

October 14, 2006

John M. Adams
Kootenai County Public Defender
Hand Delivery

Subject: **State's Counteroffer in State of Idaho v. Joseph E. Duncan III**

Dear Mr. Adams:

The State rejected your client's October 4, 2006 offer that would have required the State to remove the death penalty option in exchange for guilty pleas. This letter contains the State's counteroffer by which the State can still seek the death penalty if your client pleads guilty to three counts of First Degree Murder and three counts of First Degree Kidnapping.

Moreover, this counteroffer requires that Shasta will not be required to testify at the death penalty phase.

The State's counteroffer is as follows:

1. Mr. Duncan will enter unconditional, provident guilty pleas to all counts in the Criminal Information: three counts of First Degree Murder and three counts of First Degree Kidnapping.

2. Your client will stipulate that the death penalty phase on the three murder counts which will follow Judge Gibler's acceptance of his guilty pleas, shall be continued until after a federal trial and sentencing in United States District Court. If the United States is unsuccessful in obtaining a death sentence, your client will be immediately returned to Kootenai County to face a death sentencing jury under the same conditions as if his sentencing were not abated for the federal trial. If he receives a federal death sentence, upon the signing by the federal district judge of the death warrant or order, which ever comes earlier, Kootenai County stipulates that he receive a fixed life sentence without parole. If sentenced to death by the federal court your client will remain in federal custody pending his execution.

3. Mr. Duncan agrees to waive extradition or other proceeding to expedite his return to Idaho if that is necessary.

4. Your client will enter unconditional, provident guilty pleas to the three First Degree Kidnapping counts on October 16. The State and your client stipulate that he will

receive three consecutive fixed life terms on these charges, and that the State will introduce a statement of facts as a factual predicate for his pleas, and in aggravation. No witnesses will be called at this sentencing. Your client will waive a presentence investigation.

5. Mr. Duncan will cooperate fully and truthfully with Kootenai County law enforcement officials concerning the crimes to which he is pleading guilty under this agreement that were committed at the Wolf Lodge crime scene.

6. Mr. Duncan will provide the password and or keys to his encrypted computer files to his federal public defender.

7. The family members of the victims of the crimes to which Mr. Duncan will plead guilty may fully participate in any sentencing proceedings subsequent to the sentencing for the kidnapping charges to which he is pleading guilty pursuant to this agreement, including the right to testify and not be cross examined by the defense. Further, there will be no defense objection to the presentation of any such testimony by way of pre-recorded video or written statements.

8. Mr. Duncan agrees that the video and audio tapes of law enforcement's interview of Shasta Groene made in Kootenai County and in Montana may be used at the death penalty sentencing in Kootenai County if such sentencing becomes necessary pursuant to this agreement.

9. Your client's guilty pleas to the State murder and kidnapping charges are irrevocable and cannot be withdrawn.

10. Mr. Duncan will waive his appeal and post conviction rights on the kidnapping sentence.

11. At a death penalty sentencing, the State may introduce its full aggravation case, to include all evidence provided in discovery and marked as evidence for the trial to commence today, October 16, 2006.

12. If Mr. Duncan fails to comply with any provision of this agreement prior to the federal sentencing, the State will provide notice to Judge Gibler, and initiate his return to Kootenai County for a death penalty sentencing.

13. By entering this agreement, your client is fully aware that this client in no way binds the United States in its prosecution for any charges it may bring. Mr. Duncan is also fully aware that the United States has announced formally that it will indict and try him for certain crimes, including the murder of Dylan Groene, and will seek the death penalty upon conviction of any capital crime. He is also fully aware that any statement made pursuant to this agreement will be admissible in evidence against him in any court proceeding in both Idaho and United States District Court.

14. There are no sub rosa agreements.

Your client must accept this counteroffer prior to the commencement of jury selection on Monday, October 16. If he does not accept, we will proceed to trial as scheduled.

Indicate by your signatures below whether your client agrees to these terms.

Sincerely,

William J. Douglas
Prosecuting Attorney in and for
Kootenai County, Idaho

The above terms are accepted.

John M. Adams
Attorney for Joseph E. Duncan III
Date: October _____, 2006

Joseph E. Duncan III
Date: October _____, 2006