

2-24-2012

## Arambula v. State Appellant's Brief Dckt. 38698

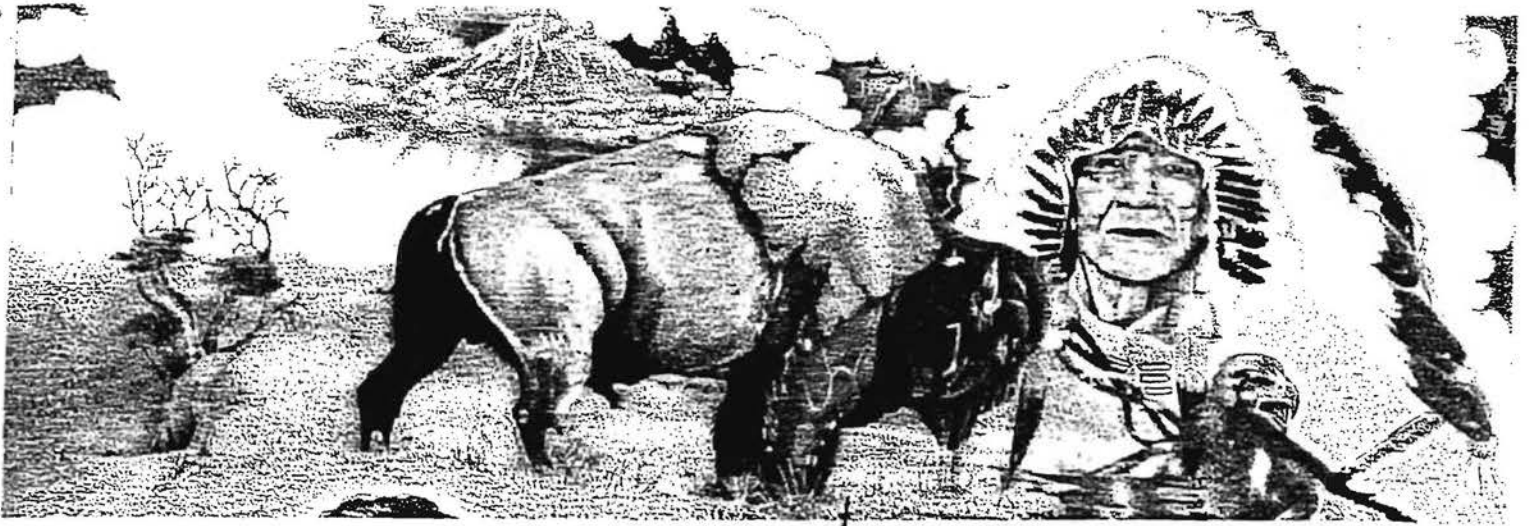
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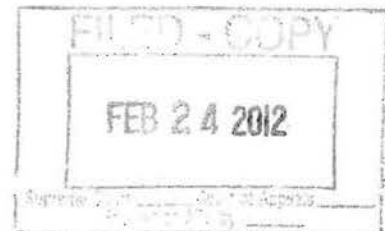
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ARmando Keto ARambula  
Petitioner - Appellant  
v.  
STATE OF IDAHO  
Respondent

BRIEF OF  
APPELLANT  
Twin Falls, County Case No. 2010-55  
Supreme Ct. Case No. 38698-2011

I received your letter from the Supreme Court with the order that Appellant shall file Appellant's Brief with this Court within 14 days. I have just received this letter on 2-17-2012. And your letter is dated the 2<sup>nd</sup> day of February 2012. Apparently you sent this letter to the wrong address, because the letter said to please notify sender of your correct address. My correct address is 125 N. 8th West St. Anthony, ID - 83445-



## Nature of Case

I was originally charged in the Fifth Judicial District, State of Idaho for the County of Twin Falls,

For Possession of a Controlled substance.

I don't know the Law, and so in reading all these Papers they represent everything that I would place into, and would like to have you screen AS MY APPELLANTS BRIEF.

Due To my lack of Knowledge and Understanding and Lack of Funds, May I be appointed an State Appellate Public Defender.

It's all in the brief here in which I feel I am doing Prison time for what was nothing more than a Misdemeanor Paraphernalia charge. I filed Ineffective Assistance of Counsel because this Attorney did not argue the fact that there was <sup>no</sup> amount of drugs, just the scale which should have been a Paraphernalia charge. I Respectfully submit this Brief.

Sincerely,

Commander [Signature]

## Ground FOUR

Counsel was ineffective for failing to provide the necessary Services due to An indigent Prisoner Pursuant to I.C. § 19-852

Idaho Code is clear when addressing the effective assistance of Counsel for needy and indigent persons; who are under formal charge of having committed a serious crime. It is stated that those persons under formal charge are "entitled to be represented by an attorney to the same extent as a person having his own Counsel is so entitled; and (2) to be provided with the necessary services and facilities of representation (INCLUDING INVESTIGATION AND OTHER PREPARATION)." I.C. § 19-852(1) and (2), emphasis mine. During several parts of the criminal proceedings petitioner demanded that his attorney conduct an independent narcotics examination of the States ~~the~~ evidence. Petitioner's attorney ignored his client's request and instead chose to rely on the States set of facts as well as their forensic examination. In the regard to adequate preparation and examination

**Brief**

~~\_\_\_\_\_~~ For Postconviction relief - 2(E)

## Ground Three

### Counsel was ineffective for failure to adequately cross examine the States witness

The petitioner contends that States witness Ken Rivers committed perjury at preliminary hearing when he stated that "he had never had a field narcotics test come back negative," or words to that effect. Later Counsel for the petitioner would disclose to his client that he had been involved in other criminal cases where Rivers acted as a witness for the State and had in fact had negative results on those tests. Counsel for the petitioner should have asked the necessary questions on cross examination to impeach witness Rivers. In failing to do so Counsel Anderson disregarded his duty to provide a zealous defense for his client. This deficient performance directly affected the outcome of this case because it inabled Arambula from discrediting the States witness.

**Brief**

For Post Conviction relief - 2(D)

Petitioner Armando Arambola asserts the following grounds for Post-Conviction relief:

## Ground One

Idaho's Possession of a Controlled Substance Statute is Unconstitutionally Vague

Petitioner Arambola contends that because I.C. § 37-2732 fails to specify a specific amount of substance, he was falsely convicted.

**Brief**



## Ground Two

Counsel of record, Ben Anderson, was ineffective for failing to file a motion in limine in an attempt to suppress the narcotics test

Petitioner argues that had Counsel performed an independent examination (AS arambola requested several times) of the States evidence he would have been able to have filed a motion in limine to suppress said evidence based upon those results. The petitioner argues that failure to file a motion to suppress and failure to obtain an independent examination was due to "inadequate preparation" by defense Counsel Ben Anderson. Pratt v. State 134 Idaho 581 (2000). Also that the inadequate preparation showed Counsel's deficiency. The probability of success of such a motion would have been high given there was no actual amount of substance, and it was simply residue on the scale found in petitioners home. Furthermore, officer Ken rivers initial field test ~~was~~ produced negative results.

**Brief**

**[REDACTED]** for Post Conviction relief - 2(B)

It was not until rivers took the Scale back to his office and re-tested the Scale that he found a positive result. Counsel's deficiency prejudiced the outcome of this case because the petitioner would have not chosen to plead guilty had Counsel followed Arambula's defense request and had an independent forensic examination conducted. Counsel Anderson refused stating Arambula would be forced to bear the costs of such a test. Such a test could have and should have been succeeded by a motion to suppress on the basis of inadequate evidence for a charge of possession of a controlled substance.

**Brief**

**[REDACTED]** For Post Conviction relief.- 2(c)

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Counsel was deficient. Said deficiency clearly prejudiced the petitioner. For had Counsel conducted an independent examination the defense could have shown there was no testable amount of substance. Moreover, testimony from an independent lab technician would have shown the same. Such evidence would have rendered the State's forensic examination unreliable. Ultimately the defense could have moved for dismissal.

## Ground Five

Counsel was ineffective for failure to address the vaguely written Chain of Custody

Defense Counsel failed to address the fact that the Chain of Custody was vaguely signed with signatures such as "UPS". Petitioner contends the signature of "UPS" is insufficient and must have an actual name accompanying such a label.

**Brief**

**[REDACTED]** For Post-Conviction relief - 2(F)


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## Ground Six

The District Court erred in refusing to provide the petitioner with alternate counsel upon multiple requests to the Court


At the beginning of this case the Court appointed the twinfalls County public defenders office. Ben Andersen, public defender, was assigned to the case as counsel of record. Later at preliminary hearing Arambula requested that he be provided with alternate counsel because Andersen was not conducting Arambulas defense as he so wished. The Court responded to Arambulas concern stating "it appears as if he is doing a good job so far", or words to that effect. Later while meeting with Andersen at the twinfalls County jail Arambula again expressed his wish to relieve Andersen of his duties as his attorney. Yet again at District Court arraignment Arambula made statements to the Court wishing to have a different attorney. The Court refused to honor this request and made additional comments stating "Mr. Andersen does not have a crystal ball," or words to that effect.

**Brief**

 For Post Conviction Relief - 2 (G)

The Court was then prepared to set the case over for jury trial; However, after finding that the Court would not provide Alternate Counsel Arambula agreed to plead guilty. Arambula did so because he felt he was being deprived of his right to prepare his own defense when the Court refused to replace Andersen. The Court continued the case for acceptance of a guilty plea later that afternoon. The Sixth and the fourteenth amendments to the United States Constitution guarantee basic rights to assure the accused of a fair adversarial proceeding. These rights are well established. The Sixth amendment provides the "Assistance of Counsel" to supplement other rights of defendants. In addition to these rights prior courts have held that "The Constitution does not force a lawyer upon a defendant." *ex rel McCann* 317 U.S. 279. The United States Supreme Court has also held that "A defendant in a state criminal trial has an independent ~~right~~ constitutional right of self representation." *Faretta v. California* 422 U.S. 806. Although Arambula did not elect to represent himself, his case poses a Sixth amendment violation similar to Faretta's.

**Brief**

 For Postconviction Relief - 2 (H)

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Arambula wished to have alternate Counsel because Public defender Andersen would not conduct his defense as he so wished. This holds similar to why Faretta wished to represent himself. He wanted his defense conducted as he so chose, not at the whim of a public defender whose office was "very loaded down with a heavy case load." Faretta at 422 U.S. 807. There were various times where Arambula brought to the Courts attention that he was dissatisfied with Counsel's performance and preferred alternative Counsel who would follow his instructions with regard to his defense. "To thrust Counsel upon the accused, against his considered wish, thus violates the logic of the [Sixth] Amendment." Faretta 422 U.S. 820.

Arambula was dissatisfied with Counsel Andersen's performance because he refused to conduct the necessary pre-trial investigation afforded to him through I.C. § 19-852. Arambula requested that Andersen have an independent forensic examination conducted on the digital scale, which the State claimed had remnants of methamphetamine on it. Andersen refused claiming Arambula would be forced to pay for the independent lab test despite

**Brief**

**[REDACTED]** For Post Conviction Relief - 2 (I)

being an indigent inmate. The initial Field test conducted by officer Ken rivers was negative. It was not until officer rivers took the Scale back to the Station and re-tested the Scale that he found positive results for Methamphetamine. This was the logic behind Arambula's request for the independent ~~for~~ forensic examination. More over, it was necessary for his defense. Later officer Ken Rivers would testify at preliminary hearing that he had never had a field test come back negative. After the hearing Counsel Andersen disclosed to Arambula that ~~that~~ he knew Rivers had lied about not having field test come back negative. Andersen stated he had been appointed to represent other defendants where Rivers had in fact had field tests come back negative. Arambula argued with Andersen insisting he should have brought this to the Courts attention through cross examination. When Andersen refused this only furthered the petitioners wish to relieve him as Counsel. Arambula attempted to do so at district Court arraignment to no Avail. It was only at this time arambula relented to pleading guilty. This logic violates the Sixth Ammendment. The Sixth Ammendment provides "The ~~Accused~~ Accused

**Brief**

For Post Conviction relief - 2 (J)

Shall enjoy.... and to have assistance of Counsel for his defense." U.S. Const. Amm. VI. Basically it is the defendant who is responsible for the preparation of his defense to Criminal accusations. The defendant inherently enjoys the right to the assistance of Counsel for preparation of that defense, whatever that defense may be. When the Court Forces an Attorney upon a defendant who is unwilling to assist in the preparation of a defense, such logic violates the Sixth Amendment. For it is then the Attorney who becomes the master as opposed to the defendant.

Had the Court provided Arambula with alternate Counsel such Counsel could have conducted the necessary Pre-trial investigation to present an exculpatory defense at trial. This is what Arambula wanted. Alternate and willing Counsel could have made arguments against the States evidence at trial, or even for suppression of the evidence. Arguments could have been made that there wasn't even a testable amount of methamphetamine and that the type of methamphetamine was never identified. Also that the chain of custody did not conform to standards of prior court rulings and

**Brief**

**[REDACTED]** For Post Conviction relief - 2 (K)

had vague information listed such as "UPS".

The Actions of Arambula's Attorney Andersen Prejudiced the Outcome of this Case because without the necessary Assistance of Counsel for his defence Arambula was forced to plead guilty. Had Arambula had the necessary Assistance to prepare a defence he would not have plead guilty.

In deciding Faretta the Court delivers a detailed opinion about the history of the American Judicial System and its roots dating back to the 16<sup>th</sup> Century. While that opinion makes a showing by centuries of consistent history that a defendant has long been afforded the right to represent himself; it also shows that Courts must not deprive defendants of their Constitutional right to prepare their own defense. In forcing Arambula to proceed with counsel who refused to aid in the preparation of ~~his~~ his defense, the Court handicapped the defendant and violated his Sixth Amendment right.

**Brief**

 For Post Conviction Relief- 2(L)

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AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

STATE OF IDAHO )  
COUNTY OF ADA ) ss

Armando Arambola, being first duly sworn on oath, deposes and says:

In March of 2002 the Above-named petitioner was Sentenced to three and one-half (3½) years fixed with three and one-half years (3½) indeterminate for a total term of Seven (7) years for the Crime of ~~possession~~ <sup>Delivery</sup> of a Controlled Substance I.C. § 37-2732(c)(1), Fifth Judicial district Court Case# CR-2001-2566. The petitioner was paroled in January 2007. In October 2009 the petitioner was arrested, while on parole for the Above-Stated case, for the Crime of Possession of a Controlled Substance I.C. § 37-2732. The petitioner was arraigned on said charges and a public defender was appointed from the twinfalls County public defenders office. Arambola immediately voiced that he wished to have an attorney appointed to him outside of the public defenders office. The petitioner had been appointed attorneys from the twinfalls County public



defenders office in the past and felt prejudiced by there past performance in his previous criminal cases. The petitioner contends that Counsel from the public defenders office refuse to follow his instructions. More specifically they refuse to make comments to the Court about the charge in this specific case being a misdemeanor and not a felony. The Court responded to Mr. Arambulas request for conflict free Counsel by stating "It looks like he is doing a great job for you so far", or words to that effect. The petitioner instructed his attorney to voice his concerns with the Court that there was no evidence to support the States charge of possession of a controlled substance. The State, at that time, had no laboratory reports confirming the presence of a controlled substance. Arambula felt that he was charged overzealously and that the maximum charge should have been possession of drug paraphanilia. Regardless, the petitioner felt he was bound over to district Court lacking the necessary evidence to do so. After failing to speak as the

Affidavit of Facts in Support of  
Post Conviction Petition - 1 (A)

**Brief**

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petitioner requested, he attempted to dismiss Ben Andersen as his attorney. Later, in an attempt to rectify the situation, Andersen visited Arambula at the Twin Falls County Jail several times. It was quite clear and obvious there was a disagreement between client counsel as to how the case should proceed. Prior to arraignment in District Court Arambula was visited at the Twin Falls County Jail by Andersen. Andersen was accompanied by a second attorney employed with the public defenders office. At that time Arambula asked Andersen why he did not speak up at preliminary hearing as he had instructed him to. Andersen responded by stating "I chose to say what I want", or words to that effect. Arambula responded by stating "Well I chose to say you are fired". This was the third or fourth time Arambula had attempted to dismiss counsel, Ben Andersen. Andersen stated that Arambula did not have a good case. Arambula argued wanting to fight the case and stating "it was just residue and likely no testable amount." Andersen and the other attorney that accompanied him coerced Arambula into accepting a plea agreement stating

Affidavit of Facts in Support of  
Post Conviction Petition - 1 (B)

**Brief**

"You are likely to receive a twenty-five year Sentence as opposed to a Seven (7) year Sentence," or words to that effect. Arambula still persisted that he wished to proceed to Jury trial. At ~~pre-trial conference~~ <sup>Arraignment</sup> a Substitute Judge was presiding in place of the Honorable Richard G. Bevan. Arambula stood up at that time and voiced his wishes regarding his Attorney. The Court responded to Mr. Arambula's concerns by stating "Mr. Andersen does not have a Crystal Ball," or words to that effect. The Court was prepared to set the matter over for jury trial, however Arambula objected after the Court determined that it would not appoint him Alternate Counsel. Arambula then agreed to accept the State's plea agreement and plead guilty. The Court set the matter over for plea later that afternoon. On May 3<sup>rd</sup>, 2010 The Court sentenced Arambula to two (2) years fixed with five (5) years indeterminate for a unified term of Seven (7) years. The Court in its judgment and commitment advised the defendant that he "loses the right to appeal except as to the sentence imposed." Exhibit "A" pg. 3

Affidavit of Facts in Support of  
Post Conviction Petition - 1 (c)

**Brief**

The judgement and Commitment goes on to contradict itself Stating "Arambula was advised of his right to appeal the judgement within 42 days...." Judgement and Commitment pg 6. In Any event Arambula asserts his right to Appeal by way of the 6<sup>th</sup> and 14<sup>th</sup> Ammendments to the United States Constitution and that to deprive him of this right is a violation of due process of law.

Moreover, Arambula instructed Counsel Ben Andersen to File a direct Appeal within the Alloted 42 days and he failed to do so.

Affidavit of facts in Support  
of Post Conviction Petition - 1 (D)

**Brief**

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**OFFICE OF THE PUBLIC DEFENDER**  
**TWIN FALLS COUNTY**

---

Marilyn B. Paul, Public Defender  
Benjamin P. Andersen  
Robin M.A. Weeks  
George P. Essma  
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Samuel S. Beus  
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231 Fourth Avenue North  
Post Office Box 126  
Twin Falls, Idaho 83303-0126  
Telephone: (208) 734-1155  
Fax: (208) 734-1161

January 5, 2010

Armando Arambula  
c/o Twin Falls County Jail

Dear Mr. Arambula,

Because the magistrate found probable cause to bind you over you are still being held on this charge. I do not know why we still don't have lab results back. I'm hoping they are having trouble finding meth in the sample and the delay is not just based on a back log. The discovery cutoff deadline is January 13, 2010. If we do not have the results by then, some action will be taken.

— Thirty days passed after receipt of this letter and I did not receive any lab report until two weeks before trial. No action was ever taken.

Sincerely,



Ben Andersen  
Chief Deputy Public Defender

Exhibit "B" pg 1

**Brief**  
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9705995-002

TWIN FALLS POLICE DEPARTMENT EVIDENCE

Net Wt. 36.0 gr Gross Wt. 36.6

Case Number: 0905993 Date of Offense: 10-22-09

Suspect: Armando K Anambula

DOB: [REDACTED] SSN: [REDACTED] SID: [REDACTED]

Suspect: \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ SID: \_\_\_\_\_

Victim: \_\_\_\_\_

Charge: PCS

Description of Evidence: 21 pills w/ m357; 9 pills w/ 937177; 11 pills w/ Watson 349; 2 pills w/ Pl. # 434; 5 pills w/ Watson 3203

Location Found: residence Date Found: 10.22.09

Examination Required: ID

Submitting Officer: Rivers

Chain of Custody

From Rivers To Temp Date 10.22.09

From Temp To Rivers Date 10-23-09

From Rivers To locker # Date 10-23-09

From evidence # To UPS/State lab Date 10/26/09

From UPS To Judy Loken Date 10-27-09

From [Signature] To UPS Date 12-21-09

From UPS To evidence # Date 12-22-09

EVIDENCE TAPE

Brief Page-22

080



TWIN FALLS POLICE DEPARTMENT EVIDENCE

Net Wt. 119.9 Gross Wt. 126.4

Case Number: C905995 Date of Offense: 10-22-09

Suspect: Armando R Acambula

DOB: [redacted] SSN: [redacted] SID: \_\_\_\_\_

Suspect: \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ SID: \_\_\_\_\_

Victim: \_\_\_\_\_

Charge: pos

Description of Evidence: digital scale

Location Found: residence Date Found: 10-22-09

Examination Required: Test for C.S.

Submitting Officer: Rivers

Chain of Custody

From Rivers To Temp Date 10-22-09

From Temp To Rivers Date 10-23-09

From Rivers To locker Date 10-23-09

From evidence To VWS/State lab Date 10/26/09

From WPS To State Lab Date 10-27-09

From James [redacted] To WPS Date 12-21-09

From \_\_\_\_\_ To \_\_\_\_\_ Date \_\_\_\_\_

EVIDENCE TAPE

D81



**TWIN FALLS POLICE DEPARTMENT EVIDENCE**

Net Wt. 119.9 Gross Wt. 126.4

Case Number: 0905985 Date of Offense: 10-22-09

Suspect: Armando R Acambula

DOB: [REDACTED] SSN: [REDACTED] SID: \_\_\_\_\_

Suspect: \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ SID: \_\_\_\_\_

Victim: \_\_\_\_\_

Charge: pos

Description of Evidence: digital scale

Location Found: residence Date Found: 10-22-09

Examination Required: Test for C.S.

Submitting Officer: Rivers

Chain of Custody

From Rivers To Temp Date 10-22-09

From Temp To Rivers Date 10-23-09

From Rivers To locker 70 Date 10-23-09

From evidence 70 To WIS/State lab Date 10/24/09

From WIS To Judy Lake Date 10-27-09

From Armando Acambula To WIS Date 12-21-09

From \_\_\_\_\_

TAPE



9905995-002

TWIN FALLS POLICE DEPARTMENT EVIDENCE

Net Wt. 30.0 gr Gross Wt. 36.6

Case Number: 0905993 Date of Offense: 10.22.09

Suspect: Armando K Arambula

DOB: [REDACTED] SSN: [REDACTED] SID: \_\_\_\_\_

Suspect: \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ SID: \_\_\_\_\_

Victim: \_\_\_\_\_

Charge: POS

Description of Evidence: 21 pills w/ m357; 9 pills w/ 937177; 11 pills w/ Watson 349; 2 pills w/ Pl. # 434; 5 pills w/ Watson 3203

Location Found: residence Date Found: 10.22.09

Examination Required: TD

Submitting Officer: Rivers

Chain of Custody

From Rivers To Temp Date 10.22.09

From Temp To Rivers Date 10.23.09

From Rivers To locker Date 10.23.09

From evidence To UPS/State lab Date 10/26/09

From UPS To Judy Date 10.27.09

From [Signature] To UPS Date 12-21-09

From UPS To evidence Date 12-22-09

EVIDENCE TAPE

Bring page

D80

**TWIN FALLS POLICE DEPARTMENT EVIDENCE**

Net Wt. 119.9 Gross Wt. 126.4

Case Number: 0905985 Date of Offense: 10-22-09

Suspect: Armando K Acambula

DOB: [REDACTED] SSN: [REDACTED] SID: \_\_\_\_\_

Suspect: \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ SID: \_\_\_\_\_

Victim: \_\_\_\_\_

Charge: pas

Description of Evidence: digital scale

Location Found: residence Date Found: 10-22-09

Examination Required: Test for C.S.

Submitting Officer: Rivers

**Chain of Custody**

From Rivers To Temp Date 10-22-09

From Temp To Rivers Date 10-22-09

From Rivers To locker Date 10-22-09

From \_\_\_\_\_ To \_\_\_\_\_ Date \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_ Date \_\_\_\_\_

Not

*Brief*

OFFSTMT

S T A T E O F I D A H O DATE: 02/08/2012  
DEPARTMENT OF CORRECTIONS TIME: 15:06:19  
TRUST FUND STATEMENT

Doc No: 56927 Name: ARAMBULA, ARMANDO KETO

SAWC/GHSG PRES FACIL  
TIER-E CELL-1

Transaction Dates: 01/07/2012-02/08/2012

Checking Status: ACTIVE

CHECKING:

Beginning Balance	Total Charges	Total Payments	Current Balance
2.14	26.55	25.80	1.39

== CHECKING TRANSACTIONS ==

Date	Batch	Description	Ref Doc	Amount	Balance
01/18/2012	SA0571885-089	099-COMM SPL		1.72DB	0.42
01/30/2012	HQ0572941-005	011-RCPT MO/CC	MO	25.00	25.42
01/31/2012	SA0573104-086	099-COMM SPL		24.83DB	0.59
02/06/2012	SA0573996-001	215-ILD WORKERS	JAN PAY	0.80	1.39

233