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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

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CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)		
)	CASE NUMBER	CR-09-0022548
Plaintiff,)		Fel
)		
V.)	MOTION FOR NEW TRIAL	
)		
FRANK TANKOVICH,)		
)		
Defendant.)		

COMES NOW, the above named defendant, by and through his attorney, Jedediah J Whitaker, Deputy Public Defender, and pursuant to Idaho Criminal Rule 34, moves this honorable Court for an Order vacating the verdict entered on October 28, 2010, and an Order requiring a new trial in this matter. This request is based upon the following violations of the Defendant's rights as guaranteed by the constitution of the State of Idaho and the United States of America;

1. Improper conduct by the presiding juror during deliberations.

During deliberations the presiding juror halted the proceedings due to an opinion expressed by another juror. This action completely exceeds the authority granted a presiding juror. It was designed to intimidate other jurors and taint the

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deliberation process. This argument is further supported by the presiding juror's actions during the improperly halted deliberations. During the period the presiding juror interrupted another juror and then attempted to influence that juror through the use of guilt, recrimination, harassment, and the false display of authority. Clearly the presiding juror ignored the Court's instructions and rather than acting as an impartial judge, behaved as a partisan advocate and basically a bully. These actions by the presiding juror tainted the deliberation process and violated the Defendant's right to a fair trial.

2. Invalid verdict.

The instructions given by the Court clearly informed the jury that their verdict could not be reached by compromise. However, the post-verdict in chambers discussion with one juror makes it clear that the unanimous verdict was the result of a compromise reached as a result of the presiding juror's conduct.¹ The juror interviewed clearly states that the Defendant was not guilty in their opinion but they had changed their verdict following the pressure and intimidation applied by the presiding juror. Therefore, the verdict entered in this case is invalid and violates the Defendant's constitutional rights.

¹ The Court has previously ordered a transcript of this interview. Once completed this transcript shall be included as an exhibit.

Counsel for the Defendant requests that a hearing be set in which the Defendant may call witnesses and present evidence. The requested time for this hearing is one hour.

DATED this 10th day of November, 2010.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: Lynn Nelson for
JEREDIAH J WHITAKER
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 10th day of November, 2010, addressed to:

Kootenai County Prosecutor

Elin Kovash