11-26-2012

State v. Guess Appellant's Reply Brief Dckt. 39646

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent; v. CHARLES EARL GUESS; Defendant-Appellant.	**Docket No. 39646-2012** **APPELLANT'S REPLY BRIEF**

Appeal from the District Court of the Second Judicial District for Latah County, the Honorable John R. Stegner presiding.

Roderick C. Bond of Roderick Bond Law Office, PLLC, 800 Bellevue Way NE, Suite 400, Bellevue, WA 98004, for the Defendant-Appellant Charles Earl Guess.

The Honorable Lawrence G. Wasden, Attorney General for the State of Idaho, and Lori A. Fleming, Deputy Attorney General for the State of Idaho, P.O. Box 83720, Boise, ID 83720-0010, for the Plaintiff-Respondent State of Idaho.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent; v. CHARLES EARL GUESS; Defendant-Appellant.	**Docket No. 39646-2012** **APPELLANT'S REPLY BRIEF**

Appeal from the District Court of the Second Judicial District for Latah County, the Honorable John R. Stegner presiding.

Roderick C. Bond of Roderick Bond Law Office, PLLC, 800 Bellevue Way NE, Suite 400, Bellevue, WA 98004, for the Defendant-Appellant Charles Earl Guess.

The Honorable Lawrence G. Wasden, Attorney General for the State of Idaho, and Lori A. Fleming, Deputy Attorney General for the State of Idaho, P.O. Box 83720, Boise, ID 83720-0010, for the Plaintiff-Respondent State of Idaho.

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

A. Cases

B. Statutes and Rules

C. Other Authorities

I. ARGUMENTS

A. Charles has established a breach of the Rule 11 Plea Agreement and that his due process rights were violated by the district court's orders.

1. The plain language of the Rule 11 Plea Agreement fully supports Charles' understanding that the guilty plea would be set aside once he completed probation and other terms of sentence.

The State incorrectly asserts that "[n]othing in the plain language of the agreement imposed upon the court an additional obligation to ultimately dismiss the case pursuant to I.C. 19-2604(1) upon Guess' satisfactory completion of probation." (Respondent's Brief, p. 8.) The State's position is simply not supported by the terms of the Rule 11 Plea Agreement.

Under I.C. § 19-2601(3), a court may "[w]ithhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation." *Id.* The terms of the Rule 11 Plea Agreement provide that "[Charles] shall receive a Withheld Judgment and shall be placed on probation...for a period of no more than five (5) years." (R. Vol. I, p. 53; Appellant's Brief, App., A, p. 2.) Thus, the plain meaning of the Rule 11 Plea Agreement, coupled with the plain reading of I.C. § 19-2601(3), fully support granting Charles the relief that he bargained for. The terms of the Rule 11 Plea Agreement do not state that the withheld judgment may be indefinitely suspended or extended. (*Id.*) The terms do not state or infer that Michele's alleged fear could be used as a basis to deny him relief.[1] (*Id.*) The terms do not state or infer that Charles would need to persuade the district court that Michele's alleged fear must be overcome in order to be entitled

[1] This case illustrates the importance of Rule 11 Plea Agreements and how prosecutors must clearly articulate in the plea agreements the terms and conditions so that a defendant fully understands the inducement or consideration being exchanged for a guilty plea. This case also illustrates why plea agreements must be construed in favor of a defendant, as set forth below.

to relief under I.C. § 19-2604(1)—alleged fear existing at the time of accepting the Rule 11 Plea Agreement. In fact, the Rule 11 Plea Agreement expressly provides that Charles would lose his right to have his guilty plea set aside if he failed to comply with the Agreement:

> Should the defendant in any way breach these agreements and covenants, the State is released from any obligations hereunder regarding an appropriate sentencing disposition, the Court may sentence the defendant up to the maximum authorized by law and the **defendant shall not be afforded the opportunity to withdraw his guilty plea**.

(R. Vol. I, p. 54; Appellant's Brief, App., A, p. 3 (emphasis added).) These terms unequivocally support the right to withdraw his guilty plea in not more than five years if he complied with the terms of the Rule 11 Plea Agreement. Indeed, while the State has taken inconsistent positions at the trial level and on appeal, the plain reading of the Rule 11 Plea Agreement is consistent with the State's expectation for the final disposition of this matter:

> ...I believe that I can accurately state that the State's intent at the time of the plea was that by virtue of the Court withholding judgment, Idaho Code 19-2604 relief would be available to Dr. Guess (and practically speaking, the State would expect that the Court would grant the relief) if Dr. Guess was fully compliant with his probation.

(R. Vol. II, p. 262.) By and through this judicial admission, the State should be barred from now asserting that Charles is not entitled to relief or that it did not expect him to get relief. *Strouse v. K-Tek, Inc.*, 129 Idaho 616, 618, 930 P.2d 1361 (Ct. App. 1997) ("A judicial admission is a formal act or statement made by a party or attorney, in the course of judicial proceedings...") Thus, the plain meaning of the Rule 11 Plea Agreement, as agreed to by all parties, is that Charles' guilty plea would be withdrawn upon completion of the terms and conditions of sentence and probation. (Tr. p. 76-78; Appellant's Brief, App., C, p. 76-78.) Moreover, it was

implied by the parties that the relief would be granted to Charles if he complied with the terms and conditions of the Rule 11 Plea Agreement. *See* 21 Am. Jur 2d Criminal Law § 640 (2012) (courts "will not construe the language so literally that the purpose of the plea agreement is frustrated; accordingly, the court considers terms implied by the plea agreement"). Thus, the State has breached the plain meaning of the actual and implied terms of the Rule 11 Plea Agreement. The appropriate remedy is specific performance setting aside Charles' guilty plea, dismissing this action and restoring his civil rights, as asserted by Charles. (*See* Appellant's Brief, p. 12-28.) *See also State v. Horkley*, 125 Idaho 860, 865, 876 P.2d 142, 147 (1994) ("A court, as well as the prosecution and defendant, is bound by the agreement *once the plea agreement is accepted without qualification.*").

2. At a minimum, the Rule 11 Plea Agreement is ambiguous and must be interpreted in accordance with Charles' reasonable understanding.

Next, the State incorrectly asserts that "Guess' attempt to equate silence with ambiguity and to have this Court read into the written agreement a provision that simply is not there is directly foreclosed by the Idaho Supreme Court's recent opinion in State v. Gomez, 153 Idaho 253, 281 P.3d 90 (2012)." (Respondent's Brief, p. 9.)

The State's reliance on *Gomez* is misplaced. In *Gomez*, the defendant pled guilty to three felonies through a conditional plea agreement. *Gomez*, 281 P.3d at 91-92. The parties did not include any terms addressing restitution in the plea agreement. *Id.* In fact, on the same day that the plea agreement was filed, a guilty plea advisory form was filed. *Id.* at 92. As noted by this Court, that guilty plea advisory form specifically addressed restitution:

> In the guilty plea advisory, question 32 asks if the defendant is 'pleading guilty to a crime for which you may be required to pay the costs and prosecution and investigation?' and cites I.C. § 37-2732A(K). Gomez answered 'yes.'

Gomez, 281 P.3d at 92 n. 2. At the sentencing hearing, the State advised that they would be entering a restitution order, which Gomez did not object to. *Id.* at 92. The district court entered a restitution order pursuant to I.C. § 37-2732(k). *Id.* In that order, Gomez was ordered to pay $129,534.97 in restitution and there was no record that he asked for a hearing or otherwise disputed the restitution. *Id.* This restitution order was separate and apart from the sentence imposed on Gomez. *Id.* at 95. The Idaho Supreme Court noted that "[a] plain reading of the written plea agreement shows that restitution is not explicitly mentioned." *Id.* at 94. The Idaho Supreme Court held that the plea agreement was silent as to restitution, that the agreement was "clear and unambiguous" and there was "no clear or obvious error" under the fundamental error analysis. *Id.* at 95.

Here, restitution is not at issue and Charles has fully paid all restitution. (R. Vol. II, p. 247-48, ¶9.) In fact, the Rule 11 Plea Agreement explicitly excluded restitution. (R. Vol. I, p. 53, ¶3; Appellant's Brief, App. A, p. 2, ¶3.) Significantly, as noted by the Idaho Supreme Court in *Gomez*, restitution is "separate and apart" from a sentence. *Id.* at 95. In addition, in *Gomez*, there was a guilty plea advisory form filed concurrently with the Rule 11 Plea Agreement advising Charles that the ultimate dismissal of his case would be predicated on the "compatible with the public interest" prong of I.C. § 19-2604(1). In fact, there is no evidence in the record advising Charles that the ultimate disposition of his case (i.e., the withdrawal of his guilty plea and restoration of his rights) was predicated on an entirely separate analysis and that the district court

had the discretion to deny him relief under I.C. § 19-2604(1).

Unlike *Gomez*, Charles pled guilty under a Rule 11 Plea Agreement based upon the promise that he would receive a withheld judgment and probation for a period not to exceed five years. (R. Vol. I, p. 52-54; Appellant's Brief, App. A, p. 1-3.) Charles' understanding of that Rule 11 Plea Agreement, as articulated by him in open court, was accepted and not disputed by the district court or the Sate. (Tr. 76-78; Appellant's Brief, App., C, p. 76-78.) In fact, since Charles' Rule 11 Plea Agreement expressly stated that he "shall not be afforded the opportunity to withdraw his guilty plea" if he breached any terms of the Agreement, it follows that he has the right to have his guilty plea withdrawn if he complied with the terms of the Agreement. (R. Vol. I, p. 54; Appellant's Brief, App. A, p. 3.) Thus, unlike *Gomez*, the terms of Charles' Rule 11 Plea Agreement expressly contain the terms "withheld judgment" and "withdraw his plea of guilty." (R. Vol. I, p. 52-54; Appellant's Brief, App. A, p. 1-3.) At issue here is the interpretation of those terms. Thus, *State v. Peterson*, 148 Idaho 593, 226 P.3d 535 (2010) is controlling, not *Gomez*, as discussed in more detail below and in the Appellant's Brief. (*See* Appellant's Brief, p. 17-23.) Simply put, *Gomez* has no application.[2] In reality, however, *Gomez* stands for the proposition that the State and district court did not include the required terms to support their respective positions in the Rule 11 Plea Agreement or the Order Withholding Judgment that was entered pursuant to that Rule 11 Plea Agreement. (R. Vol. I, p. 52-54, 103-110; Appellant's Brief, App., A-B.) The State's present position really amounts to the Rule 11 Plea Agreement lacking "finality" and amounting to an "illusory" promise. *U.S. v. Ritsema*, 89 F.3d 392, 401-02 (7th Cir.

[2] It is also unclear from the record in Gomez whether the plea agreement was entered pursuant to ICR 11, as was the case with Charles' plea agreement (which is significant).

1996) ("Were courts free to re-examine the wisdom of plea bargains with the benefit of hindsight, the agreements themselves would lack finality and the benefits that encourage the government and defendants to enter into pleas might prove illusory...").

3. Contrary to the State's assertions, the facts of this case are not only analogous to *State v. Peterson*, but more compelling than that case.

Next, the State contends that "this is not a case like State v. Peterson, 148 Idaho 593, 226 P.3d 535 (2010)..." (Respondent's Brief, p. 11.) In reality, the facts of this case scream out the application of the Idaho Supreme Court's holdings articulated in *Peterson*, 148 Idaho 593.

In *Peterson*, the defendant and prosecution agreed to be bound by the terms of an oral Rule 11 plea agreement. *Peterson*, 148 Idaho at 596-97. In that oral plea agreement, counsel for the defendant recited the terms of the plea agreement, with the terms being agreed to by the State, and then the defendant's counsel "offered his clarifying statement of the scope of the agreement, with no objection or response from the State" that the plea deal resolved all charges against the defendant. *Id.* at 596-97. Despite these clarifying statements, Peterson was subsequently charged with felony possession of a controlled substance. *Id.* at 596. After Peterson was convicted on the felony charge, he appealed. The Idaho Supreme Court found that the plea agreement was vague and should be interpreted in accordance with Peterson's "reasonable understanding." *Id.* at 596-97. The Idaho Supreme Court held the clarifying statements made by the defendant's counsel constituted the accepted terms of the Rule 11 Plea Agreement:

> Following Peterson's counsel's clarifying statement, the prosecutor stood silent. Based upon the facts of this case, where both the prosecution and defense have assented to entry of the plea agreement contract, and where, immediately following the court's acceptance of the plea agreement, defense counsel proffers a

> description of the scope of the plea agreement, said description differing from what the prosecutor understands the agreement to encompass, the prosecutor has an affirmative duty to dispute the defendant's representation of the scope of the plea agreement, or to ask for further time to clarify the agreement. Otherwise silence shall be interpreted as acceptance of the stated terms.

Peterson, 148 Idaho at 597.

Here, it is undisputed that the State and Charles entered into a written Rule 11 Plea Agreement. (R. Vol. I, p. 52-54; Appellant's Brief, App. A, p. 1-3.) Unlike *Peterson* wherein the district court questioned counsel, the district court went a step further and directly questioned the Charles to ascertain his understanding of the Rule 11 Plea Agreement:

(The Court): **And my understanding is that you're pleading pursuant to a Rule 11 Agreement; is that correct**?

(The Defendant): **Yes**.

(The Court): **Why don't you explain to me what your understanding is of what will happen to you if I accept that plea**.

(The Defendant): Well, my understanding is there will be a presentencing investigation and then a sentencing hearing.

(The Court): **And do you understand that the agreement contemplates that you would receive a withheld judgment** as a result of pleading guilty to this charge?

(The Defendant): **Yes, sir**.

(The Court): **Do you know what a "withheld judgment" means**?

(The Defendant): **Yes**.

(The Court): **Why don't you explain to me what you're understanding is**?

(The Defendant): Well, I mean that – I guess, I'd explain that – **my understanding of the entire agreement is that I – that I am pleading guilty to**

this charge and that I will spend – my punishment will include 30 days in Latah County jail. I will pay a $1,000 fine. **And I'm pleading guilty to one of the – one of the felony charges. I'll have a year probation, and if I fulfill the period of probation without any problems in that period of time, that the felony charges would -- would be dropped.**

* * * * *

(The Court): **Well, Mr. Guess, the -- I think you understand what a withheld judgment means. It means that if you comply with your terms and conditions of probation** that at the conclusion of the period of probation, which is for a period of no more than five years, ACCORDING TO THE AGREEMENT, that **you could come in and petition to have your guilty plea, which you tendered today, withdrawn and the charge against you dismissed. Do you understand that**?

(The Defendant): **I do, yes.**

(Tr. p. 76-78; Appellant's Brief, App., C, p. 76-78 (bold, underlined and capitalized emphasis added).) As confirmed by his undisputed testimony, Charles rightfully believed that, according to the Rule 11 Plea Agreement, his guilty plea would be withdrawn once he complied with the terms of sentence and probation. Charles' understanding was articulated by him in open court, without objection by the prosecutor or the district court. Such silence constitutes the acceptance of Charles' understanding of the Rule 11 Plea Agreement (which, not surprisingly, the State does not address in its Brief). *Peterson*, 148 Idaho at 596-97 (*citing* Restatement (Second) of Contracts § 69 (1981)).[3] Contrary to the State's argument, the above testimony does not show

[3] As noted on page 20 of Charles' Appellant's Brief, the Idaho Supreme Court cited to the Restatement (Second) of Contracts § 69 (1981) to support its holding in *Peterson*:

that "to the extent Guess believed the plea agreement calling for a withheld judgment meant the 'felony charges would...be dropped' upon his successful completion of probation, such misconception was expressly corrected by the district court who advised Guess that he could *petition* to have his guilty plea withdrawn and the case dismissed." (Respondent's Brief, p. 12.) It is disingenuous for the State to assert that Charles allegedly knew that the ultimate dismissal of his case was subject to an additional discretionary analysis simply because the district court advised Charles that he could "petition" to have his guilty plea withdrawn after completed probation. In fact, Charles' understanding, which was not objected to by the State or the district court, simply confirms what was everyone's understanding at that time—that Charles would need to comply with his terms of sentence and probation before his guilty plea would be withdrawn through the procedural step of filing a "petition." (*See also* Appellant's Brief, p. 40.) Significantly, this was the precise time that the State should have advised Charles of the position that they are presently taking, but instead the prosecutor remained silent. Indeed, the "prosecutor ha[d] an affirmative duty to dispute [Charles'] representation of the scope of the plea agreement,

---

> [I]t is a general rule of law that silence and inaction, or mere silence or failure to reject an offer when it is made, does not constitute an acceptance of the offer. *Vogt v. Madden,* 110 Idaho 6, 9, 713 P.2d 442, 445 (1985). However:
>
> > (1) Where an offeree fails to reply to an offer, his silence and inaction operate as an acceptance in the following cases only: (a) Where an offeree takes the benefit of the offered services with reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation...
>
> Restatement (Second) of Contracts § 69 (1981).

Peterson, 148 Idaho at 596. This is precisely why Charles' *reasonable* understanding of the Rule 11 Plea Agreement, as articulated by him in open court without objection from the State or the district court, became terms of his Rule 11 Plea Agreement, irrespective of any other arguments or reasons to interpret the Rule 11 Plea Agreement in accordance with his reasonable understanding based upon the State and district court's silence.

or to ask for further time to clarify the agreement," but he failed to do so. *Peterson*, 148 Idaho at 597. Likewise, the district court failed to advise Charles that his understanding was incorrect. Thus, the State and district court's "silence shall be interpreted as acceptance of the stated terms." *Id.* at 596. For these reasons and those stated in Charles' Appellant's Brief, *Peterson* is applicable to the interpretation and enforcement of Charles' Rule 11 Plea Agreement.[4] (Appellant's Brief, p. 17-23.)

B. Charles' has established that the district court abused its discretion by denying his motions for I.C. § 19-2604(1) relief.

1. The district court's refusal to grant Charles relief was based solely on Michele's alleged fear.

The State incorrectly asserts that Charles did not allege that the district court abused its discretion and it cites to transcript testimony in an ill-fated attempt to persuade the Court that the district court did not abuse its discretion when it found that it was not compatible with the public interest to allow Charles to withdraw his guilty plea. (Respondent's Brief, p. 16-18.)

First, Charles asserted that "the district court incorrectly perceived the issues in Sections

[4] In footnote 1 on page 13 of Respondent's Brief, the State mischaracterizes Charles' arguments. Charles is asserting that he faithfully and diligently complied with all terms and conditions of sentence and probation imposed upon him through the Rule 11 Plea Agreement. Charles asserts that if a withheld judgment is granted pursuant to the terms of the Rule 11 Plea Agreement and that Agreement does not provide that the district court retains the discretion under I.C. § 19-2604(1) to ultimately decide if and when a defendant could withdraw his guilty plea, a district court does not have any discretion to deny the relief, particularly, as here, where Charles articulated in open court, without objection, his understanding of the terms of that Rule 11 Plea Agreement. (Tr., p. 76-78; Appellant's Brief, App., C, p. 76-78.) If the State desired to take its present position, it should have inserted a provision in the Rule 11 Plea Agreement stating that the determination of if and when Charles would be entitled to withdraw his guilty would be decided at a later date and in the discretion of the district court in the manner set forth in I.C. § 19-2604(1). Thus, once the district court accepted the plea agreement and Charles lived up to his end of the bargain, the Legislature's intent to reform is met and, barring terms reserving further discretion or any new evidence that dismissal was not "compatible with the public interest," the Legislature's intent and Charles end of the bargain should be honored as being "compatible with the public interest."

(A)-(B) & (C)(1) as ones of discretion" and the district court abused its discretion when it refused to permit Charles to withdraw his guilty plea and restore his civil rights. (Appellant's Brief, p. 11 & 33.) Second, despite the district court's reasoning on pages 17-18 of the Respondent's Brief, the district court clarified that its denial of I.C. § 19-2604(1) relief was based solely on Michele's alleged fear, which was a clear abuse of discretion:

(Mr. Bond): ...so that I know I understood you right, **did you say earlier that if Michele didn't object, then you would grant the relief**?

(The Court): **I did...Whether that is possible is anybody's guess**.

(Mr. Bond): **So, that's what you're really hinging** the -- **the compatible with public interest is**, whether if Michele is -- **your concern over Michele**?

(The Court): **That's my current reservation**.

(Tr., p. 41, L. 15-21, p. 42, L. 1-2; Appellant's Brief, App., C, p. 41, L. 15-21, 24-25, p. 42, L. 1-2 (emphasis added).) The State is attempting to show that the district court considered other factors when it ruled that it was not "compatible with the public interest" to grant Charles relief, but the district court clearly confirmed that the sole reason was Michele's alleged fear and that it would grant the relief if Michele consented. (*Id.*) Notwithstanding any requirements to grant relief under the Rule 11 Plea Agreement, the district court's refusal to grant Charles relief because the victim will not consent is an abuse of discretion and misapplication of I.C. § 19-2604(1). Moreover, as noted by the transcript quoted on pages 16-17 in Respondent's Brief, Michele never objected in the first place. Rather, she stated: "[s]o, it's your decision, Judge." (Tr., p. 55, L. 20; Appellant's Brief, App., C, p. 55, L. 20.) Thus, the district court's reliance that

Michele objected through her statement was also an abuse of discretion because she never really objected at all. (Tr., p. 55, L. 11-24; Appellant's Brief, App., C, p. 55, L. 11-24.)

2. There is no requirement under I.C. § 19-2604(1) as to when the district court must find that it is compatible with the public interest.

Next, the State asserts that the district court must make a finding that it is compatible with the public interest at the time of the motion to dismiss. (Respondent's Brief, p. 19-20.) The State again misses the point. Charles concedes that the State is generally correct, but the analysis is different here because Charles' withheld judgment was a product of a Rule 11 Plea Agreement. In addition, there is nothing in I.C. § 19-2604(1) that requires the district court to make the finding that it is "compatible with the public interest" at the time of granting a motion to dismiss. The plain words of the statute simply require the district court to make that finding. Charles' Rule 11 Plea Agreement does not contain a single term stating that he would need to demonstrate to the district court that it was "compatible with the public interest" to set aside his guilty plea or that his guilty plea would not be set aside under I.C. § 19-2604(1) once he completed probation. (R. Vol. I, p. 52-54; Appellant's Brief, App. A.) Moreover, there is a significant difference between a withheld judgment entered pursuant to a Rule 11 Plea Agreement, as is the case here, and a withheld judgment entered without such an agreement. As noted in Charles' Appellant's Brief, a plea agreement implicates due process and the protections provided under the United States and Idaho's constitutions. (Appellant's Brief, p. 23-28.) In addition, the Idaho Criminal Rules, including I.C.R. 11, take precedent over a statute when there is a conflict between procedural matters, i.e., when a withheld judgment would be dismissed. *See*

State v. Currington, 108 Idaho 539, 54`, 700 P.2d 942, 944 (1985). If the State and the district court erroneously failed to consider the "compatible with the public interest" prong of I.C. § 19-2604(1) at the time of accepting the Rule 11 Plea Agreement, Charles should not be penalized by that failure. Neither the State nor the district court can argue that they advised Charles prior to entering the Rule 11 Plea Agreement that the ultimate dismissal was subject to a separate and distinct finding of "compatible with the public interest" and no such terms or condition were included in that Agreement. (R. Vol. I, p. 52-54; Appellant's Brief, App., A.) As a result, Charles asserted that the analysis is different when dismissing a withheld judgment that was the product of, and induced through, a Rule 11 Plea Agreement. (*See* Appellant's Brief, p. 12-17 & 40.)

With respect to the State's assertion that it is not collaterally estopped from re-litigating Michele's alleged fear, the State again misses the point. (Respondent's Brief, p. 19.) Charles simply asserted that the State should not be permitted to re-litigate Michele's alleged fear as a basis to obtain the maximum five-year period of probation, only to later assert that her same alleged fear should be the basis to deny Charles the right to withdraw his guilty plea over five years later. (*See* Appellant's Brief, p. 34-35.) The State and district court could have rejected the Rule 11 Plea Agreement based upon Michele's alleged fear, but they both failed to do so.

Next, the State incorrectly asserts that "Guess' claim on appeal that the court erred by 'refus[ing] to restore' his gun rights (Appellant's Brief, pp. 41-45) is not properly before this court." (Respondent's Brief, p. 20 n. 3.) Charles asserted below and on appeal that he is entitled to have his civil rights restored, including his right to bear arms for hunting purposes. (R. Vol., II, p. 235, 238-241, 269-72.) The district court denied Charles' motions to have his civil rights

(including gun rights) restored, and it was not required to issue an opinion specifically addressing those civil rights. As asserted by Charles on appeal, the restoration of his civil rights is intertwined with and an integral part of withdrawing his guilty plea, because you cannot have one without the other. (Appellant's Brief, p. 23-28, 41-44.) In fact, the restoration of his rights is required under I.C. § 19-2604(1). Thus, the restoration of Charles' civil rights (including his right to bear arms) is properly before this Court. However, even if the issue was not properly before the Court, "the court shall pass upon and determine all questions of law involved in the case presented upon such appeal, and necessary to the final determination of the case." I.C. § 1-205; *see also In re Estate of Keeven*, 110 Idaho 452, 456-57, 716 P.2d 1224 (1986). Moreover, there was an adverse ruling—Charles' civil rights were not restored (including his right to bear arms), despite his request. Since the State did not dispute Charles' arguments regarding the restoration of his civil rights (including his right to bear arms), the State has conceded that issue. *See* I.A.R. 35(c).

Next, the State incorrectly asserts that Charles is basing his request for relief solely on the district court finding that he had "complied with probation and better than 'any defendant [the district court could] remember while on probation.'" (Respondent's Brief, p. 20.) There is no question that the district court must make a finding that it is "compatible with the public interest" to grant relief under I.C. § 19-2604(1). Charles asserts, however, that if he complies with the terms of sentence and probation and there were no other conditions that were required to be met in the Rule 11 Plea Agreement, then it would be an abuse of discretion to not permit him to withdraw his guilty plea. (Appellant's Brief, p. 29-30.) Notably, if Charles violated any terms of

the Rule 11 Plea Agreement, he would have lost his right to have his guilty plea set aside and his civil rights restored. (R. Vol. I, p. 54, ¶6; Appellant's Brief, App., A, p. 3.)

Charles' arguments are all based upon the due process implications associated with the withheld judgment being entered pursuant to the terms of a Rule 11 Plea Agreement and that the Rule 11 Plea Agreement does not contain a single terms that permits the State or district court from taking their present positions. (R. Vol. I, p. 52-54; Appellant's Brief, App., C, p. 1-3.)

3. Michele's alleged fear is not a basis to deny Charles relief under I.C. § 19-2604(1) and there was no evidence that she ever objected to him obtaining relief.

The State attempts to create a new legal standard that a victim's alleged "fear" is a basis to deny relief under I.C. § 19-2604(1). (Respondent's Brief, p. 21-25.) The State's arguments, however, lack merit factually and based upon the plain language of I.C. § 19-2604(1), which does not grant any rights to a victim to determine if, or when, relief is granted.

The State incorrectly asserts that Charles' interpretation of "compatible with the public interest" is "unduly restrictive and ignores the fact that victim's rights are a matter of public interest under Idaho law." (Respondent's Brief, p. 21.) First, the State's position is far from true. Charles acknowledges Michele's right to participate in the criminal proceedings, as provided under Idaho law. However, Charles asserts that under I.C. § 19-2604(1), Michele is not entitled to determine whether relief is granted and the district court is not authorized to condition granting relief based upon Michele's consent or acquiescence. *See Manners v Bd. of Veterinary Med.*, 107 Idaho 950, 952, 694 P.2d 1298 (1985) (Nowhere in that statute is there language…"). Granting Charles relief as being "compatible with the public interest" does not necessarily mean

that it will be compatible with Michele's desires. Instead, granting or denying Charles relief is an issue for the community as a whole, as asserted by Charles in his Appellant's Brief. (*See* Appellant's Brief, p. 30-38.) As for the State's assertion that "there can be no serious question that the public has an interest in the victim's safety and sense of well-being," this argument ignores that fact that Michel is not a resident of Idaho. In fact, Michele has resided in Walla Walla, Washington for over six years. (Presentence Report, p. 5.) Moreover, the State does not cite any authority for its argument that "compatible with the public interest" may only be satisfied if the victim has no fear. Lastly, it should be noted that Mr. Welsh, the other victim, has no objection to granting Charles relief as "he didn't have any position about how – this case went at any stage. He didn't need to be involved any more" and there is "no issue with Mr. Welsh." (Tr., p. 33, L. 21-25, p. 34, L. 1-5.)

Next, the State incorrectly asserts that "[a]s recognized by the district court in this case, a victim's continuing fear of a defendant is one of many considerations that must be balanced in determining whether to grant the defendant's request for I.C. § 19-2604(1) relief." (Respondent's Brief, p. 22.) However, the State fails to cite any authority for this proposition. In fact, the only reason provided to deny Charles relief was the district court's consideration for Michele's alleged fear and nothing more. (Tr., p. 41, L. 15-21, p. 42, L. 1-2; Appellant's Brief, App., C, p. 41, L. 15-21, 24-25, p. 42, L. 1-2.) Although the State correctly pointed out that district court noted that it may still grant Charles relief if Michele did not acquiesce (Respondent's Brief, p. 22), the State's position ignores the fundamentally flawed argument that Michele's alleged fear was a basis to deny relief in the first place. Moreover, neither the district court nor the State has

provided any authority for the proposition that a victim's alleged fear is a basis to deny relief under I.C. § 19-2604(1). Since the only reason for not finding it "compatible with the public interest" was based upon Michele's alleged fear (which was not based upon any new act or omission by Charles), the district court abused its discretion by denying I.C. § 19-2604(1) relief.

The State incorrectly asserts that it "is patently meritless" for Charles to assert that the district court's findings that Michele feared him and objected to granting relief "are not supported by any evidence." (Respondent's Brief, p. 23.) This is simply not true. In fact, although Michele attended the hearing on Charles' first motion to dismiss via telephone, she never actually objected at that hearing. (Tr., p. 49-57.) She simply stated twice that: "[s]o, it's your decision, Judge." (Tr., p. 55, L. 20; Appellant's Brief, App., C, p. 55, L. 20.) Significantly, Michele did not attend in person or by telephone, and, therefore, did not object at the hearing for the motion to dismiss held on January 26, 2012. (Tr., p. 8-43.) Michele did not provide any specific reasons at either hearing why she feared Charles nor did she provide any new reasons to support any new fear. (Tr., p. 8-43, 49-57.) Contrary to the State's assertion, there was no statement or evidence presented that "she opposed [Charles'] motion for dismissal and any accompanying restoration of his civil rights." (Respondent's Brief, p. 23.) In fact, Charles and Michele's only child Griffin, now a 27-year-old dentist, wrote a letter in support of Charles wherein he stated that: "[i]n my communications with my mother she has had no objection to full reinstatement of [Charles'] civil liberties." Griffin Guess also noted that the "community knows and recognizes [Charles] as a great physician" and "[r]estricting an educated, able, and valuable member of the community from full liberties will be a loss." (R. Vol. II, p. 181; Presentence

Report, p. 11.) Lastly, the State asserts that Michele had "unbelievable terror" of Charles and her desire for a strong sentence. (Respondent's Brief, p. 23 n. 4.) In reality, Michele appeared shortly after that hearing at various divorce related hearings with Charles, remained alone with Charles at various times and she personally appeared at Charles' home to hold a three-day auction between Michele and Charles to divide all of their personal property. (R. Vol. II, p. 256-258, ¶¶3-6.) The evidence before the Court is that Michele is not really afraid of Charles and she never formally objected to him obtaining relief.[5] Thus, contrary to the State's assertion, Charles has shown "clear error in the district court's factual findings that Michele still feared [Charles] and objected to his motion for I.C. § 19-2604(1) relief." (Respondent's Brief, p. 23-24.) There was no objective proof of fear and there was no evidence submitted that Michele actually objected to Charles obtaining I.C. § 19-2604(1) relief.

Next, the State incorrectly asserts that there was objective evidence of fear sufficient to support a finding that it was not compatible with the public interest to grant Charles I.C. § 19-2604(1) relief. (Respondent's Brief, p. 24-26.) The State also mischaracterizes a number of alleged "facts" in support of its arguments. (*Id.*)

First, the State asserts that Charles' Psychologist is the former Psychologist for Charles.

[5] At the hearing, the district court recognized that this action arose from a bitter divorce. Not to downplay the significance of Charles' acts for which he will forever be ashamed (R. Vol. II, p. 248, ¶10) and with all due respect to Michele as the victim, Charles and Michele's 30-year marriage ended when Michele had "extramarital affairs" and lied to Charles "about the state of their finances." After the charges were filed, Charles "stated that he is not bitter or angry about his wife's adultery, he is just hurt. He stated, 'She ended up being a stranger.'" (Presentence Report, p. 11.) Notwithstanding the hurt Charles endured, he aggressively sought and received counseling. In support of his Motion to Dismiss, Charles' Psychologist opined that "[Charles] has no desire to have any additional contact with [Michele], except in the context of co-parenting their [twenty-seven-year-old] son. [He] do[es] not believe that [Charles] currently poses a threat to [Michele], or to himself at this time." (R. Vol. II, p. 183.) Thus, there is ample evidence to support that it is compatible with the public interest to grant him relief.

Charles' Psychologist, Dr. Rehnberg, is not, as the State contends, his former Psychologist. Dr. Rehnberg clearly articulated his and Charles' long-term relationship that started in 2006 in the letter that he submitted to the district court. (R. Vol. II, p. 182.) Although Charles stopped seeking counseling on an "on-gong basis" in was the summer of 2011, Dr. Rehnber and Charles remained in contact via the telephone and email. (*Id.*) Thus, to the extent that the State is implying that Dr. Rehnberg was not in a position to adequately address Charles, the State is simply incorrect.

Second, the State incorrectly asserts that "there was plenty of evidence before the court to support the conclusion that Michele's continued fear of Guess was objectively reasonable in this case."[6] (Respondent's Brief, p. 24.) The State is simply ignoring the facts and evidence. There is no question that Michele had objective reason to be fearful of Charles at the time of sentencing. However, to the extent that Michele's alleged fear may be a basis to deny relief, it should be based upon new evidence or events that occurred after sentencing. The record is void of any evidence to support any new or renewed objective fear. Indeed, at the hearing on Charles' Motion to Dismiss, Michele stated: "I would like to tell you that I still have ***some*** fear." (Tr., p. 55, L. 17-18; Appellant's Brief, App., C, p. 55, L. 17-18 (emphasis added).) Thus, by Michele's own admission, her alleged fear is objectively less than the fear she had at the time of sentencing. It should be noted that the district court ordered the maximum five-year period of probation and entered a No Contact Order to alleviate Michele's fear. That No Contact Order was never

[6] In the first paragraph of page 25 of Respondent's Brief, the State incorrectly asserted that Michele and Mr. Welsh "were ultimately able to escape." To the contrary, Charles allowed Michele and Mr. Welsh to leave. (Presentence Report, p. 3.)

renewed or extended by Michele as provided under I.C.R. 46.2(b). The other victim, Mr. Welsh, expressed no desire to remain involved in the proceedings, thereby confirming that he had no fear of Charles. (Tr., p. 33, L. 15-25, p. 34, L. 1-5.) The State's arguments completely disregard the fourteen letters and Affidavit by counsel submitted in support of Charles. (R. Vol. II, p. 179-209, 255-258.) In fact, Charles Psychologists' opined that he does not "believe that [Charles] currently poses a threat to [Michele], or to himself at this time." (R. Vol. II, p. 183.) Thus, although Charles asserts that a victim's fear is not a basis to deny relief under I.C. § 19-2604(1), the district court abused its discretion when it found that the fact that Michele allegedly still had "some" fear supported a finding to deny Charles relief.

4. The State has failed to rebut the evidence submitted on behalf of Charles and, therefore, setting aside Charles' guilty plea and restoring his civil rights is warranted and consistent with the standard set forth in *State v. Dieter*.

Charles responds in this section to the State's contentions that it is not "compatible with the public interest" to grant him relief under I.C. § 19-2604(1). After the State submitted its Respondent's Brief, the Idaho Supreme Court filed its decision in *State v. Dieter*, 2012 WL 4054112 (Idaho 2012). In *Dieter*, the Idaho Supreme Court held that "public interest refers to that which the public or the community at large has an interest." *Id.* *5. This is consistent with the definition articulated by Charles. (*See* Appellant's Brief, p. 30-33.) However, the district court's decision denying Charles relief was based erroneously and solely on Michele's alleged fear, which is not a "public interest" as defined by the Idaho Supreme Court in *Dieter*. (Tr., p. 41, L. 15-21, p. 42, L. 1-2; Appellant's Brief, App., C, p. 41, L. 15-21, 24-25, p. 42, L. 1-2.)

Dieter is also easily distinguishable from the case at bar for several other reasons. First,

the district court found that "Dieter did not fully comply with the probation terms and therefore decided not to dismiss the case."[7] *Dieter*, *4. Here, Charles completed his probation and the district court found that "[Charles]...performed as well as any defendant [the district court] can remember while on probation." (Tr., p. 56, L. 20-21; Appellant's Brief, App., C, p. 56, L. 20-21.)

Second, the district court also focused on Dieter's prior psychological report that stated "Dieter had been 'frankly dishonest about his sexually deviant interests' and displayed a 'complete lack of motivation towards treatment..." *Id.* Here, the record is void of any dishonesty or failure by Charles to show motivation for treatment and the district court made no such findings. (Tr., p. 8-43-49-57; R. Vol. II, p. 212-213, 280-286.)

Third, the Idaho Supreme Court also held that the burden was on the defendant to provide evidence to support a dismissal and that "Dieter provided the court with no new evidence, such as an updated psychological report or any other proof..." *Dieter*, *6. Here, Charles has met his burden. He submitted evidence in the form fourteen letters of recommendation on his behalf, including letters from his Psychologist, who he had diligently seen since the charges were filed, and his 27-year-old son.[8] (R. Vol. II, p. 179-209.) Dr. Rehnberg, who was also Charles'

[7] The Idaho Supreme Court focused on Judge Newhouse's use of the word "substantially" in terms of the level of Dieter's compliance with the terms of probation. *Dieter*, * 4.

[8] In full disclosure, the undersigned attorney also wrote a letter of recommendation on behalf of Charles. (R. Vol. II, p. 192-93.) The undersigned attorney has known Charles since the undersigned was a child. The undersigned's father was a family physician in Lewiston, Idaho for many years and Charles was the radiologist who would travel from Moscow, Idaho to read x-rays in Lewiston. After meeting Charles as a child at the undersigned's father's office, the undersigned became good friends with Charles and Michele. During the divorce proceedings, Charles was represented by the undersigned's former partner Ned A. Cannon in Lewiston, Idaho. On the date of the altercation, however, the undersigned had not appeared as Charles' divorce attorney. After the events occurred that led up to the filing of this action, the undersigned attorney appeared and became involved in the divorce proceedings in any attempt to assist to amicably resolve the remaining issues. (R. Vol. II, p. 255-258.) With all due respect to Michele, at no time during the various days Michele and Charles were together did Michele show any fear towards

Psychologist at the time of sentencing,[9] submitted an additional letter in support of Charles' Motion to Dismiss and did so without seeking any compensation from Charles, i.e., he was not a paid witness:

> I have found Dr. Guess to be a very easy man to work with. He has complied with all [of] the request[s] of the court, and has completed his formal probation without incident. At no time in our counseling sessions has he ever expressed wanted to harm his ex-wife in any way. Overall, he has left me with the impression that he has no desire to have any additional contact with her, except in the context of co-parenting their son.[10] **I do not believe that he currently poses a threat to her, or to himself at this time.**

(R. Vol. II, p. 183, 252, ¶19 (emphasis added).) Dr. Rehnberg also invited the district court to contact him if the district court needed additional information. (*Id.*) However, the district court never asked Dr. Rehnberg for more information and the State never disputed his opinions nor did it offer any opinions from another Psychologist to dispute any of Dr. Rehnberg's opinions. Charles and Michele's 27-year-old son Griffin stated in his letter submitted to the district court:

> I again relate that I have not witnessed nor been subject to any maltreatment by my father.[11]...In my communications with my mother [Michele] she has had no objection to full reinstatement of [Charles'] civil liberties. I wish to improve my relationship with my parents and believe that finality, as full restoration of my father's civil liberties, is the only measure that will encourage resolve.

Charles. (*Id.*) In fact, Michele and Charles were left alone together without incident and she insisted on holding an auction, at the same family home where the incident occurred, between her and Charles that required each of them to bid against the other to determine who would be awarded the community's personal property in their divorce. The fact that Mr. Welsh also attended seems to support the finding that both he and Michele were not afraid, that they both knew the altercation was an anomaly and that they were not worried about it occurring again.

[9] In his July 20, 2006 letter submitted for Charles' sentencing, Dr. Rehnberg opined that "I do not believe that Dr. Guess intended to kill his wife or her attorney...believe[d] that [Dr. Guess] has many admirable attributes and also believe[d] that he has the potential and desire to provide many more years of valuable service to the medical community, if given the chance." (R. Vol. II, p. 186.)

[10] Charles and Michele's only child is their son Griffin, who is now 27-years-old. (Presentence Report, p. p. 11.) Griffin also submitted a letter in support of his father Charles. (R. Vol. II, p. 181.)

[11] Michele alleged that Charles has mistreated her over the years. Griffin disputed that contention. Griffin's contention is consistent with Charles' testimony. (R. Vol. II, p. 244, ¶3.)

(R. Vol. II, p. 181.) Although Michele was provided with a copy of Griffin's letter, she did not dispute it. In fact, her telephonic statement was consistent with Griffin's letter because she never objected to granting Charles relief or restoring his civil rights. (Tr. 8-43, 49-57.) According to Griffin, the public interest will only be served if this matter is laid to rest once and for all. This provides yet another independent reason to grant Charles relief. In addition, the undersigned attorney also submitted an Affidavit based upon his interaction with Michele and Charles, and therein testified that Michele did not appear to fear Charles. (R. Vol. II, p. 255-258.) Although Michele was provided with a copy of that Affidavit, neither she nor the State disputed any of the undersigned's testimony. Other letters were submitted by individuals to support that it was compatible with the public interest. Charles "has had a great influence not only on my life, but the lives of my entire family." (R. Vol. II, p. 190.) "The one reason that I know Charles would like to have his rights back is to be able to continue his passion for hunting with friend and family." (*Id.* at p. 195.) "[Dr. Guess] was never late, never complained, never unaccounted for, and in my view represented no risk to our faculty, staff or students during his time here...Dr. Guess is remorseful, humiliated, and embarrassed by his egregious acts and simply wants to restore his life and rights as a citizen." (*Id.* at p. 197.) "Charlie is a good person and he has a big heart and would do anything to help someone if they needed it. I know I can always count on Charlie if I need anything." (*Id.* at p. 199.) "During his five year probation period, I personally attest he has never violated what has been expected of him. He has carried out the full letter of the law...I firmly believe that Mr. Charles Guess is an asset to his friends and community and

always will be in the future." (*Id.* at p. 200.) "My observation is that he has made a very good recovery and I was impressed with his avoidance of alcohol during that time...[I have] benefitted from his generosity..." (*Id.* at p. 203.) In other words, the only evidence before the district court supported granting Charles relief as being "compatible with the public interest" and no evidence was submitted opposing granting him relief. In fact, the State did not oppose granting Charles' I.C. § 19-2604(1) relief in the first place.

Fourth, in *Dieter*, the Idaho Supreme Court affirmed the district court's decision because it ruled within its discretion "based upon the facts and evidence available." *Dieter*, *6. Here, the only *alleged* evidence was Michele's alleged fear at the first hearing (Michele never attended in person or via telephone the second hearing), which was not really any evidence at all since she never formally objected to granting Charles relief or restoring his civil rights. (Tr., p. 55, L. 6-24; Appellant's Brief, App., C, p. 55, L. 6-24.) Since Michele never objected to dismissing the case and restoring Charles' civil rights, the district court abused its discretion because its decision was not based upon any evidence at all and did not consider the overwhelming evidence submitted that supported granting Charles relief. Moreover, the district court abused its discretion because there was not a shred of evidence to support a finding that it was not "compatible with the public interest," even if the timing of, or ultimate dismissal, was never a part of, or an inducement to, his Rule 11 Plea Agreement.

Fifth, the defendant did not assert or contend that his constitutional rights were violated or that the ultimate dismissal of the withheld judgment was a term or inducement of a Rule 11 plea agreement. *Dieter*, *1-5. Here, Charles has asserted valid arguments that his constitutional

due process rights were violated and that setting aside his guilty plea was a specific term and inducement of the Rule 11 Plea Agreement. (*See* Appellant's Brief, p. 12-27, 41-45.) The State has not disputed the terms or inducement that led to Charles pleading guilty. The district court never addressed the inducement or Charles' constitutional arguments.

In sum, the only holding in *Dieter* that has any relevance to this case is the definition of "public interest" as being "that which the public or the community at large has an interest." *Dieter*, *6. Charles has met this standard and he submitted substantial undisputed evidence to support the finding that it is "compatible with the public interest" under I.C. § 19-2604(1) to grant him relief and restore his civil rights. The State did not submit any evidence to support, let alone infer, that it would not be "compatible with the public interest" to grant Charles relief. Accordingly, the Court should reverse the district court and instruct it to enter an order withdrawing Charles' guilty plea and restoring his civil rights as provided in I.C. § 19-2604(1).

C. Charles has established that the district court exceeded its jurisdiction by denying his motions for I.C. § 19-2604(1) relief.

The State asserts, albeit inconsistently, that the district court had the discretion and jurisdiction to deny Charles relief. (Respondent's Brief, p. 27-29.)

First, the State concedes that a "court may not, however, withhold judgment indefinitely...If it does so, 'it has, for all practical purposes, lost jurisdiction to proceed further.'" (Respondent's Brief, p. 27 (citations omitted).) The State asserts that "[b]ecause the withheld judgment expired on August 31, 2011, the court had no jurisdiction beyond that date to enfore the withheld judgment – i.e., it had no jurisdiction to keep Guess on probation..." (*Id.* at n. 6.)

The State also concedes "that the court's December 23, 2011 order that purported to finally discharge Guess from probation (R. Vol. II, p. 213), when his probation period had already expired as a matter of law, is void." Charles agrees. Pursuant to the terms of the Rule 11 Plea Agreement and as authorized under I.C. § 19-2601(3), the district court entered the Order Withholding Judgment. (R. Vol., I, p. 103-110; Appellant's Brief, App., B.) The district court was, therefore, constrained to withhold the judgment for no longer than five years, as provided in the Rule 11 Plea Agreement. (R. Vol. I, p. 52; Appellant's Brief, App., A, p. 2.) Unless Charles breached the terms of the Rule 11 Plea Agreement or violated the terms of the Order Withholding Judgment, the district court, by the terms of its own order, had no jurisdiction to do anything but dismiss this action and restore Charles' civil rights once he complied with the terms and conditions of sentence and probation. If the State or the district court desired to retain jurisdiction for a longer period of time or for other reasons, it was incumbent upon them to include such language in the Rule 11 Plea Agreement and Order Withholding Judgment to grant the district court authority to retain jurisdiction. Absent any language retaining jurisdiction, the district court and State, like Charles, are bound solely to the terms of that Order, which was entered and limited by the terms of a Rule 11 Plea Agreement. I.C. § 2601(3). (R. Vol. I, p. 52-54, 103-110; Appellant's Brief, App., A-B.)

The State's position that the district court's order is void is entirely inconsistent with its position that the district court retains discretion. The State's position makes no sense. Either the district court has jurisdiction or it does not have jurisdiction, as asserted above. In reality, the State and district court should have included terms in the Rule 11 Plea Agreement and the Order

Withholding Judgment stating that the judgment would be withheld, regardless of Charles' compliance with sentencing and probation, until such time as the district court found that it was "compatible with the public interest" under I.C. § 19-2604(1) to allow Charles to withdraw his guilty plea, dismiss this action and restore his civil rights. Since the Order Withholding Judgment was entered pursuant to the terms of the Rule 11 Plea Agreement and there were no terms in that Agreement authorizing the district court to retain jurisdiction so long as Charles complied with the terms of sentence and probation, the district court had no jurisdiction to not dismiss this action and restore Charles' civil rights. *See State v. Branson*, 128 Idaho 790, 792, 919 P.2d 319, 321 (1996); *Ex parte Medley*, 73 Idaho 474, 483, 253 P.2d 794, 800 (1953).

II. CONCLUSION

For the reasons articulated above, the Court should reverse the district court's two orders and remand this case with instructions to set aside Charles' guilty plea, restore all of his civil rights and dismiss this action. Since this action involves post-sentence and quasi-civil matters, Charles requests an award of costs pursuant to I.A.R. 40.

DATED this 20th day November, 2012.

RODERICK BOND LAW OFFICE, PLLC

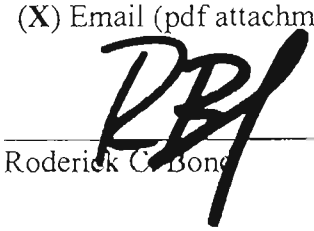
By:_____
Roderick C. Bond
Attorney for Defendant-Appellant Charles Earl Guess

CERTIFICATE OF SERVICE

I, Roderick Bond, declare that, on the 20th day of November, 2012, I served two true and correct copies of Appellant's Reply Brief on the following parties via the method(s) indicated below:

Lawrence G. Wasden, Attorney General
Lori A. Fleming, Deputy Attorney General
P.O. Box 83720
Boise, ID 82720-0010

(**X**) U.S. Mail, Postage Prepaid
( ) Facsimile
(**X**) Email (pdf attachment)



Roderick C. Bond