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9
10 ETHICS COMMISSION
11 CITY AND COUNTY OF SAN FRANCISCO

12
13 In the Matter of Charges Against
14 ROSS MIRKARIMI,
15 Sheriff, City and County of San Francisco.

**DECLARATION OF SFPD
INSPECTOR RICHARD DANIELE**

16
17 I, RICHARD DANIELE, declare:

18
19 1. I have personal knowledge of the matters stated herein, except for those matters set
20 forth on information and belief, which I believe to be true, and if called to testify, I can and will
21 testify competently as to all matters set forth herein.

22 2. I am currently an Inspector in the Domestic Violence Response Unit of the San
23 Francisco Police Department. I have worked in the San Francisco Police Department since 1981,
24 initially as a patrol officer. In 1999 I was promoted to Inspector. I worked in the General Works
25 Division from 1999 to 2005, investigating a variety of crimes including assault, kidnapping, and
26 extortion. From 2005 to 2006, I was in the Special Investigations Division, where I worked with
27 the US Secret Service to provide dignitary security. For a time in 2006, I returned to the General
28 Works Division. At both the General Works Division and the Special Investigations Division, I

1 investigated allegations of criminal conduct by law enforcement officers. I have worked in the
2 Domestic Violence Response Unit since 2007. I have conducted approximately 500 domestic
3 violence investigations.

4 3. This declaration includes information about an investigation conducted by me and
5 Inspector Mike Becker of the San Francisco Police Department Domestic Violence Response Unit,
6 concerning a report of a December 31, 2011 incident of domestic violence involving victim Eliana
7 Lopez and suspect Ross Mirkarimi.

8 4. On January 4, 2012 around 1 p.m., I was on duty in the Domestic Violence Response
9 Unit. Inspector Mike Becker and I were the on-call inspectors. My lieutenant in the Unit, Lt.
10 Michele Jean, met with me and Inspector Becker and directed us to investigate a report of domestic
11 violence that Inspector John Keane of the Domestic Violence Response Unit had received by
12 telephone around 12:25 p.m., from reporting party Ivory Madison, concerning an incident that
13 occurred on December 31, 2011 involving victim Eliana Lopez and suspect Ross Mirkarimi. I
14 received information that Madison had videotaped the victim's injury and received Madison's
15 address and telephone number.

16 5. On January 4, 2012 around 1:15 p.m., Inspector Becker and I obtained photos of
17 Lopez, Madison, and Mirkarimi. Around 1:40 p.m., Inspector Becker called Ivory Madison and left
18 a message on her voice mail. Around 2:19 p.m., I called Ivory Madison and left a message on her
19 voice mail.

20 6. On January 4, 2012 around 2:30 p.m., Inspector Becker and I arrived at Madison's
21 address. Madison's father in law opened the door and told us he was babysitting his granddaughter
22 and Madison would be home in 30 minutes. I left a contact card with him and advised him to have
23 Madison call me. Around 3:07 p.m. I received a call from Madison, who told me she would be
24 home in approximately 30 minutes and would call me when she got home.

25 7. On January 4, 2012 around 3:50 p.m., Inspector Becker and I arrived at Madison's
26 address and rang the door bell. A short time elapsed and the door opened and Lopez exited the
27 front door. She walked past Inspector Becker and me. Inspector Becker called "Eliana" and
28 identified himself and me. Inspector Becker told Lopez that we needed to talk to her, at which time

1 she looked at us and kept walking. Inspector Becker repeated himself. Lopez replied that she did
2 not have anything to say. Lopez walked down the stairs and Inspector Becker again called "Eliana"
3 and told her we needed to speak with her. Lopez stated she did not want to talk to us and pointed at
4 Madison and stated, you should talk to Ivory, she's the one who called the police. Lopez walked
5 away and continued walking on Webster Street.

6 8. Inspector Becker and I introduced ourselves to Madison and we responded inside
7 and were met by her husband Abe Mertens, who was holding their two-year-old daughter. I later
8 found out from Inspector Becker that shortly after we arrived, Madison told Inspector Becker that a
9 person who worked with Mirkarimi on his campaign just called Madison and told Madison she was
10 some kind of domestic violence advocate; the person was trying to have Madison not follow
11 through with reporting the incident; and Madison did not appear happy about this.

12 9. While we were at Madison's home, Mertens told us he was not present for Lopez's
13 meeting with Madison on January 1, 2012. We told Madison we would like to conduct a taped
14 interview of her, by herself. She agreed. The taped interview of Madison began at approximately
15 4:33 p.m. and concluded at approximately 5:03 p.m.

16 10. During the time we were at Madison's home, Lopez attempted to contact Madison
17 numerous times on Madison's cell phone. At least once, Madison answered the phone and spoke to
18 Lopez. Madison told us at the time that Lopez said she was taking care of it and that she was at
19 City Hall at the Sheriff's office meeting someone and her husband was coming to meet her; Lopez
20 told Madison that she was meeting with an advocate of some kind and she was meeting the right
21 people; Lopez told Madison she did not want to involve the police and asked Madison not to show
22 the police the video tape. I heard Madison tell Lopez she wasn't going to show the police the video
23 unless they had a search warrant or a court order. This statement and other statements we overheard
24 from Madison were consistent with Madison's report that the calls were from Lopez.

25 11. We requested that Madison provide us with the video, and she said she would not
26 provide it unless we had a search warrant or court order. In response, we told Madison and her
27 husband that we were going to freeze the premises while a search warrant was being obtained. We
28 did so and requested a search warrant. At approximately 8:35 p.m. on January 4, 2012, Inspector

1 Keane arrived at the premises with the signed search warrant, for the video camera used to record
2 Lopez's January 1 statement and for Madison's cell phone containing text messages from Lopez.
3 After we presented and explained the warrant to Madison and Mertens, Madison provided Inspector
4 Keane with the video camera and her cell phone. Madison also told us that she had corresponded
5 with Lopez through e-mails. We asked Madison if she could forward those e-mails, and Madison
6 stated she would forward those e-mails to Inspector Becker.

7 12. On January 4, 2012 around 9 p.m., I arrived back at the Domestic Violence Response
8 Unit at 850 Bryant and took custody of the video camera and Madison's cell phone from Inspector
9 Keane.

10 13. On January 4, 2012 around 10:51 pm., Inspector Becker searched computer
11 databases regarding Mirkarimi and determined that Mirkarimi had three firearms registered to him.
12 Inspector Becker later informed me of the results of his search and I entered this information in the
13 chronological report of our investigation.

14 14. On January 5, 2012 in the morning, with the assistance of the SFPD Forensic Video
15 Unit I viewed and heard the January 1 video. The SFPD Forensic Video Unit downloaded the video
16 from the camera and made a copy for me, which I placed in the investigative file. The SFPD later
17 provided the District Attorney with copies of this video for their use and for discovery to Mirkarimi
18 in the criminal case. In addition, the SFPD later made a copy for the San Francisco City Attorney's
19 Office, after an Order from the San Francisco Superior Court on May 15, 2012. A true and correct
20 copy of the video is attached as Exhibit 4 to this Declaration.

21 15. On January 5, 2012 shortly after noon, as part of our investigation, Inspector Becker
22 contacted the custodian of records at the Emergency Communications Division for video from
23 surveillance cameras at public housing units, to determine whether any video footage existed of the
24 block of Webster Street where Lopez lived. Inspector Becker was informed there was none.
25 Inspector Becker also contacted SFPD communications to determine whether there were any
26 service calls by SFPD to that block on December 31 between 11:30 a.m. and 4 p.m. Inspector
27 Becker was informed there were none. Inspector Becker told me about these contacts and I entered
28 them in the chronological report of our investigation.

1 16. On January 5, 2012 around 12:20 p.m., I called the cell phone number I had for
2 Lopez. Lopez told me she was doing very well and doing fine and was okay. Lopez declined to be
3 interviewed and advised me to speak to her attorney. Lopez told me that her neighbor is doing this,
4 that she was not in fear and nothing happened at all. Lopez told me that no one had threatened her.
5 Lopez told me that because she was on her cell phone she was not able to access her attorney's
6 phone number and asked me to call her right back. At around 12:25 p.m. I called Lopez again and
7 she provided me with her attorney's name, Cheryl Wallace, and a phone number for Wallace. I
8 advised Lopez that there are advocates to assist her, and Lopez told me that she did not need their
9 services. Lopez stated that her neighbor is trying to get attention. I advised Lopez about the video,
10 and Lopez told me it was completely out of context. Lopez again advised me to call her attorney
11 and again stated it was completely out of context. Lopez stated everything was fine with Ross.
12 Lopez told me she would call if she was in danger. At 12:33 p.m. I attempted to contact Wallace by
13 phone and left a message. [Attorney Note: This paragraph is not offered for the truth of the matters
14 stated by Lopez.]

15 17. On January 5, 2012 around 1:25 p.m., Inspector Becker and I met with Madison
16 again at her home. I asked Madison if she had forwarded all of her e-mails of her correspondence
17 with Lopez, and Madison told me that she had only forwarded the e-mails involving this incident.
18 We advised Madison that we needed all of her e-mail, and Madison stated that she would forward to
19 Inspector Becker the other e-mails. Inspector Becker received an email later that day from Madison
20 with an attachment that he could not open, and after I informed Madison of this she stated that she
21 would forward the individual emails to Inspector Becker, and she did so.

22 18. On January 5, 2012 around 2:40 p.m., I received a call from attorney Cheryl
23 Wallace, who informed me that she was representing Lopez. Wallace asked me to contact her in the
24 future if I needed to contact Lopez. Wallace also told me that Mirkarimi had counsel, Robert
25 Waggener, and gave me telephone numbers for Waggener.

26 19. During the afternoon of January 5, 2012 between 3:15 p.m. and 4:17 p.m., I had a
27 series of telephone calls and messages with the San Francisco Superior Court duty judge, requesting
28

1 that the Court issue an emergency protective order (EPO) for Lopez based on information I orally
2 provided to the duty judge. The duty judge denied the EPO.

3 20. On January 5, 2012 around 3:48 p.m., I received a call from attorney Robert
4 Waggener, who informed me that he was representing Mirkarimi. I told Waggener that I would like
5 to interview Mirkarimi. Waggener told me that he needed to meet with Mirkarimi and would get
6 back to me. Around 4:20 p.m., I contacted Waggener, who told me he needed to call Mirkarimi and
7 would get back to me. Around 6:21 p.m., Waggener called me and told me that Mirkarimi was
8 meeting him the next day at noon and he would get back to me after their meeting.

9 21. On January 5, 2012 around 5:00 p.m., as part of our investigation, Inspector Becker
10 and I returned to the block of Webster where Lopez lived and canvassed for witnesses. We were
11 unable to locate any witnesses. Of note, Callie Williams, a resident who lived in another apartment
12 of Lopez's building, told us that she did not witness anything on December 31 between 11am and
13 4pm, but on January 4 Lopez approached Williams and asked Williams if she had heard anything on
14 New Year's Eve.

15 22. On January 6, 2012 around 10:55 a.m., I left a telephone message for Waggener.
16 Around 11:20 a.m. Waggener returned my call and told me he would be meeting with Mirkarimi at
17 12:30 p.m. and would call me after their meeting. Around 2:00 p.m., Waggener called me and
18 informed me that Mirkarimi would not be giving me a statement.

19 23. On January 11, 2012, I received a voice mail message from Abe Mertens advising
20 me that he had text messages on his cell phone and was willing to download the text messages for
21 the investigation. I contacted Mertens and he consented to the download of his text messages. I
22 arranged for those text messages to be downloaded by the SFPD on the same date. A true and
23 correct copy of the printout from that download, including the pages containing text messages
24 between Mertens and Lopez, is attached to this declaration as Exhibit 5; the telephone numbers are
25 blacked out, and so are the text messages involving other persons. I also conducted a taped
26 interview of Mertens; Inspector Becker and Assistant District Attorney Jean Roland were also
27 present. I also received a copy of a separate taped interview with Madison conducted by the
28 District Attorney's Office.

1 24. On January 12 and 13, 2012, Inspector Becker and I worked with the District
2 Attorney's Office to prepare a warrant for Mirkarimi's arrest.

3 25. On January 13, 2012 around 1:30 p.m., Inspector Becker and I received a warrant
4 from the District Attorney's Office. Around 2:30 p.m., Inspector Becker and I met with the duty
5 judge, who reviewed and approved the arrest warrant. A true and correct copy of the arrest warrant
6 is attached as Exhibit 6. We also requested an Emergency Protective Order. The duty judge
7 reviewed the information we presented and granted an Emergency Protective Order. The
8 Emergency Protective Order was issued on the standard Judicial Council Form EPO-001 (Rev. Jan.
9 1, 2007).

10 26. On January 13, 2012 around 4:05 p.m., I called Waggener and advised him that I had
11 an arrest warrant for Mirkarimi and asked Waggener to have Mirkarimi surrender himself to us.
12 Around 4:55 p.m., Inspector Becker and I made arrangements with Waggener for Mirkarimi to
13 surrender himself to us at County Jail No. 1.

14 27. On January 13, 2012 around 5:30 p.m., Mirkarimi arrived at County Jail No. 1 with
15 his attorney Waggener, at which time Inspector Becker and I placed Mirkarimi under arrest.
16 Inspector Becker and I served Mirkarimi with the Emergency Protective Order. We explained the
17 provisions of the Emergency Protective Order to Mirkarimi, including that it prohibited him from
18 owning or possessing any firearms. We advised Mirkarimi that he had to surrender all firearms, and
19 advised him that three weapons were registered to him. Mirkarimi stated that he only had two
20 weapons, and I advised him that a Smith & Wesson revolver, a Sig Sauer, and a Beretta were
21 registered to him. Mirkarimi stated that he sold the Smith & Wesson revolver to a fellow recruit at
22 the Police Academy in 1996. Mirkarimi stated that the other weapons were at his residence and
23 they were buried deep inside the house. At this time, Inspector Becker and I told Mirkarimi and
24 Waggener that we would give them 24 hours to locate and surrender the weapons to us, and also
25 proof of the sale of the Smith & Wesson revolver. Waggener told us that he would make
26 arrangements to surrender the two firearms Mirkarimi had in his possession to Inspector Becker and
27 me tomorrow, and would telephone us when he was ready to meet with us. We agreed. Inspector
28 Becker asked Mirkarimi if he was armed at this time, and Mirkarimi responded that he was not

1 issued a firearm. Inspector Becker asked Mirkarimi if he had his own firearm with him. Mirkarimi
2 stated that he did not, and raised his coat to show he did not have a firearm. During this discussion,
3 we also advised Mirkarimi that if he did not surrender his weapons to us he would be subject to
4 arrest under the Emergency Protective Order. At no point in this conversation did anyone ever
5 discuss or agree to Mirkarimi or Waggener surrendering Mirkarimi's weapons to the Sheriff's
6 Department.

7 28. Mirkarimi was booked at County Jail No. 1 by deputy sheriffs. Inspector Becker and
8 I left as Mirkarimi was being photographed for booking.

9 29. On Saturday January 14, 2012 around 11:00 a.m., Lt. Jean, the head of the DVRU,
10 called me at home and asked me for an update on the surrender of Mirkarimi's weapons. Lt. Jean
11 directed me to get these guns into our custody as soon as possible. Around 11:35 a.m., I attempted
12 to contact Waggener by phone, and left a voice mail message asking for an update on the status of
13 his turning over Mirkarimi's weapons to us. I then called Inspector Becker at his home and gave
14 him an update on the situation. We decided that if we did not hear from Waggener soon, we would
15 obtain a search warrant for the weapons and go to Mirkarimi's home. I drove to Inspector Becker's
16 home, picked him up, and drove to the Hall of Justice. We were en route to the Hall of Justice
17 when, around 1:52 p.m., I received a call from Waggener. Waggener told me that he was in the
18 process of turning over Mirkarimi's weapons to the San Francisco Sheriff's Department. I asked
19 who at the Sheriff's Department was taking possession of the weapons. Waggener responded that
20 he was with Captain Kathy Gorwood of the San Francisco Sheriff's Department. I asked to speak
21 with Captain Gorwood. Captain Gorwood confirmed that she had possession of all three of
22 Mirkarimi's firearms. I asked her to describe the three weapons and she told me they were a Smith
23 & Wesson, Sig Sauer, and Beretta. The description was consistent with the weapons registered to
24 Mirkarimi. I said to Captain Gorwood that my partner and I would come to pick up the weapons
25 right now. Captain Gorwood replied, no, we are handling it. I asked Captain Gorwood where she
26 was going to store the weapons, and she told me, we have a place for them. I asked Captain
27 Gorwood to write an incident report indicating that she had taken possession of Mirkarimi's
28 firearms, and I gave her a case number for that purpose. Captain Gorwood took the case number

1 and told me that she would be filing a report the following week. The discussion with Captain
2 Gorwood was very brief. I did not discuss with her the agreement with Waggener that he would be
3 turning over the weapons to me and Inspector Becker. Inspector Becker and I contacted Lt. Jean
4 and informed her that the San Francisco Sheriff's Department had taken possession of Mirkarimi's
5 firearms.

6 30. On January 17, 2012 around 4:38 p.m., I received a copy of an incident report of the
7 same date prepared by Captain Gorwood regarding the weapons surrendered to her on January 14.
8 The three weapons listed in the incident report corresponded to the weapons that were registered to
9 Mirkarimi.

10 31. I received from the District Attorney's Office an order from the San Francisco
11 Superior Court dated January 19, 2012. The order directed the Undersheriff to transfer Mirkarimi's
12 three firearms (with serial numbers listed) to the custody and control of the San Francisco Police
13 Department, specifically to me and to Inspector Becker. A true and correct copy of that order is
14 attached to this declaration as Exhibit 7. Inspector Becker and I presented that order to the Sheriff's
15 Department on January 20, 2012, and the Sheriff's Department turned over three firearms to us.
16 The weapons we seized matched the weapons listed on the court order. We transported the
17 weapons to the SFPD Property Control Section and booked them in for safekeeping.

18 32. This declaration includes much of the information about the investigation conducted
19 by Inspector Becker and me, but in the interest of being brief it does not include all of the
20 information. I am willing to provide any additional information about our investigation that I can
21 lawfully provide.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct. Executed this 6/07/12, 2012 in San Francisco.

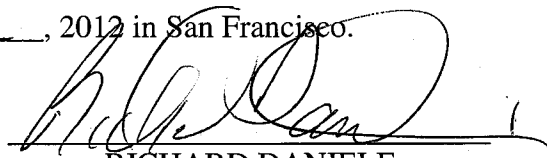
24 
25 RICHARD DANIELE
26
27
28

EXHIBIT 4

EXHIBIT 4
[CD ON FILE]

EXHIBIT 5

#	Number	Name	Date & Time	SMSC	Status	Folder	Storage	Type	Text
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3	[REDACTED]	N/A	10/19/11 16:38:48 (GMT)		Sent	Outbox	Phone	Outgoing	So sorry to hear about your traumatic experience. Ivory will call you. Let me know if I can help.
4	[REDACTED]	N/A	10/19/11 16:42:08 (GMT)		Read	Inbox	Phone	Incoming	Thank you! I'm trying to think clearly and don't be so emotional. Thank you!
5	[REDACTED]	N/A	10/19/11 17:08:36 (GMT)		Sent	Outbox	Phone	Outgoing	Please call Ivory or me to talk through what happened.

12	[REDACTED]	N/A	10/25/11 16:28:19 (GMT)	Read	Inbox	Phone	Incoming	Hello! I saw your garage open. And when I came back was still open. Just letting you know. Eliana.
13	[REDACTED]	N/A	10/25/11 18:40:52 (GMT)	Sent	Outbox	Phone	Outgoing	Thanks. I'll ask Ivory if she forgot to close it.

55	[REDACTED]	N/A	12/01/11 03:56:04 (GMT)		Read	Inbox	Phone	Incoming	Hi! We are still on hayes and kebab. Untie Pat came too, so we will go straight home. I will call you tomorrow. Kisses!
56	[REDACTED]	N/A	12/01/11 03:57:50 (GMT)		Sent	Outbox	Phone	Outgoing	Ok see you Friday.
57	[REDACTED]	N/A	12/03/11 02:18:03 (GMT)		Read	Inbox	Phone	Incoming	The boys here are falling apart. They are resting on bed. So if you want to walk first we will meet you in around.30min :(

61	[REDACTED]	N/A	12/14/11 02:45:41 (GMT)		Read	Inbox	Phone	Incoming	Did you see that the situation with the tickets is real? He told me he paid it.
62	[REDACTED]	N/A	12/14/11 02:55:30 (GMT)		Sent	Outbox	Phone	Outgoing	I'm so sorry this happened. Please let me know if we can help in any way.

75	[REDACTED]	N/A	12/22/11 16:46:20 (GMT)		Read	Inbox	Phone	Incoming	Morning! We are outside.
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82	[REDACTED]	N/A	12/31/11 21:48:55 (GMT)		Read	Inbox	Phone	Incoming	Hello! Where are you guys?
83	[REDACTED]	N/A	01/01/12 00:06:08 (GMT)		Sent	Outbox	Phone	Outgoing	We're at the Academy of Sciences. You?

EXHIBIT 6

WARRANT OF ARREST

IN THE SUPERIOR COURT
IN THE
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

The People of the State of California to any peace officer of this State:

COMPLAINT upon oath having this day been laid before me that the offense of MISDEMEANOR, to-wit:
Violating Sec. 273.5 (a), 273a (b), 136.1 (b) (1) PENAL CODE has been committed and
accusing..... **ROSS MIRKARIMI**

thereof, you are therefore commanded forthwith to arrest the above named defendant and bring same before the Superior Court in
the City and County of San Francisco of California, at the Hall of Justice, San Francisco, California.

The defendant is to be admitted to bail in the sum of \$ **35,000.00**

This warrant may be served day or night..

Witness my hand and the seal of said court.....

JANUARY 13, 2012 20

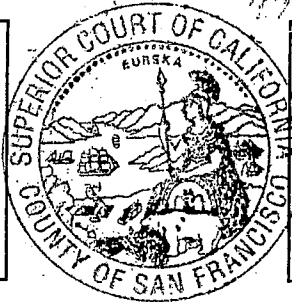
Richard A. Keawer
Judge of the Superior Court in the City and County of San Francisco

RICHARD A. KEAWER

WHEN BAIL DEPOSITED INSTRUCT DEFENDANT
APPEAR 9:30 A.M., ROOM 201 HALL OF JUSTICE,
SAN FRANCISCO, ON

..... **20**

(Within 10 days after admittance to bail.)



RETURN THIS WARRANT WITH
BAIL DEPOSIT TO CLERK SUPE-
RIOR COURT, ROOM 201 HALL OF
JUSTICE, SAN FRANCISCO.

ON DECEMBER 31, 2011, DEFENDANT VERBALLY AND PHYSICALLY ASSAULTED THE VICTIM IN FRONT OF
THEIR 2 YEAR OLD CHILD. THE ASSAULT RESULTED IN INJURY TO THE VICTIM. FOR DETAILS PLEASE
SEE ATTACHED AFFIDAVIT IN SUPPORT OF THE ARREST WARRANT.

JANUARY 13, 2012
DATE

J. Roland
ASSISTANT DISTRICT ATTORNEY

EXHIBIT 7

1 GEORGE GASCÓN (SBN 182345)
District Attorney
2 ELIZABETH AGUILAR TARCHI (SBN 113295)
Assistant District Attorney
3 850 Bryant Street, Room 300
San Francisco, California 94103
4 Telephone 415-553-1087

ENDORSED
FILED
San Francisco County Superior Court

JAN 19 2012

CLERK OF THE COURT

BY: P. Lee
Deputy Clerk

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SAN FRANCISCO

9 PEOPLE OF THE STATE OF CALIFORNIA,

MCN 12001311

10
11 Plaintiff,

12 vs.

**ORDER TO UNDERSHERIFF TO
TRANSFER FIREARMS TO CUSTODY
OF SFPD**

13 ROSS MIRKARIMI,

14 Defendant.

Date: January 19, 2012

Time: 9:00 a.m.

Dept: 50 (DV Courtroom 24)

Judge: Honorable Susan Breall

17
18 Good cause appearing, it is hereby ordered, that Undersheriff J. Dempsy coordinate the
19 transfer of the following firearms to the custody and control of the San Francisco Police Depart-
20 ment, to wit, Inspector Inspector Richard Daniele, Star 427 and Inspector Mike Becker, Star 564:

21 (1) Sig Sauer P229 Serial Number AH20337

22 (2) Beretta 92G Serial Number BER408607Z

23 (3) Smith and Wessen Revolver 19-5 19-5 Serial Number ADS6169

24 It is so ordered.

25
26 Dated: January 19, 2012

By: **JUDGE SUSAN BREALL**

Hon. Susan Breall, Superior Court Judge

