t-z, that  
13 I've already cited. And so again here is the  
14 quotation: "We said that, quote, 'the Fourth Amendment  
15 protects people, not places,' unquote, and found a  
16 violation in attachment of an eavesdropping device to a  
17 public telephone booth. Our later cases have applied  
18 the analysis of Justice Harlan's -- H-a-r-l-a-n's --  
19 have applied the analysis of Justice Harlan's  
20 concurrence in that case which said that a violation  
21 occurs when government officers violate a person's  
22 reasonable expectation of privacy," unquote.

23 And again I'm reading from page 406 of  
24 United States versus Jones, 565 U.S. 400, 2012, Idaho  
25 -- rather United States Supreme Court case.



1           Now, in that majority opinion Justice Scalia  
2 further wrote on page 406 of the United States Reporter  
3 this, and he's talking about Jones, the person -- the  
4 person who was -- his constitutional rights were at  
5 issue in that Jones case, and here's the quotation.  
6 Quote, "Jones's Fourth Amendment rights do not rise or  
7 fall with the Katz formulation. At bottom we must  
8 assure preservation of that degree of privacy against  
9 government that existed when the Fourth Amendment was  
10 adopted."

11           Now, there's a citation to an earlier United  
12 States Supreme Court case. I'm now going to skip that  
13 and continue on with the quotation.

14           Quote, "As explained, for most of our  
15 history the Fourth Amendment was understood to embody a  
16 particular concern for government trespass upon the  
17 areas, persons, houses, papers, and effects it  
18 enumerates," unquote.

19           And so that's the description. That's the  
20 description in the Jones case in terms of what is  
21 protected by the Fourth Amendment.

22           Now, there is also helpful language in the  
23 concurring opinion authored by Justice Sotomayor. And  
24 this is actually the very first sentence in that  
25 concurring opinion. And the citation is 565 U.S. 413.

1 And here's what the concurring justice wrote there.  
2 Quote, "I join the court's opinion because I agree that  
3 a search within the meaning of the Fourth Amendment  
4 occurs at a minimum where, as here, the government  
5 obtains information by physically intruding on a  
6 constitutionally protected area," unquote.

7 And now there is a citation to another  
8 United States Supreme Court case, but I am not going to  
9 read that internal citation.

10 So there is settled law as to what is a  
11 search. And in this case when the state and other  
12 government actors used publically available genealogic  
13 databases those simply don't constitute a search within  
14 the meaning of established Fourth Amendment juris  
15 prudence. And there's nothing that's been cited that  
16 persuades the court that the Idaho Constitution extends  
17 any further protection.

18 It's an interesting issue. It was well  
19 briefed by both sides. I appreciate the work that was  
20 put into it. But for -- if the Fourth Amendment is  
21 going to be interpreted, is going to be interpreted to  
22 have broader protections, that's the role of the  
23 appellate courts. That's not the role of the trial  
24 court.

25 If the Idaho Constitution is going to be

1 interpreted to have broader protections, again that is  
2 the role of the Idaho Supreme Court. That is not the  
3 role of a district court.

4 So what occurred here regarding the  
5 genealogic databases simply was not a search.

6 Now, in addition, as to that information  
7 Mr. Dalrymple doesn't have standing. And I'm going to  
8 quote from the Idaho Court of Appeals case State versus  
9 Porter. And it's 170 Idaho 391. The pin cite there is  
10 397. That's a 2022 Court of Appeals case which in turn  
11 quotes an earlier Idaho appellate court case. And the  
12 relevant language is this, quote, "On a suppression  
13 motion challenging a warrantless search the defendant  
14 bears the evidentiary burden to show that a search  
15 occurred, that there was no warrant, and that the  
16 defendant has standing to challenge the search. By  
17 standing we mean that the defendant has a reasonable  
18 expectation of privacy in the place or thing that was  
19 searched."

20 So here I've already held that it was not --  
21 the usage, the government's usage of the genealogic  
22 databases does not constitute a search. But even if it  
23 did, Mr. Dalrymple has no standing to challenge that  
24 because he has not demonstrated any individual, any  
25 individual ability to challenge the government's use of

1       that public information.

2                       And so that aspect of -- that concludes the  
3       court's analysis of that aspect of the Defendant's  
4       Motion to Suppress.

5                       Now, defendant also challenges the search  
6       warrant that was obtained for -- that was obtained by  
7       the state to get his DNA, a DNA sample from him  
8       relatively recently while he was in the custody of the  
9       Idaho Department of Correction. And that was an Ada  
10      County warrant. First I'll note that there was not  
11      briefing really on that issue. It was raised in the  
12      last page of the defense brief. It's not thoroughly  
13      analyzed. I think it's really a corollary to their  
14      other arguments, the other arguments by defense  
15      counsel. But looking at the evidence as a whole what  
16      happened when the state got the search warrant to get  
17      Mr. Dalrymple's DNA for use in this case was certainly  
18      properly based on Idaho law, particularly because the  
19      state relied in part upon consensual DNA obtained from  
20      the bother of Mr. Dalrymple.

21                      So, you know, the law was well satisfied  
22      here that the search warrant that was used to obtain  
23      Mr. Dalrymple's DNA was based upon a showing of  
24      probable cause that was simply good police work. You  
25      know, the case which was a complicated case, a lot of

1 work went into it. And the work that was done to  
2 construct this family tree for lack of a better word  
3 was not the product of searching anything that was  
4 Mr. Dalrymple's. It's that work went into -- that work  
5 rather was based upon either publically available  
6 information like the genealogic databases or critically  
7 consensually obtained DNA from the brother of  
8 Mr. Dalrymple, and then the application for the search  
9 warrant was made, and the search warrant was granted,  
10 and the DNA was obtained.

11 Now, the third argument set forth by the  
12 defense is aimed at the SNP, S-N-P, SNP profile of  
13 Mr. Dalrymple. That's really a product of what --  
14 that's really a product of the fact that the search  
15 warrant was obtained and that his mouth swab was  
16 obtained while he was in the prison, and then the  
17 defense makes an argument that, well, that's too  
18 invasive. That's too invasive. They got his DNA, and  
19 that's too invasive. But there's been no showing that  
20 -- there's been no showing that under either United  
21 States Supreme Court precedent regarding search and  
22 seizure law or Idaho Supreme Court precedent regarding  
23 search and seizure law under the Idaho Constitution  
24 that the government is limited in what it can do once  
25 it gets the DNA sample lawfully here. It got the

1 sample. It conducted an ordinary DNA analysis that  
2 included creating a profile of the so-called SNP or  
3 S-N-P profile, but that was all based upon the evidence  
4 obtained when the search warrant was lawfully obtained  
5 from the Ada County magistrate.

6 So it was a very interesting issue, but the  
7 Defendant's Motion to Suppress is denied. Now, I'll  
8 enter a short order.

9

10 (End of excerpt.)

11 -oo0oo-

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