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### State v. Angulo Respondent's Brief Dckt. 44860

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

STATE OF IDAHO, )  
 ) No. 44860  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR-FE-2016-4891  
 )  
 JESUS ESTEBAN CASTRO-ANGULO )  
 AKA LUIS CARLOS QUEZADA, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE DEBORAH A. BAIL**  
**District Judge**  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Jesus Esteban Castro-Angulo appeals from his convictions for two counts of trafficking in methamphetamine.

### Statement Of The Facts And Course Of The Proceedings

A grand jury indicted Castro-Angulo for trafficking 28 grams or more of methamphetamine and for trafficking 400 grams or more of methamphetamine. (R., pp. 24-25.) Castro-Angulo's attorney requested "unredacted" discovery. (R., pp. 28-29 (bolding omitted).) The prosecutor provided the requested discovery. (R., p. 41.) Castro-Angulo's counsel then requested "Redacted Discovery." (R., p. 45.) Castro-Angulo's co-defendants stipulated to a protective order, but Castro-Angulo did not. (R., p. 46.) The state filed for a protective order "allowing the State to continue to withhold from Defendant during all further proceedings the name, address and identity of the Confidential Informant that the State does not expect to call as a witness" and requiring that counsel keep the discovery, including copies, in his possession. (R., pp. 48-51.) The district court granted the order. (R., pp. 60-61.)

One of Castro-Angulo's co-defendants moved *in limine* to exclude evidence of the dollar value of the methamphetamine Castro-Angulo and the others were charged with trafficking. (Aug., pp. 1-3.) Castro-Angulo joined the motion. (Tr., p. 38, Ls. 18-20.) The district court denied the motion. (R., p. 83; Tr., p. 37, L. 12 – p. 38, L. 14.)

The case proceeded to trial. The state presented evidence that an undercover detective obtained contact information for Castro-Angulo through a methamphetamine dealer he was investigating. (Tr., p. 226, L. 10 – p. 229, L. 19.) The detective bought a

quarter pound of methamphetamine from Castro-Angulo in Twin Falls on January 13, 2016. (Tr., p. 229, L. 20 – p. 231, L. 19; p. 237, L. 9 – p. 309, L. 17; p. 311, L. 18 – p. 329, L. 25; p. 334, Ls. 10-20; State’s Exhibits 1, 1A, 2, 2A, 3, 3A, 3B, 11-20, 22-28.) Detective Bustos then set up another purchase of two pounds of methamphetamine. (Tr., p. 231, L. 24 – p. 233, L. 5; p. 336, L. 21 – p. 363, L. 21; State’s Exhibits 1A, 8, 8A, 9, 9A, 10, 10A.) When Castro-Angulo arrived for the drug purchase at the arranged location in Ada County, law enforcement arrested him and the other occupants of the car (co-defendants Alejandro Garcia-Carranza and Guadalupe Garcia-Carranza) and retrieved over two pounds of methamphetamine. (Tr., p. 233, L. 11 – p. 235, L. 17; p. 363, L. 22 – p. 373, L. 21; State’s Exhibits 29-32.)

Detective Bustos testified that if he had broken down the two and one-quarter pounds of methamphetamine he had arranged to buy into smaller units (ounces, “teeners” (one-sixteenth of an ounce), and “eight balls” (one-eighth of an ounce)) he could have sold it for more than he arranged to pay (\$450-800 per ounce, \$120-200 per “eight ball,” and \$70-90 per “teener”). (Tr., p. 449, L. 12 – p. 453, L. 12.)

The jury found Castro-Angulo guilty of both counts of trafficking. (R., pp. 123-24.) The district court imposed concurrent sentences of 20 years with ten years determinate. (R., pp. 126-28.) Castro-Angulo filed a timely notice of appeal. (R., pp. 130-32.) The district court also awarded \$5,100 restitution to the Ada County Prosecutor’s office and \$2,300 to the Ada County Sherriff’s Office. (R., pp. 141-42.)

## ISSUES

Castro-Angulo states the issues on appeal as:

- 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?

(Appellant's brief, p. 12.)

The state rephrases the issues as:

1. Has Castro-Angulo failed to show error in the district court's protection order?
2. Has Castro-Angulo failed to show error in the admission of evidence of what the methamphetamine would have sold for?
3. Has Castro-Angulo failed to show error in the district court's award of restitution to the prosecutor's office?



## ARGUMENT

### I.

#### Castro-Angulo Has Failed To Show Error In The District Court's Protection Order

##### A. Introduction

The state sought a protective order regarding the use of the redacted copy of discovery requested by Castro-Angulo's counsel. (R., pp. 45, 48-51.) The state sought two protections: first, the state sought a "*time, place and manner*" restriction on the materials it had already provided in discovery and, second, it sought to protect the identity of a confidential informant it did not intend to present as a witness at trial. (R., p. 49 (emphasis original).) Under the first protection the state requested an order "requiring that the discovery materials are provided only to Counsel and all materials, unredacted and redacted, are maintained by Counsel of Record with said materials made available to the Defendant by appointment with said Counsel." (R., p. 49.) The state was trying to avoid "duplication and dissemination" of the discovery materials already provided to counsel. (Tr., p. 6, L. 24 – p. 7, L. 23.)

The state asserted such a restriction on time, place and manner was to reduce the risk of "*economic, physical or other harm or coercion.*" (R., p. 49 (emphasis original).) The persons who might be harmed included the confidential informant and the undercover officer. (R., pp. 49-50.) The state's "significant concerns" of potential harm were based on "the significant quantity of methamphetamine" which Castro-Angulo "had access too [sic], distributed and lost upon the seizure by law enforcement," and Castro-Angulo's "statements connecting him to both Sinaloa, Mexico as well as a Mexican gang." (R., p. 50.) The fact that Mexican drug cartels and gangs employ "violence, intimidation and retaliation" is "well documented and publicized." (R., p. 50.) The state had previously

had difficulties with defendants in high-volume drug trafficking cases mailing out copies of police reports with names highlighted, resulting in harassment of the named persons. (Tr., p. 8, L. 9 – p. 10, L. 17.) “During the court of that same” case a recording of an interview with one of the co-defendants had been disseminated, putting that person at risk. (Tr., p. 10, L. 18 – p. 11, L. 5.)

Finally, the state requested that the court consider that Castro-Angulo claimed he “only speaks Spanish,” while the reports and materials, with the exception of recorded communications involving Castro-Angulo, were in English, and therefore Castro-Angulo could not review the materials “without assistance in any event.” (R., p. 51.)

The state specifically asked the district court to set “parameters of discovery review” for Castro-Angulo, “including the time, place and manner that inspection of discovery is permitted,” and to “prohibit any further duplication or dissemination” of the discovery materials “except during the course of review with Defense Counsel utilizing the assistance of a court certified interpreter.” (R., p. 51.)

Castro-Angulo argued, through counsel, that the confidential informant was irrelevant to his case. (Tr., p. 12, Ls. 9-17.) He contended that the behavior of other defendants could not be imputed to him. (Tr., p. 12, Ls. 18-24; p. 13, Ls. 17-23.) He further argued that because Detective Busto’s role in the investigation was known, there was no “legitimate risk” associated with Castro-Angulo having his own copy of the discovery. (Tr., p. 12, L. 25 – p. 13, L. 6.) He also contended that if he did not have such documentation in his possession he might be considered an informant and be at risk himself. (Tr., p. 13, Ls. 7-14.) Monitoring his outgoing mail, Castro-Angulo argued, was

sufficient to prevent any attempted dissemination of the discovery materials. (Tr., p. 13, L. 24 – p. 14, L. 2.)

The district court followed up on the language and logistical issues raised by the state by asking about Castro-Angulo’s language skills, and counsel acknowledged that Castro-Angulo could not read the police reports without an interpreter. (Tr., p. 14, Ls. 5-22.) The court stated there was “no issue” with Castro-Angulo “fully reviewing ... absolutely everything that’s in the police reports” with his counsel, something “that of course is going to happen.” (Tr., p. 15, Ls. 2-10.) The issue was copies of the police reports going “the wrong way.” (Tr., p. 15, Ls. 11-12.) The district court concluded there was “less need for a copy when it is in a language” the defendant cannot speak, because the document would be meaningful only when reviewing it with counsel and an interpreter. (Tr., p. 15, Ls. 12-21.) The court stated that Castro-Angulo’s inability to read the police reports was not a basis for entering a protection order, but the need for him to have the documents other than when his interpreter and lawyer could explain what was in them was minimal. (Tr., p. 15, L. 25 – p. 16, L. 22.) After Castro-Angulo’s counsel admitted his client was “going to be able to review it fully,” the district court balanced the “concerns of the State with [the] absolute need [of] the defendant to be able to review it fully and meaningfully,” and granted the motion. (Tr., p. 17, L. 2 – p. 18, L. 2; R., pp. 60-61.)

On appeal Castro-Angulo argues the state failed to demonstrate a sufficient showing to justify the protection order and that the district court’s conclusion was based on his inability to speak English. (Appellant’s brief, pp. 15-17.) Neither argument finds support in the record, which shows that Castro-Angulo had full and complete discovery, was deprived of no right when the district court disallowed him to have his own

independent copies of the police reports, and was not deprived of a right based on his inability to speak English.

B. Standard Of Review

“Control of discovery is within the trial court’s discretion.” Westby v. Schaefer, 157 Idaho 616, 621, 338 P.3d 1220, 1225 (2014). “Therefore, the proper standard for reviewing a trial court’s grant of a protective order is abuse of discretion.” Quigley v. Kemp, 162 Idaho 408, 410, 398 P.3d 141, 143 (2017) (internal quotation omitted). “The appellant has the burden of showing the trial court abused its discretion” under a three factor test of (1) whether the district court “correctly perceived the issue as one of discretion,” (2) whether the district court “acted within the boundaries of its discretion and consistently with applicable legal principles,” and (3) whether the district court “reached its decision through an exercise of reason.” Westby, 157 Idaho at 621, 338 P.3d at 1225.

C. Castro-Angulo Has Failed To Show The District Court Abused Its Discretion

“Upon written request of the defendant the prosecuting attorney shall furnish to the defendant reports and memoranda in possession of the prosecuting attorney that were made by a police officer or investigator in connection with the investigation or prosecution of the case.” I.C.R. 16(b)(8) (2016). It is undisputed that the state provided copies of the police reports (and all other requested discovery) and fully complied with this rule. (See Tr., p. 6, L. 24 – p. 7, L. 8.) “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 ....” I.C.R. 16(k)(1).

Here no discovery was denied or deferred. To the contrary, the defense was provided with full and complete discovery as required by Rule 16(b)(8). The order imposes only a restriction on post-disclosure use of the police reports as a prophylactic to possible harm caused by dissemination of the police reports outside the legitimate needs of the defense. (R., pp. 60-61.) The district court did not abuse its discretion because Castro-Angulo demonstrated no right to copy or dispense discovery documents, or to have his own personal copies of the police reports. All discovery was provided, and no restriction on its use for necessary trial preparation was imposed. Castro-Angulo has thus failed to show that an order that he not do what he had no right to do is an abuse of discretion.

Even if he had a right to personally possess, copy or dispense the police reports he received in discovery, the district court did not abuse its discretion by ordering he not do so. The district court weighed the state's concerns about the possible ramifications of such copying and dispersing against any possible benefit Castro-Angulo would receive from having his own copies of the police reports, found those benefits nonexistent because he could not even read them, and acted within the boundaries of that discretion, consistently with applicable legal principles, and reached its decision through an exercise of reason.

Castro-Angulo attacks both sides of the district court's balance, claiming the state failed to demonstrate any legitimate concerns weighing in its favor and arguing that it was inappropriate to consider his inability to understand English in relation to whether he gained a benefit from having his own copies of the police reports. Review of his arguments shows Castro-Angulo has shown no abuse of discretion.

First, he claims that the state failed to establish the possibility of harm or coercion coming to state's witnesses because the witnesses would otherwise be known to Castro-

Angulo and that the court could not merely assume that Castro-Angulo would use the police reports to attempt coercion or harm to witnesses. (Appellant’s brief, pp. 15-16.) Tellingly, he simply ignores the state’s primary argument—that the evidence of Castro-Angulo’s involvement in trafficking a large amount of methamphetamine from Mexico to Idaho demonstrated a connection with a drug cartel or gang. (Compare R., p. 50 with Appellant’s brief, pp. 15-16.) The state’s argument that the facts of the case strongly suggest drug cartel or gang involvement may not be simply ignored. The evidence was more than sufficient for the district court to conclude that Castro-Angulo was associated with a Mexican drug cartel or gang and had the motive and ability to harm the state’s potential witnesses or others mentioned in the reports.

Castro-Angulo next asserts that the district court restricted his post-discovery use of the police reports simply “because he does not speak English.” (Appellant’s brief, pp. 16-17.) This argument misrepresents the district court’s holding. The district court specifically stated that it did not find that the language issue was a “basis for entering the order.” (Tr., p. 15, L. 25 – p. 16, L. 4.) It clarified that it was finding that “the need for giving present English discovery is less” outside the presence of an interpreter, and the court was allowing full review with an interpreter. (Tr., p. 16, Ls. 4-15.) The district court concluded there was no additional benefit from having the English police reports available outside the context of having an interpreter available. (Tr., p. 16, Ls. 15-22.) The record is clear that the district court considered the language issue only in relation to potential prejudice to Castro-Angulo. Castro-Angulo has not addressed the district court’s actual analysis, and has therefore failed to show an abuse of discretion.

Castro-Angulo has failed, both below and on appeal, to show that he had a right to his own personal copy of the police reports, or that providing those reports to his counsel did not fully comply with the state's discovery obligations. He has also failed to show that the state's concerns for the safety of its witnesses and others connected to the case were baseless. Finally, he has failed to even challenge the district court's analysis that providing Castro-Angulo with police reports he could not read would not have benefited his trial preparation. He has therefore failed to show an abuse of discretion.

In addition, the appellate court will not reverse the results of a trial over a discovery error that did not prejudice a party at trial. State v. Allen, 145 Idaho 183, 185, 177 P.3d 397, 399 (Ct. App. 2008) (“we will not reverse in the absence of a showing that the delayed disclosure prejudiced the defendant's preparation or presentation of his defense”); State v. Cochran, 129 Idaho 944, 949, 935 P.2d 207, 212 (Ct. App. 1997) (“If there was a discovery violation, because Cochran has failed to demonstrate that he was prejudiced by the violation, such error was harmless.”). Castro-Angulo's trial counsel acknowledged that he and his client were “going to be able to review [the discovery] fully.” (Tr., p. 17, L. 2-11.) Castro-Angulo has not shown that vacating a fair trial unrelated to the alleged discovery violation is a remedy to which he is entitled even if he could demonstrate the error he claims.

Finally, even if Castro-Angulo could show an abuse of discretion, and even if the proper remedies for such an abuse of discretion included vacating the results of the trial, the error was harmless. State v. Montgomery, 163 Idaho 40, \_\_\_, 408 P.3d 38, 44 (2017) (“A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point the State shall have the

burden of demonstrating that the error is harmless beyond a reasonable doubt.” (internal quotation and citation omitted)). As set forth above in more detail, the state’s evidence included the actual communications between Detective Bustos and Castro-Angulo to arrange two sales of large amounts of methamphetamine; the recorded and well-photographed delivery of methamphetamine by Castro-Angulo to the detective in Twin Falls; and the arrest of Castro-Angulo in possession of the methamphetamine he had agreed to sell to the detective. In addition, defense counsel acknowledged that the protective order would not interfere with his ability to go over the discovery with Castro-Angulo while preparing for trial. Because the state provided full disclosure of all police reports, preventing further dissemination of those reports, even if error, was an error that had nothing to do with the fairness of the trial and was therefore harmless.

## II.

### Castro-Angulo Has Failed To Show Error In The Admission Of Evidence Of What The Methamphetamine Would Have Sold For

#### A. Introduction

The district court held that evidence of the methamphetamine’s value was “very relevant.” (Tr., p. 37, L. 17 – p. 38, L. 14; see also Tr., p. 449, L. 12 – p. 453, L. 12 (Detective Bustos’ testimony regarding what the methamphetamine would have sold for if he had broken it down into smaller quantities).) Castro-Angulo does not dispute that evidence of the methamphetamine’s wholesale value (the price Detective Bustos negotiated with Castro-Angulo) was relevant, but claims that the retail value of the subunits of methamphetamine (e.g., ounces, “teeners” and “eight-balls”) was improperly admitted. (Appellant’s brief, pp. 18-21.) He “does not dispute [the] basic premise” that the value of the methamphetamine is relevant to the intent of the defendants and whether those in the



car with the methamphetamine would be involved in the crime, but contends only the wholesale price was relevant because Castro-Angulo “would not get a cut of that theoretical amount” Detective Bustos would have sold the methamphetamine for had he been an actual drug dealer. (Appellant’s brief, p. 20.) Even assuming the retail value was *less* indicative of intent than the wholesale value, Castro-Angulo has failed to show error.

B. Standard Of Review

Whether evidence is relevant is a question of law reviewed de novo. State v. Atkinson, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993) (citations omitted).

C. The Value Of The Methamphetamine In The Stream Of Commerce Was Relevant

To be admissible, evidence must be relevant. I.R.E. 401, 402. Evidence that tends to prove the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence, is relevant. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989). “Whether a fact is material is determined by its relationship to the legal theories presented by the parties.” State v. Stevens, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008) (citation omitted).

As set forth above, the state’s theory and evidence was that Castro-Angulo was a higher level drug dealer selling to someone he believed was a lower level drug dealer. Because people treat things of higher value differently than they treat things of lower value, evidence of value is relevant to motive and intent of persons in possession of drugs. See State v. Ortiz, 148 Idaho 38, 41, 218 P.3d 17, 20 (Ct. App. 2009) (testimony regarding how methamphetamine was sold in user amounts and the value of those amounts “was relevant for the juror’s evaluation of whether, considering the value and number of doses of

methamphetamine found in Ortiz's car, it was plausible that the substance would have been intentionally or accidentally left there by a third person, i.e., without Ortiz's knowledge"). The evidence of the value to the lower level drug dealer (what he could sell the methamphetamine for after processing it into smaller amounts) was relevant to educate the jury on how methamphetamine is trafficked and to establish its value to the traffickers.

Castro-Angulo argues that as a matter of law the value of the methamphetamine at his stage of the trafficking is the only relevant value, and evidence of its value before or after his link in the distribution chain was irrelevant. (Appellant's brief, pp. 20-21.) However, even if less relevant to Castro-Angulo, the evidence regarding value still had a tendency to prove a fact of consequence in the case. Understanding that the price the detective negotiated with Castro-Angulo was a wholesale price and that the distribution chain was intended by Castro-Angulo to continue with the "dealer" he sold the methamphetamine to were facts of consequence in the case. Castro-Angulo's argument that some evidence of value was relevant but other evidence of value was not does not show error by the district court.

Even if irrelevant, the admission of the evidence was harmless beyond a reasonable doubt under the applicable legal standards as set forth above. The evidence of Castro-Angulo's guilt was overwhelming, and the jury being made aware that if Detective Bustos had actually been a lower level dealer he would have packaged the meth in user amounts and sold it at a mark-up did not affect the verdict.

III.  
Castro-Angulo Has Failed To Show Error In The District Court's Award Of Restitution  
To The Prosecutor's Office

A. Introduction

At sentencing the prosecutor stated she had “addressed restitution previously” and requested an order that “includes the transcripts and the \$2300 that the defendant was paid.” (Tr., p. 833, Ls. 21-24.) Counsel for Castro-Angulo started his sentencing argument with “objections on the restitution,” but stated he would not spend much time on them “[g]iven the Court’s ruling in Guadalupe’s case.” (Tr., p. 834, Ls. 5-8.<sup>1</sup>) Counsel referenced “the restitution documents” the prosecutor had supplied and objected to restitution for the buy money. (Tr., p. 834, Ls. 9-23.) He expressed no objection to the restitution for transcripts used at trial, but did object to restitution for transcripts not used at trial. (Tr., p. 834, L. 24 – p. 835, L. 19.) Counsel also objected to “the rest of the remaining amount” as punishing the defendants for going to trial. (Tr., p. 835, Ls. 20-23.)

The district court declined to order “any costs related to the trial of this case.” (Tr., p. 841, L. 19 – p. 842, L. 1.) The district court did order restitution of \$5,100 to the prosecutor’s office for the costs of transcripts and \$2,300 to the sheriff’s office for the buy money paid to Castro-Angulo as part of the undercover investigation. (Tr., p. 842, Ls. 2-12; R., pp. 141-42.)

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<sup>1</sup> Guadalupe’s case is that involving co-defendant Guadalupe Garcia-Carranza, Docket No. 44878. In that case the state also asked for restitution for the costs of prosecution. (#44878 Tr., p. 820, L. 13 – p. 821, L. 6.) Garcia-Carranza’s counsel objected on the basis that his client was unable to pay the fine and restitution (#44878 Tr., p. 822, L. 19 – p. 823, L. 8.) The court ordered a “limited amount of restitution cost related to prosecution” for the “costs of the transcripts.” (#44878 Tr., p. 825, L. 13 – p. 826, L. 1.) The state requests this Court to take notice of the cited portions of the transcript in docket 44878 to give context to the proceedings in this case.

On appeal, for the first time, Castro-Angulo argues the prosecutor's office is not a "victim" and therefore not eligible to seek restitution. (Appellant's brief, pp. 21-26.) This argument is not preserved for appellate review and is not a claim of fundamental error.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013).

C. Castro-Angulo's Challenge To The Restitution Award Is Not Preserved For Appellate Review

"It is a fundamental tenet of appellate law that a proper and timely objection must be made in the trial court before an issue is preserved for appeal." State v. Carlson, 134 Idaho 389, 398, 3 P.3d 67, 76 (Ct. App. 2000). Absent a timely objection, the appellate courts of this state will only review an alleged error under the fundamental error doctrine. State v. Perry, 150 Idaho 209, 226, 245 P.3d 961, 978 (2010). Review without objection will not lie unless (1) the defendant demonstrates that "one or more of the defendant's unwaived constitutional rights were violated"; (2) the constitutional error is "clear or obvious" on the record, "without the need for any additional information" including information "as to whether the failure to object was a tactical decision"; and (3) the "defendant must demonstrate that the error affected the defendant's substantial rights," generally by showing a reasonable probability that the error "affected the outcome of the trial proceedings." Id. at 226, 245 P.3d at 978.

The prosecution sought as restitution the costs of preparing transcriptions of the Spanish conversations made during the investigation of this case. (Tr., p. 833, Ls. 21-24.)

Castro-Angulo did not contend the prosecutor's office was not entitled to recover its transcription costs as costs of prosecution. To the contrary, he acknowledged that the prosecution was entitled to restitution for transcriptions used at trial, but contended it was not entitled to restitution for transcriptions not used at trial. (Tr., p. 834, L. 24 – p. 835, L. 19.) The district court ultimately awarded the prosecution restitution for all costs of transcription. (Tr., p. 842, Ls. 9-12; R., pp. 141-42.) The record is clear that Castro-Angulo did not object to the state's request for restitution for the costs of prosecution by claiming the prosecutor's office was not a "victim." Indeed, he specifically stated he did not object to some of those costs. His appellate argument that the prosecutor's office is not entitled to restitution because it was not a "victim" is not preserved.

Nor has Castro-Angulo claimed, much less demonstrated, fundamental error. Restitution is a statutory, not a constitutional question. "Restitution may be ordered by the district court under I.C. § 37-2732(k) once a defendant is convicted of, or pleads guilty to, a crime under Title 37, Chapter 27 of the Idaho Code." State v. Gomez, 153 Idaho 253, 257-258, 281 P.3d 90, 94-95 (2012). "Since I.C. § 37-2732(k) is short on specific guidance regarding the nature of a restitution award or the procedure to obtain such an award, we find guidance in the general restitution statute, I.C. § 19-5304." Id.; see also State v. Weaver, 158 Idaho 167, 170, 345 P.3d 226, 229 (Ct. App. 2014) (citing Gomez, 153 Idaho at 258, 281 P.3d at 95; State v. Mosqueda, 150 Idaho 830, 833-34, 252 P.3d 563, 566-67 (Ct. App. 2010)). Castro-Angulo's claim is statutory; he has failed to show a violation of an unwaived constitutional right.

The error Castro-Angulo claims is also not clear. His argument is apparently premised on his reading of the judgment as awarding the prosecution costs under I.C. § 19-

5304 because it cites that section generally and cites I.C. § 37-2732(k) specifically only in relation to the award to law enforcement. (Appellant’s brief, pp. 21-24.) However, it is not clear from the record that the state was not relying on, and the court did not consider, I.C. § 37-2732(k), as the basis for awarding transcription costs as costs of prosecution. For example, the state submitted documents supporting its claim that are not in the record. (Tr., p. 834, Ls. 9-23.<sup>2</sup>)

Finally, Castro-Angulo cannot establish prejudice. The restitution for English-language transcription of the Spanish-language communications made during the investigation of this case is clearly allowable under I.C. § 37-2732(k). Castro-Angulo was convicted of two counts of trafficking, a “felony ... violation” of Chapter 27 of Title 37 and payments for the transcripts were “costs” incurred by the county prosecuting attorney’s office. I.C. § 37-2732(k). The citation to I.C. § 19-5304 in the judgment, even if error, did not prejudice Castro-Angulo.

Castro-Angulo has failed to show that his appellate claim of error was preserved or was fundamental error.

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<sup>2</sup> Apparently Castro-Angulo’s appellate counsel is claiming the proposed order submitted by the state is the “restitution documents” referenced at the hearing. (Appellant’s brief, p. 21.) It is not. It is clear from even a cursory review of the transcript that the proposed order is not the “restitution documents” submitted by the state, referenced by defense counsel, and utilized by the trial court. (Tr., p. 828, L. 19 – p. 829, L. 4; p. 833, Ls. 21-24; p. 834, L. 5 – p. 835, L. 23; p. 841, L. 24 – p. 842, L. 12; #44878 Tr., p. 820, L. 16 – p. 821, L. 6; p. 822, Ls. 21-25; p. 825, L. 13 – p. 826, L. 3.)

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 4th day of May, 2018.

/s/ Kenneth K. Jorgensen \_\_\_\_\_  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of May, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JASON C. PINTLER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen \_\_\_\_\_  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd