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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 43967
 Plaintiff-Respondent,)
) Canyon County Case Nos.
 v.) CR-2015-4640, CR-2015-4591
) & CR-2015-4586
 JAMES PATRICK STELL, JR.,)
)
 Defendant-Appellant.)
)
)
)
)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

James Patrick Stell, Jr., appeals from his convictions for aggravated assault, with a firearms enhancement, carrying a concealed weapon while under the influence, malicious injury to property, and possession of paraphernalia.

Statement Of The Facts And Course Of The Proceedings

Police investigated a report of a man with a gun in a park, who was threatening someone in a car, and ultimately arrested Stell with a stolen handgun and marijuana paraphernalia. (R., pp. 27-29.) Their investigation also showed that the victim was Stell's girlfriend and Stell had smashed her cell phone. (Id.)

The state charged Stell by information with assault with intent to commit murder, with a firearm enhancement, and grand theft. (R., pp. 41-44.) The state also charged Stell by citation with carrying a concealed weapon while under the influence (R., p. 8), and malicious injury to property and possession of paraphernalia (R., p. 16). After a trial on all the joined charges, the jury acquitted Stell of the grand theft and assault with intent to commit murder charges, but found Stell guilty of the included offense of aggravated assault and the charged offenses of carrying a concealed weapon while intoxicated, malicious injury to property, and possession of drug paraphernalia. (R., pp. 212-13.) The jury also found the firearm enhancement. (R., p. 214.) Stell timely appealed from the entry of the judgments. (R., pp. 9 (judgment for carrying a concealed weapon under the influence), 17 (judgment for malicious injury to property), 18 (judgment for

possession of drug paraphernalia), 221-23 (judgment for aggravated assault enhanced by firearm enhancement), 228-29 (notice of appeal.)

ISSUES

Stell states the issues on appeal as:

- I. Did the district court err when it admitted an audio recording of Mr. Stell's arrest?
- II. Did the district court err when it denied Mr. Stell's Rule 29 motion for judgment of acquittal for carrying a concealed weapon when intoxicated?

(Appellant's brief, p. 7.)

The state rephrases the issues as:

1. Has Stell failed to show error in the district court's ruling on his relevancy and prejudice objections to State's Exhibit 20?
2. Has Stell failed to show fundamental error in the admission of the last part of State's Exhibit 20, in which he was provided his *Miranda* warnings?
3. Has Stell failed to show the district court erred in denying his motion for acquittal on the carrying a concealed weapon while intoxicated charge?

ARGUMENT

I.

Stell Has Failed To Show Error In The District Court's Ruling On His Relevancy And Prejudice Objections To State's Exhibit 20

A. Introduction

State's Exhibit 20 is a short portion of an audio recording of Stell's statements made at the time of his arrest, including his denial that anything happened and denial that he had a girlfriend. (State's Exhibit 20.) Stell accurately states the exhibit was admitted "to show Mr. Stell was lying to the police." (Appellant's brief, p. 10.) According to Stell, however, evidence that he lied to police about the crimes in question is "impermissible character evidence," inadmissible under I.R.E. 404(a). (Appellant's brief, pp. 10-11.) Stell's argument fails for three reasons: it is not preserved, it is unsupported by any relevant authority, and it lacks merit.

B. Standard Of Review

On appeal, the Court "reviews questions of admissibility of evidence using a mixed standard of review." State v. Stevens, 146 Idaho 139, 143, 191 P.3d 217, 221 (2008). Whether evidence is relevant is a question of law reviewed de novo, but whether the evidence is subject to exclusion under I.R.E. 403 is reviewed for an abuse of discretion. Id. Idaho's appellate courts have "adopted a three part test for determining whether the district court abused its discretion," which test requires the Court to consider whether the trial court (1) "correctly perceived that the issue was one of discretion," (2) "acted within the outer boundaries of its discretion and consistently with the legal standards applicable

to the specific choices available to it,” and (3) “reached its decision by an exercise of reason.” Id. (citation omitted).

C. The District Court Did Not Abuse Its Discretion By Admitting Evidence That Stell Lied To Officers About Events In Question

Stell’s appellate argument regarding I.R.E. 404(a) is not preserved. “For an objection to be preserved for appellate review, either the specific ground for the objection must be clearly stated, or the basis of the objection must be apparent from the context.” State v. Sheahan, 139 Idaho 267, 277, 77 P.3d 956, 966 (2003) (citations omitted). Below, Stell objected that the recording was “not relevant,” but the court accepted the state’s argument that it was relevant as an “admission of a party opponent.” (11/4/15 Trial Tr., p. 132, L. 11 – p. 133, L. 1.) Stell also argued it was unfairly prejudicial because it showed Stell “acting like an ass.” (11/4/15 Trial Tr., p. 133, Ls. 2-7.) At no point did Stell claim the recording was inadmissible under I.R.E. 404(a) because it showed he lied to the police, nor did the trial court rule on the admissibility of evidence under I.R.E. 404(a) that a suspect lied to police. (11/4/15 Trial Tr., p. 132, L. 11 – p. 133, L. 17.) Stell has failed to show on the record that his appellate argument—that evidence showing he lied to police was inadmissible under I.R.E. 404(a)—was preserved by objection or ruling below.

Stell has also failed to cite relevant authority supporting his theory that lying to the police about the facts of the crime is inadmissible character evidence. “When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.” State v. Zichko, 129 Idaho 259, 263,

923 P.2d 966, 970 (1996). Not only has Stell failed to support his theory with authority, the authority he does cite is contrary to his argument. According to the case he cites, “untruths in the statement given under interrogation” are “incriminating in any meaningful sense of the word.” Miranda v. Arizona, 384 U.S. 436, 477 (1966) (cited and quoted at Appellant’s brief, p. 11). Because evidence of untruths is incriminating, it is not “evidence of character” admitted “for the purpose of proving that the person acted in conformity therewith.” I.R.E. 404(a). Stell’s theory that lying to the police or otherwise trying to mislead or intimidate them about the facts of the crime at issue is inadmissible character evidence is unsupported by any relevant law.

To the contrary, application of relevant law shows the evidence was properly admitted. Evidence is relevant if it has “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. Relevant evidence is generally admissible, unless otherwise excluded by applicable rules. I.R.E. 402. Relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” I.R.E. 403. “This rule, however, does not require the exclusion of all prejudicial evidence, but only that which is *unfairly* prejudicial such that it tends to suggest a decision on an improper basis.” State v. Russo, 157 Idaho 299, 309, 336 P.3d 232, 242 (2014) (quoting State v. Moore, 131 Idaho 814, 819, 965 P.2d 174, 179 (1998) (emphasis added)). “The fact that [Stell’s] choice of words in his statement were [sic] crude, vulgar and potentially offensive to a jury is not in and

of itself sufficient reason to exclude [Stell's] uncoerced statement to law enforcement investigators." State v. Floyd, 125 Idaho 651, 654, 873 P.2d 905, 908 (Ct. App. 1994).

In the recording Stell falsely denied having a girlfriend, tried to mislead the officer by claiming he did not hit her after the officer stated the crime at issue was assault, tried to convince the officer there was no evidence to support his arrest, and tried to intimidate the officer by threatening to get him fired. (State's Exhibit 20.) All of this is relevant to Stell's consciousness of guilt and is "incriminating in any meaningful sense of the word." Miranda, 384 U.S. at 477. Moreover, that Stell demonstrated his consciousness of guilt "like an ass" (11/4/15 Trial Tr., p. 133, Ls. 2-7) did not render the evidence inadmissible. Floyd, 125 Idaho at 654, 873 P.2d at 908. Application of the relevant legal standards shows no error by the district court.

Finally, Stell asserts that the district court failed to apply the relevant legal standard, and therefore abused its discretion. (Appellant's brief, p. 11.) The entirety of the district court's ruling on the objection at trial, made before the jury, was, "I'm going to allow it." (11/4/15 Trial Tr., p. 133, L. 8.) Stell has failed, on this record, to show that the district court employed an incorrect legal standard.

In making his argument that the district court failed to apply Rule 403's balancing test Stell relies on State v. Parker, 157 Idaho 132, 334 P.3d 806 (2014). In Parker, the district court specifically stated that the balancing test of Rule 403 "is not an issue here" because it had already ruled that the evidence objected to (the detective's statements in an interview) was not evidence, but

was submitted to the jury only to provide context. Id. at 138, 334 P.3d at 812. Rejecting the theory that evidence of context not admitted for the truth of the matter asserted was not evidence, the Court held that failure to apply the balancing test to a Rule 403 objection was an abuse of discretion. Id. at 139, 334 P.3d at 813. In contrast to Parker, in this case the district court did not refuse to apply the balancing test of Rule 403. Rather, it merely overruled Stell's Rule 403 objection that the exhibit was inadmissible because he was at the time acting like an "ass."

Stell's argument confuses the error of refusing to apply the correct legal standard found in Parker (or the application of standards other than the balancing test required by Rule 403, as determined in the cases cited in that opinion¹) with not putting the analysis on the record. Because, unlike in Parker, nothing in the record suggests the district court employed an incorrect legal standard, Stell has failed to show error.

Even if not articulating its analysis on the record could be considered erroneous, the error was harmless. State v. Perry, 150 Idaho 209, 222, 245 P.3d 961, 974 (2010) (error will be declared harmless if state demonstrates

¹ The Court cited to and relied on other cases where the district court employed legal standards other than the balancing test required by I.R.E. 403. In State v. Ruiz, 150 Idaho 469, 248 P.3d 720 (2010), the district court excluded all evidence of the mandatory minimum sentence potentially avoided by a state's witness rather than balancing potential unfair prejudice. Parker, 157 Idaho at 139, 334 P.3d at 813. In State v. Meister, 148 Idaho 236, 220 P.3d 1055 (2009), the district court employed a standard from a case pre-dating the adoption of Rule 403 rather than the balancing standard of Rule 403. Parker, 157 Idaho at 139, 334 P.3d at 813. In short, in all three cases, Parker, Ruiz and Meister, the record established that the district court employed a standard *other than* the balancing test of Rule 403.

harmlessness beyond a reasonable doubt). First, as set forth above, there is ample authority that admission of evidence of Stell's statements at the time of his arrest was within the bounds of the district court's discretion. Failure to articulate those grounds was harmless beyond a reasonable doubt for this reason. Second, Stell suffered no unfair prejudice. The evidence shows he pointed a gun at the victim during an argument. (11/04/15 Tr., p. 87, L. 24 – p. 93, L. 21; 11/5/15 Trial Tr., p. 285, L. 10 – p. 288, L. 16; p. 290, L. 1 – p. 292, L. 13; p. 327, L. 24 – p. 336, L. 13; p. 340, L. 6 – p. 348, L. 2; p. 371, L. 2 – p. 374, L. 5; p. 377, Ls. 21-25; p. 378, Ls. 7-16; p. 386, L. 2 – p. 387, L. 9.) The jury convicted him of some charges but not others, and of the reduced offense of aggravated assault (as opposed to the charged offense of assault with intent to commit murder). (R., pp. 212-14.) This shows that its verdict was based on the evidence rather than on any minimal potential unfair prejudice caused by the court's alleged failure to put its analysis on the record (or, for that matter, the potential unfair prejudice of Stell acting like an "ass" when arrested). Any error in the district court not putting its Rule 403 analysis on the record, or any error in the admission of the evidence, was harmless.

II.

Stell Has Failed To Show Fundamental Error In The Admission Of The Last Part Of State's Exhibit 20, In Which He Was Provided His *Miranda* Warnings

A. Introduction

Stell asserts, for the first time on appeal, that Exhibit 20 should have been redacted before admission because he invoked his right to counsel while being given the *Miranda* warnings. (Appellant's brief, pp. 12-16.) Stell has failed to

show a clear due process violation or prejudice from the admission of the evidence.

B. Standard Of 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). Claims of error not preserved by timely objection are reviewed using a three-part test:

(1) the defendant must demonstrate that one or more of the defendant’s unwaived constitutional rights were violated; (2) the error must be clear or obvious, without the need for any additional information not contained in the appellate record, 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, meaning (in most instances) that it must have affected the outcome of the trial proceedings.

State v. Perry, 150 Idaho 209, 226, 245 P.3d 961, 978 (2010).

C. Stell Has Failed To Establish Fundamental Error For Not Redacting The Last Portion Of State’s Exhibit 20

Stell has failed to show a clear due process violation in the record. “[I]mpeachment use of a defendant’s post-arrest silence” violates due process because “it would be fundamentally unfair and a deprivation of due process to allow the arrested person’s silence to be used to impeach an explanation subsequently offered at trial.” Doyle v. Ohio, 426 U.S. 610, 616-18 (1976). “[W]e have consistently explained *Doyle* as a case where the government had induced silence by implicitly assuring the defendant that his silence would not be used against him.” Portuondo v. Agard, 529 U.S. 61, 74 (2000) (brackets

original (quoting Fletcher v. Weir, 455 U.S. 603, 606 (1982) (*per curiam*)). “With respect to post-*Miranda* warnings ‘silence,’ we point out that silence does not mean only muteness; it includes the statement of a desire to remain silent, as well as of a desire to remain silent until an attorney has been consulted.” Wainwright v. Greenfield, 474 U.S. 284, 295 n. 13 (1986).

The record in this case does not show a clear Doyle violation for two reasons. First, it is not clear on the record that Stell’s statement of desire to have a lawyer would have been interpreted by the jury as a “desire to remain silent until an attorney has been consulted.” Id. at 295 n. 13. In fact, just after the invocation of the right to counsel, and the officer’s question whether Stell wanted to tell him what happened quoted by Stell on appeal (Appellant’s brief, p. 14), Stell said, “I told you what happened. Nothing happened. ... Nothing happened, Sir, I never did that.” (State’s Exhibit 20, at 3:34 – 3:38.) It is not clear factually that the invocation of the right to counsel was also an invocation of the right to silence protected by Doyle because Stell gave a statement regarding the facts of the crime before receiving warnings and expressly relied on that prior statement after receiving warnings. Although the record is clear that Stell expressed a desire for counsel, such is a due process violation under the law only if it is also a concurrent invocation of the right to silence. The record does not make clear that Stell’s invocation of the right to counsel was also an invocation of the right to silence because at no point did Stell actually invoke that right, nor was he silent at any point in the exhibit.

Stell argues that the presentation of evidence that he invoked his right to counsel is itself a due process violation. (Appellant's brief, p. 15.) The cases he cites for that proposition do not contradict the statement in Wainright, *supra*, that there is a due process violation only to the extent the invocation of the right to counsel is also an invocation of the right to silence. In Griffin v. California, 380 U.S. 609, 610-11 (1965) (cited at Appellant's brief, p. 15), the prosecutor, in closing argument, asked the jury to draw an inference of guilt from the defendant's choice to not testify. In State v. Parker, 157 Idaho 132, 147, 334 P.3d 806, 821 (2014) (cited at Appellant's brief, p. 15), the prosecution presented evidence that the defendant terminated a police interview by invoking his right to silence. In State v. Ellington, 151 Idaho 53, 59-60, 253 P.3d 727, 733-34 (2011) (cited at Appellant's brief, p. 15), the Court held it was misconduct to elicit testimony that the officer "attempted" to interview defendant after his arrest when the interview attempt was thwarted by the invocation of the right to silence, and in State v. Tucker, 138 Idaho 296, 298, 62 P.3d 644, 646 (Ct. App. 2003) (cited at Appellant's brief, p. 15), the error was the testifying officer's volunteered testimony that the defendant refused to say anything after being given *Miranda* warnings. In State v. Strouse, 133 Idaho 709, 711-14, 992 P.2d 158, 160-63 (1999), and State v. Lopez, 141 Idaho 575, 577-78, 114 P.3d 133, 136-37 (Ct. App. 2005) (cited at Appellant's brief, p. 15), the prosecutor improperly impeached the defendants' trial testimony with evidence they had invoked their post-*Miranda* right to silence. None of the cases cited by Stell hold that admission of evidence of the invocation of counsel *without more* results in a

due process violation. Thus, he has failed to show that the error he claims is clear constitutional error as required to demonstrate fundamental error.

Second, even if the right to silence had been clearly invoked, such invocation was never used in any effort to impeach Stell. “[T]he holding of *Doyle* is that the Due Process Clause bars *the use* for impeachment purposes of a defendant’s postarrest silence.” Greer v. Miller, 483 U.S. 756, 763 (1987) (emphasis original). Although the jury was made aware of the invocation of counsel by Stell, no post-*Miranda* silence was used by the state to imply guilt. The jury was certainly aware that Stell had invoked his right to counsel—he was represented by an attorney at trial—so the fact that Stell invoked that right early rather than late did not in any way impeach him.

In addition, the error is not clear in the record because the lack of objection could easily have been the result of tactical choice. Stell’s counsel very easily may have chosen to let the exhibit play out to the end because of Stell’s statements immediately after receiving his *Miranda* rights: “I told you what happened. Nothing happened. ... Nothing happened, Sir, I never did that.” (State’s Exhibit 20, at 3:34 – 3:38.) If counsel had asked to end the recording before those statements he may have found the prosecutor entirely accommodating. In short, on this record counsel may have chosen to object to the entire exhibit as he expressed on the record, but declined to object to the last portion of it for entirely tactical reasons.

Finally, Stell has failed to demonstrate prejudice. As noted above, not only did Exhibit 20 not include any invocation of the right to silence, it in fact

included Stell's general denials of guilt. Stell argues that invocation of the right to counsel "signals a guilty conscious [sic]." (Appellant's brief, p. 15.) The state notes, however, that although an instruction that the jury take no inference of guilt from the defendant's invocation of the right to silence at trial is common, ICJI 301; Carter v. Kentucky, 450 U.S. 288 (1981), no equivalent instruction that jurors take no adverse inference from the invocation of the right to counsel is generally required merely because a defendant is represented by counsel at the trial. That a jury might draw an adverse inference from a defendant's refusal to provide his "side of the story" seems obvious, but that a jury would draw an adverse inference from a defendant's desire to be represented by an attorney after his arrest seems far less obvious. Stell has failed to show a probability that the jury concluded that Stell had invoked his right to silence, much less that the jury concluded that such invocation of the right to silence was an admission of guilt under the facts of this case.

Moreover, as noted above, the record strongly suggests that the jury decided this case on the basis of the evidence, and not on the basis of unfair prejudice. Stell's fundamental error argument fails on all three elements.

III.

Stell Has Failed To Show The District Court Erred In Denying His Motion For Acquittal On The Carrying A Concealed Weapon While Intoxicated Charge

A. Introduction

Stell moved at the conclusion of the presentation of evidence for an acquittal on the charge of carrying a concealed weapon while under the influence. (11/06/15 Trial Tr., p. 19, Ls. 4-14.) In response, the prosecutor

outlined the evidence supporting the charge. (11/06/15 Trial Tr., p. 20, L. 18 – p. 21, L. 25.) The district court denied the motion, concluding there was “enough evidence to send to the jury.” (11/06/15 Trial Tr., p. 23, L. 25 – p. 24, L. 1.)

On appeal Stell concedes there was sufficient evidence he carried a concealed weapon, and admits there was evidence that he had been drinking, but disputes whether the evidence shows he was intoxicated or under the influence. (Appellant’s brief, pp. 16-23.) Review of the evidence, under the applicable standard, shows the evidence was sufficient to support the conviction.

B. Standard Of Review

“Appellate review of the sufficiency of evidence is limited in scope.” State v. Marsh, 153 Idaho 360, 365, 283 P.3d 107, 112 (Ct. App. 2011). An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. A. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991). Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury’s verdict. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The Evidence Was Sufficient To Show Stell Was Under The Influence Of An Intoxicating Drink Or Drug

“It shall be unlawful for any person to carry a concealed weapon on or about his person when intoxicated or under the influence of an intoxicating drink or drug.” I.C. § 19-3302B(1). The state agrees with Stell’s dictionary definitions of “intoxicated” as a “diminished ability to act with full mental and physical capabilities” and “under the influence” as “deprived of clearness of mind and self-control.” (Appellant’s brief, p. 18 (quoting Black’s Law Dictionary (10th Ed. 2014)).) The issue before this Court, then, is whether the trial record shows substantial evidence upon which a rational trier of fact could have found Stell had a diminished ability to act with full mental and physical capabilities or was deprived of clearness of mind and self-control as a result of alcohol or drugs. The evidence supports both the conclusion that Stell acted without clearness of mind and self-control, and that such lack of clearness and self-control was a result of his alcohol consumption.

Arlan Scroggins, a friend of Stell’s who was with him immediately before and after the aggravated assault, testified that he “could tell” by Stell’s behavior that Stell had been drinking, but “couldn’t tell that he had been drinking drinking.” (11/05/15 Trial Tr., p. 328, Ls. 10-15.) Scroggins was then asked if he thought

Stell “had some alcohol based on how he was behaving” and Scroggins answered, “A little bit probably.” (11/05/15 Trial Tr., p. 328, Ls. 16-18.)

Stell’s behavior, in addition to that which led Scroggins to conclude Stell had been drinking (even if not “drinking drinking”), included that he threatened his girlfriend (and mother of his child) with a gun (11/04/15 Trial Tr., p. 89, L. 1 – p. 93, L. 21; State’s Exhibit 1); tried to crawl out a bathroom window to avoid police (11/04/15 Trial Tr., p.123, L. 8 – p. 124, L. 9; p. 153, L. 7 – p. 155, L. 14); begged the police to shoot him (11/04/15 Trial Tr., p. 124, Ls. 10-18; p. 155, L. 15 – p. 156, L. 4); called them “punks” or “bitches” when they refused to shoot him (11/04/15 Trial Tr., p. 156, Ls. 3-7); and threatened to get the officer who arrested him fired (State’s Exhibit 20; see also 11/04/15 Trial Tr., p. 133, Ls. 2-7 (defense counsel admitting Stell was acting “like an ass”)). It is thus beyond cavil that (1) Stell had been drinking and (2) that he acted without clearness of mind and self-control. It was not unreasonable for the jury to connect those two dots and conclude the latter was a product of the former. The evidence was sufficient to show Stell was intoxicated or under the influence.

CONCLUSION

The state respectfully requests this Court to affirm the judgments of conviction.

DATED this 30th day of March, 2017.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of March, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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

KKJ/dd