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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 44860
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2016-4891
v.	)	
	)	
JESUS ESTEBAN CASTRO	)	
ANGULO AKA LUIS CARLOS	)	
QUEZADA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE DEBORAH A. BAIL  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

A jury found Jesus Castro-Angulo guilty of two counts of trafficking in methamphetamine and he was sentenced to concurrent unified terms of 20 years, with 10 years fixed. Mr. Castro-Angulo asserts that the district court abused its discretion by precluding him from keeping a copy of his discovery, by allowing the State to present evidence of the street value of the drugs he allegedly possessed, and by ordering him to pay restitution to the Ada County Prosecutor's Office as a purported crime victim.

### Statement of the Facts and Course of Proceedings

On April 15, 2016, officers from the Ada County Metro Narcotics Unit and the Drug Enforcement Administration stopped a vehicle driven by Jesus Castro-Angulo, and discovered over four pounds of methamphetamine. (PSI, pp.73-77.)<sup>1</sup> Mr. Castro-Angulo, along with his passengers, Guadalupe Garcia-Carranza and Alejandro Garcia-Carranza, were arrested and charged by criminal complaint with trafficking in 400 grams or more of methamphetamine. (R., pp.10-16; PSI, pp.73-77.) A month later, the prosecutor empaneled a grand jury to consider Mr. Castro-Angulo and his co-defendants' cases. (*See generally*, Tr. GJ.)

Detective Javier Bustos, a narcotics investigator with the Ada County Sheriff's Office who often works undercover, testified to the grand jury that a confidential informant gave Detective Bustos' undercover persona's contact information to a drug dealer named Luis Soria. (Tr. GJ, p.27, L.1 – p.36, L.4.) With Sheriff's Deputies and DEA agents monitoring and recording the transactions, Detective Bustos, working undercover, purchased a quarter pound of

methamphetamine on November 23, 2015, and one-half pound of methamphetamine on December 16, 2015, from Mr. Soria. (Tr. GJ, p.35, L.19 – p.67, L.13.) During the December transaction, Detective Bustos spoke by phone with an unidentified male whom Mr. Soria had indicated may be willing to sell him methamphetamine in the future. (Tr. GJ, p.63, L.25 – p.65, L.14.) The person was later identified as Jesus Castro-Angulo. (PSI, pp.73-77.)

Over the next month, Detective Bustos communicated with Mr. Castro-Angulo, and the two eventually agreed to meet in Twin Falls on January 13, 2016, to discuss future drug sales. (Tr. GJ, p.70, L.16 – p.72, L.14.) Detective Bustos and Mr. Castro-Angulo met in Detective Bustos' vehicle in a mall parking lot in Twin Falls where, during the monitored and recorded conversation, Mr. Castro-Angulo agreed to sell Detective Bustos a quarter pound of methamphetamine.<sup>2</sup> (Tr. GJ, p.72, L.11 – p.77, L.1.) Mr. Castro-Angulo told Detective Bustos that it would take about 20 minutes for him to pick up the methamphetamine and he drove off.<sup>3</sup> (Tr. GJ, p.76, L.22 – p.77, L.3.) Mr. Castro-Angulo returned and sold Detective Bustos a quarter pound of methamphetamine. (Tr. GJ, p.78, L.1 – p.86, L.9.) Over the next three months, Detective Bustos continued to occasionally communicate with Mr. Castro-Angulo, who

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<sup>1</sup> Citations to the Presentence Investigation Report and its attached documents will include the designation "PSI," and the page number associated with the electronic file containing those documents.

<sup>2</sup> Though Detective Bustos did not testify to the grand jury about the price he agreed to pay, the prosecutor correctly told the grand jury that the price agreed to was \$2,300. (Tr. GJ, p.20, Ls.6-21; *see also* Tr., p.318, Ls.16-25 (Detective Bustos testifying he paid \$2,300 for the quarter pound of methamphetamine).)

<sup>3</sup> The car Mr. Castro-Angulo drove was registered to an individual name Luis Carlos Quezada; thus, Detective Bustos and the other investigators operated under the assumption that Mr. Castro-Angulo was actually Luis Quezada. (Tr. GJ, p.77, Ls.2-18; PSI, pp.47-82.) Though the State included "aka LUIS CARLOS QUEZADA" as part of Mr. Castro-Angulo's name in the Indictment, and thus that designation is also included in the official title of this appeal, Mr. Castro-Angulo confirmed his true name to officers upon his arrest and interrogation, and he never claimed to be Luis Quezada. (Tr. GJ, p.118, Ls.16-23; PSI, pp.75-77.)

eventually agreed to sell Detective Bustos an additional two pounds of methamphetamine and to provide him additional methamphetamine on credit, with the transaction set to occur on April 15, 2016, in Boise. (Tr. GJ, p.86, L.10 – p.90, L.5.) Detective Bustos needed to wrap up the investigation so he did not actually meet with Mr. Castro-Angulo; rather, he observed narcotics officers stop Mr. Castro-Angulo’s vehicle, and arrest him and his two passengers. (Tr. GJ, p.88, L.9 – p.94, L.10.)

Detective Kevin Louwsma of the Ada County Sheriff’s Office was involved in the April 15, 2016 arrest, and he testified that Mr. Castro-Angulo was the driver, Guadalupe Garcia-Carranza was in the front passenger seat, and Alejandro Garcia-Carranza was in the rear seat of the vehicle. (Tr. GJ, p.95, L.11 – p.99, L.23.) The vehicle was transported to the Ada County Sheriff’s Office and was searched, and officers discovered a total of two and a quarter pounds of methamphetamine. (Tr. GJ, p.99, L.24 – p.101, L.17; p.106, L.9 – p.114, L.25.)

Russell Magoffin, Special Agent with the DEA who is fluent in Spanish and was a part of the investigation and arrest team, interviewed the three suspects along with Special Agent Chris Davis. (Tr. GJ, p.115, L.15 – p.120, L.3.) Special Agent Magoffin wanted to conduct the interview in English but he quickly determined Mr. Castro-Angulo did not understand English well, so he conducted the interview in Spanish. (Tr. GJ, p.120, Ls.8-16.) After being informed of his *Miranda* rights and agreeing to speak, Mr. Castro-Angulo admitted that his intent was to sell to his associate the methamphetamine found in the vehicle, and that he had sold an additional quarter-pound of methamphetamine to the same man in Twin Falls on a prior occasion.<sup>4</sup> (Tr. GJ, p.120, L.23 – p.122, L.19.) Corinna Owsley of the Idaho State Police Forensic Services testified

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<sup>4</sup> Mr. Castro-Angulo did not express any indication that he knew Detective Bustos was an undercover officer at the time of his interrogation. (Tr. GJ, p.120, L.23 – p.122, L.19.)

that the packages purchased by Detective Bustos on January 13, 2016, and the packages seized by officers on April 15, 2016, contained methamphetamine. (Tr. GJ, p.128, L.1 – p.135, L.11; p.137, L.8 – p.143, L.1.)

The grand jury issued an Indictment charging Mr. Castro-Angulo with two counts of trafficking in methamphetamine: Count I alleged that he possessed 400 grams or more on April 15, 2016; and Count II alleged that he possessed and/or delivered 28 grams or more on January 13, 2016. (R., pp.24-26.) The Indictment included the names of the witnesses who testified before the grand jury. (R., p.26.) Counsel for Mr. Castro-Angulo filed a motion requesting a transcript of the grand jury proceeding. (R., p.31.) The district court granted the request and issued an order stating that “[t]he defendant, defense counsel, and the prosecutor shall be allowed to review the entire grand jury transcript.” (R., pp.32-33.)

Counsel for Mr. Castro-Angulo filed a specific request for discovery, seeking the “Redacted Discovery.” (R., p.45.) In response, the State filed a Motion for Protection Order requesting that it be allowed to withhold information about the confidential informant,<sup>5</sup> and seeking an order prohibiting Mr. Castro-Angulo’s counsel from providing a copy of the discovery to Mr. Castro-Angulo. (R., pp.48-52.) The State’s claimed basis for not allowing Mr. Castro-Angulo a copy of his discovery was that “release and any duplication or dissemination potentially puts individual(s) at risk of *economic, physical or other harm or coercion.*” (R., p.49 (emphasis original).) The prosecutor noted that “an undercover officer” was involved in the investigation, and that the case involves a large amount of methamphetamine. (R., p.50.) The prosecutor stated that Mr. Castro-Angulo said at one point

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<sup>5</sup> Mr. Castro-Angulo did not object to the State’s request to withhold information about the confidential informant. (Tr., p.12, Ls.9-17.)

that he was from Sinaloa, Mexico, and that he had admitted that he “sold drugs in the past and received a quarter pound of methamphetamine from an individual he described as a Cholo Mexican Gang Member.”<sup>6</sup> *Id.* The State continued:

Based upon the significant quantity of methamphetamine that Defendant allegedly had access too, distributed and lost upon the seizure by law enforcement combined with the Defendant’s statements connecting him to both Sinaloa, Mexico as well as a Mexican gang, the state has significant concerns that unrestricted release, duplication or dissemination of the materials provided in the State’s Response to Discovery potentially puts individual(s) involved in the investigation at risk of economic, physical or other harm or coercion. The violence, intimidation and retaliation at the hands of Mexican Drug Cartels and Gangs is very well documented and publicized and the State urges this Court out of an abundance of caution to enter the protection order requested in this case.

(R., pp.50-51.) The State did not provide any specifics as to how Mr. Castro-Angulo having a copy of his discovery could put individual(s) at risk of harm or coercion, nor did the State identify who those individual(s) might be. *Id.* The State did however,

note and request this Court consider that during the investigation and the court proceedings in this case, Defendant has indicated that he only speaks Spanish. However, the reports and materials, with the exception of communication between the Defendants and the undercover, are all in English. Therefore, if the Defendant is unable to speak and read English, as asserted, he would be unable to review any of the discovery materials without assistance in any event.

(R., p.51.)

During a hearing on its motion, the State expressed that it had provided Mr. Castro-Angulo’s counsel with all of the discovery and it had no objection to Mr. Castro-Angulo

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<sup>6</sup> The prosecutor’s claim that Mr. Castro-Angulo received one-quarter pound from a “Cholo Mexican Gang Member,” apparently stems from a report authored by Special Agent Davis. (R., pp.78-82.) Special Agent Davis, who does not speak Spanish, interviewed Mr. Castro-Angulo with the assistance of Special Agent Magoffin. (Tr., p.635, L.15 – p.636, L.6; p.647, L.19 – p.651, L.6; p.667, L.14 – p.670, L.24 – p.673, L.18.) Although it was certainly reasonable for the prosecutor to rely on Agent Davis’ report, Agent Magoffin testified that Mr. Castro-Angulo told him that he got the quarter pound of methamphetamine he sold to Detective Bustos “from a guy he referred to as Cholo,” not from a “Cholo Mexican Gang Member” as alleged in the State’s motion for a protection order. (Tr., p.679, L.1 – p.681, L.16.)

reviewing the discovery. (Tr., p.6, L.19 – p.8, L.4.) However, the State argued that Mr. Castro-Angulo should not have a copy of his own discovery because two or three years earlier, in a different drug trafficking case involving multiple defendants including a person “who was living in California but came from Mexico,” prosecutors became aware that copies of discovery were being mailed out of the jail, and potential witnesses were being threatened, so the district court in that case entered a protection order similar to the one the State was asking for in Mr. Castro-Angulo’s case. (Tr., p.8, L.5 – p.11, L.5.) The prosecutor stated a protection order should be issued in order to protect “any individual involved in the investigation or any one believed to be involved in the investigation, including our undercover officer Detective Javier Bustos, and his safety is certainly a concern.” (Tr., p.11, Ls.6-18.) The prosecutor asserted that “retaliation is a potential” because the seizure of two pounds was a financial hit to the distributor. (Tr., p.11, Ls.19-23.)

Counsel for Mr. Castro-Angulo argued that the actions of others in the past should not interfere with his client’s ability to have a copy of his own discovery, that Detective Bustos’ identity was already known as he was “the case agent for anybody to come and see,” that there had been no indication that Mr. Castro-Angulo has made any threats or acted inappropriately at all, and that the jail has the ability to review his mail. (Tr., p.12, L.17 – p.14, L.4.) The district court inquired of whether Mr. Castro-Angulo could read English and if the police reports would need to be interpreted for him, and counsel responded that they would in fact be interpreted for him. (Tr., p.14, Ls.5-22.) The district court then stated that “it seems to me that there is less need for a copy when it is in a language that the person is not familiar with” and that it would be “labor intensive” and “arduous” for defense counsel to have the reports interpreted. (Tr., p.15,

Ls.2-24.) When defense counsel responded that the language barrier is not a basis for entering discovery protection order, the district court responded,

Well, I'm not saying it is. I am saying the need for giving present English discovery is less when the true need is to be sure that there is plenty of time with the interpreter and with you with the ability to translate it fully. Because I speak several languages but I know if I were in another country, I would for sure want an interpreter helping me make absolutely sure that I really get everything that's being said.

And so I think with the interpreter, that's absolutely critical. I don't know that there is extra benefit for the defense in preparing a defense to get written discovery in English that's greater than the benefit that is already provided you and the interpreter going over all of the discovery. Because that seems to me to be the greatest need and the greatest need is satisfied.

(Tr. p.16, Ls.4-22.) The district court granted the State's motion, holding,

Well, since he can review it fully and he can review it fully in the most effective way possible, which is with the help of an interpreter, I think that we are already doing what I think is the best and most reasonable approach.

So I think in this particular case, this is a reasonable approach to take to balance the concerns of the State with absolute need the defendant to be able to review it fully and meaningfully. And reviewing it fully and meaningfully means it is going to have to be done with the assistance of the interpreter.

I don't see in this particular case providing written -- the copies of written discovery which is in English would be even useful. So I will grant your motion for protective order.

(Tr., p.17, Ls.6-23; R., pp.60-61.)

During the first trial, over Mr. Castro-Angulo's relevance objection, Detective Bustos was allowed to testify about what he believed would be the street value of the methamphetamine seized on April 15, 2016, if he had actually been a drug dealer intending to resell the methamphetamine he, in his undercover capacity, agreed to buy. (Ex. Tr., p.212, L.9 – p.216, L.25.) That trial ended in a mistrial.<sup>7</sup>

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<sup>7</sup> The first trial ended in a mistrial after Special Agent Magoffin testified about a statement made by Alejandro Garcia-Carranza that implicated Guadalupe Garcia-Carranza. (Ex. Tr, p.514, L.3 – p.522, L.14.)

Prior to the second trial, counsel for Guadalupe Garcia-Carranza filed a motion in limine arguing that Detective Bustos should not be allowed to testify about the possible street value of the methamphetamine seized on April 16, 2016, because such evidence is not relevant pursuant to I.R.E. 401 and, even if relevant, such evidence should be excluded as overly prejudicial pursuant to I.R.E. 403. (Augmentation.)<sup>8</sup> The State argued the information relevant to the theoretical street value of the methamphetamine was relevant to whether the defendants had “knowing possession” of the methamphetamine because it is “economics” and that the evidence was not overly prejudicial. (Tr., p.29, L.3 – p.36, L.2.) Counsel for Guadalupe Castro-Carranza argued that the street value of the methamphetamine was not relevant because it was never actually going to be sold on the street, and that such evidence would be overly prejudicial as it would suggest the jury should convict the defendants based upon the impact this amount of methamphetamine would have on the community. (Tr., p.36, L.4 – p.37, L.11.) The court denied the motion in limine, finding that it was “very relevant when there is a valuable object and multiple people are involved in its transportation and deliver to consider the inference that a person would not let people accompany them delivering valuable objects, unless they were also participants in the same project.” (Tr., p.37, L.12 – p.38, L.14.) Counsel for Mr. Castro-Angulo noted, and the district court recognized, that Mr. Castro-Angulo joined in the motion. (Tr., p.38, L.18 – p.39, L.2.)

During the second trial, Detective Bustos testified consistently with his grand jury testimony; notably, that Mr. Castro-Angulo sold him a quarter pound of methamphetamine on January 13, 2016, Mr. Castro-Angulo agreed to sell him two pounds and front him an additional

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<sup>8</sup> Mr. Castro-Angulo has filed a motion to augment the appellate record with this motion in limine. The motion to augment is currently pending.

amount of methamphetamine, and that Mr. Castro-Angulo was one of the three people arrested by the task force on April 15, 2016. (*See generally*, Tr. p.218, L.14 – p.373, L.21; p.407, L.4 – p.518, L.25.) Regarding the street value of the two and a quarter pounds of methamphetamine seized on April 15, 2016, Detective Bustos testified about a range of prices that he could have charged for the methamphetamine if he were an actual drug dealer, depending upon the amount of methamphetamine involved in each transaction, but he would need a calculator to figure out exactly how much he could make. (Tr., p.449, L.12 – p.453, L.12.) Special Agent Magoffin also testified consistently with his grand jury testimony and he informed the jury that Mr. Castro-Angulo admitted that he intended to sell the methamphetamine found on April 15, 2016, to his friend, and that he sold methamphetamine to the same friend previously in Twin Falls. (*See generally*, Tr., p.667, L.14 – p.724, L.23.) Corinna Owlsey again testified that the substances she tested related to this case contained methamphetamine. (*See generally*, Tr., p.374, L.22 – p.406, L.9.)<sup>9</sup>

The jury found Mr. Castro-Angulo guilty of both charges.<sup>10</sup> (R., pp.123-124.)

Prior to sentencing, the prosecutor submitted an “Unsigned Order for Restitution and Judgment with attached Statement of Costs, which was signed by the prosecuting attorney on February 7, 2017.” (*See Order Granting Motion to Augment and Denying Motion to Suspend the Briefing Schedule*, entered March 30, 2018.) As part of its proposed order, the State named

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<sup>9</sup> Additionally, the State presented the testimony of Diana Arbiser, who translated and transcribed the recorded conversations from Spanish to English (Tr., p.154, L.20 – p.200, L.10), and DEA Agent Dustin Bloxham (Tr., p.201, L.1 – p.213, L.5), Ada County Sheriff’s Detective Chris Bones (Tr., p.519, L.15 – p.539, L.11), Ada County Sheriff’s Detective Kevin Louwsma (Tr., p.539, L.18 – p.618, L.13) Ada County Sheriff’s Forensic Lab Manager Natasha Wheatley (Tr., p.618, L.22 – p.635, L.6), and DEA Special Agent Chris Davis (Tr., p.635, L.15 – p.666, L.24), about their roles in the investigation.

<sup>10</sup> The jury also found the Garcia-Carranza brothers guilty. (Tr., p.823, L.8 – p.824, L.13.)

the Ada County Prosecutor's Office as a "Crime Victim," and sought restitution in separate amounts of \$2,440, and \$2,660, but provided justification for neither the amount requested nor how the Ada County Prosecutor's office could be considered a crime victim. *Id.* The State also sought \$7,076.31 in restitution for law enforcement agencies. *Id.*

During Mr. Castro-Angulo's sentencing hearing, the prosecutor stated, "In light of your prior ruling, I would just note not only were the actual out of pocket costs, the transcript costs, but this defendant was paid \$2300 in cash." (Tr., p.828, Ls.19-24.) Defense counsel objected to the State's restitution request, stating,

The transcripts, there is two different amounts that Ms. Reilly has requested for the transcripts. One is a document for \$2,440. That's the transcripts of the undercover wires phone calls and text messages if the Court was inclined to grant restitution. For transcripts, that's seems probably reasonable on that.

There is also another document for over \$1,000 where the interpreter who provided the transcription is asking for witness fees and the transcriptions of the video recordings of the defendants. I don't think that there was any issues with the law enforcement testimony about what they believe was done.

Those transcriptions weren't played to the jury as part of the trial. And so if the Court is seeking to order that, I would ask the Court to only order the \$2440 but not the additional approximately \$1100 for the testimony and the actual police interviews once the three gentlemen have been taken into custody.

The restitution, the rest of the remaining amount, I think it has some problematic issues punishing the defendants for going to trial.

(Tr., p.834, L.5 – p.835, L.23.) The district court stated that it would order restitution "for the various transcriptions that were referred to. But certainly not for any costs related to the trial itself." (R., p.842, Ls.9-12.) For reasons not clear from the record, the district court entered an Order for Restitution and Judgment, requiring Mr. Castro-Angulo to pay the Ada County Prosecutor's Office as a "Crime Victim" \$5,100 (\$2,440 joint and several with Alejandro and Guadalupe Garcia-Carranza, and \$2,660 joint and several with the Garcia-Carranza brothers and Luis Soria), seven months after his sentencing hearing. (R., pp.125, 141-143.) The district court

sentenced Mr. Castro-Angulo to concurrent terms of 20 years, with 10 years fixed, and he filed a timely Notice of Appeal. (R., pp.126-133.)

## ISSUES

- I. Did the district court abuse its discretion by preventing Mr. Castro-Angulo from keeping copies of his discovery, as the State failed to make a sufficient showing that any person would be subjected to economic, physical or other harm or coercion, if Mr. Castro-Angulo was allowed to keep copies of his own discovery?
  
- II. Did the district court err when it allowed the State to present evidence of the street value of the seized methamphetamine, as that information was not relevant to any issue for the jury's consideration?
  
- III. Did the district court abuse its discretion by ordering Mr. Castro-Angulo to pay restitution to the Ada County Prosecutor's Office, as that office is not a crime victim?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion By Preventing Mr. Castro-Angulo From Keeping Copies Of His Discovery, As The State Failed To Make A Sufficient Showing That Any Person Would Be Subjected To Economic, Physical Or Other Harm Or Coercion, If Mr. Castro-Angulo Was Allowed To Keep Copies Of His Own Discovery

##### A. Introduction

The State asked the district court to order defense counsel to refrain from providing Mr. Castro-Angulo copies of his own discovery because; he is from Sinaloa, Mexico; he obtained methamphetamine previously from a person the prosecutor mistakenly believed was a gang member; he doesn't speak English; and a few years earlier, a different Mexican defendant accused of drug trafficking arranged for threats to be made to witnesses in that case. Despite the fact that Detective Bustos' identity was already known, and that there was no evidence that Mr. Castro-Angulo was a gang member or had or would make any type of threat to anyone, the district court granted the State's motion, primarily because Mr. Castro-Angulo does not speak English. Mr. Castro-Angulo asserts that the State failed to make a sufficient showing that allowing him to keep copies of his discovery posed a threat to anyone, and the district court abused its discretion in granting the State's motion for a protection order.

##### B. The District Court Abused Its Discretion By Preventing Mr. Castro-Angulo From Having Copies Of His Own Discovery

At time of his arrest and trial, Idaho Criminal Rule 16(l) read as follows:

Protective orders. **Upon a sufficient showing**, after notice and hearing, **the court may at any time order that the discovery or inspection be denied, restricted or deferred**, or make such other order as is appropriate, **including an order denying a request for disclosure of names and addresses of witnesses or others who may be subjected to economic, physical or other harm or coercion**. The court may permit a party to make such showing in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order

granting relief after such showing, the entire text of the party's statement shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

I.C.R. 16(l) (2016)<sup>11</sup> (emphasis added). Because this Criminal Rule indicates that the district court “may” restrict discovery, this Court should reviewed the district court’s decision to restrict discovery in this case under an abuse of discretion standard. *See State v. Joy*, 155 Idaho 1, 12 (2013) (noting that the word “may” found in I.C.R. 17(b) shows that the decision to grant or deny a motion to quash a subpoena in a criminal case is a discretionary decision); *State v. Harbaugh*, 123 Idaho 835, 837 (1993) (use of “may” in I.C.R. 33 indicates a discretionary decision); *see also Quigley v. Kemp*, 162 Idaho 408, \_\_\_, 398 P.3d 141, 143 (2017) (noting that a district court’s grant of a protective order in civil cases is review under an abuse of discretion standard). The abuse of discretion standard requires the appellate Court to consider: 1) whether the trial court correctly perceived the issue as discretionary; 2) whether the court acted within the bounds of its discretion and consistent with applicable legal standards; and 3) whether the court reached its decision through reason. *Joy*, 155 Idaho at 6 (citations omitted). The district court abused its discretion in granting the State’s motion for a protection order, as it acted inconsistently with the applicable legal standards and did not reach its decision through and exercise of reason.

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<sup>11</sup> Idaho Criminal Rule 16(l) has since been simplified and now reads, “[a]t any time the court may, for **good cause**, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve and seal the entire text of the party’s statement.” ICR 16(l) (2017) (emphasis added). The rule is almost identical to Federal Rule of Criminal Procedure 16(d)(1), and the “good cause” standard therein has been interpreted to mean that such orders should not be granted arbitrarily or be based upon broad allegations of harm; rather, they require a specific showing that disclosure will work a clearly defined and serious injury. *See United States v. Johnson*, 191 F.Supp.3d 363, 368 (M.D. Pa. 2016).

Consistent with the language in the 2016 version of I.C.R. 16(l), the State argued in its written motion that allowing Mr. Castro-Angulo to keep a copy of his own discovery “potentially put(s) individuals at risk of *economic, physical or other harm or coercion.*” (R., p.49.) The State noted that “an undercover officer was used,” cynically suggesting that the undercover officer’s identity needed to be protected when in fact that undercover officer, Detective Bustos, was already well-known to the defendant as he was named as one of the witnesses who testified in front of the grand jury in the Indictment, and a transcript of the grand jury proceedings was prepared and presented to Mr. Castro-Angulo. (R., pp.24-26, 32-34; Tr. GJ.) Furthermore, any claim that Detective Bustos’ identity needed to be protected is belied by the fact that the prosecutor specifically identified Detective Bustos as the person who needed to be protected, in a courtroom open to the public, during the hearing on the State’s motion. (Tr., p.11, Ls.6-18.)

Additionally, the State failed to provide any information, let alone make a “sufficient showing” as required by I.C.R. 16(l), that allowing Mr. Castro-Angulo specifically to have a copy of his own discovery would subject Detective Bustos or anyone else to economic, physical or other harm or coercion. The prosecutor argued that Jesus Castro-Angulo should be presumed dangerous, not because he had a violent past, was a gang member, or had made any threats,<sup>12</sup> but rather because he was from Sinaloa, Mexico, and supposedly did business with a Mexican gang member in the past.<sup>13</sup> (R., p.50.) The prosecutor asserted, “[t]he violence, intimidation and retaliation at the hands of Mexican Drug Cartels and Gangs is very well documented and

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<sup>12</sup> Although the district court did not have a copy of the PSI at the time it considered the State’s motion, the prosecutor would have presumably known that Mr. Castro-Angulo had no tattoos of any kind, let alone tattoos indicating gang affiliation, and his prior criminal history consisted only of some type of immigration offense, and the failure to purchase a driver’s license. (PSI, pp.2-3.)

<sup>13</sup> As noted in footnote 6 above, the prosecutor’s argument that Mr. Castro-Angulo had some connection with a Mexican gang stems from Agent Davis’ misapprehension that when

publicized and the State urges this Court out of an abundance of caution to enter the protection order requested in this case.” (R., pp.50-51.) During the hearing on its motion, the State again failed to provide any evidence whatsoever that Jesus Castro-Angulo, who was presumably sitting mere feet from the prosecutor, had ever done anything remotely violent or threatening; instead, the prosecutor argued that a different Mexican national who had been charged with drug trafficking in a different case three years earlier, had engage in some type of behavior that led to witnesses being threatened in that prior case. (Tr., p.8, L.9 – p.12, L.7.) Demonstrating that the defendant is of the same nationality and facing the same type of charges as a person who acted badly in the past, is simply not a “sufficient showing” that would support a protection order.

Instead of requiring the State to meet its burden, the court instead decided that Mr. Castro-Angulo should not be able to keep a copy of his discovery because he does not speak English.

Well, since he can review it fully and he can review it fully in the most effective way possible, which is with the help of an interpreter, I think that we are already doing what I think is the best and most reasonable approach.

So I think in this particular case, this is a reasonable approach to take to balance the concerns of the State with absolute need the defendant to be able to review it fully and meaningfully. And reviewing it fully and meaningfully means it is going to have to be done with the assistance of the interpreter.

I don't see in this particular case providing written -- the copies of written discovery which is in English would be even useful. So I will grant your motion for protective order.

(Tr., p.17, Ls.6-23; R., pp.60-61.) Mr. Castro-Angulo asserts that the district court's conclusion that he should not be allowed to keep a copy of his own discovery, because he doesn't speak English, is inconsistent with any legal standard, in any context, in modern American

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Mr. Castro-Angulo said he got drugs on one occasion in the past from a guy named “Cholo,” he actually said he got drugs from a “cholo,” which is a Spanish slang term for a gang member. *See* <https://www.urbandictionary.com/define.php?term=Cholo> (last visited April 4, 2018).

jurisprudence. Idaho courts should not have one set of rules for English proficient defendants, and a different set of rules for non-English proficient defendants. Criminal defendants should not be required to pass an English literacy test before they are entitled to keep a copy of their discovery. The district court simply did not reach its decision through an exercise of reason.

Because the State failed to make a “sufficient showing” that allowing Mr. Castro-Angulo to keep a copy of his own discovery may put anyone at risk of economic, physical or other harm or coercion, and because the district court acted inconsistently with the applicable legal standards and failed to exercise reason, the district court abused its discretion when it granted the State’s motion.

C. The State Will Be Unable To Show The Error Is Harmless Beyond A Reasonable Doubt

When a defendant objects to an error and shows that a violation occurred, the State bears the burden of proving, “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. Perry*, 150 Idaho 209, 221 (2008) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)); *see also Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). The question “is whether the jury actually rested its verdict on evidence establishing the presumed fact beyond a reasonable doubt, independently of” the inadmissible evidence. *Yates v. Evatt*, 500 U.S. 391, 404 (1991). “The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict *actually rendered* in this trial was *surely unattributable* to the error.” *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993) (emphasis added).

Mr. Castro-Angulo asserts that the State will be unable to show that the verdict rendered in his case is surely unattributable to the district court precluding him from keeping a copy of his discovery.

Additionally, Mr. Castro-Angulo asks this Court to consider the broader implications of the district court's decision in this case. While Mr. Castro-Angulo certainly does not believe, and does not assert, that either the prosecutor or the district court had any unethical or discriminatory intent, the fact remains that the State's motion, and the district court's decision, would unquestionably be perceived by an average Idahoan as a ruling based entirely upon stereotypes related to Mr. Castro-Angulo's Mexican nationality and his lack of English proficiency. This Court should avoid sending a message to the public that a court ruling that is legally erroneous *because* it was based upon an individual's national heritage and language skills, can be considered "harmless" under Idaho law. *See, e.g., State v. Phillips*, 144 Idaho 82, 89 (Ct. App. 2007) (noting that circumstances may arise where an Idaho appellate Court should vacate a conviction, even if the error in the particular case was harmless, in order to address a pattern of misconduct on the part of the prosecutor).

## II.

### The District Court Erred When It Allowed The State To Present Evidence Of The Street Value Of The Seized Methamphetamine, As That Information Was Not Relevant To Any Issue For The Jury's Consideration

#### A. Introduction

Under the State's theory of the case, Mr. Castro-Angulo agreed to sell two pounds of methamphetamine to a person he believed was a drug dealer, in exchange for \$16,000, and agreed to front the same person an additional quarter pound of methamphetamine, for the promise of future payment (presumably \$2,300 as he had paid Mr. Castro-Angulo previously). The theoretical amount of money Detective Bustos could have made had he been an actual drug dealer and sold the methamphetamine seized to other actual drug dealers and/or users, was not

relevant to any issue the jury needed to decide. As such, the district erred in allowing the State to present this evidence, over Mr. Castro-Angulo's relevance objection.<sup>14</sup>

B. The District Court Erred When It Allowed The State To Present Evidence Of The Street Value Of The Seized Methamphetamine

“A trial court has ‘broad discretion’ in determining whether to admit or exclude evidence, ‘and *its judgment in the fact finding role* will only be disturbed on appeal when there has been a clear abuse of discretion.’” *Joy*, 155 Idaho at 6 (citing *State v. Watkins*, 148 Idaho 418, 421 (2009) (in turn quoting *State v. Gleason*, 123 Idaho 62, 65 (1992)) (emphasis original).) “However, whether evidence is relevant is a question of law this Court reviews *de novo*.” *Id.* (citing *State v. Shackelford*, 150 Idaho 355, 363 (2010).) “‘Relevant Evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” I.R.E. 401. “All relevant evidence is admissible except as otherwise provided by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible.” I.R.E. 402. The district court erred in allowing the State to present evidence of the street-value of the methamphetamine seized by officers during the April 15, 2016 incident, as it acted outside the boundaries of the law as such evidence was not relevant.

In order for the jury to find Mr. Castro-Angulo guilty of trafficking by possession of over 400 grams of methamphetamine as alleged in Count I of the Indictment (R., p.24), the State was required to prove the following beyond a reasonable doubt:

1. On or about April 15, 2016

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<sup>14</sup> Mr. Castro-Angulo does not challenge the district court's specific ruling on the prejudicial impact of this evidence pursuant to I.R.E. 403, except in that it was in part based upon the finding that the evidence was relevant.

2. in the state of Idaho,
3. the defendant Jesus Esteban Castro-Angulo possessed methamphetamine,
4. the defendant knew it was methamphetamine and
5. possessed at least four-hundred (400) grams of methamphetamine or more or any mixture or substance with a detectable amount of methamphetamine.

(R., p.110.) The street value of the methamphetamine the State alleged that Mr. Castro-Angulo possessed is simply not a fact of consequence for any of these determinations. Detective Bustos' knowledge of the street value of the methamphetamine, even assuming the jury could infer that Mr. Castro-Angulo also knew the street value of the methamphetamine, does not make it more or less probable that Mr. Castro-Angulo knowingly possessed 400 grams or more of methamphetamine.

In denying the motion in limine to preclude such evidence, the district court reasoned that Mr. Castro-Angulo's knowledge of the street-value of the methamphetamine was "very relevant when there is a valuable object and multiple people are involved in its transportation and delivery to consider the inference that a person would not let people accompany them delivering valuable objects, unless they were also participants in the same project." (Tr., p.37, Ls.17-23.) Mr. Castro-Angulo does not dispute this basic premise; however, under the State's theory, Mr. Castro expected to be paid \$16,000 at the time of the delivery for the two pounds, and presumably an additional \$2,300 for the additional quarter pound at a future date. Therefore, under the State's theory the value of the methamphetamine to Mr. Castro-Angulo was the approximately \$18,300 sale price. The theoretical street value of the methamphetamine seized could in no way weigh into the jury's consideration of whether Mr. Castro-Angulo knowingly possessed the methamphetamine, because even if Detective Bustos was an actual drug dealer, Mr. Castro-Angulo would not get a cut of that theoretical amount. As such, the street value of

the methamphetamine was not relevant and the district court abused its discretion by allowing the jury to hear this evidence.

C. The State Will Be Unable To Show The Error Is Harmless Beyond A Reasonable Doubt

As noted above, the State bears the burden of showing, beyond a reasonable doubt, that evidence erroneously admitted over Mr. Castro-Angulo's objection did not contribute to the verdict, and is harmless. *See Perry*, 150 Idaho at 221. Mr. Castro-Angulo asserts the State will be unable to meet that burden in this instance.

III.

The District Court Abused Its Discretion By Ordering Mr. Castro-Angulo To Pay Restitution To The Ada County Prosecutor's Office, As That Office Is Not A Crime Victim

A. Introduction

Based upon a proposed order submitted by the prosecutor, the district court ordered Mr. Castro-Angulo to pay \$5,100 in restitution to the Ada County Prosecutor's Office as a victim. Mr. Castro-Angulo objected to at least \$2,660 of that amount. Mr. Castro-Angulo asserts that, because the Ada County Prosecutor's Office was not a victim of his actions, it was not entitled to restitution, and the district court abused its discretion by ordering him to pay \$2,660 in restitution, as it acted outside the boundaries of its legal authority.

B. The District Court Abused Its Discretion By Ordering Mr. Castro-Angulo To Pay \$2,660 In Restitution To The Ada County Prosecutor's Office

In response to a motion to augment the record with the written restitution request submitted by the prosecutor prior to Mr. Castro-Angulo's sentencing hearing, the district court provided to this Court an "Unsigned Order for Restitution and Judgment with attached Statement

of Costs, which was signed by the prosecuting attorney on February 7, 2017.” (*See* Order Granting Motion to Augment and Denying Motion to Suspend the Briefing Schedule, entered March 30, 2018.) The proposed order sought \$5,100 in restitution, naming the Ada County Prosecutor’s Office as a “crime victim,” but it did not provide any information as to what the money was sought for or how the prosecutor’s office qualified as a crime victim. *Id.* The State submitted a separate restitution request in the amount of \$7,076.31 on behalf of the law enforcement agencies and the Ada County Prosecutor’s Office for their costs in prosecuting Mr. Castro-Angulo, pursuant to I.C. § 37-2732(k). *Id.*

During Mr. Castro-Angulo’s sentencing hearing, the prosecutor made reference to “out of pocket costs” and “transcript costs,” in requesting the court order restitution. (Tr., p.828, Ls.19-24.) Defense counsel appears to have stipulated to the prosecutor’s request for \$2,440 for a transcript, but objected to the remaining request for restitution (although it is not clear that defense counsel was aware that the prosecutor was seeking an \$2,660 for some un-described costs, as counsel made reference to an “additional approximately \$1100 for the testimony and the actual police interviews”). (Tr., p.834, L.5 – p.835, L.23.) The district court stated that it would order restitution “for the various transcriptions that were referred to. But certainly not for any costs related to the trial itself.” (R., p.842, Ls.9-12.) The Court ultimately entered an order for restitution that included \$2,660 to the Ada County Prosecutor’s Office as a crime victim (plus an additional \$2,440 to the Ada County Prosecutor’s Office as a crime victim that Mr. Castro-Angulo’s counsel did not object to). (R., pp.141-142).

A district court’s restitution order is reviewed under an abuse of discretion standard, and the appellate Court will not disturb the district court’s factual findings if they are supported by substantial evidence. *State v. Straub*, 153 Idaho 882, 885 (2013). A court’s power to order

restitution is authorized and limited by the relevant statutes. *State v. Gonzales*, 144 Idaho 775, 777 (Ct. App. 2007). Idaho Code § 19-5304(5) authorizes a court to order “the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.” A crime victim is defined as,

(i) The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant’s criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases;

(ii) Any health care provider who has provided medical treatment to a directly injured victim if such treatment is for an injury resulting from the defendant’s criminal conduct, and who has not been otherwise compensated for such treatment by the directly injured victim or the immediate family of the directly injured victim;

(iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, from which payment was made to or on behalf of a directly injured victim pursuant to the requirements of Idaho law as a result of the defendant’s criminal conduct;

(iv) A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract, or payments to or on behalf of a directly injured victim to pay or settle a claim or claims against such person or entity in tort or pursuant to statute and arising from the crime.

I.C. § 19-5304(1)(e).

Mr. Castro-Angulo objected to any amount of restitution over \$2,440, but the district court ordered an additional \$2,660 in restitution to the Ada County Prosecutor’s Office as a “crime victim.” Because the Ada County Prosecutor’s Office does not meet the definition of a “victim” pursuant to I.C. § 19-5304(1)(e), the district court had no power to award the \$2,660 in restitution challenged in this appeal. As such, the district court abused its discretion in ordering

Mr. Castro-Angulo to pay that portion of the restitution order, as it acted outside the legal boundaries governing restitution to crime victims.

CONCLUSION

Mr. Castro-Angulo respectfully requests that this Court vacate his judgment of conviction. Alternatively, he requests that this Court order the district court to submit a revised restitution order omitting the \$2,660 amount ordered to be paid to the Ada County Prosecutor's Office as a purported crime victim.

DATED this 6<sup>th</sup> day of April, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6<sup>th</sup> day of April, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JESUS ESTEBAN CASTRO ANGULO  
INAMTE #122335  
ISCC  
PO BOX 70010  
BOISE ID 83707

DEBORAH A BAIL  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

BRIAN C MARX  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCP/eas