6-28-2017

Adamcik v. State Respondent's Brief Dckt. 44358

IN THE SUPREME COURT OF THE STATE OF IDAHO

TOREY MICHAEL ADAMCIK,	)	
	)	**No. 44358**
Petitioner-Appellant,	)	
	)	**Bannock County Case No.**
v.	)	**CV-2013-3682-PC**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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STATEMENT OF THE CASE

Nature Of The Case

Torey Michael Adamcik appeals from the judgments summarily dismissing two of his post-conviction relief claims, and denying his two remaining claims following an evidentiary hearing.

Statement Of Facts And Course Of Proceedings

The Idaho Supreme Court set forth the facts underlying Adamcik's convictions for first-degree murder and conspiracy to commit first degree murder, as follows:

> On September 22, 2006, [Cassie Jo] Stoddart was spending the night at her cousin's house, the Whispering Cliffs residence, performing house-sitting duties. Matt Beckham (Beckham), Stoddart's boyfriend, stated that he and Stoddart had invited Adamcik to the Whispering Cliffs residence that evening to "hang out." Adamcik and [Brian] Draper arrived at the Whispering Cliffs residence at approximately 6:30 or 7:00 PM. After spending approximately two hours at the Whispering Cliffs residence, Draper informed Stoddart and Beckham that he needed to leave and shortly thereafter Draper and Adamcik departed.
>
> Approximately fifteen minutes after Adamcik and Draper departed, the power at the Whispering Cliffs residence went out. Beckham called his mother to ask for permission to stay the night, but such permission was denied. After speaking with his mother, Beckham phoned Adamcik to inform him that Beckham would be going home for the night. ... Beckham and Adamcik spent the following day together. Beckham tried repeatedly to call Stoddart throughout the day but was unable to get an answer.
>
> On September 24, 2006, it was discovered that Stoddart had been killed at the Whispering Cliffs residence. Police [O]fficer Hatch responded to the scene and noted large amounts of blood on the victim's body, as well as deep lacerations and stab wounds. Shortly after responding, police and paramedics confirmed that Stoddart was dead. Detectives conducting the preliminary investigation determined that Adamcik and Draper had been among the last people to see Stoddart alive.
>
> Detectives Thomas and Ganske went to the Adamcik home and interviewed Adamcik on September 24, 2006. Adamcik's father ... was present. ... During the course of the first interview, Adamcik informed the

detectives that he and Draper had gone to the Whispering Cliffs residence at approximately 8:30 PM on September 22, 2006, for a party. Adamcik stated that ... he and Draper decided to go and see a movie in Pocatello. When the detectives questioned Adamcik regarding the movie he had reportedly seen, Adamcik was unable to describe what the movie had been about. Adamcik told detectives that following the movie he and Draper had gone to spend the night at Adamcik's home.

On September 27, 2006, after Adamcik's first interview, but before the second, Draper led law enforcement agents to a stash of evidence buried in the Black Rock Canyon area (BRC site). The evidence uncovered by law enforcement at the BRC site included:

1. Two dagger-style knives with sheaths.
2. A silver-and-black-handled knife with a smooth and non-serrated blade.
3. A folding knife with a silver blade and black handle, which is similar to a survival knife. The portion of the blade nearest to the hilt is serrated.
4. A homemade Sony videotape (BRC tape).
5. A box of stick matches.
6. A melted brown bottle of hydrogen peroxide.
7. Partially burned notebook paper.
8. A partially melted multi-colored mask.
9. A red and white mask.
10. A pair of black boots.
11. A single black glove.
12. A pair of black "Puma" gloves.
13. A pair of blue latex gloves.
14. A pair of fingerless black "Athletic Works" gloves.
15. A black "Calvin Klein" dress shirt.
16. A black "Hagger" shirt.

Adamcik conceded that his handwriting was present on the notebook paper found along with the other evidence at the BRC site. The BRC tape contained footage of Adamcik and Draper planning Stoddart's murder, and later reacting to having killed Stoddart. ... The following relevant portions of the BRC tape have been rearranged according to the time and date stamps that appear on the BRC tape.

1. *September 21, 2006, at 8:05:23 PM* [Adamcik and Draper are in a car, Adamcik is driving and Draper is filming from the passenger seat]

Draper: We're going for a high death count.

Adamcik: Plus, we're not going to get caught Brian, if we're going for guns, we're just gonna end it. We're just gonna grab the guns and get outta there and kill everybody and leave.

Draper: We're going to make history .... We're gonna make history.

Adamcik: For all you FBI agents watching this --

Draper: (laughing)

Adamcik: Uh ... you weren't quick enough. (laughing)

Draper: You weren't quick enough, and you weren't s-s-smart enough. And we're going over to [Jane Doe 1's] house, we-we-we're going to snoop around over there and try to see if she's home alone or not, and if she's home alone, SPLAT! ... She dead.

….

2. *September 21, 2006, at 8:08:12 PM* [Adamcik and Draper are in a car, Draper is filming Adamcik with the camera light on]

Draper: We're at [Jane Doe 1's] house. It's clear out there in the pasture. We've already snooped around her house a couple times, Uh, and sh-sh-she's not at home so we're gonna go to that church over there and we're gonna call a girl and a guy named Cassie and Matt. They're our-our friends but we have to make sacrifices. So um I feel tonight i-i-it is the night and I feel really weird ... and stuff. I feel like I want to kill somebody. Uh, I know that's not normal but what the hell.

Adamcik: I feel we need to break away from normal life.

...

Draper: Natural selection, dude. Natural selection, that's all I've gotta say.

Adamcik: There should be no law against killing people. I know it's a wrong thing, but ...

. . .

3. *September 21, 2006, at 8:15:39 PM* [Adamcik and Draper are in a car, Adamcik is driving and Draper is filming from the passenger seat]

....

Draper: Now we're going to go over to Cassie and Matt's house. If they're home alone, we're gonna ...

Adamcik: It's Cassie's house. Matt is there.

Draper: Matt is there. Sorry. We're gonna ga [sic] -- we're gonna knock on the door. We'll see who is there. We'll, we'll see, we'll see -- see if their parents are home or not. If they're home alone we will leave our way and then we will come back in about ten minutes. We'll sneak in through the door because chances are they're probably in Cassie's room. S–s–s–so we will sneak in the front door, we'll make a noise outside.

Adamcik: And Matt will come out to investigate.

Draper: We'll kill him. And we'll scare the shit out of Cassie ... okay?

Adamcik: Sounds like fun.

Draper: Well stay tuned.

4. *September 21, 2006, at 8:36:46 PM* [Adamcik and Draper are in a car, Adamcik is driving and Draper is filming from the passenger seat]

Draper: We found our victim and sad as it may be she's our friend but you know what? We all have to make sacrifices. Our first victim is going to be Cassie Stoddart and her friends . . .

....

Draper: We'll let you ... (laughs) we'll find out if she has friends over, if she's going to be alone in a big dark house out in the middle of nowhere (laughs). How perfect can you get? I, I mean like holy shit dude.

Adamcik: I'm horny just thinking about it.

Draper: Hell yeah. So we're gonna fuckin' kill her and her friends and we're gonna keep moving on. I heard some news about [Jane Doe 2], she's gonna be home alone from six to seven so we might kill her and drive over to Cassie's thing and scare the shit out of them and kill them one by fucking one. Hell yeah.

Adamcik: Why one by one? Why can't it be a slaughterhouse?

Draper: Two by two and three by three. Cause we've got to keep it classy.

Adamcik: Keep it classy.

Draper: So yeah. It's going to be extra fun.

Adamcik: You're evil (laughs).

Draper: Yes, I am. So are you dude. Evil. Evil.

....

Adamcik: We are bad.

Draper: That sounds so shitty.

Adamcik: We're evil. That sounds even shittier.

Draper: Hey, we're not, okay. Then we are sick psychopaths who get their pleasure off killing other people.

Adamcik: That sounds good baby.

Draper: We're gonna go down in history. We're gonna be just like Scream except real life terms.

Adamcik: That sounds good baby.

Draper: We're gonna be murderers. Like, let's see, Ted Bundy, like the Hillside Strangler.

Adamcik: No.

Draper: The Zodiac Killer.

Adamcik: Those people were more amateurs compared to what we are going to be, we're gonna be more of higher sources of Ed gl [sic] …

Draper: Gein

Adamcik: Gein.

Draper: (laughs) Well let's say we're that sick and that twisted --

Adamcik: Oh, you know what Ed Gein's words were?

Draper: What?

Adamcik: He saw a girl walking' down the street, right?

Draper: Yeah.

Adamcik: Two questions came to his head. Hmm, I could take her out and have a nice time with her --

Draper: -- and then kill her? Skin her alive?

Adamcik: -- charm the pants off her. Or, I wonder what her head would look like on a stick? (laughs)
(laughs)

Draper: Holy shit!

Adamcik: It's creepy huh?
….
Draper: Murder is power, murder is freedom, goodbye.
….

5. *September 22, 2006, at 12:10:58 PM* [Adamcik and Draper are sitting at a table with the camera facing them]

Draper: Alright, cool.

Adamcik: [looking down and writing in a notebook] I was planning to kill him.

Draper: September 22, 2006, we're skipping our fourth hour class. We're writing our plan right now for tonight. It's gonna be cool.

Adamcik: We? Torey and Brian ... [writing] ... we're making our death list right now, for when, for actually tonight ...
…
Draper: Yeah, if you're watching this we're probably deceased …

Draper: Hopefully this will go smoothly and we can get our first kill done and then keep going.

Adamcik: For you future serial killers watching this tape

Adamcik & Draper: (laughing)

Adamcik: I don't know what to say.

Draper: It -- It's --

Adamcik: -- good luck with that.

Draper: Good luck.

Adamcik: Hopefully you don't have like 8 or 9 failures like we have.

Draper: Yeah, we've probably tried maybe 10 times, but they've never been home alone so –

Adamcik: Or when they have, their parents show up.

Draper: As long as you're patient you know, and we were patient and now we're getting paid off, cuz our victim's home alone, so we got er, our plan all worked out now .... I'm sorry. I'm sorry Cassie's family, but she had to be the one. We have to stick with the plan ... and she's perfect, so she's gonna die (laughs) …

6. *September 22, 2006, at 9:53:20 PM* [It is dark and Draper and Adamcik are sitting in a car.]

Draper: We're here in his car. The time is 9:50, September 22nd, 2006. Um ... unfortunately we have the grueling task of killing our two friends and they are right in -- in that house just down the street.

Adamcik: We just talked to them. We were there for an hour, but ....

Draper: We checked out the whole house. We know there's lots of doors. There, there's lots of places to hide. Um, I unlocked the back doors. It's all unlocked. Now we just got to wait and um ... yep, we're, we're really nervous right now but, you know, we're ready.

Adamcik: We're listening to the greatest rock band ever.

Draper: We've waited for this for a long time.

Adamcik: Pink Floyd. Before we commit the ultimate crime of murder.

Draper: We've waited for this for a long time.

Adamcik: A long time.

Draper: We -- well stay tuned.

7. *September 22, 2006, at 11:31:56 PM* [Adamcik and Draper are in a car driving.]

Draper: -- just killed Cassie! We just left her house.[1] This is not a fucking joke.

Adamcik: I'm shaking.

Draper: I stabbed her in the throat, and I saw her lifeless body. It just disappeared. Dude, I just killed Cassie!

Adamcik: Oh my God!

Draper: Oh, oh fuck. That felt like it wasn't even real. I mean it went by so fast.

Adamcik: Shut the fuck up. We gotta get our act straight.

Draper: It's okay. Okay? We -- we'll just buy movie tickets now.

Adamcik: Okay

Draper: (Unintelligible)

Adamcik: No.

Draper: Okay. Bye.

On September 27, 2006, after the BRC site evidence was found, detectives Ganske and Thomas conducted a second interview with Adamcik at the Pocatello Police Department in the presence of Adamcik's parents. Detective Ganske read Adamcik his *Miranda* rights at the beginning of the interview and Adamcik signed a waiver-of-rights form. During the course of the interview, Adamcik informed detectives Ganske and Thomas that he and Draper had arrived at the Whispering Cliffs residence at 8:00 or 8:30, got a tour of the home, watched a portion of the film *Kill Bill Vol. 2*, departed from the Whispering Cliffs residence at approximately 10:00 PM, and began attempting to break into cars. Adamcik stated that during the course of their attempted burglaries he made multiple calls to Beckham and during the final call Beckham

[1] After a sheriff's office transcriber prepared a transcript of the videotape, Detective Hamilton listened to the video with "really good headphones" and enhanced sound, and made a corrected version of the transcript (St. Ex. 89) which was admitted into evidence. (Tr., vol. II, p.1910, L.16 - p.1911, L.6; p.1913, L.6 - p.1915, L.7; p.1927, L.15 - p.1929, L.18.) Detective Hamilton testified at trial that, using the enhanced measures and after listening to the videotape in court, Draper said "*We* just killed Cassie!" (Tr., vol. II, p.1930, L.3 – p.1932, L.2.) Adamcik's trial team entered its own transcription of the videotape into evidence, which read "... just killed Cassie." (Def. Ex. VV, p.5, L.13.)

informed Adamcik that his mother was coming to get him from the Whispering Cliffs residence.

Adamcik stated that he and Draper returned to Adamcik's house at around 11:30 PM and did not leave for the remainder of the night. However, when Ganske informed Adamcik that witnesses had seen him at the convenience store, Common Cents, Adamcik stated that he and Draper had gone to the store so that Draper could buy matches for Draper's cigarettes. Adamcik eventually admitted that he and Draper had gone to Black Rock Canyon. At the close of Adamcik's second interview, the detectives informed Adamcik of the evidence that they had discovered at the BRC site and pressured Adamcik to tell the truth. Adamcik responded by asking "Can I talk to an attorney?" The detectives stopped questioning Adamcik immediately, and exited the room, allowing Adamcik and his father, Sean, to converse in private in a different room. Following this private meeting, Adamcik, Sean and the detectives reconvened in the interview room where detectives proceeded to tell Adamcik that he was going to be arrested and informed Adamcik of the evidence they had gathered.[2] [3] In response to intervening questions from Sean, Adamcik made both verbal and nonverbal replies.

At trial, the jury heard extensive forensic testimony documenting and analyzing Stoddart's wounds. The medical examiner, Dr. Steve Skoumal, performed the autopsy on Stoddart on September 25, 2006. Dr. Skoumal determined that the cause of Stoddart's death was stab wounds to the trunk. In all, Dr. Skoumal documented thirty knife-related wounds on Stoddart's body, twelve of which were potentially fatal. The State also had forensic pathologist Dr. Charles Garrison examine Stoddart's body. Dr. Garrison testified "It's my opinion that there were at least two knives used, one of which was a non-serrated blade, and one of which was a serrated blade." In general, the majority of the potentially fatal wounds that Dr.

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[2] On June 21, 2007, the Idaho Supreme Court granted the state's motion to take judicial notice of the Clerk's Record, Reporter's Transcripts, and Exhibits in State v. Torey Adamcik, Supreme Court Docket No. 34639-2007. Due to volume, all citations to those documents will remain as originally presented in that appeal; all citations to the district court post-conviction record (etc.) will be preceded by "PC."

[3] A search warrant executed on Brian Draper's home on September 26, 2006, led to the discovery of a knife sheath under Draper's bed, which was consistent with the shape and length of the "Sloan" knife (St. Ex. 70). (Tr., vol. III, p.2764, L.24 - p.2771, L.2.) A search warrant executed on the Adamcik residence on September 27, 2006, resulted in the seizure of three shovels (St. Exs. 87, 88) and a notebook with a page listing: (1) supplies (watches, communication devices, pliers), (2) clothing (cargo pants, gloves, utility belt), (3) mask, (4) weapons (daggers, survival knife, pocket knife), and (5) the names of six "victims" (St. Ex. 84).

> Skoumal listed were inflicted with the serrated blade, however, wound number 1, which struck the right ventricle of Stoddart's heart, was inflicted by a non-serrated blade -- consistent with Dr. Garrison's testimony -- and was potentially fatal.

State v. Adamcik, 152 Idaho 445, 453-459, 272 P.3d 417, 425-431 (2012) (footnotes omitted).

On June 8, 2007, a jury convicted Adamcik for the first-degree murder of Cassie Jo Stoddart and for conspiring with Draper to commit first-degree murder, and Adamcik was sentenced to fixed life for first-degree murder and indeterminate life with thirty years fixed for conspiracy to commit first-degree murder. Adamcik, 152 Idaho at 453-454, 272 P.3d at 425-426. Adamcik filed a Rule 35 motion for reduction of his sentences, which was denied. (PC R., p.641.) The Idaho Supreme Court affirmed Adamcik's convictions and sentences. Adamcik, 152 Idaho 445, 272 P.3d 417. Adamcik filed a petition for rehearing with the Idaho Supreme Court, which was denied. (PC R., p.641.) Adamcik then filed a Petition for Writ of Certiorari with the United States Supreme Court, which was denied. (Id.; State v. Adamcik, 133 S.Ct. 141 (2012).)

On September 27, 2013, Adamcik, through counsel, filed a petition for post-conviction relief, presenting seven claims. (PC R., pp.12-67.) Those claims were:

(1) The state withheld exculpatory evidence in violation of Brady v. Maryland, 373 U.S. 88 (1963) (PC R., pp.16-25);

(2) Ineffective assistance of trial counsel for failing to "get important expert testimony before the jury in part because they failed to obtain the murder weapons for testing by the defense expert" (PC R., pp.25-30 (capitalization modified));

(3) Ineffective assistance of trial counsel for failing to move to suppress or exclude evidence of (a) a notebook found in Adamcik's bedroom, and (b) "kiddie porn" found on the Adamcik's computer, and for making an illogical trial decision when the state threatened to introduce such evidence (PC R., pp.31-44);

(4) Ineffective assistance of trial counsel for failing to move to exclude Adamcik's invocation of the right to counsel from videotape of police interview (PC R., pp.45-46);

(5) Ineffective assistance of trial counsel due to the cumulative effect of prejudice caused by counsel's various instances of deficient performance (PC R., p.46);

(6) Ineffective assistance of trial counsel for failing to communicate a favorable plea offer to Adamcik (PC R., pp.46-48); and

(7) Violation of state and federal constitutional provisions against cruel and unusual punishment under Miller v. Alabama, 132 S.Ct. 2455 (2012) (PC R., pp.48-66).

After the state filed an Answer (PC R., pp.152-169), Adamcik filed a Motion for Partial Summary Disposition on all but Claims 1 and 6 (PC R., pp.205-256), and the state filed a motion for summary dismissal with a supporting brief (PC R., pp.257-281). Adamcik filed a response to the state's motion for summary dismissal, with a memorandum supported by the affidavits of the two prosecutors who initially tried Adamcik, Sean Adamcik (father), Shannon Adamcik (mother), and Barbara Adamcik (grandmother). (PC R., pp.288-344.)

After a hearing on the cross-motions for summary dismissal and partial summary disposition (PC Tr. 10/17/14), the district court entered a memorandum decision and order, making the following rulings: **Claim 1** – summarily dismissed (PC R., p.407); **Claim 2** – both motions denied (id.); **Claim 3(a) (notebook)** – summarily dismissed (PC R., pp.407-408); **Claim 3(b) ("kiddie porn" on computer)** – both motions denied on the "deficient performance" prong of Strickland v. Washington, 466 U.S. 668 (1984), but summarily dismissed on the prejudice prong; the court later ruled that evidence on the claim could be presented at the evidentiary hearing in regard to Claim 5 (cumulative prejudice) (PC R., pp.408, 468); **Claim 4** – summarily dismissed on the prejudice prong

of Strickland (PC R., pp.402-403);[4] **Claim 5** – both motions denied (PC R., p.408); **Claim 6** – state's motion denied (PC R., p.408) (Adamcik's motion did not pertain to Claim 6; see PC R., p.205); **Claim 7** – to be decided in a separate order. (PC R., pp.407-408.) Adamcik filed a motion for reconsideration of the court's order on the parties' motions for summary dismissal/disposition, with a supporting brief (PC R., pp.438-447), which was denied (PC R., pp.461-473).

On February 24, 2015, the district court entered an order granting the state's motion for summary dismissal of Adamcik's seventh claim, based on Miller. (PC R., pp.410-426.) Adamcik filed a "Second Motion for Reconsideration" in regard to the summary dismissal of Claim 7 (PC R., pp.613-618), which, after the submission of briefs, supplemental authorities, and oral argument, was denied. (PC R., pp.692-702.)

Following a two-day evidentiary hearing in July 2015 at which 21 witnesses testified (PC R., pp.499-502), and after receiving written closing arguments from counsel (PC R., pp.505-609), the court entered "Findings of Fact, Conclusions of Law and Memorandum Decision and Order on Post-Conviction Relief," denying Adamcik's post-conviction "claims as related to Cause of Action Two, Cause of Action Five and Cause of Action Six." (PC R., pp.640-675.) On July 19, 2016, the court entered a "Judgement of Dismissal," stating that "each of Petitioner's Seven Causes of Action are Dismissed." (PC R., pp.704-705.) Adamcik filed a timely notice of appeal. (PC R., pp.706-710.)

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[4] In the "Conclusion" section of its decision on the parties' motions, the district court said "the State's Motion for Summary Dismissal as it relates to Adamcik's Fourth Cause of Action is **DENIED**[.]" (PC R., p.408 (emphasis original).) However the court clearly ruled to the contrary in the body of its decision. (PC R., pp.402-403 ("As such the Court will **DISMISS** Adamcik's Fourth Cause of Action and **GRANT** the State's Motion for Summary Dismissal . . . .").)

ISSUES

Adamcik states the issues on appeal as:

A. Did the district court err in denying the ineffective assistance of counsel claim that the defense team's performance was deficient because it failed to move to suppress the evidence found on a computer seized without the authority of a warrant?

B. Did the district court err in finding Torey was not prejudiced by the deficient performance of the defense team which failed to get important expert testimony before the jury?

C. Did the district court err in finding that Torey was not prejudiced by the cumulative effect of the defense team's deficient performance?

D. Did the district court err in summarily dismissing the Eighth Amendment claim?

(Appellant's Brief, p.3.)

The state rephrases the issues as:

1. Has Adamcik failed to show error in the district court's rulings that he failed to show his trial counsel provided ineffective assistance as alleged in Claims 2, 3, and 5?

2. Has Adamcik failed to show error in the district court's denial of Claim 7 which alleged, that under Miller and Montgomery, his fixed life sentence was cruel and unusual punishment?

ARGUMENT

I.
Adamcik Has Failed To Show Error In the District Court's Rulings That He Failed To Show His Trial Counsel Provided Ineffective Assistance As Alleged In Claims 2, 3, And 5

A. Introduction

Adamcik argues that the district court erred in denying relief on his claims that his trial counsel team ("trial team") was ineffective for failing to: (1) move to suppress evidence of "kiddie porn" found on a computer seized from the Adamcik residence pursuant to a search warrant, which, in turn, caused counsel to not present character evidence about Adamcik and Draper (Claim 3(b)), and (2) present expert testing of the serrated Rambo knife (St. Ex. 74) and the smooth-edged Sloan knife (St. Ex. 70), to show that the Rambo knife caused wound number 1 (Claim 2). (Appellant's Brief, pp.3-25.) Additionally, Adamcik contends "the district court erred in finding that [he] was not prejudiced by the cumulative effect of the defense team's deficient performance" (Claim 5). (Appellant's Brief, p.25 (capitalization modified).)

Adamcik's arguments fail. Application of the law to the facts supports the district court's determinations that Adamcik failed to carry his burden of proof with respect to either the deficient performance or prejudice prongs of his ineffective assistance of counsel claims, and that any prejudice – cumulative or individual – was insufficient to undermine confidence in the outcome of Adamcik's jury trial.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file

…." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

When the district court conducts an evidentiary hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the conclusions of law drawn by the district court from those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-730 (1998). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. Peterson v. State, 139 Idaho 95, 97, 73 P.3d 108, 110 (Ct. App. 2003). A trial court's decision that a post-conviction petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990).

C. Legal Standards Applicable To Ineffective Assistance Of Counsel Claims

In order to prove a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). With respect to the deficient performance prong, the United States Supreme Court has articulated the defendant's burden under Strickland as follows:

> To establish deficient performance, a person challenging a conviction must show that counsel's representation fell below an objective standard of reasonableness. A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. The challenger's burden is to show that counsel made errors so serious that counsel was

not functioning as the counsel guaranteed the defendant by the Sixth Amendment.

Harrington v. Richter, 562 U.S. 86, 104 (2011) (citations and quotations omitted). "This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation." Arellano v. State, 158 Idaho 708, 710, 351 P.3d 636, 638 (Ct. App. 2015) (citing Howard v. State, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994)).

To establish prejudice, a post-conviction petitioner must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Richter, 562 U.S. at 104. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citations and quotations omitted).

D. Adamcik Has Failed To Meet His Burden Of Showing That The District Court Erred In Summarily Dismissing Claim 3(b) – That His Trial Team Was Ineffective For Failing To Move To Suppress Evidence Of "Kiddie Porn" Found On The Computer[5]

1. Introduction

Adamcik argues that the district court erred in summarily dismissing Claim 3(b), which alleged his trial team was ineffective for failing to move to suppress evidence described as "kiddie porn" found on a computer seized from the Adamcik residence

[5] The district court explained that, "more concerning from Adamcik's . . . perspective, would be the images focusing on Adamcik's fixation with violence and slasher/horror movies." (Addendum B; PC R., p.653 n.7.) All references to "kiddie porn" in this brief will also implicitly refer to the other images noted by the district court.

pursuant to a search warrant. (Appellant's Brief, pp.3-16.) His claim is based on the fact that, although the search warrant affidavit of probable cause listed computers as one of the items sought, the "command" portion of the search warrant did not authorize the seizure of computers. (Appellant's Brief, pp.3-16.) Based on that anomaly, Adamcik contends he meets the three criteria required to show his trial team was ineffective for failing to move for suppression: (1) a motion to suppress would have been granted, (2) the failure to move to suppress was not outside the boundaries of reasonable trial strategy, and (3) he was prejudiced by his trial team's deficient performance.[6] (Appellant's Brief, pp.6-7 (citing Wurdemann v. State, --- Idaho ---, --- P.2d --- (February 28, 2017).) Adamcik's claim fails.

2. Factual Background

The district court made the following findings of fact germane to Adamcik's claim:

> 24. Adamcik asserts in his P.C.R. Petition's Third Cause of Action that it was his Defense Team's intention to "call several character witnesses during the trial.["] P.C.R. Petition, p.23, ¶ 87. Adamcik's P.C.R. Petition asserts further that it was also his Defense Team's intent "to call witnesses to testify about Brian Draper's prior bad acts." *Id*., p. 24, ¶ 93. Adamcik asserts in his P.C.R. Petition that "counsel's deficient performance prejudiced Torey because he was deprived of the character evidence which formed a large basis of the defense." *Id*., p.32.

[6] As noted, this claim was summarily dismissed on the prejudice prong of Strickland (PC R., p.393), but, in denying Adamcik's subsequent motion for reconsideration, the court ruled that evidence on the claim could be presented at the evidentiary hearing in regard to Claim 5, cumulative prejudice (PC R., p.468). In its memorandum decision and order following the evidentiary hearing, the court first determined, as a prerequisite to considering whether counsels' conduct added any prejudice under Claim 5, that Adamcik's trial team was not deficient for not filing a suppression motion because such motion would not have been successful. (PC R., p.669.) Having made that determination, the court "nonetheless" discussed "this claimed failure (for appeal purposes) in considering Adamcik's prejudice claim based upon the cumulative nature of Adamcik's Defense Team's conduct." (PC R., p.670.)

25. On September 27, 2006, Detective Tom Sellers of the Idaho State Police submitted an Affidavit of Probable Cause in support of a search warrant. *See* Exhibit "C". This Affidavit of Probable Cause sought a warrant to search the residence located at 1598 Pointview Drive in Pocatello, Idaho. The Court understands this to have been the residence of Adamcik and his family. It also sought a warrant to search a red 1994 Geo Prism.

26. The Affidavit of Probable Cause outlined a lengthy "Statement of Facts in Support of Probable Cause". It then makes a specific request concerning the items law enforcement wishes to "search for and seize as evidence". These requested items were "bodily fluids, stains, hair fibers, and other trace evidence as well as clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephone and cellular telephone account information, fingerprints." *See* Exhibit "C". This Affidavit of Probable Cause was "subscribed and sworn" to before the Honorable Gaylen L. Box on September 27, 2006.

27. On September 27, 2006, Judge Box signed a Search Warrant authorizing a search of the property and vehicle outlined in the Affidavit of Probable Cause. It also authorized law enforcement to "search for and seize all evidence including but not limited to bodily fluids, stains, hair fibers and other trace evidence as well as fingerprints." *See* Exhibit "B".

28. It is perplexing to this Court that the warrant itself does not authorize the search for or seizure of a computer, even though the Affidavit of Probable Cause request includes computers. In fact, the Search Warrant does not address or include "clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computers, computer programs, cellular telephones and cellular telephone account information."

29. The Honorable Gaylen L. Box testified at Adamcik's post-conviction relief evidentiary hearing. When Judge Box was asked why computers were not specifically listed on the Search Warrant, he responded as follows:

> I issued the warrant as it was presented to me. I recall no specific discussion concerning the computer.

Tr. P.C.R. Ev. Hrg., p. 136, LL. 2-3.

30. On cross-examination, Judge Box testified, that following his review of the Probable Cause Affidavit, he made no effort to cross-out or delete anything from the Search Warrant itself. Tr. P.C.R. Ev. Hrg., p.136, LL. 22-25, p.137, LL.1-2. However, he did require that the Affidavit of Probable Cause be modified to "provide some basis for the issuance of a

nighttime search warrant." *See* Exhibit "C", ¶ 11 and Tr. P.C.R. Ev. Hrg., p.136, LL.2-5.

31. Finally, Judge Box testified that when he signs a search warrant he intends to give permission to search for the items identified on the warrant and does not intend to grant permission to search for items not listed on the search warrant. Tr. P.C.R. Ev. Hrg., p.139, LL.16-23.

32. Pursuant to the Search Warrant issued by Judge Box on September 27, 2006, law enforcement conducted a search of the Adamcik residence. Incident to that search, law enforcement seized as evidence a "computer tower." *See* Exhibit "D". A review of Exhibit "D" reflects that twenty-five (25) separate items were seized incident to the search of the Adamcik residence and not one of the seized items were "bodily fluids, stains, hair fibers, other trace evidence or fingerprints." In fact, each one of the seized items exceeded the scope of the enumerated items in the Search Warrant.

33. During the course of Adamcik's jury trial, the State notified the Defense Team that it had obtained a computer that had been seized as evidence incident to the September 27, 2006 Search Warrant. The State notified the Defense Team that if it attempted to introduce character evidence, the State would attempt to introduce evidence obtained from the computer. The computer in question contained what has been characterized by Adamcik throughout these post-conviction relief proceedings as "kiddie porn." A CD containing the photographs that have been described as "kiddie porn" was introduced into evidence at the post-conviction relief evidentiary hearing. While the images and photographs are distasteful and do show some nude images, this Court would not characterize the same as "kiddie porn." However, the Court can certainly understand the Defense Team's desire not to have those images and photographs introduced into evidence and shown to the jury.

34. As a result, the Defense Team made a strategic decision not to put on the character evidence that it had originally planned to introduce at trial. Neither did the Adamcik Defense Team attempt to prohibit the threatened introduction of this evidence by way of a motion in *limine* or motion to suppress.

35. The Court heard character testimony evidence from numerous friends, acquaintances and family members touching upon their impression of Adamcik and various positive and upstanding character traits and qualities which they attribute to him.

36. Adamcik himself testified at the post-conviction relief evidentiary hearing addressing issues concerning his Defense Team, trial strategy, and offers or the lack thereof. Finally, he testified in detail concerning his version of the crime and facts and circumstances surrounding the commission of the crime.

(PC R., pp.651-654 (footnotes omitted).)

3. Deficient Performance

The district court ruled (although in regard to Claim 5 regarding cumulative prejudice (see n.6, supra)) that Adamcik failed to meet his burden of showing his trial team was deficient for not filing a suppression motion to exclude the "kiddie porn" found on the computer, and, presumably, anything else from the computer that cast a bad light on his character (PC R., pp.669-670). The court held that a motion to suppress evidence from the computer would not have succeeded because the omission of the words "clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephones and cellular account information" as requested in the Probable Cause Affidavit was "due exclusively to a scrivener's error." (PC R., pp.666, 668-669.)

The state relies upon and incorporates into this response, as if fully set forth herein, that part of the district court's analysis and decision in its post-evidentiary hearing order (Addendum B; specifically p.665 ¶28 – p.669 ¶43)[7] finding Adamcik's trial team was not deficient for not filing a motion to suppress evidence from the computer. In addition to the district court's well-reasoned analysis, the state makes the following arguments.

The face of the search warrant shows an obvious scrivener's error. The Affidavit of Probable Cause lists the items to be searched for and seized, "including but not limited to, bodily fluids, stains, hair fibers and other trace evidence as well as *clothing,*

[7] References to page numbers to Addendums A through D will be to the page numbers assigned by the Clerk's Record.

knives, scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephones and cellular telephone account information, fingerprints and any indicia whatsoever of this crime." (PC Plaintiff's Ex. C, p.15 (emphasis added).) The "command" portion of the Search Warrant, the last of three full paragraphs of the warrant, did not include the above italicized items. (PC Plaintiff's Ex. B.) The district court concluded that the failure to transpose the full list of items to be searched from the Affidavit of Probable Cause to the "command" section of the Search Warrant was an obvious scrivener's error. (PC R., pp.666, 668-669.)

Adamcik contends that "nothing in the text of the search warrant would lead the police officer to conclude that the seizure of computers was implied . . . ." (Appellant's Brief, p.9.) However, the opening paragraph of the Search Warrant states:

SEARCH WARRANT

THE STATE OF IDAHO to any peace officer of the State of Idaho:

> Detective Tom Sellers, having this day by affidavit and sworn testimony shown that there is probable cause to believe that said affidavit is true, that certain property consisting of evidence, including but not limited to, bodily fluids, stains, hair fibers and other trace evidence as well as clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephones and cellular telephone account information, fingerprints and any indicia whatsoever of this crime.

(PC Plaintiff's Ex. B (emphases added).)

The Search Warrant was signed and dated at the bottom by the magistrate judge. (Id.) In doing so, the magistrate made a finding of probable cause, based on the truth of Detective Sellers' affidavit, to search for all the items listed in the opening paragraph as evidence of the crime, including "computer" and "computer programs." (PC Plaintiff's Ex. B.) Because the magistrate made a finding in the first paragraph of

the Search Warrant that there was probable cause to search for and seize the computer and computer programs, the failure to accurately transpose the list of those items from the first to the third paragraph of the Search Warrant was an obvious clerical or scrivener's error – one readily observed on the face of the warrant.[8]

Because a "probable cause" finding is germane to the issuance of a search warrant, no other purpose would have prompted the magistrate court to make such a finding. The district court correctly concluded that, despite the scrivener's error, the search warrant was plainly intended to command law enforcement officers to search for and seize the computer (etc.); therefore, a motion to suppress the evidence found on the computer would not have been granted, and Adamcik's trial team could not have been deficient for failing to file such a motion.

4. Prejudice

Adamcik asserts that had the evidence of "kiddie porn" from the computer not been available for the state to use at trial, the state could not have threatened to present it in the event "the defense put on its planned character witnesses" (Appellant's Brief,

[8] See United States v. Premises and Real Property with Bldgs., . . . , 949 F.Supp. 166, 170-171 (W.D.N.Y. 1996), which explained:

> An officer armed with the search warrant at issue in this case could, with reasonable effort, ascertain that the attic was a place intended to be searched. The recitation of probable cause on the first page of the warrant specifically states that marijuana and marijuana-growing equipment are believed to be in the attic of the subject premises. … The search warrant specifically states that "the attic of 500 Delaware Street ... is used to cultivate marihuana in felony quantities." … Although the command clause of the warrant fails to include the attic, the description of the items to be seized includes marijuana plants and paraphernalia to package, administer, or grow marijuana. … An officer armed with the warrant in this case needed only to read the warrant in its entirety to determine that the attic was a place intended to be searched.

p.4) – thwarting the trial team's plan to introduce character evidence that would have shown Adamcik incapable of committing the crimes charged (id., pp.3-16).[9]

The state relies upon and incorporates into this response, as if fully set forth herein, that part of the district court's analysis and determination in its summary dismissal memorandum decision and order which found that any failure by Adamcik's trial team to seek suppression of the evidence from the computer did not prejudice Adamcik under Strickland (Addendum A; specifically pp.390-393). The state also relies upon the Idaho Supreme Court's recitation of facts, as set forth at pages 1 through 9, supra, to show that Adamcik has failed to meet his burden of showing a reasonable probability that, but for counsels' deficient performance, the outcome of the proceeding would have been different, and that confidence in the outcome has been undermined. Richter, 562 U.S. at 104. Additionally, several of Adamcik's arguments warrant further comment.

The ten people Adamcik claims should have been called to testify at trial about his good character, and Adamcik himself, would have been impeached, either directly or indirectly, with the many comments by Adamcik that were recorded on the Black Rock Canyon videotape, which showed a side of his character that was anything but "good." As one of many examples from that recording, after Draper announced that their first

[9] Adamcik alleged in his post-conviction petition that the prosecutor's threat caused his trial team to not call three witnesses to testify about Draper's bad character. (PC R., pp.34-35.) The factual showing in a post-conviction relief application must be in the form of evidence that would be admissible at an evidentiary hearing. Drapeau v. State, 103 Idaho 612, 617, 651 P.2d 546, 551 (1982); Cowger v. State, 132 Idaho 681, 684, 978 P.2d 241, 244 (Ct. App. 1999). Because there appear to be no affidavits, depositions, testimony, or any explanation of what the three witnesses would say through admissible evidence regarding Draper's bad character, and because Adamcik does not explain on appeal what they would have said at trial, they need not be addressed further.

victim was going to be Cassie Stoddart, Draper fantasized out loud that Cassie was "going to be alone in a big dark house out in the middle of nowhere," and said, "How perfect can you get? I, I mean like holy shit dude." Adamcik responded, "I'm horny just thinking about it." Adamcik, 152 Idaho at 456, 272 P.3d at 428. Adamcik's contention that he would have been acquitted if his character witnesses would have shown he was not like Draper, is not realistic.

Next, Adamcik argues parenthetically that "the [evidentiary hearing] testimony of Rudolf Reit, had it been presented at the trial, would have corroborated Dr. Leis's testimony that only one knife was used." (Appellant's Brief, p.15 (explanation added).) Testimony by Reit about his testing of the two knives was relevant at the evidentiary hearing only to Claim 2, ineffective assistance of counsel for failing to obtain the murder weapons for testing by the defense expert, and Claim 5, cumulative prejudice. (PC R., pp.25-30, 407 (denial of summary motions), 658-664, 671-672.) Any consideration of Reit's evidentiary hearing testimony in regard to proving prejudice under Claim 3(b) is improper and irrelevant. Moreover, the district court only allowed evidentiary hearing testimony about prejudice under Claim 3(b) to be presented in regard to cumulative prejudice as alleged in Claim 5. (PC R., pp.469, 670-671.)

Adamcik also argues that he was prejudiced by the failure of his trial team to move to suppress the "kiddie porn" found on the computer (precluding testimony by his character witnesses) because his evidentiary hearing "testimony that Brian killed Cassie with the serrated Rambo knife would have been corroborated by Dr. Leis' [trial] testimony that only the Rambo knife was used." (Appellant's Brief, p.15.) Alternatively, Adamcik contends, "even if the jury believed Dr. Garrison's [trial] testimony that there

were two knives used, Torey's [evidentiary hearing] testimony that he dropped the Sloan [non-serrated] knife, and ran out of the house ahead of Brian, who did not arrive at the car for another couple of minutes, would have caused the jury to conclude that Brian used both knives, inflicting additional wounds with the Sloan knife after Torey left." (Id.) Regardless of the propriety of considering Adamcik's own self-serving evidentiary hearing testimony in regard to whether he has shown prejudice under Claim 3(b), his testimony does nothing to show that, had he testified accordingly at trial, the result would have been different.

As to the number of knives used to inflict the twelve "potentially fatal wounds" into Cassie's body (out of a total of thirty knife wounds), and focusing on wound #1, the state addresses that issue in section E, infra, and relies on that argument to show that the Idaho Supreme Court correctly determined there was sufficient evidence "for a jury to reasonably conclude that (1) two knives were used to murder Stoddart; (2) both knives inflicted potentially fatal wounds; (3) Draper favored the knife with the serrated blade which inflicted most of the potentially fatal wounds; and (4) the other [non-serrated] knife was used by Adamcik to inflict the other stab wound that injured Stoddart's vital structures and which had the potential to be fatal." Adamcik, 152 Idaho at 461-462, 272 P.3d at 433-434. Adamcik testified at the evidentiary hearing, and presents on appeal as an alternative theory, the following version of events: Draper must have used both knives to stab Cassie after Adamcik ran from the murder scene to his car and waited for Draper; Adamcik "might" have dropped the (non-serrated) Sloan knife while kneeling down beside Cassie while she lay "snoring" on the living room floor, as he held a key-ring light to see what was going on. (PC Tr., p.346, L.11 – p.348, L.3; p.361, L.23

– p.362, L.13.) Adamcik's version of events would have been viewed with more than a little incredulity, especially in light of the voluminous evidence of teamwork he and Draper employed all through the planning, carrying out, and concealment phases of Cassie's murder. As Adamcik testified at the evidentiary hearing, he lied to the police about going to the movies, and (later) about burglarizing cars; he also lied to his parents about going to the movies. (PC Tr., p.363, Ls.3-22.) Moreover, Adamcik confirmed that he drove his car to Black Rock Canyon, and, once there, used his own shovel to dig a hole to bury the evidence used in the murder. (PC Tr., p.363, L.23 – p.364, L.7.) In short, no number of character witnesses could have rehabilitated Adamcik's character as "good," much less to the extent that he would have been acquitted of first-degree murder and conspiracy to commit first-degree murder.

Based on the above arguments, and those parts of the district court's memorandum decisions and orders incorporated herein, Adamcik has failed to meet his burden of demonstrating any error in the summary dismissal of Claim 3(b).

E. Adamcik Has Failed To Show Error In The District Court's Denial Of Claim 2 Following An Evidentiary Hearing – That His Trial Team Was Ineffective For Failing To Obtain Expert Testing Of The Knives To Show That Wound No. 1 Was Inflicted By A Serrated Knife

The district court's memorandum decision and order on the parties' summary disposition motions succinctly explained Claim 2 of Adamcik's post-conviction petition as follows:

> Adamcik alleges that his trial counsel retained a forensic investigator by the name of Rudolf Reit (Reit) to testify at trial. P.C.R. Petition, p.14, ¶48. Adamcik asserts that his defense counsel's intent with respect to Reit's testimony, was to . . . have "Reit testify about the results of an experiment he conducted which showed that knives similar but not identical to Exhibits 70 and 74 would make different marks on a body." P.C.R. Petition, p.14,

> ¶¶49-50. The claimed import of this testimony was to establish "that Wound #1 was caused by the serrated blade knife." Adamcik's Supporting Memorandum, pp.2-3, ¶51. Adamcik argues that "Reit's evidence about the knife marks would have corroborated Dr. Leis' testimony that Wound #1 was inflicted with a serrated blade. It could have tipped the balance on that issue and resulted in an acquittal." *Id*., at p.8.

(PC R., p.373-374 (footnote omitted).)

After an evidentiary hearing (see generally PC 7/22/15 Tr.), the district court entered a memorandum decision and order concluding that Adamcik's trial team was deficient for failing to take reasonable steps to have Reit conduct tests of the Sloan (non-serrated) and Rambo (serrated) knives that would have led to expert testimony about the types of stab wounds each type of knife made – all for the purpose of supporting Dr. Leis' trial testimony that a serrated knife was used to inflict wound #1. (PC R., p.644, ¶5 – p.650, ¶21; p.658, ¶13 – p.660, ¶20.) However, the district court concluded that Adamcik failed to meet his burden of demonstrating that his trial team's deficient performance prejudiced him under Strickland. (PC R., p.664, ¶27.)

The state relies on the Idaho Supreme Court's rendition of facts recited above (see pages 1-9, supra), and the district court's findings of fact and conclusions of law regarding Claim 2, which are incorporated as if fully set forth herein. Those findings and conclusions are part of the attached Addendum B. (Addendum B; specifically PC R., p.644, ¶5 – p.650, ¶21; p.658, ¶13 – p.665, ¶27.) In addition to the district court's "prejudice" analysis regarding Claim 2, the state offers the following argument.

Adamcik first contends he was prejudiced by his trial team's failure to obtain the Sloan knife (St. Ex. 70) and Rambo knife (St. Ex. 74) for expert testing by Mr. Reit because the "lack of witness preparation led to a situation where the jury saw both the long-serving Judge and the elected Prosecuting Attorney castigate [defense counsel] –

calling him unprepared, unprofessional, and a liar," thereby undermining counsel's credibility. (Appellant's Brief, pp.16-20.) Regardless of the propriety of the prosecutor's and trial judge's comments to Adamcik's trial team during the failed attempt to present Mr. Reit as an expert witness, the comments bear little, if any, causal relationship to the actual deficient performance of his counsel alleged in the post-conviction petition and found by the district court – the failure to obtain the two knives for testing. The essential elements of a claim of ineffective assistance of counsel are that the attorney's performance was deficient and prejudice *caused by the deficiency*. Strickland, 466 U.S. at 687-688; Zepeda v. State, 152 Idaho 710, 713, 274 P.3d 11, 14 (Ct. App. 2012). The question is not whether the outcome of the trial would have been different had the comments by the prosecutor and trial judge not been made. The relevant question is whether, had Adamcik's trial team obtained the knives for testing, the result of the trial have been different. Here, the comments by the prosecutor and the trial judge in discussing the admissibility of Mr. Reit's expert testimony are far too attenuated from Adamcik's counsels' failure to obtain the knives for testing to give rise to a reasonable likelihood of a different result. See Atkins v. Zenk, 667 F.3d 939, 946 (7th Cir. 2012) (finding the defendant's chain of inferences "little more than an invitation for the Court to make speculation-fueled inferential leaps"); Beyah v. Uribe, 2010 WL 5524912 (C.D.Ca 2010) ("Petitioner's defense was not prejudiced because the link between the testimony of the potential witnesses and a reasonable likelihood of a better outcome at trial for Petitioner is too attenuated."); Soto-Beltram v. United States, 946 F.Supp.2d 312, 318 (S.D.N.Y. 2013) (trial counsel's "negotiation efforts were simply too attenuated from any prejudice that arose during the sentencing phase").

It should also be noted that the trial court instructed the jury that it was to "consider only the evidence at trial" consisting "of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts." (R., vol. V, p.1087 (Jury Instruction No. 2).) The same instruction stated:

> Except as explained in this instruction, none of my rulings were intended by me to indicate any opinion concerning the evidence in this case.
>
> The arguments and remarks of the attorneys involved in this case are intended to help you in understanding the evidence and applying the instructions, but they are not themselves evidence. If any argument or remark has no basis in the evidence, then you should disregard it.

(R., pp.1087-1088.) Any risk that the jury may have thought less of the defense team's credibility due to comments made by the prosecutor and trial judge, and allowed that to enter into its verdict, was minimized by the court's instructions about both trial counsels' and the courts own remarks. In short, the jury was instructed to only consider the evidence at trial in reaching its verdict, and it is presumed to have followed that instruction. State v. Kilby, 130 Idaho 747, 751, 947 P.2d 420, 424 (Ct. App. 1997) (the jury is presumed to follow instructions). Based on the above arguments, Adamcik has failed to show that the prosecutor's and/or the trial judge's comments constituted Strickland prejudice as to Claim 2.

Next, Adamcik contends he was prejudiced as a result of his trial team's failure to obtain the knives for testing because he was precluded from presenting Mr. Reit's testimony, which, he argues, "was strong evidence that only one knife was used" to murder Cassie. (Appellant's Brief, pp.21-25.) At trial, Dr. Garrison testified for the state, in effect, that wound #1 was caused by a non-serrated knife, such as the Sloan knife (St. Ex. 70). Dr. Garrison concluded that two knives (the other being a serrated knife

such as the Rambo knife) were each used to inflict at least one "potentially fatal" wound to Cassie. (Tr., vol. II, p.2219, L.17 – p.2227, L.15.) Dr. Garrison based his opinion upon the fact that wound #1: (1) showed no signs of having been inflicted by a serrated knife, (2) had a hilt mark, and (3) was thirteen centimeters (i.e., 5.118 inches) deep, but the Rambo knife's serrations began seven centimeters (i.e., 2.755 inches) from the tip of the blade. (Tr., vol. II, p.2224, L.5 – p.2226, L.9; p.2251, L.17 – p.2252, L.4; see http://www.inches-to-cm.com.) Dr. Leis, testifying for Adamcik, concluded that only one knife was used – the Rambo serrated knife (St. Ex. 74) – "in the attack." (Tr., vol. III, p.2653, Ls.3-6.)

In the post-conviction evidentiary hearing, Mr. Reit testified that, after he conducted tests of the actual Rambo and Sloan knives on pig skin, he concluded "the wounds made by the Rambo [serrated] knife could in part be similar to the wounds made by the tanto [i.e., Sloan] knife. And that the tanto knife wound could be totally accounted for by the Rambo knife, *if* the Rambo knife is not plunged all the way into the skin." (PC Tr., p.283, Ls.9-14 (explanations and emphasis added).) Based on the premise that the Rambo knife had not been "plunged all the way into the skin," Mr. Reit agreed with Dr. Leis' trial testimony that only one knife was used to murder Cassie. There is no dispute that, *if* it is assumed that the Rambo knife was only thrust part of the way into Cassie's chest, the wound might look "in part" similar to a wound inflicted by the Sloan knife. However, the testimony by Dr. Leis totally belies that assumption.

At trial, Dr. Leis testified that wound #1 to Cassie's upper right chest showed no signs of serrations and had a "hilt mark;"[10] therefore, his testimony has always been contrary to any suggestion – including his own – that wound #1 was caused by a serrated knife. Dr. Leis testified:

> Q. Can you describe, Dr. Leis, what Exhibit 22 is?
>
> A. This depicts wound number "1" – which was to Cassie's right upper chest area.
>
> Q. And would you agree that that wound was to the hilt?
>
> A. Yes.
>
> Q. And there is a hilt mark there?
>
> A. Correct.
>
> Q. Are there serrations on that – on that wound?
>
> A. Not – that I can see definitively in this photograph.

(Tr., vol. III, p.2647, Ls.12-24; see id., p.2610, L.22 – p.2612, L.11 (Dr. Leis' summary of Dr. Garrison's testimony that his photos show wound #1 has a hilt mark, "the result of a part of the handle of the knife striking the skin's surface and leaving an outline behind"); p.2651, L.19-25 ("In just looking at wound number "1" or "2" by themselves, there is not a specific feature that depicts a serrated blade striking the skin . . . .").)

Because Dr. Leis testified at trial that wound #1 penetrated Cassie's chest "to the hilt," the blade used to inflict that wound necessarily went all the way into her chest until

[10] Dr. Garrison testified that a "hilt" mark or "impact injury" is a mark left by either the hilt, hand or finger "as it impacts the skin" during a blow with a knife. (Tr. vol. II, p.2217, L.21 - p.2218, L.10.) While showing the jury showing photos of wound #1 (see St. Ex. 94, slides 15, 16), Dr. Garrison explained that, "although this picture is somewhat out of focus, you can see it's fairly rounded here – and another impact injury. So we know that this knife went in up to where the hand was. It's an impact injury . . . ." (Tr., vol. II, p.2219, L.23 – p.2220, L.5.)

it was stopped by the hilt – leaving a mark. To be clear, whatever knife was used to inflict wound #1 was thrust all the way into Cassie's chest. If the serrated Rambo knife had been used, wound #1 would have exhibited irregularities and disruptions from the serrations on the upper part of the knife blade that was closest to the hilt. Because both Dr. Garrison (see Tr., vol. II, p.2219, L.7 – p.2220, L.11) and Dr. Leis agreed that wound #1 did *not* have any serrations, *and* that it penetrated Cassie's chest cavity "to the hilt," the only reasonable conclusion is that wound #1 was inflicted by a non-serrated knife, such as the Sloan knife.[11] Moreover, because wound #1 was thirteen centimeters deep, and the Rambo knife's serrations began only seven centimeters from the tip of the blade, it is unlikely that a serrated knife inflicted wound #1, even taking the possibility of "compression" into account.[12] (Tr., vol. II, p.2224, L.5 – p.2226, L.9; p.2251, L.17 – p.2252, L.4.) Having convicted Adamcik of first-degree murder, the jury clearly understood the significance of these facts – a non-serrated knife was used to inflict wound #1.

[11] If Dr. Leis' theory was correct, there should be no hilt mark on wound #1 if wound #22 to Cassie's left hand pinkie stopped the serrated Rambo knife from fully penetrating her chest. Conversely, the fact that wound #1 had a hilt mark, and wound #2 did not, is an indication that wound #22 aligned with wound #2 – not wound #1.

[12] Adamcik's trial counsel tried to get Dr. Garrison to agree that, based on the possibility of "compression," the knife used to inflict wound #1 "doesn't have to be thirteen centimeters long. This could be eight, nine centimeters long, as well," Dr. Garrison answered, "No, it's going to depend on the compressibility of the tissues." (Tr., vol. II, p.2252, Ls.9-16.) When testifying about wound #15, an unserrated knife wound, Dr. Garrison explained, "if we have a wound that goes into the thigh fourteen centimeters leaving no markings, even though you would have compression, *it's not going to compress that much*, so that would have to be, in my opinion, a knife other that the serrated knife." (Tr., vol. II, p.2226, Ls.4-9 (emphasis added).) Based on that testimony, the jury could have reasonably concluded that wound #1, only one centimeter less deep than wound #15, would also not compress enough to allow for the possibility that it was inflicted by a serrated knife.

Despite the fact that he testified that wound #1 went into Cassie's chest to the hilt and showed no sign of serrations, Dr. Leis later testified that wound #1 was caused by a serrated knife. He said that he reached that opinion by enlarging and lightening one of the photos Dr. Garrison used to show how wound numbers 22 (left hand pinkie) and 2 (chest) aligned together (see St. Ex. 94, slides 3, 5), but concluded that, because he believed he saw a hilt mark on wound #2, it was really wound #1 (Tr., vol. III, p.2613, L.22 – p.2615, L.10; see Def. Ex. DD, slides 6, 8, 10-12; St. Exs. 23; 94, slides 4, 5 (showing no obvious hilt mark on wound #2)). A mere glimpse at Dr. Garrison's photos of wound #1 (see St. Ex. 94, slides 15, 16) – showing an extremely pronounced hilt mark on the right side – should cast doubt on Dr. Leis' testimony that the same wound can be seen in Dr. Garrison's photos (or Dr. Leis' enhanced photos) showing wound #22[13] and wound #2 in alignment (see St. Ex. 94, slides 3, 5; Def. Ex. DD, slides 6, 8, 10-12).

Lastly, Dr. Leis asked the jury to believe that Dr. Garrison misidentified wound #1 as wound #2, a mistake that was highly unlikely due to the following factors:

(1) Dr. Garrison personally conducted an examination on Cassie's body (Tr. vol. II, p.2193, L.16 - p.2194, L.20; p.2201, Ls.5-18), and was present when the photo was taken during the re-examination of Cassie's body (Tr. vol. II, p.1731, L.9 - p.1732, L.12; St. Ex. 28).

(2) Dr. Leis did not attend Cassie's autopsy or Dr. Garrison's re-examination of her body; he had only seen photos of those procedures, and there is no indication he ever actually saw or examined Cassie's body. (Tr. vol. III, p.2646, L.23 - p.2647, L.8.)

[13] Adamcik mistakenly states that Dr. Garrison "testified that wound #22 . . . was caused by a smooth-bladed knife, like the Sloan knife." (Appellant's Brief, p.22.) Dr. Garrison testified that wound #22 to Cassie's left hand pinkie was inflicted by a serrated knife. (Tr., vol. II, p.2211, L.8 – p.2213, L.21 ("this was a serrated or survival-type knife cut to the hand").)

(3) Each of Cassie's wounds were clearly identified with easily read numbered labeled stickers, placed on her body and photographed by Dr. Skoumal or his staff. (Tr., vol. II, p.2084, L.16 – p.2085, L.7; see St. Exs. 20, 94.)

(4) Dr. Garrison testified in detail about the points of identification linking the two photos of wound #2 in the side-by-side slide showing Cassie's left hand pinkie (wound #22) laid over wound #2 (closed with tape) on the left, and a photo of wound #2 (not closed with tape) on the right. (See St. Ex. 94, slide 5; Tr. vol. II, p.2213, Ls.3-21.)

Mr. Reit's testimony would not have made any difference at trial in attempting to buttress Dr. Leis' testimony. The "assumption" Mr. Reit employed to theorize that wound #1 was a partial stab wound is based entirely on Dr. Leis' self-contradicting testimony that – despite the fact there was a hilt mark on wound #1 – the knife blade only partially penetrated Cassie's chest. That contradictory testimony, combined with the consistent and logical testimony of Dr. Garrison, the photos of the stab wounds, and the improbability that wound #1 was mis-identified by Dr. Garrison by a stickered label placed by Dr. Skoumal as wound #2 (see St. Ex. 94, slide 5), all reinforce the district court's determination that Adamcik failed to demonstrate prejudice under Strickland in regard to this claim.

F. Adamcik Has Failed To Show Error In The District Court's Denial Of Claim 5 – Cumulative Prejudice

1. Introduction

The district court rejected Claim 5 of Adamcik's petition, which alleged cumulative prejudice based on Claims 2, 3(b), and 4. (PC R., pp.665-672.) On appeal Adamcik asserts cumulative prejudice based on the district court's findings that his trial counsel were deficient in regard to Claim 2 (failure to obtain the knives for testing), and Claim 4 (failure to excise Adamcik's invocation of rights that appeared on videotaped

police interview). (Appellant's Brief, pp.25-27.) Adamcik further argues that Claim 3(b) (failure to move to suppress the "kiddie porn" found on the computer) should be considered in the cumulative prejudice mix, even though the district court found (in the context of determining cumulative prejudice under Claim 5) that his trial counsel's performance was *not* deficient. (Id.; see PC R., pp.468, 665, 670 (stating it would "nonetheless" consider Claim 3(b) in regard to cumulative prejudice for appeal purposes).)

Regardless of whether cumulative prejudice is based on all three claims, or just the two for which the district court found Adamcik's trial counsel deficient, Adamcik has failed to meet his burden of showing that he was prejudiced to the extent that he was denied a fair trial.

2. Adamcik Has Failed To Show Error In The District Court's Rejection Of His Cumulative Error Claim

Under the doctrine of cumulative error, a series of errors, harmless in themselves, may in the aggregate show the absence of a fair trial. State v. Martinez, 125 Idaho 445, 453, 872 P.2d 708, 716 (1994). A necessary predicate to application of the doctrine is a finding of more than one error. State v. Hawkins, 131 Idaho 396, 958 P.2d 22 (Ct. App. 1998).

The ultimate question of Strickland prejudice is whether the defendant was denied "a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687. Adamcik has failed to show that the errors he cites, i.e., instances of deficient performance, amount to a denial of due process that would require reversal. State v. Gray, 129 Idaho 784, 804, 932 P.2d 907, 927 (Ct. App. 1997); State v. Barcella, 135 Idaho 191, 204, 16

P.3d 288, 301 (Ct. App. 2000) (accumulation of errors deemed harmless). In response to this issue, the state incorporates, as if fully set forth herein, those portions of the district court's orders relevant to the denial of this claim. (Addendum A; specifically PC R., pp.394-403; Addendum B; specifically PC R., p.650, ¶22 – p.654, ¶38; p.656, ¶4; p.665, ¶28 – p.672, ¶50.)

Additionally, in light of the strong evidence presented against Adamcik at trial as set out in the Statement of Facts (pp.1-9, supra) and incorporated herein, the strong testimony of Dr. Garrison, and the fact that Dr. Leis contradicted his own "one-knife" theory by testifying at trial that wound #1 penetrated Cassie's chest "to the hilt" and showed no sign of being made by a serrated knife, Adamcik has failed to show that his trial was less than fair or reliable. For these reasons, Adamcik has failed to show cumulative error.

II.

Adamcik Has Failed To Show Error In the District Court's Denial Of Claim 7 – That Under *Miller* And *Montgomery*, His Fixed Life Sentence Was Cruel And Unusual Punishment

Adamcik argues that the district court erred in denying his claim (Claim 7) that he was subjected to cruel and unusual punishment under the Eighth Amendment of the United States Constitution based on Miller v. Alabama, 132 S.Ct. 2455 (2012), and Montgomery v. Louisiana, 136 S.Ct. 718 (2016). (Appellant's Brief, pp.27-42.) For its response to this issue, the state relies upon, and incorporates as if fully set forth herein, those parts of the district court's decisions that are relevant to this issue: (1) the court's Memorandum Decision and Order on Summary Disposition Re: *Miller v. Alabama* [etc.], attached as Addendum C (specifically PC R., pp.419-425), and (2) the court's

Memorandum Decision and Order on Second Motion for Reconsideration, attached as Addendum D (specifically PC R., pp.696-702).

Additionally, the district court's decisions are consistent with the Idaho Supreme Court's recent decision in Johnson v. State, Docket No. 42857, 2017 Opinion No. 45 at 17 (Idaho May 12, 2017) (quoting Montgomery, 136 S.Ct. at 735), which explained that "*Miller* and *Montgomery* do, however, require that the sentencing court weighs the juvenile offender's youth and characteristics against the nature of the crime to determine whether the crime was one that 'reflected the transient immaturity' of youth." The Idaho Supreme Court also explained that "*Montgomery* was careful, however, to note that '*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility." Johnson, Docket 42857 at 16 (quoting Montgomery, 136 S.Ct. at 735). (See Appellant's Brief, p.34 ("Absent a finding that a crime reflects a juvenile's 'irreparable corruption,' life without parole may not be imposed.").)

Based on the district court's well-reasoned analysis of this issue, Adamcik has failed to meet his burden of showing any error in the denial of Claim 7.

CONCLUSION

The state respectfully requests that this Court affirm the judgments dismissing Adamcik's petition for post-conviction relief.

DATED this 28th day of June, 2017.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of June, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

DENNIS BENJAMIN
NEVIN, BENJAMIN, McKAY & BARTLETT LLP

at the following email addresses: db@nbmlaw.com and lm@nbmlaw.com.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd

ADDENDUM A

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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TOREY ADAMCIK, Petitioner, vs. STATE OF IDAHO, Respondent.	)	Case No. CV-2013-3682 MEMORANDUM DECISION AND ORDER ON ADAMCIK'S MOTION FOR PARTIAL SUMMARY DISPOSITION AND THE STATE'S MOTION FOR SUMMARY DISMISSAL

This matter is before the Court on cross-motions for summary dismissal/disposition arising out of Petitioner's, Torey Adamcik (Adamcik), Petition for Post-Conviction Relief (P.C.R. Petition). Adamcik has filed a Motion for Partial Summary Disposition (Adamcik's M.S.D).[1] The State of Idaho (State) also filed its motion for summary disposition and supporting brief in one (1) document titled Respondent's Dispositive Motion with Brief in Support of Motion for Summary Dismissal (State's M.S.D). Adamcik filed his Response to Respondent's Dispositive Motion (Response Memorandum).[2] Finally, Adamcik submitted a document entitled Supplemental Authority shortly in advance of the oral argument on these cross-motions. The parties argued their cross-motions to the Court, and following argument, the Court took this

[1]Adamcik's M.S.D. was supported by a Brief in Support of Petitioner's Motion for Partial Summary Disposition (Adamcik's Supporting Memorandum).

[2]Adamcik's Response Memorandum was supported by several affidavits: (1) the Affidavit of Mark Heideman (Heideman Affidavit); (2) the Affidavit of Vic Pearson (Pearson Affidavit); (3) the Affidavit of Sean Adamcik (Sean Adamcik Affidavit); (4) the Affidavit of Shannon Adamick [sic] (Shannon Adamcik Affidavit); and (5) the Affidavit of Barbara Adamcik (B. Adamcik Affidavit).

matter under advisement.[3] The Court, having considered the parties' written submissions along with the argument presented, now issues it Memorandum Decision and Order (MD&O).[4]

BACKGROUND AND RELEVANT COURSE OF PROCEEDINGS

Adamcik filed his P.C.R. Petition in September, 2013. His P.C.R. Petition outlines seven (7) separate claims upon which he seeks post-conviction relief. Adamcik seeks summary disposition on five (5) of the seven (7) claims asserted in his P.C.R. Petition.[5] The State in turn seeks summary dismissal of each claim raised by Adamcik in his P.C.R Petition.

Adamcik's P.C.R. Petition arises out of the underlying criminal proceedings in Bannock County Case CR-2006-17984. In this proceeding, Adamcik was charged with and convicted by a jury, of committing the first-degree murder of Cassie Jo Stoddart (Stoddart). Adamcik was also convicted of conspiring with co-defendant, Brian Draper (Draper), to commit the first-degree murder of Stoddart. At sentencing, Adamcik was sentenced to a thirty (30) year fixed sentence and an indeterminate life sentence for the conspiracy to commit first-degree murder and a fixed life sentence for the first-degree murder conviction of Stoddart. Adamcik filed a motion seeking a reduction of his sentence pursuant to Idaho Criminal Rule 35 (I.C.R.). This motion

[3]It should be noted that incident to this post-conviction relief proceeding, the Court has taken judicial notice of the entire record of the criminal proceedings in Bannock County Case CR-2006-17984 pursuant to Idaho Rule of Evidence 201 (I.R.E.). *See* Order Taking Judicial Notice. Additionally, at the hearing on the cross-motions for summary dismissal/disposition, the parties apprised the Court of their stipulation that the summary dismissal/disposition record will include the depositions taken of Adamcik's defense team, Greg May, Bron Rammell, and Aaron Thompson.

[4]Adamcik, in his Response Memorandum objected to the State's M.S.D. on the grounds that it had failed to file a motion separate from its memorandum, identifying with particularity the grounds supporting the motion and the rule or statute under which it was seeking relief. At hearing on the cross-motions for summary dismissal/disposition, Adamcik acknowledged that following the objection identified in his Response Memorandum, the State did file Respondent's Amended Dispositive Motion which Adamcik advised to be "a proper motion filed citing the correct statute." As such, any defect in the initial filing of the State's M.S.D. has been cured and the Court will consider the merits of both parties' motions for summary dismissal/disposition.

[5]Adamcik acknowledges that his sixth claim or cause of action requires an evidentiary hearing because of the existence of material issues of fact, and therefore asks that an evidentiary hearing be set on that matter. Because Adamcik has not moved for summary dismissal on his first claim or cause of action, it is also clear that he is conceding, at a minimum, that this issue also requires an evidentiary hearing. It may be that Adamcik has waived or withdrawn this claim entirely, but because the Court is not certain of this fact, the Court will consider the State's M.S.D. on this cause of action as well in this MD&O. *See* Adamcik's Response Memorandum where Adamcik states "further, as will be explained below, Causes of Action 2-7 should not be summarily dismissed even if the Court reaches the merits of the Respondent's arguments." Response Memorandum, p. 3.

was denied after hearing by the trial court. Adamcik then filed an appeal. In *State v. Adamcik*, 152 Idaho 445, 458-59, 272 P.2d 417, 486-87 (2012), the Idaho Supreme Court affirmed Adamcik's conviction and sentence. Adamcik filed a Petition for Rehearing; the Idaho Supreme Court denied the relief sought in that petition. Adamcik then filed a Petition for Writ of Certiorari from the United States Supreme Court. This petition was denied. *State v. Adamcik*, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

STANDARD OF REVIEW SUMMARY DISMISSAL

Post-Conviction Relief proceedings are generally governed by the Uniform Post-Conviction Procedure Act (UPCPA) which is codified at Idaho Code §§19-4901 through 19-4911 (I.C.) As summarized in *Rhoades v. State,* 148 Idaho 247, 249-50, 220 P.3d 1066, 1068-69 (2009) (*Rhoades*):

> [A]petition for post-conviction relief is a civil proceeding, governed by the Idaho Rules of Civil Procedure. *Pizzuto v. State,* 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, "[t]he 'application must contain much more than a short and plan statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).'" *State v. Payne, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008)* (quoting *Goodwin v. State,* 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct.App.2002)). Instead, the application must be supported by a statement that "specifically set[s] forth the grounds upon which the application is based." *Payne,* 146 Idaho at 561, 199 P.3d at 136 (citing I.C. § 19-4903). "The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal." *Id.*

The UPCPA applies to the Adamcik's M.S.D. and the State's M.S.D. I.C. §19-4906(c) provides that:

> The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

As stated in *Zepeda v. State*, 152 Idaho 710, 713, 274 P.3d 11, 14 (Ct.App.2012), summary dismissal is the functional or procedural equivalent of summary judgment under Rule 56 of the Idaho Rules of Civil Procedure (I.R.C.P.). In considering a summary judgment, or in this case a motion for summary disposition, this Court applies the same standard applied by the appellate courts on appeal. *Syringa Networks, LLC v. Idaho Dept. of Admin.*, 155 Idaho 55, 63, 305 P.3d 499, 507 (2013).

DeRushe v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (*DeRushe*), provides that "a claim for post-conviction relief will be subject to summary dismissal pursuant to I.C. §19-4906 if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." (*Quoting*, *Berg v. State,* 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)).

As summarized by the *Rhoades* Court on summary dismissal, the trial court:

> [h]as free review of questions of law. *Hopper v. Hopper,* 144 Idaho 624, 626, 167 P.3d 761, 763 (2007). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court determines whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party. *Hauschulz v. State,* 144 Idaho 834, 838, 172 P.3d 1109, 1113 (2007) (citing *Gilpin-Grubb v. State,* 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)). However, "while the underlying facts must be regarded as true, the petitioner's conclusions need not be so accepted." *Phillips v. State,* 108 Idaho 405, 407, 700 P.2d 27, 29 (1985). "[W]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." *State v. Yakovac,* 145 Idaho 437, 443, 180 P.3d 476, 482 (2008).

148 Idaho at 250, 220 P.3d at 1069.

DISCUSSION

1. ADAMCIK'S CLAIM THAT HE WAS DEPRIVED OF A FAIR TRIAL DUE TO THE STATE'S WITHHOLDING OF EXCULPATORY EVIDENCE IN VIOLATION OF *BRADY V. MARYLAND*, 373 U.S. 88 (1963).

In his first claim, Adamcik argues that he was deprived of a fair trial because the State withheld exculpatory evidence in violation of *Brady v. Maryland*. 373 U.S. 88, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (*Brady*). The exculpatory evidence that Adamcik claims the State withheld was the rebuttal testimony of Dr. Charles O. Garrison, M.D. (Dr. Garrison), who was an expert witness for the State. *See* First Cause of Action, P.C.R. Petition, pp. 5-14.

During Dr. Garrison's testimony, upon direct examination, he testified that stab wounds to Stoddart's body were caused by at least two (2) separate knives. Transcript on Appeal (Tr. App) p. 2225, LL.16-20. Dr. Garrison testified that one (1) of the knives had a serrated blade and one (1) had a non-serrated blade. *Id.* The State introduced two (2) knives into evidence at trial: one (1) with a serrated edge (Trial Exhibit 74 -- the "Rambo knife") and one (1) without (Trial Exhibit 70 -- the "Sloan blade").

Adamcik argues that Dr. Garrison testified that what was referred to during the trial as "Wound # 1", "a potentially fatal wound", was caused by a knife with a non-serrated blade. P.C.R. Petition, p.5, ¶30. Adamcik asserts that "Dr. Garrison testified that all other potentially fatal wounds were caused by a knife with a serrated blade." *Id.* at ¶31.

Dr. Edward Leis, M.D. (Dr. Leis) was an expert witness who testified for Adamcik at trial. Dr. Leis' testimony contradicted Dr. Garrison's opinion and testimony as it related to "Wound # 1". Dr. Leis testified that "Wound #1" was, in fact, caused by a knife which had a serrated blade. Tr. App. p. 2615, LL.7-10. Dr. Leis asserted that Dr. Garrison was wrong on two (2) separate points: (1) that the wound to Stoddart's hand was associated with "Wound #2"

when it was actually associated with "Wound #1"; and (2) that because Stoddart's left hand was placed over Wound #1 the evidence of the serration appeared on the hand and not "Wound #1" itself. Tr. App. p. 2614, LL. 5-25, p. 2615, LL. 1-10.

Adamcik asserts that Dr. Garrison was present in the courtroom during the course of Dr. Leis' testimony, "presumably to prepare himself to testify as a state's rebuttal witness." P.C.R. Petition, p. 5, ¶35. However, Dr. Garrison was not called by the State as a rebuttal witness. Adamcik alleges in his P.C.R. Petition that Dr. Garrison did not reveal his analysis of Dr. Leis' testimony to any member of the prosecution or defense team and told the prosecution team that there was no reason for him to testify on rebuttal. *Id.* p. 6, ¶¶40-42.

Adamcik concludes and "alleges **on information and belief** that Dr. Garrison either agreed with or could not disagree with Dr. Leis' testimony regarding Wound #1." *Id.* p. 6, ¶39. Adamcik asserts, again "**on information and belief**", that "Dr. Garrison's analysis of Dr. Leis' testimony was exculpatory evidence "because it tended to show that only one person inflicted the potentially fatal wounds" and that Dr. Garrison's analysis "was impeachment evidence because it contradicted Dr. Garrison's previous testimony in the trial." *Id.* p. 6, ¶¶43-44.[6]

As such, it appears that Adamcik is suggesting that the State was required to either call Dr. Garrison as a rebuttal witness or disclose his "analysis of Dr. Leis' testimony" to Adamcik's defense team. Adamcik asserts that if Dr. Garrison's "analysis of Dr. Leis' testimony" had been disclosed the "defense would have called Dr. Garrison to present what would have been either exculpatory evidence (that he agreed that Wound #1 was caused by a knife with a serrated blade)

[6]Bold emphasis relative to "on information and belief" was added by the Court.

or impeaching evidence (that he could not disagree with Dr. Leis' analysis) of his own prior testimony.[7]" P.C.R. Petition, p. 8.

A. *BRADY v. MARYLAND* STANDARD

Under Brady, the prosecution has a duty to disclose evidence that is both favorable to the defense and material to either guilt or punishment, the suppression of this evidence violates due process. Brady, 373 U.S. at 86-87. To show a *Brady* violation, a petitioner must prove three (3) components with respect to the evidence at issue: "the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). The United States Supreme Court has further clarified that the prejudice must create a "probability of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its in absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A 'reasonable probability' of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) citing to *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

[7]This entire argument presupposes one (1) crucial fact and that is that Dr. Garrison agreed with Dr. Leis' analysis and testimony, and would not have been able to offer a rebuttal. It overlooks the other possible conclusion; that being that Dr. Garrison was unpersuaded by Dr. Leis' analysis and testimony and did not believe that Dr. Leis' testimony and/or analysis was of sufficient weight or credibility to respond to in rebuttal. Therefore, when asked by prosecutors if there was a need or "reason for him to testify" in rebuttal, as alleged in the P.C.R. Petition, he responded and advised that there was not. *See* P.C.R. Petition, p. 6, ¶42.

B. DISCUSSION

The Court will **GRANT** the State's Motion for Summary Dismissal of Adamcik's P.C.R. Petition. In short, Adamcik has failed to come forward with any admissible evidence to support his assertion that Dr. Garrison's testimony, in response to Dr. Leis' testimony, would have been or was exculpatory in nature.

As pointed out above, the only evidence supporting Adamcik's assertion that Dr. Garrison's rebuttal testimony would have been exculpatory in nature is contained in Adamcik's verified P.C.R. Petition. However of significance to the present issue, these assertions are not based upon Adamcik's personal knowledge as required by I.R.C.P. 56(e), but are speculative in nature and are preceded by the phrase **"on information and belief"**. The Court is mindful of the fact that "a verified complaint has the force and effect of an affidavit in support of a motion for summary judgment so long as it conforms to the requirements of Rule 56(e)." *Drennan v. Idaho State Correctional Institution*, 145 Idaho 598, 603, 181 P.3d 524, 529, footnote 3 (Ct.App. 2007). However, Adamcik's assertions based **"on information and belief"** do not satisfy the requirements of I.R.C.P. 56(e) because they are not based upon the personal knowledge of Adamcik or any other qualified affiant. In *Van Stelton v. Van Stelton*, 2014 WL 4898591, *10 (N.D. Iowa), the trial court noted as follows:

> "Rule 56[c]'s personal knowledge requirement prevents statements in affidavits that are based, in part, 'upon information and belief'—instead of only knowledge—from raising genuine issues of fact sufficient to defeat summary judgment." *Pace v. Capobianco,* 283 F.3d 1275, 1278 (11th Cir.2002); *see Automatic Radio Mfg. Co. v. Hazeltine Research, Inc.*, 339 U.S. 827, 831 (1950) (facts alleged on "information and belief" are not sufficient to create a genuine issue of fact); *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1367 (8th Cir.1983) ("Under Rule 56[c], an affidavit filed in support of or in opposition to a summary judgment motion must be based upon the personal knowledge of the affiant; information and belief is insufficient" to create an issue of material fact); *see also SCR Joint Venture L.P. v. Warshowsky,* 559 F.3d 133, 138 (2d

Cir.2009) ("The Rule's requirement that affidavits be made on personal knowledge is not satisfied by assertions made 'on information and belief.' ") (quoting *Patterson v. County of Oneida,* N.Y., 375 F .3d 206, 219 (2d Cir.2004)); *Stewart v. Booker T. Washington Ins.,* 232 F.3d 844, 851 (11th Cir.2000) ("upon information and belief" insufficient); *Causey v. Balog,* 162 F.3d 795, 803 n. 4 (4th Cir.1998) ("Rule 56[c] precludes consideration of materials not based on the affiant's first hand knowledge."); *Price v. Rochford,* 947 F.2d 829, 832 (7th Cir.1991) (verification based on personal knowledge or information and belief is insufficient to oppose a motion for summary judgment because it avoids the possibility of perjury); *Fowler v. Southern Bell Tel. and Tel. Co.,* 343 F.2d 150, 154 (5th Cir.1965) ("knowledge, information and belief" insufficient).

Due to the fact that Adamcik has failed to come forward with any admissible evidence in response to the State's M.S.D. with respect to the assertion made in his P.C.R. Petition that Dr. Garrison's analysis of Dr. Leis' testimony was such that he agreed with it or could not dispute it and that any additional testimony of Dr. Garrison would have been exculpatory in nature, the Court will **GRANT** the State's Motion for Summary Dismissal as it relates to the First Cause of Action outlined in Adamcik's P.C.R. Petition.

2. ADAMCIK'S CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT AND IDAHO CONSTITUTION ARTICLE I, SECTION 13, UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 668 (1984) BECAUSE COUNSEL FAILED TO GET IMPORTANT EXPERT TESTIMONY BEFORE THE JURY IN PART BECAUSE THEY FAILED TO OBTAIN THE MURDER WEAPONS FOR TESTING BY THE DEFENSE EXPERT.

Adamcik's Second Cause of Action for post-conviction relief, as outlined in his P.C.R. Petition, alleges that Adamcik was denied effective assistance of counsel because his defense counsel failed to get important expert testimony before the jury. *See* Second Cause of Action, P.C.R. Petition, pp. 14-19. Adamcik alleges that his trial counsel retained a forensic investigator by the name of Rudolf Reit (Reit) to testify at trial. P.C.R. Petition, p. 14, ¶48. Adamcik asserts that his defense counsel's intent with respect to Reit's testimony, was to illicit testimony about

the police procedures used at the crime scene[8] and to have "Reit testify about the results of an experiment he conducted which showed that knives similar but not identical to Exhibits 70 and 74 would make different marks on a body." P.C.R. Petition, p. 14, ¶¶49-50. The claimed import of this testimony was to establish "that Wound #1 was caused by the serrated blade knife." Adamcik's Supporting Memorandum, pp. 2-3, ¶51. Adamcik argues that "Reit's evidence about the knife marks would have corroborated Dr. Leis' testimony that Wound #1 was inflicted with the serrated blade. It could have tipped the balance on that issue and resulted in an acquittal." *Id.*, at p. 8.

In short, Reit was not allowed to testify at trial concerning the tests he had conducted on what have come to be referred to as the "exemplar knives." Further, the defense teams attempt to have the exemplar knives admitted into evidence was similarly denied.

A. INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD

The standard the Court must employ in determining whether or not defense counsel's performance was ineffective has its genesis in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The applicable standard for a trial court, when presented with a claim of ineffective assistance counsel, is summarized by the Idaho Supreme Court in *Booth v. State*, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011) (*Booth*):

[8]The Court will **GRANT** the State's Motion for Summary Dismissal as it relates to that portion of Adamcik's Second Cause of Action which purports that Adamcik's trial counsel planned to have Reit testify about the police procedures used at the crime scene (see P.C.R. Petition paragraph 49) and that this testimony was not elicited due to the deficient performance of one (1) of Adamcik's trial counsel, Bron Rammell, because of ineffective questions and or techniques. *See* P.C.R. Petition, paragraphs 53 (including sub-paragraphs) and 54. First, Adamcik appears to have withdrawn this contention. In Adamcik's Supporting Memorandum he makes no reference to the expected testimony of Reit and "police procedures used at the crime scene." Rather, this assertion is replaced with the assertion that trial counsel intended to have Reit testify "about the different characteristics of the knives used in the attack on Cassie Stoddard." *See* Adamcik Supporting Memorandum, p. 2, ¶ 49. Second, Adamcik has failed to put forth, in the record on summary dismissal, any facts or admissible evidence which would support his contention that whatever this expected testimony was, that by resorting to better questions or techniques would have resulted in the admissibility of this testimony. Without such a showing, the Court cannot make a determination concerning whether the alleged deficient performance reached the level contemplated by *Strickland* and certainly cannot make a determination that the alleged deficient performance was prejudicial as that term has been defined and applied by *Strickland* and its progeny.

> "The right to counsel in criminal actions brought by the state of Idaho is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho State Constitution." *McKay v. State,* 148 Idaho 567, 570, 225 P.3d 700, 703 (2010). A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Baxter v. State,* 149 Idaho 859, 862, 243 P.3d 675, 678 (Ct.App.2010). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *McKeeth v. State,* 140 Idaho 847, 850, 103 P.3d 460, 463 (2004); *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.3d2d at 693.

In *Baldwin v. State*, 145 Idaho 148, 154 177 P.3d 362, 368 (2008) (*Baldwin*), this standard was described as follows:

> To establish deficient assistance, the burden is on the petitioner to show that his attorney's conduct fell below an objective standard of reasonableness. *Ivey v. State,* 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). This objective standard embraces a strong presumption that defense counsel was competent and diligent. *Ivey,* 123 Idaho at 80, 844 P.2d at 709. Thus, the claimant has the burden of showing that his attorney's performance fell below the wide range of reasonable professional assistance. *Berg,* 131 Idaho at 520, 960 P.2d at 741.

B. **DISCUSSION**

The parties approach to this issue diverges in their post-conviction relief briefing. Adamcik, who seeks summary disposition of this claim in Adamcik's M.S.D., argues that defense counsel's performance was deficient under the *Strickland* standard because they "failed to move the Court for permission to have the knives tested" and "mistakenly and unreasonably believed that the state had denied it [sic] access to the evidence." Adamcik's Supporting Memorandum, p. 6. Adamcik argues further that "the Court excluded important defense evidence when Mr. Rammell could have gotten the evidence admitted by use of well-known and simple steps. He could have asked proper questions and he could have obtained the knives before trial and had Mr. Reit conduct the same tests" on the actual knives." *Id.* at p. 8.

The State, in turn, approaches this matter from an entirely different perspective. The State argues that despite the fact that the State objected to this evidence's admission at trial, evidence such as this is "generally admissible" pursuant to I.R.E. 702. State's M.S.D., p. 8. The State continues as follows:

> [I]f hired defense experts used actual or exemplar evidence to advance their theory, the court must be flexible in its approach to its employment to the trier of fact – the jury. Since the gatekeeping function is the court's, it is awkward to claim a theory of deficient performance on the defense counsel. The trial court may have erred in not allowing otherwise admissible evidence to be employed, despite trial defense counsel's significant efforts to have Mr. Reit's expert tests, testimony and evidence be considered by the jury – including the trial court's order to strike a significant portion of Mr. Reit's testimony prior to objection.

Id.

In short, the State attempts to turn this into judicial error with the obvious result being defense counsel was not deficient in its performance, instead the trial court committed error in not allowing this evidence, the testimony, tests, and exemplar knives into evidence.[9]

During defense counsel's direct examination of Reit there is a discussion of various knives and photographs taken by Reit concerning testing he had conducted. At one point during this direct examination, the State objected to Adamcik's defense team's attempt to introduce Defense Exhibits K through G which was the work product of Reit's knife experiments. Adamcik's Supporting Memorandum, p. 3, ¶56. The State objected to the admission of these exhibits arguing as follows:

> MR. HEIDEMAN: I would object. And, you know, Your Honor, I think the witness himself has said this is so far removed from the actual knives, that this

[9]Adamcik, in his Response Memorandum, argues that the State should be judicially estopped from asserting this position in Adamcik's post-conviction relief proceeding, when it asserted the exact opposite during Adamcik's jury trial. The Court need not address the issue of judicial estoppel, because the Court agrees with the rulings of Judge McDermott, at least based upon that portion of the record that has been brought to the Court's attention in these summary dismissal proceeding. Therefore, the Court will not address or rule on Adamcik's assertion of judicial estoppel as it relates to the apparent contradictory positions asserted by the State.

test wouldn't be valid. I should have objected to the first ones, too, because they're not the actual knives used in the test.

I realize I didn't object to the admission of those, but these are certainly objectionable – certainly aren't relevant, and I would object to any testing that he did on the first admissions, also.

Tr. App. p. 2524, LL. 8-19.[10] In ruling on the objection, the trial court has the following dialogue with defense counsel:

THE COURT: All right. Mr. Rammell, this is a court of law and articles being similar to one in evidence and tests being done on an article similar to one in evidence is not sufficient.

The items in evidence could have been released for testing to your witness, as some were, but -- not going to allow this fellow to testify to -- testify on tests run on knives he thinks are similar to one.

Just not going to allow it, so we can shorten this up right now. These will not be admitted, and I'm not going to allow him to give opinions on them. I don't think this is something the jury -- it could mislead them, I don't think it's proper. He hasn't been proven to be an expert in this field.

Also, he has not used the items in evidence for his testing. So on two grounds he should not be allowed to give an opinion -- confuse and mislead the jury, and I don't think it would be proper.

So, we might as well end this right now unless you got more to offer.

Mr. Rammell: Okay. Well, Your Honor, I think that the standard actually is substantially similar. We looked at that and I appreciate --

The Court: Mr. Rammell, this is a homicide case. If you wanted the witness to examine evidence, you could have made a motion and it would have been granted.

He could have examined the items that we had, not talked about something that he thinks -- I emphasize thinks is similar.

I mean, we're talking – we should be talking apples and apples here, but we're talking about items that were found at Black Rock, and then you want – and then

[10]As a result, the State's objection to Exhibits K-G morphed into a successful attempt to strike and exclude Reit's earlier testimony concerning other portions of his investigation and testing which had been introduced without a contemporaneous objection.

> he comes in and says, well, he went out and bought some that looked like. Well, that's not good enough in my opinion. That's not good enough in a homicide case like this.

Tr. App. p. 2524, LL. 20-25, p. 2525, LL. 1-25, and p. 2526, LL. 1-13.[11]

The first important issue for this Court to address is what legal basis did the State advance for its objection, and second, upon what basis did the trial court sustain the objection. The State asserted first that the exemplar knives were not the actual knives and second based upon relevance. *Id.* at p. 2524, LL.13-17.[12] The trial court, in ruling on this objection, never addressed the first prong of the State's objection, relevance. Therefore, there is no need to discuss the same in this MD&O.

The trial court also never identifies the exact legal basis upon which the State's objection is sustained. However, a review of the trial court's discussion of this issue clearly demonstrates that it was for lack of foundation. The lack of foundation appears to be with respect to two (2) essential issues: (1) that it had not been established that Reit was an expert in this field (Tr. App. p. 2525, LL.10-11); and (2) that Reit had not had access to and/or used the items in evidence for his testing (*Id.* at LL.12-13).

On the record before the Court[13] on these cross-motions for summary dismissal, the Court must conclude that it is in full agreement with the trial court's ruling on the State's objection as it

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[11]A discussion then ensues before the jury concerning whether or not the knives in question were available to the defense team or withheld from the defense team by the prosecution. Mr. Rammell claimed that an associate from his office represented that the State had refused the defense team access to these items of evidence, a fact which was strongly refuted by the State.

[12]Although the State never expressed its objection in legal terms, it appears that the second prong of its objection was lack of foundation. In other words, the defense team had failed to lay sufficient foundation to establish that the exemplar knives were the same as or sufficiently similar to the knives in evidence to allow Reit to testify concerning his testing and the results of his testing with the exemplar knives. The State established during its voir dire, in aid of objection, that Reit had never seen the knives in evidence prior to their being introduced into evidence by the State. *See* Tr. App. p. 2516, LL. 24-25, p.2517, LL. 1-10.

[13]The Court emphasizes that it has not conducted an exhaustive review of the Transcript on Appeal. The transcript of the trial portion of these proceedings contains over 3,000 pages of testimony and examination. Rather, the Court has relied, in large part, on counsel for the parties to cite the Court to the relevant portions of the transcript that support their respective positions. This is consistent with summary judgment advocacy and the expectation that the responsibility lies with the parties to point the Court to those portions of the record that support their respective positions. In *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574,

relates to lack of foundation.[14] Therefore, the Court must analyze what Adamcik's defense team might have done differently in order to utilize Reit's testimony, investigation, and test results.

Certainly, the most striking and obvious deficiency is the failure of defense counsel to obtain access to the knives at issue. If these knives had been obtained through discovery and/or motion practice, Reit or some other qualified expert would have been able to determine whether they wanted to perform the tests with the actual knives themselves or if they were able to obtain the same or sufficiently similar knives to perform tests with the exemplar knives.

The Court concludes that there are genuine issues of material fact concerning Adamcik's defense team's conduct and their failure to aggressively seek out and obtain these knives to warrant an evidentiary hearing on this issue. When the Court considers the evidence in the record on summary dismissal in a light most favorable to Adamcik and construes all reasonably inferences to be drawn from that evidence in favor of Adamcik, the Court concludes that a determination could be reached that Adamcik's defense team's performance was deficient as that term has been defined by *Strickland* and its progeny.

Therefore, the Court will **DENY** the State's Motion for Summary Dismissal on this issue. However, the Court does find that genuine issues of material fact exist on this issue, which similarly warrants the Court's **DENYING** Adamcik's counter-request for summary dismissal

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582, 329 P.3d 356, 364 (2014), the Idaho Supreme Court noted that "'[T]he trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring that evidence to the court's attention.' *Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008)."

[14]While stating that the Court is in agreement with the trial court's ruling in this particular instance, this Court will not go so far as to conclude that the exemplar knives and testing conducted by qualified expert with respect to the exemplar knives could never come into evidence. However, it would require much more foundation than this Court has been pointed to in the record by the parties. An expert without having access to the knives in evidence would not be able to testify that they were the same or sufficiently similar to the actual knives. Even if the expert were able to obtain the exact same knives, if he has never seen or possessed the knives in evidence, he lacks information regarding the specific character of the knives in evidence vis a via the exemplar knives. By way of example only, he has no ability to compare what kind of condition the knives in evidence are in: (1) do they have any defects or particular characteristics which have manifested themselves due to use, abuse or age since their purchase. Without having access to the knives in evidence, there is insufficient foundation to establish that the exemplar knives are the same or sufficiently similar to the knives in evidence.

relative to the Second Cause of Action in his P.C.R. Petition.[15] Therefore, the Court will proceed to an evidentiary hearing on Adamcik's Second Cause of Action.

3. ADAMCIK'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT AND IDAHO CONSTITUTION ARTICLE I, SECTION 13 UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 688 (1984), BECAUSE DEFENSE COUNSEL FAILED TO MOVE TO SUPPRESS OR EXCLUDE EVIDENCE AND MADE ILLOGICAL TRIAL DECISIONS WHEN THE STATE THREATENED TO INTRODUCE THAT EVIDENCE.

Adamcik's third cause of action, as outlined in his P.C.R. Petition, alleges that his defense team was deficient due to their failure to move for the suppression of certain items of evidence seized by law enforcement pursuant to various search warrants. *See* Third Cause of Action, P.C.R. Petition, pp. 20-33. Specifically, Adamcik asserts that a "Computer Tower found in the basement TV room of the Adamcik home" and a "notebook" found in Adamcik's bedroom were obtained by law enforcement in violation of his Fourth Amendment under the United States Constitution as well as Article 1, §17 of the Idaho Constitution. *See* Adamcik's Supporting Memorandum, pp. 10-11, ¶¶ 72 and 74.

Adamcik argues that his defense team should have moved to suppress the seizure of these two (2) items on the basis that: (1) there was no probable cause to seize the family computer; (2) the search warrant, issued on September 27, 2006, did not authorize law enforcement to seize computers and was therefore outside of the scope of the search warrant; (3) there was no

[15]The Court recognizes that it has not ruled on the prejudice prong of the *Strickland* two (2) pronged test nor does the Court feel that it is in a position to do so without hearing all of the evidence related to trial counsel's claimed deficient and ineffective performance on this issue. The Court is mindful of the fact, without regard to what its eventual determination is concerning defense counsel's performance on the Reit's knife evidence, that the State presented testimony through its expert Dr. Garrison. This evidence was that two (2) knives were involved in inflicting potentially fatal wounds to Stoddart, one (1) a serrated knife and one (1) a non-serrated knife. It would appear to the Court that in order for Adamcik to prevail on the prejudice component of the *Strickland* two (2) prong test, Adamcik must establish that Reit's testimony, investigation and testing, coupled with Dr. Leis' testimony would have resulted in Dr. Garrison's opinions changing from those expressed in his direct testimony to views and opinions consistent with Dr. Leis and Reit. Without such a result, the jury would still, as the finder of fact, have been free to disregard the testimony of Dr. Leis and Reit as lacking credibility and weight and accept, as being more credible, Dr. Garrison's opinions and testimony. Nevertheless, the Court concludes, at this stage of the proceedings, that genuine issues of material fact exist sufficient to deny both parties' motions for summary dismissal/disposition relative to the prejudice prong of *Strickland's* ineffective assistance of counsel test.

probable cause for the first of two (2) search warrants issued on October 4, 2006; and (4) there was no probable cause for the second search warrant issued on October 4, 2006.[16]

A. INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD

The same standard of review is applicable with respect to this cause of action as Adamcik's second cause of action. Therefore, the Court will not repeat the standard, but refers and incorporates the standard outlined in section 2.A. of this MD&O.

B. DISCUSSION

Adamcik's assertion that his defense team was deficient due to their failure to suppress evidence focuses primarily on two (2) separate pieces of evidence: (1) a notebook obtained incident to a search conducted at the Adamcik residence resulting from a search warrant issued on October 4, 2006; and (2) "'kiddie porn' photographs [that] had been discovered" by the State incident to a search of the computers obtained as part of a search of the Adamcik residence conducted on September 27, 2006 following the issuance of a search warrant issued on the same date.[17] For purposes of the MD&O, the Court will address the ineffective assistance of counsel claim as it relates to the "notebook" and the "kiddie porn" photographs separately.

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[16]Adamcik also asserts additional grounds upon which he contends his defense team should have moved to suppress the State's use of the computer and evidence obtained from the computer and the notebook. These grounds are that evidence found on the computer was not disclosed in a timely fashion by the State, the evidence was not relevant, and finally that the evidence was improper character evidence and the unfair prejudice of the evidence outweighed any probative value as rebuttal evidence. The Court declines to discuss these assertions in the MD&O. These are evidentiary issues which never arose during the trial. In order for the Court to make any conclusions concerning whether any of these assertions have merit, the Court would be required to resort to mere conjecture concerning many possible scenarios that may have played out had the State attempted to use this evidence. However, quite clearly the State did not attempt to introduce this evidence into trial and therefore, the Court will not engage in hypothecating concerning the various scenarios that **could have** played out at trial had there been an attempt to introduce the same. The crux of Adamcik's ineffective counsel claim is grounded in, and must succeed or fail, in his claim that there was no probable cause for the seizure of the computer and/or that seizure of the same exceeded the scope of the warrant, and that the subsequent warrant authorizing the search of the computer for its contents was not supported by probable cause. Further, that there was not probable cause for the seizure of the notebook. This will be the focus of the Court's query, not on evidentiary issues and potential scenarios that are speculative at best. Any claim of ineffective assistance of counsel based upon these hypothetical issues is **DENIED** and State's Motion for Summary Dismissal is **GRANTED** on both the deficiency prong as well as the prejudice prong of the *Strickland* analysis.

[17]The authorization for the search of the computers themselves was authorized by way of a subsequent search warrant issued on October. 4, 2006. This was the second of two (2) search warrants issued on this date.

i. Suppression of Notebook.

Adamcik argues that his defense team was deficient in their failure to move for the suppression of the "notebook" obtained by law enforcement during a search of his home, specifically his bedroom, pursuant to a Search Warrant issued on October 4, 2006. This was the first of two (2) search warrants issued on this date.

The Court will **GRANT** the State's Motion for Summary Dismissal as it relates to Adamcik's claim that his defense team was deficient in failing to move for the suppression of the fruits of the search of the Adamcik residence conducted on October 4, 2006 pursuant to a Search Warrant issued on October 4, 2006. The fruits of this search included the "notebook" in question.

The Court concludes, based upon its review of the evidence advanced in support of the parties' arguments on these cross-motions for summary dismissal, that there was probable cause to support the issuance of the first of the two (2) search warrants issued on October 4, 2006. It was incident to the search conducted following the issuance of this warrant that the "notebook" at issue was located and seized.

As noted by the Idaho Supreme Court in *Baldwin*:

> In a post-conviction proceeding challenging an attorney's failure to pursue a motion in the underlying action, the court properly may consider the probability of success of the motion in question in determining whether the attorney's inactivity constituted incompetent performance. *Boman v. State*, 129 Idaho 520, 526, 927 P.2d 910, 916 (Ct.App.1996).

145 Idaho at 155.

In considering Adamcik's un-filed motion to suppress on this issue, the Court concludes that probable cause existed for the issuance of the first of two (2), Search Warrants issued on

October 4, 2006. The Court therefore, concludes that defense counsel's failure to file a motion to suppress on this issue was not deficient and most certainly was not prejudicial.

When considering a challenge concerning the issuance of a search warrant and whether it was properly supported by a showing of probable cause, the Idaho Court of Appeals has stated as follows:

> When probable cause to issue a search warrant is challenged on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Illinois v. Gates,* 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed.2d 527, 548–49 (1983); *State v. Josehpson*; *State v. Lang,* 105 Idaho 683, 684, 672 P.2d 561, 562 (1983). In this evaluation, great deference is paid to the magistrate's determination. *Gates,* 462 U.S. at 236, 103 S.Ct. 2317, 76 L.Ed.2d at 546–47; *State v. Wilson,* 130 Idaho 213, 215, 938 P.2d 1251, 1253 (Ct.App.1997). The test for reviewing the magistrate's action is whether he or she abused his or her discretion in finding that probable cause existed. *State v. Holman,* 109 Idaho 382, 387, 707 P.2d 493, 498 (Ct.App.1985). When a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid. *State v. Kelly,* 106 Idaho 268, 275, 678 P.2d 60, 67 (Ct.App.1984).
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> The Fourth Amendment to the United States Constitution states:
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> > The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> Article I, Section 17, of the Idaho Constitution is virtually identical to the Fourth Amendment, except that "oath or affirmation" is termed "affidavit." In order for a search warrant to be valid, it must be supported by probable cause to believe that evidence or fruits of a crime may be found in a particular place. *Josehpson*, 123 Idaho at 792-93, 852 P.2d at 1389-90. When determining whether probable cause exists:
>
> > The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Gates, 462 U.S. at 238, 103 S.Ct. at 2332, 76 L.Ed.2d at 548; *see also Wilson*, 130 Idaho at 215, 938 P.2d at 1253.

State v. Belden, 148 Idaho 277, 280, 220 P.3d 1097, 1099 (Ct.App. 2009) (*Belden*).

The affidavit filed in support of the search warrant which was issued contained all of the factual information which was contained in the initial search warrant issued on September 27, 2006. The information contained in the original supporting affidavit provides that: (1) "Adamcik is obsessed with knives[,] guns[,] and horror films"; that "Torey [Adamcik] and his friend Brian Draper are so obsessed with horror films that they are writing their own script for a horror movie"; that "Torey [Adamcik] gave him/her the script about two months ago to read"; that "Torey [Adamcik] has a knife collection that he keeps in the closet of his bedroom"; that "Torey [Adamcik has been heard] bragging about committing the perfect crime and how he watches killing movies and actually takes notes during the movie on how not to get caught when committing a murder"[18]. However, the information contained in the original probable cause affidavit is supplemented with new information obtained from an interview Detective Schei, of the Pocatello Police Department, conducted with April L. Phillips. The Affidavit of Probable Cause dated October 4, 2006, reports that Ms. Phillips had observed "a lot [sic] of knives in Torey's [Adamcik] bedroom closest;" she had been in Torey's [Adamcik] house about five times"; the last time she was in Adamcik's house was "about a month and a half" prior to the interview date; " that Ms. Phillips "thought it was weird that Torey's [Adamcik] knives were hidden from his mom"; Ms. Phillips advised "that Torey [Adamcik] has a place in his bedroom where he hides stuff" this is a "heating vent in his room and he puts his dresser on top of it."

[18]This information is obtained by Bannock County Detective Tom Foltz from a "person who is known to [Detective Foltz] but wishes to remain anonymous." *See* Affidavit of Probable Cause, P.C.R. Petition, Exhibit E.

Based upon the information in this Affidavit of Probable Cause, law enforcement sought and obtained the first search warrant issued on October 4, 2006. This Search Warrant expressly authorized law enforcement to "search for [at the Adamcik residence] and seize all evidence including, but not limited to, bodily fluids, stains, hair fibers and other trace evidence as well as fingerprints, knives, clothing, scripts, journals, video cameras, video tapes and any indicia whatsoever of this crime."

Adamcik's Supporting Memorandum essentially outlines three (3) reasons for his claim that probable cause was lacking. First, he argues that the notebooks "were not found in the alleged hiding place." Instead, they were found in "Torey's [Adamcik] closest." *See* Supporting Memorandum, p. 18. The fact that the notebooks were found in Adamcik's bedroom closet rather than the heater vent, does not invalidate the warrant. Second, Adamcik asserts that there was "no indication in the Affidavit that Ms. Phillips was reliable." *Id.* This is simply inaccurate. While there is no express statement vouching for Ms. Phillips' reliability contained in the Affidavit of Probable Cause; a cursory review of the Affidavit of Probable Cause reveals that much of the information Ms. Phillips provided in her interview was consistent with other information law enforcement had garnered during the course of its investigation. This fact, in and of itself, is evidence of reliability. Further, as outlined in *Belden*, when the Court of Appeals cites to the United States Supreme Court decision in *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527, 548 (1983) (*Gates*), "the task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Applying this language to Ms. Phillips' statements, the

veracity and basis of knowledge appears to relatively high. As noted, the information is consistent with other information law enforcement had acquired from other sources during the course of its investigation and the source of her knowledge is from her own personal observations and dealings with Adamcik. Finally, Ms. Phillips' information, when coupled with the other information contained in the October 4, 2006 Affidavit of Probable Cause, supports the finding of probable cause and the issuance of the Search Warrant in question. As noted in *Gates*, the test is a totality of the circumstances of the test. On the record before this Court on summary dismissal and applying the standard outlined in *Belden* which requires great deference be afforded the magistrate judge issuing the search warrant and reviewing the totality of the circumstances contained in the Affidavit of Probable Cause dated October 4, 2006, this Court cannot find that the Judge Woodland abused his discretion in issuing the requested search warrant. Rather, the Court finds the determination to issue the Search Warrant dated October 4, 2006 to be a practical, commonsense decision, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, that there was a fair probability that evidence of a crime would be found in Adamcik's residence and specifically in his room's closet or heater vent.

The third and last issue raised in Adamcik's Supporting Memorandum appears to be that the information provided by Ms. Phillips is stale or dated. Her information concerning Adamcik's room and house was qualified by her acknowledgement that she had not been in Adamcik's house for approximately one and one half months prior to Stoddart's murder. Similarly, this Court cannot conclude that this information is stale or too remote to be part of the overall basis for issuing a search warrant. Adamcik was living at his parent's residence. There is no evidence that he had any other places where he would keep his private items. As noted in

Belden, the burden of proof is on Adamcik to show that the search was invalid. Adamcik has not come forward with any evidence that items which he had historically kept in his bedroom, closet or heater vent, had been moved or relocated in the intervening month and a half. One and a half months between the time Ms. Phillips was last at Adamcik's residence and the time of the murder does not make Ms. Phillips' information stale under the facts of this case.

Therefore, in applying the rationale outlined in *Baldwin*, this Court concludes that any attempt by Adamcik's defense counsel to suppress the search by which law enforcement came to be in possession of the notebook at issue, would have been unsuccessful and denied by the trial court. Therefore, this issue fails to support Adamcik's claim of deficient performance on behalf of his defense team. Therefore, the Court will **DENY** Adamcik's claim of ineffective assistance counsel on this portion of Adamcik's third cause of action and will **GRANT** the State's request for summary dismissal on this portion of Adamcik's third cause of action.[19]

ii. Suppression of "Kiddie Porn".

Adamcik's argument in support of his post-conviction relief claim relative to his third cause of action, as it relates to the suppression of the evidence of "kiddie porn" is circuitous and complex. In summary, he claims that he has been prejudiced at his trial because of his defense team's deficient performance. This deficient performance consists of a failure to put on any proof of Adamcik's good character and also a failure to put on proof of his co-defendant's, Draper, prior bad acts. Adamcik advances the position that this evidence "formed a large basis of the [Adamcik] defense." Adamcik's Supporting Memorandum, p.22. However, when confronted with the State's threat to use evidence of "'kiddie porn' photographs", which the State had discovered when analyzing the contents of a computer seized by law enforcement

[19]Based upon the Court's ruling, there is no need for the Court to address the prejudice prong of the *Strickland* standard.

incident to the search conducted on September 27, 2006, if Adamcik's defense team called Adamcik's character witnesses, defense counsel relented and abandoned their plan and strategy to put on this character evidence. Therefore, Adamcik contends a "large basis of [Adamcik's] defense" was abandoned and the "critically important [objective] to differentiate Torey [Adamcik] from Brian Draper" was similarly not pursued. Adamcik's Supporting Memorandum, p. 22.

Once again, the critical analysis the Court must grapple with is whether a motion to suppress, if pursued by the defense team, would have resulted in the suppression of the evidence i.e. the computer tower and/or the "kiddie porn" photographs retrieved from the computer tower.

The computer tower in issue was seized by law enforcement pursuant to a Search Warrant issued on September 27, 2006. The basis asserted by law enforcement for the issuance of the September 27, 2006 Search Warrant is contained in the Affidavit of Probable Cause of the same date.

This issue presents a more difficult analysis than the issue arising from the seizure of the notebook. The September 27, 2006 Affidavit of Probable Cause, after outlining the pertinent facts supporting the request, requests authorization "to search for and to seize evidence, including but not limited to, bodily fluids, stains, hair fibers and other trace evidence as well as clothing, knives, scripts, journals, video cameras, video tapes garbage bags, computer, computer programs, cellular telephones and cellular telephone account information, fingerprints and any indicia whatsoever of this crime." *See* P.C.R. Petition, Exhibit E.

However, despite the breadth of this request, the magistrate judge issuing the September 27, 2006 Search Warrant restricted the scope of the Search Warrant to a "search for and seiz[ure of] all evidence including but not limited to bodily fluids, stains, hair fibers and other trace

evidence as well as finger prints and indicia of crime"; despite the fact that the request contained in the September 27, 2006 Affidavit of Probable Cause requested "clothing, knives, scripts, journals, video cameras, video tapes garbage bags, computer, computer programs, cellular telephones and cellular telephone account information." Those items are expressly excluded from the warrant.[20] In this Court's mind, this creates a perplexing and important issue of fact. Did the magistrate judge intend to sign a search warrant authorizing a search consistent with the "requesting language" from the September 27, 2006 Affidavit of Probable Cause **or** did the magistrate judge purposefully delete from the "authorizing language" from the September 27, 2006 Search Warrant language that mirrored the requesting language from the supporting affidavit.[21] If the latter is in fact the case, then it would appear that Adamcik's position has merit and that law enforcement exceeded the scope of the warrant in seizing computers from the Adamcik residence incident to the search conducted on September 27, 2006. At a minimum this creates a genuine issue of material fact sufficient to support the presentation of evidence with respect to this issue.[22]

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[20]This fact is particularly curious to the Court. The Court, having considered and issued many warrants, is familiar with the process of preparation and obtaining warrants. The normal practice is that the party preparing the affidavit of probable cause and the search warrant itself generally will copy and paste the same language, verbatim, from the affidavit requesting permission to search into the search warrant itself. This gives rise to the question - why does the "requesting language" in the supporting affidavit not mirror the "authorizing language" in the September 27, 2006 Search Warrant. Adamcik postulates that the reason for this discrepancy is that the issuing magistrate judge agreed with his position that there was no probable cause to conduct a search for the excluded items and required that portions of the "requesting language" be stricken from the September 27, 2006 Search Warrant before he would sign the same. *See* Adamcik's Supporting Memorandum, p. 16 ("the magistrate judge must have agreed with the above because he did not authorize the seizure or search of any computers"). However, it is also plausible that this discrepancy is merely a scrivener's error and that during the course of preparing the supporting affidavit and the search warrant, an error occurred and a portion of the "requesting language" was inadvertently deleted or not properly copied and pasted into the search warrant itself.

[21]In this Court's mind this also renders moot the inquiry concerning whether there was probable cause pursuant to the September 27, 2006 Affidavit of Probable Cause to authorize seizure of computers. Whether or not there was probable cause becomes moot because law enforcement is authorized to search under the Fourth Amendment of the United States Constitution pursuant to a search warrant. Therefore, if the magistrate, even incorrectly, determines there is not probable cause for the issuance of a search warrant, law enforcement is limited by the parameters of the search warrant issued. *See State v. Bussard*, 114 Idaho 781, 787, 760 P.2d 1197, 1203 (Ct.App. 1988).

[22]If seizing the computers from the Adamcik residence exceeded the scope of the September 27, 2006 Search Warrant, the October 4, 2006 Search Warrant authorizing law enforcement to search the computers it had in its possession must also be invalid because the computers were obtained and possessed by law enforcement illegally.

Therefore, the Court concludes that there are genuine issues of fact when the Court construes the evidence in favor of the non-moving party, Adamcik, and applies all reasonable inferences in Adamcik's favor. Therefore, the Court will require an evidentiary hearing on this issue. In construing this issue in Adamcik's favor, the Court concludes that there are genuine issues of material fact which could support a finding that Adamcik's defense team was deficient in not identifying this issue and seeking to suppress the fruits of this search.

However, despite this lengthy analysis, the Court concludes that Adamcik's claim in this respect must fail under the "prejudice prong of the *Strickland* standard. Therefore, the Court will **GRANT** the State summary dismissal on Adamcik's third cause of action as it relates to his claim that he was prejudiced as a result of his defense team's failure in filing a motion to suppress the evidence of "kiddie porn" photos.

Adamcik's prejudice argument is predicated upon and anchored in a great deal of conjecture and speculation. In summary, this argument goes as follows: had defense counsel successfully suppressed the "kiddie porn" photographic evidence, then they would have put on evidence of Draper's prior bad acts and of Adamcik's good character. All of this may be true. However, Adamcik's argument presupposes that this evidence of Draper's prior bad acts and Adamcik's good character would rise to such a level that it would have tipped the balance in his favor. In other words, would this evidence of Draper's bad acts and Adamcik's good character have been sufficient to convince the jury that he was not guilty first-degree murder?

On Adamcik's direct appeal to the Idaho Supreme Court, the Supreme Court addressed the quantum and sufficiency of the evidence supporting his conviction at the hands of the jury. In doing so, the evidence was chronicled as follows:

Contrary to Adamcik's argument, there is substantial evidence in the record upon which a jury could reasonably conclude, beyond a reasonable doubt, that Adamcik was guilty of first-degree murder. Dr. Skoumal, the medical examiner who performed the autopsy on Stoddart, testified that Stoddart died from *multiple* stab wounds to the trunk. Dr. Skoumal also testified that twelve of the thirty knife-related wounds on Stoddart's body had the potential to be fatal. Of those twelve, Dr. Skoumal was unable to identify the specific wounds that caused Stoddart's death, but it is clear from his testimony that she died as a result of more than one of those twelve stab wounds. According to Dr. Skoumal, one of those wounds, referred to as wound number 1;

> was located in Stoddart's mid, upper chest....
>
> The tissues that it penetrated included the skin, muscle, soft tissue, right rib number three, the mediastinum—which is in the middle of the chest—the pericardial sac—which is the sac overlining the heart—the right ventricle—which is a part of the heart. And there were two cups of blood in the pericardial sac surrounding the heart.
>
> It's my opinion that the vital structures were injured, and it had the potential to be fatal.

In response to a subsequent question from the prosecutor, as to whether wound number 1 was "potentially fatal," Dr. Skoumal answered in the affirmative.

Dr. Garrison testified that at least two knives were used in the murder of Stoddart, one with a serrated blade, and another with a non-serrated blade. Dr. Garrison based this conclusion on the fact that some of the wounds contained excoriations and tears around their edges, which is consistent with the use of a knife with a serrated blade, while other wounds contained no such excoriations or tears, which is consistent with the use of a knife with a non-serrated blade. Dr. Garrison further testified that wound number 1 did not contain any irregular cuts, which would be expected if wound number 1 was inflicted by a knife with a non-serrated blade. From the testimony of these two witnesses, taken together, a reasonable jury could conclude that wound number 1, which was a potentially fatal wound, was inflicted by a knife with a non-serrated blade. Therefore, the jury could have reasonably concluded that two knives were used during the attack on Stoddart, and that both knives inflicted wounds that could have caused Stoddart's death. [Footnote 5 deleted by the Court]

Adamcik's friend, Joe Lucero, testified that he bought four knives for Adamcik and Draper. Lucero said that he used $45 to pay for the knives—$40 from Draper and $5 from Adamcik. Lucero identified four of the State's exhibits as the knives he bought. One of the knives had a serrated blade; the other three knives were

non-serrated. Police found all four knives at the BRC site. Lucero testified that Draper made a point to claim ownership of the serrated knife.

The jury was presented with evidence that two knives inflicted potentially fatal wounds, and that Adamcik and Draper collaborated in the murder. This collaboration is supported by the BRC tape wherein Draper and Adamcik discuss their joint plan to kill Stoddart. The jury was also provided with evidence suggesting that Adamcik and Draper were together immediately after Stoddart's murder, and jointly attempted to hide weapons and clothing used during the commission of the murder. The jury watched the video of police interviewing Adamcik, during which Adamcik made verbal and nonverbal assertions that can reasonably be construed as his confessing to stabbing Stoddart. This evidence, coupled with the testimony provided by the State's experts, is sufficient for a reasonable jury to conclude that: (1) two knives were used to murder Stoddart; (2) both knives inflicted potentially fatal wounds; (3) Draper favored the knife with the serrated blade which inflicted most of the potentially fatal wounds; and (4) the other knife was used by Adamcik to inflict the other stab wound that injured Stoddart's vital structures and which had the potential to be fatal. No evidence was introduced that would contradict such conclusions.

State v. Adamcik, 152 Idaho 445, 460-63, 272 P.3d 417, 432-35 (2012).

In order for Adamcik to survive summary dismissal on this issue, he would be required to establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 446 U.S. at 694. The *Strickland* Court provides further guidance when it states that "a reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

This Court cannot say that even if Adamcik's defense team had put on evidence of Draper's bad acts and/or evidence of Adamcik's good character, that there is a reasonable likelihood that such evidence would have tipped the balance in Adamcik's favor and resulted in the jury disregarding the evidence outlined in the Supreme Court's recitation of evidence supporting the verdict and resulted in the jury finding him not guilty of the first-degree murder of Stoddart. To reach such a conclusion one would be required to resort to speculation and conjecture. In *Harrington v. Richter*, 562 U.S. 86, 131 S.Ct. 770, 792, 178 L.Ed.2d. 624 (2011)

the United States Supreme Court noted that "the likelihood of a different result must be substantial, not just conceivable." As noted in *Rhodes* "[W]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." 148 Idaho at 250, 220 P.3d at 1069. In light of the evidence which is in the record on summary dismissal and which was considered by the jury in the underlying proceeding, this Court will not speculate and in this Court's mind reach the unreasonable inference that the jury's collective judgment and wisdom would have been changed by the introduction of this character evidence.

Therefore, the Court concludes that no genuine issue of fact has been established by Adamcik as it relates to the second *Strickland* prong, prejudice. As such, the Court will **GRANT** the State's Motion for Summary Dismissal as it relates to that portion of Adamcik's third cause of action for ineffective assistance of counsel relative to Adamcik's claim that his defense team failed to move to suppress evidence of "kiddie porn" photographs.

4. ADAMCIK'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT AND IDAHO CONSTITUTION ARTICLE I, SECTION 13 UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 688 (1984), BECAUSE DEFENSE COUNSEL FAILED TO MOVE TO EXCLUDE TOREY'S INVOCATION OF THE RIGHT TO COUNSEL

In his fourth claim, Adamcik argues that he was denied effective assistance of counsel because his defense team failed to move to exclude Adamcik's invocation of the right to counsel in a video that was presented to the jury during the course his trial. *See* P.C.R. Petition, pp. 34-35.

A. Ineffective Assistance of Counsel Standard

The same standard of review is applicable with respect to this cause of action as Adamcik's second cause of action. Therefore, the Court will not repeat the standard, but refers and incorporates the standard outlined in section 2.A. of this MD&O.

B. STANDARD ON INVOCATION OF RIGHT TO COUNSEL

In general, the State may not comment upon or present evidence at trial of a defendant's decision to exercise his right to remain silent or to be represented by counsel. *See Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (*Doyle*)[23] and *Griffith v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965) (*Griffith*).[24] These protections are rooted in the Fifth and Fourteenth Amendment to the United States Constitution.

C. DISCUSSION

There is really no dispute that Adamcik's defense team did not bring such a motion on Adamcik's behalf. Aaron Thompson, one of Adamcik's defense counsel, acknowledges this fact in his deposition when the following dialogue occurs:

> Q. Okay. Did you file a motion to suppress the actual invocation of the right to counsel under Doyle versus Arizona? I mean Doyle versus Ohio?
>
> A. No.
>
> Q. Or Griffith versus California?
>
> A. No.
>
> Q. Okay. And did you have a reason not to do that?

[23] *Doyle* stands for the proposition that the due process clause of the Fourteenth Amendment is violated when a state prosecutor seeks to impeach a defendant's exculpatory story or statements which are told for the first time at trial, by cross-examining the defendant about the defendant's post-arrest silence after receiving *Miranda* warnings.

[24] *Griffith* stands for the proposition that the Fifth and Fourteenth Amendments forbid prosecutorial comment on the accused's silence or failure to testify.

A. I believe -- and this is all on me. I was the one making the decision with regard to how to approach the suppression.

I was so focused on the two aspects. I was focused on one, that there was invocation by Shannon and Sean that should have been respected and I felt like was completely disrespected. And the post-invocation, functional equivalent of counseling that the Doyle argument was not made.

Q. Okay.

A. That would be my fault.

Deposition Aaron Thompson, p. 75, LL. 8-25, p. 76, L.1.

Therefore, there is not any significant dispute concerning whether the Adamcik defense team's performance was deficient with respect to the so called *Doyle* Argument. As Mr. Thompson related, he was so focused on the suppression issue regarding the September 27, 2006 interrogation that he neglected to make the *Doyle* Argument.

The Court would note that this issue was not raised by Adamcik on direct appeal to the Idaho Supreme Court. The Court assumes that the reason this was not raised on direct appeal is that appellate counsel concluded that because the issue had not been raised at the trial level, it had not been preserved for appeal.

As discussed by the United States Supreme Court in *Arizona v. Fulminante*, 499 U.S. 279, 306-07, 111 S.Ct. 1246, 1263, 113 L.Ed.2d 302 (1991) (*Fulminante*), had this matter been raised or addressed on direct appeal to the Idaho Supreme Court the standard would be a "harmless error" standard:

> Since this Court's landmark decision in *Chapman v. California,* 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), in which we adopted the general rule that a constitutional error does not automatically require reversal of a conviction, the Court has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless. See, *e.g., Clemons v. Mississippi,* 494 U.S. 738, 752–754, 110 S.Ct. 1441, 1450–1451, 108 L.Ed.2d

725 (1990) (unconstitutionally overbroad jury instructions at the sentencing stage of a capital case); *Satterwhite v. Texas,* 486 U.S. 249, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988) (admission of evidence at the sentencing stage of a capital case in violation of the Sixth Amendment Counsel Clause); *Carella v. California,* 491 U.S. 263, 266, 109 S.Ct. 2419, 2421, 105 L.Ed.2d 218 (1989) jury instruction containing an erroneous conclusive presumption); *Pope v. Illinois,* 481 U.S. 497, 501–504, 107 S.Ct. 1918, 1921–1923, 95 L.Ed.2d 439 (1987) (jury instruction misstating an element of the offense); *Rose v. Clark,* 478 U.S. 570, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986) (jury instruction containing an erroneous rebuttable presumption); *Crane v. Kentucky,* 476 U.S. 683, 691, 106 S.Ct. 2142, 2147, 90 L.Ed.2d 636 (1986) (erroneous exclusion of defendant's testimony regarding the circumstances of his confession); *Delaware v. Van Arsdall,* 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) (restriction on a defendant's right to cross-examine a witness for bias in violation of the Sixth Amendment Confrontation Clause); *Rushen v. Spain,* 464 U.S. 114, 117–118, and n. 2, 104 S.Ct. 453, 454–455, and n. 2, 78 L.Ed.2d 267 (1983) (denial of a defendant's right to be present at trial); *United States v. Hasting,* 461 U.S. 499, 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983) **(improper comment on defendant's silence at trial, in violation of the Fifth Amendment Self–Incrimination Clause)**; *Hopper v. Evans,* 456 U.S. 605, 102 S.Ct. 2049, 72 L.Ed.2d 367 (1982) (statute improperly forbidding trial court's giving a jury instruction on a lesser included offense in a capital case in violation of the Due Process Clause); *Kentucky v. Whorton,* 441 U.S. 786, 99 S.Ct. 2088, 60 L.Ed.2d 640 (1979) (failure to instruct the jury on the presumption of innocence); *Moore v. Illinois,* 434 U.S. 220, 232, 98 S.Ct. 458, 466, 54 L.Ed.2d 424 (1977) (admission of identification evidence in violation of the Sixth Amendment Counsel Clause); *Brown v. United States,* 411 U.S. 223, 231–232, 93 S.Ct. 1565, 1570–1571, 36 L.Ed.2d 208 (1973)(admission of the out-of-court statement of a nontestifying codefendant in violation of the Sixth Amendment Counsel Clause); *Milton v. Wainwright,* 407 U.S. 371, 92 S.Ct. 2174, 33 L.Ed.2d 1 (1972) (confession obtained in violation of *Massiah v. United States,* 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964)); *Chambers v. Maroney,* 399 U.S. 42, 52–53, 90 S.Ct. 1975, 1981–1982, 26 L.Ed.2d 419 (1970) (admission of evidence obtained in violation of the Fourth Amendment); *Coleman v. Alabama,* 399 U.S. 1, 10–11, 90 S.Ct. 1999, 2003–2004, 26 L.Ed.2d 387 (1970) (denial of counsel at a preliminary hearing in violation of the Sixth Amendment Confrontation Clause).

[Bold Emphasis Added by Court]. The United States Supreme Court goes on to discuss the use of the harmless-error standard in the situation cited above. It states as follows:

> The common thread connecting these cases is that each involved "trial error" – error which occurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt. In applying harmless-error analysis to these many different constitutional violations, the Court has been faithful to the belief that the harmless-error doctrine is essential to preserve the "principle that the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, and promotes public respect for the process by focusing on the underlying fairness of the trial rather than on the virtually inevitable presence of immaterial error." *Van Arsdall*, *supra*, 475 U.S., at 681, 107 S.Ct., at 1436 (citations omitted).

Id. 499 U.S., at 308, 111 S.Ct. 1264.

However, because this issue is raised on post-conviction relief rather than by way of a direct appeal, the applicable standard for this Court's analysis is the second prong of the *Strickland* standard and not the harmless-error standard outlined in *Fulminante*. As has been discussed above with respect to Adamcik's other ineffective assistance of counsel claims *Strickland's* second prong requires a showing of prejudice which requires that Adamcik establish that "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 446 U.S. at 694.

In applying the facts and circumstance before the Court on summary dismissal, the Court concludes that Adamcik's defense team failed to raise the "Doyle Argument" and that said failure was deficient and had this motion been raised, at the trial court level, it likely would have been successful.[25] Therefore, the Court must consider whether this deficiency on the part of the

[25]Further, the Court also concludes that had the issue been raised at the trial court level and denied by Judge McDermott, this Court believes that such a ruling would likely have been deemed to be a trial court error by the Idaho Supreme Court under *Doyle* and *Griffith* and their progeny. However, the Court also concludes that the Supreme Court would have determined that this hypothetical trial court error was harmless-error on a direct appeal.

Adamcik defense team meets the second prong of *Strickland* standard. In order to address this issue, the Court must address the circumstances surrounding Adamcik's invocation of counsel.

The evidence in the record on summary dismissal reflects that Stoddart was murdered on September 22, 2006. Adamcik was first interviewed by law enforcement on September 24, 2006. Adamcik denied "that either he or Brian Draper was involved with Ms. Stoddart's death." Memorandum Decision and Order on Motion to Suppress Videotaped Interview of Torey Adamcik, p. 2. On September 27, 2006, a second Adamcik interview was conducted by law enforcement. This interview was conducted following three (3) separate interviews with Draper and other investigative efforts of law enforcement. During the course of these three (3) interviews, Draper eventually advised that Adamcik had stabbed Stoddart, denying that he had been involved in the actual stabbing himself. He further led law enforcement to a location in Black Rock Canyon to locate various items taken to that location by himself and Adamcik.

Prior to the September 27, 2006 interview with law enforcement, Adamcik and his parents met with counsel. However, counsel did not accompany them to the interview. Although it appears counsel was paid an initial fee for this consultation, it does not appear that counsel was retained to represent Adamcik's interest beyond that initial consultation. It appears that there was a factual dispute between law enforcement and Adamcik's parents concerning circumstances arising immediately prior to the September 27, 2006 interview. Adamcik argued that his mother invoked his right to counsel before this interview and that this invocation was disregarded and ignored by law enforcement. Law enforcement disagrees and contends that the interviews were conducted appropriately under the law. The trial court concluded pursuant to Adamcik's Motion to Suppress Videotaped interview of Torey Adamcik that: (1) law

enforcement and Adamcik's parents discussed having counsel present for the interview; (2) if Adamcik's mother had in fact invoked Adamcik's right to counsel, that invocation had been waived "once they agreed to go forward with the interview, under the condition that they could stop the interview at any time"; and (3) Detectives Ganske, Thomas and Marchand did not coerce [Adamcik's parents] into agreeing to go forward with the interview by threatening them with Torey's possible detention." Memorandum Decision and Order on Motion to Suppress Videotaped Interview of Torey Adamcik, p. 38, ¶¶ 1-3.[26]

Ultimately an interview was conducted at the Pocatello Police Station. Adamcik and his parents were present.[27] This first portion of this interview continued for over an hour and nineteen minutes when Adamcik requested that he be allowed to "talk to with an attorney." *See* Trial Exhibit 12. At this time, the detective primarily in charge of the interview, Detective Ganske, advises "we can do that." *Id.* Adamcik's father then inquires "can you talk to me" and Adamcik responds "probably, ya." *Id.* Adamcik's father then inquires of the detectives concerning whether he can "have a minute with him [referring to Adamcik]." The detective responds "sure" and arrangements are made for a private room to allow this conversation between father and son to take place. *Id.*[28]

After the private conversation with Adamcik and his father, the videotape of the interview resumes again. Once Adamcik and his father have come back into the interview room, Adamcik's father has a brief discussion with the detectives concerning his wife's return. He then

[26]The issues raised by Adamcik through his defense team in the Motion to Suppress Videotaped Interview of Torey Adamcik are not before this Court in this post-conviction relief proceeding.
[27]Adamcik's mother did leave during the course of this interview to pick up her son from a football game.
[28]It should be noted that the entirety of this interview up to and including the request by Adamcik to "talk to with an attorney" was ruled by the trial court to be admissible and played to the jury. *See* trial court's ruling as contained in its Memorandum Decision and Order on Motion to Suppress Videotaped Interview of Torey Adamcik. Again, this issue is not before the Court on post-conviction relief except as it relates to the *Doyle* component.

has a brief exchange with Adamcik before the detectives return to the interview room. The detectives then return to the room and a few comments are made. At this time, the following dialogue takes place:

> Sean Adamcik: He just um – based upon what the lawyer said – he's just worried about telling you guys anything…
>
> Detective Ganske: Well here's the deal…
>
> Detective Thomas: (Interrupting Detective Ganske and Sean): Dad, I think we owe it to you at this point to find out what we know at this point. There's just no easy way to tell you this. We do know that Sean [Detective Ganske corrects supplying the name "Torey"] or excuse me Torey and, um [Detective Thomas supplies the name "Brian"] Brian have gone back in the house, okay, we do know that the two of them murdered, we do know that they murdered Cassie. Okay? We've got the evidence at this point to prove that [Detective Ganske makes a statement that the Court can't quite hear]. We also have some overwhelming evidence – uh trace evidence, that type of stuff that's going to prove that they did it as well. It's not just hearsay. It's not just somebody saying it. And then we do have a confession from another person giving full disclosure.
>
> Sean: (directed to Adamcik) So is that why you want a lawyer?
>
> Detective Ganske: (speaking to Sean) And here's the deal and here's the deal with you. What I would like to do is maybe when your wife comes back sit down and talk with you all and get you up to speed.
>
> Detective Ganske: (speaking to Adamcik) You know what you need to do. You know exactly what happened and you know what you need to do. So unfortunately, you're not going anywhere tonight. You're going to be placed in custody tonight. Okay? Um – I'm sorry that's the way it goes, but …
>
> Detective Thomas: You are going to be charged with First Degree Murder.
>
> Detective Ganske: Okay? But like I said before, before you say anything, I encourage you to talk to an attorney. You should do that. I am not pulling any punches here, still, your – your full cooperation can do nothing but help you at this point in time.

Sean: Do you understand that Torey? You know you need a lawyer or whatever – you want to talk to a lawyer -- I understand that's the advice they gave you today, and then whatever you and the lawyer work out. They want you to cooperate…

Detective Ganske: (speaking to Adamcik) We know the details. We got the knife that you used, we got the mask that you used, we've got the videotape. We've got it. There's a tape up in there that you buried. Okay? You tried to catch it on fire. All that stuff. You know what I'm talking about, I don't need to tell you that.

Sean: This is right, Torey …

Adamcik: Yeah.

Sean: What they are saying is true?

Adamcik: nods in the affirmative.

Trial Exhibit 12.[29]

It is important when considering the second or prejudice prong of the *Strickland* standard that Adamcik's defense team requested that the trial court suppress the entire Adamcik interview of September 27, 2006 on the basis that his mother had initially invoked Adamcik's right to counsel on his behalf, well before he invoked his right to counsel. The trial court denied this motion and this matter is not before the Court on summary dismissal.

The issue before the Court is Adamcik's defense team's failure to seek the suppression of the invocation of his right to counsel. In considering this failure on the record before the Court, it cannot be said that this failure was prejudicial as that term has been defined and applied under the *Strickland* test. Certainly there is no quantitative measurement for prejudice. However, as the Court compares the damage done to Adamcik's defense, utilizing an analogy to earthquakes,

[29]The quoted version of this dialogue as used in this MD&O was prepared by the Court upon viewing and listening to Trial Exhibit 12 and also utilizing the transcribed portion of this interview as contained in the trial court's Memorandum Decision and Order, pp. 30-31.

the dialogue between the detectives and Adamcik's father in which Sean Adamcik asked Adamcik if the detective's recitation of the evidence was true to which Adamcik both replies "yes" and nods in the affirmative registers a 9 plus earthquake on the *Richter* Scale and the invocation of the right to counsel, the tremor that precedes the 9 plus earthquake, registers a 2 on the *Richter* Scale. Any inference of guilt the jury may have drawn from the State's introduction of Adamcik's invocation of his right to counsel is far outweighed by the inferences created from Adamcik's responses to his own father's queries, both of which were expressly ruled upon by the trial court to be admissible and are not the subject of collateral attack in this post-conviction relief proceeding. Any prejudice flowing from this invocation is diluted even further in light of the evidence outlined by the Idaho Supreme Court in Adamcik's direct appeal supporting the jury's verdict in this matter. *Supra.*, pp. 25-27. The Court cannot conclude that the exclusion of Adamcik's invocation of his right to counsel would have created "a reasonable probability that ... the result of the proceedings would have been different" nor does it "undermine the [Court's] confidence in the outcome." *Strickland*, 446 U.S. at 694.[30]

Therefore, despite the fact that the trial team was deficient in its performance in failing to identify and raise the *Doyle* issue with the trial court, this Court concludes that the prejudice prong of the *Strickland* standard has not been met by Adamcik. He has failed to raise a genuine issue of material fact sufficient to survive summary dismissal on this cause of action. As such

[30]The Court recognizes that at the summary dismissal stage of a post-conviction relief proceeding, the Court is to apply the same standard applicable in a summary judgment proceeding under I.R.C.P. 56. This standard requires that the Court construe the evidence in a light most reasonable to the non-moving party. As it relates to the State's Motion for Summary Dismissal, the non-moving party is Adamcik. This standard similarly provides that all "reasonable inferences" must be construed in favor of the non-moving party. However, the Court again relies upon the language in Rhodes "[w]here the evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." 148 Idaho at 250, 220 P.3d at 1069. This Court will make the inference and concludes that to do so would be unreasonable that defense counsel's failure to raise and suppress the *Doyle* issue amounted to prejudice as that term has been utilized in *Strickland* in light of the much stronger inferences to be drawn from Adamcik's responses to his father's queries and the substantial evidence introduced at trial of his guilt.

the Court will **DISMISS** Adamcik's Fourth Cause of Action and **GRANT** the State's Motion for Summary Dismissal alleging ineffective assistance of Adamcik's defense team, on the basis that Adamcik has not raised a genuine issue of fact demonstrating a reasonable probability that the result of his jury trial and the subsequent guilty verdict would have been different had this issue successfully been raised at trial.

5. ADAMCIK'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT AND IDAHO CONSTITUTION ARTICLE I, SECTION 13 UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 688 (1984), BECAUSE THE CUMULATIVE EFFECT OF ALL THE ABOVE INSTANCES OF DEFECIENT PERFORMANCE PREJUDICIED HIM.

Adamcik's fifth cause of action alleges an ineffective assistance of counsel cause of action premised upon the argument that although any one (1) of the above referenced claims of ineffective assistance of counsel may not have resulted in satisfying the prejudice prong of *Strickland*, the cumulative effect of the foregoing alleged multiple instances of ineffective assistance counsel, do satisfy the prejudice prong of *Strickland*. Adamcik's ineffective assistance causes of action as asserted in his P.C.R. Petition are as follows: (1) Second Cause of Action – Failure to Obtain the Murder Weapons for Testing by Defense Expert; (2) Third Cause of Action – Failure to Move to Suppress Evidence, a Notebook and Photographs of "Kiddie Porn"; and (3) Fourth Cause of Action – Failure to Move to Suppress Adamcik's invocation of his right to counsel during the September 27, 2006 interview.

The Court has ruled that Adamcik is entitled to an evidentiary hearing on whether his defense team's failure to request, either through pre-trial discovery and/or motion practice, the actual knives introduced into evidence was deficient under the first prong of the *Strickland* standard, as well as the prejudice prong of *Strickland*. The Court has likewise ruled that there is

a genuine issue of fact concerning whether Adamcik's defense team was deficient in failing to move to suppress the prosecution's use of the "Kiddie Porn" photographs.[31] Finally, the Court has also ruled that Adamcik's defense team was deficient in failing to file a motion to suppress Adamcik's invocation of the right to counsel, the so-called *Doyle* issue.[32]

Because the Court has ruled that there is a genuine issue of material fact on whether Adamcik's defense team was deficient on cause of action two, and because the Court has ruled that Adamcik's defense team was deficient on portions of cause of action three and cause of action four, the Court must **DENY** both parties' motions for summary dismissal on cause of action five. The Court must wait and conduct an evidentiary hearing to review the evidence in support of these three (3) claimed deficiencies and whether the combined cumulative effect of the deficiencies in order determine if the cumulative effect of two (2) or more of these deficiencies gives rise to "a reasonable probability that ... the result of the proceedings would have been different" thereby "undermin[ing] the [Court's] confidence in the outcome." *Strickland*, 446 U.S. at 694.

Therefore, each party's request for summary dismissal of cause of action number five of Adamcik's P.C.R. Petition is hereby **DENIED,** and this cause of action will proceed to evidentiary hearing.

[31]Although the Court granted the State summary dismissal on this cause of action on the basis that there was no genuine issue of fact that would allow this matter to proceed to an evidentiary hearing as it related to the prejudice prong of the *Strickland* standard.

[32]Again, the Court granted summary dismissal on this cause of action on the basis that there was no genuine issue of fact that would allow this matter to proceed to an evidentiary hearing as it related to the prejudice prong of the *Strickland* standard.

6. ADAMCIK'S CLAIM THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF THE SIXTH AMENDMENT AND IDAHO CONSTITUTION ARTICLE I, SECTION 13 UNDER *STRICKLAND V. WASHINGTON*, 466 U.S. 688 (1984), BECAUSE DEFENSE COUNSEL FAILED TO COMMUNICATE A FAVORABLE PLEA OFFER TO HIM.

In his sixth cause of action, Adamcik argues that he was denied effective assistance of counsel because his counsel failed to communicate a favorable plea offer to him. The State seeks summary dismissal of this claim. Adamcik, in turn, concedes that this cause of action is not ripe for summary dismissal, but asserts that due to the existence of genuine issues of material fact, this matter should proceed to an evidentiary hearing. The Court agrees with Adamcik that this claim must proceed to an evidentiary hearing because of the existence of disputed issues of material fact.

Adamcik's P.C.R. Petition is verified. In Adamcik's P.C.R. Petition, he asserts as follows:

> 107. Sometime after February 14[, 2007] and before and the start of the Brian Draper trial [April, 2007], the state made a plea offer to Torey that it would withdraw the request for fixed life and recommended a fixed sentence of 30 years in exchange for Torey pleading guilty to the charges.
>
> 108. Defense counsel never informed Torey or his parents of this offer.
>
> 109. Torey would have accepted this plea offer had he known about it.

P.C.R. Petition, p. 36, ¶¶107-10.[33] In addition Adamcik, in response to the State's Motion for Summary Dismissal on this cause of action, also filed the Heideman Affidavit and Pearson Affidavit (both asserting that the State made an offer to Adamcik's defense team of "life with 30 years fixed in exchange for a guilty plea to the murder charges") along with the Sean Adamcik

[33]As noted earlier in this MD&O, "a verified complaint has the force and effect of an affidavit in support of a motion for summary judgment so long as it conforms to the requirements of Rule 56(e)." *Drennan*, 145 Idaho at 603, 181 P.3d 524, 529, footnote 3.

Affidavit and the Shannon Adamcik Affidavit (both asserting that the State's offer was never communicated to them).

Despite the State's protestations to the contrary, these claims, while in direct contradictions to the assertions of Mr. Rammell, as outlined in his deposition, do create genuine issues of material fact and when construing the evidence in a light most favorable to Adamcik, must be accepted as true at the summary dismissal stage of the proceedings.

In *Missouri v. Frye*, ___ U.S. ___, 132 S.Ct. 1399, 1408, 182 L.Ed.2d 379 (2012) (*Frye*), the United States Supreme Court clearly establishes that "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." The United States Supreme Court then articulates the prejudice prong of the *Strickland* test in the context of a failure to communicate a formal offer from the prosecution in the following terms:

> To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time. Cf. *Glover v. United States,* 531 U.S. 198, 203, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001) ("[A]ny amount of [additional] jail time has Sixth Amendment significance").

132 S.Ct. at p.1409.

Based upon the conflicting affidavits in the record on summary disposition, the Court will **GRANT** Adamcik an evidentiary hearing, and **DENY** the State's Motion for Summary Dismissal relative to both prongs of the *Strickland* test, as it relates to his claim that his defense

team failed to appropriately advise him and his family of a formal plea offer made by the State, and whether the failure of the defense team in communicating this formal offer of a life with a fixed thirty (30) year term, was prejudicial under the analysis outlined in *Frye*.

7. ADAMCIK'S CLAIM THAT HE IS ENTITLED TO SUMMARY DISPOSITION IN HIS FAVOR BECAUSE THE FIXED LIFE SENTENCE IMPOSED PROCEDURALLY AND SUBSTANTIVELY VIOLATED THE EIGHTH AMENDMENT AND ARTICLE 1, §6 PROTECTIONS AGAINST CRUEL AND UNUSUAL PUNISHMENTS UNDER *MILLER v. ALABAMA*, ___ U.S. ___, 132 S.Ct. 2455 (2012)

It is the desire of the Court to issue this MD&O despite the fact that the Court continues to consider further Adamcik's argument arising out of *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012) (*Miller*). The Court continues to evaluate *Miller*, the cases and rationale upon which *Miller* relies in relationship to the Idaho Supreme Court's ruling on Adamcik's direct appeal. However, because of the necessity of an evidentiary hearing on the other causes of action as outlined above and an impending trial date in April, 2015 on those issues, the Court desires to provide the parties with as much advance notice on those issues as possible. It is for this reason that the Court will bifurcate this MD&O and will issue its decision on Adamcik's seventh cause of action shortly in separate Memorandum Decision and Order.

CONCLUSION

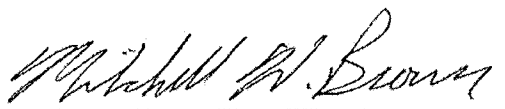
Based upon the foregoing, the Court orders as follows: (1) the State's Motion for Summary Dismissal as it relates to Adamcik's First Cause of Action as outlined in his P.C.R. Petition is **GRANTED**; (2) the State's Motion for Summary Dismissal as it relates to Adamcik's Second Cause of Action is **DENIED**;[34] similarly, Adamcik's Motion for Summary Disposition on this cause of action is also **DENIED**; (3) the State's Motion for Summary Dismissal as it relates to Adamcik's Third Cause of Action is **GRANTED** in part (failure to move to suppress

[34]The Court did **GRANT** the State Summary Dismissal on a small portion of this claim, see *supra.* at footnote 6.

notebook) and **DENIED** in part (failure to move to suppress "Kiddie Porn" photographs and resultant prejudice, if any), Adamcik's Motion for Summary Disposition is **DENIED**; (4) the State's Motion for Summary Dismissal as it relates to Adamcik's Fourth Cause of Action is **DENIED**, Adamcik's Motion for Summary Disposition as to deficient performance is **GRANTED** and as to the prejudice is **DENIED**; (5) the State's Motion for Summary Dismissal of Adamcik's Fifth Cause of Action is **DENIED**, Adamcik's Motion for Summary Disposition is likewise **DENIED**; and (6) the State's Motion for Summary Dismissal on Adamcik's Sixth Cause of Action is **DENIED.**

This matter will proceed to an evidentiary hearing on those issues and claims surviving summary disposition as presently scheduled on April 21 through April 23, 2015.

Dated this 14th day of January, 2015.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of January, 2015, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Dennis A. Benjamin PO Box 2772 Boise, ID 83701	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:
Ian N. Service Courthouse Mail	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:

Deputy Clerk

ADDENDUM B

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

******

TOREY ADAMCIK,	)	Case No. CV-2013-3682 - PC
Petitioner,	)	
vs.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM DECISION AND ORDER ON POST-CONVICTION RELIEF**
STATE OF IDAHO,	)	
Respondent.	)	

This matter came before the Court for a bench trial on July 21 and 22 of 2015. The bench trial addressed a number of Petitioner's, Torey Adamcik ("Adamcik"), claims for post-conviction relief raised in his Petition for Post-Conviction Relief ("P.C.R. Petition"). Adamcik was represented at the evidentiary hearing by counsel, Dennis A. Benjamin and Deborah Whipple. The State of Idaho ("State") was represented by counsel, Ian N. Service.

At the conclusion of the bench trial, and following discussion with counsel, it was determined that the Court would require that a transcript of this bench trial be prepared prior to post-trial briefing. The Court outlined a post-trial briefing schedule to be followed by the parties once the transcript had been completed and provided to the Court and parties. The order required that the parties submit their proposed findings of fact and conclusions of law along with closing arguments in separate submissions to the Court. The Court's order outlined the timing associated with the various post-trial submissions. *See* Order and Briefing Schedule. The parties complied with the Court's briefing schedule by submitting the requested post-trial submissions. Upon the filing of the

parties' post-trial submissions, the Court took the matter under advisement. The Court now enters its Findings of Fact, Conclusions of Law and Memorandum Decision and Order ("F.F.C.L. & M.D.O") as required by Rule 52(a) of the Idaho Rules of Civil Procedure ("I.R.C.P.") and Idaho Code ("I.C.") §19-4907(a).

BACKGROUND AND RELEVANT COURSE OF PROCEEDINGS

Adamcik's P.C.R. Petition arises out of the underlying criminal proceedings in Bannock County Case CR-2006-17984. In this proceeding, Adamcik was charged with and convicted by a jury, of committing the first-degree murder of Cassie Jo Stoddart ("Stoddart"). Adamcik was also convicted of conspiring with co-defendant, Brian Draper (Draper), to commit the first-degree murder of Stoddart. At sentencing, Adamcik was sentenced to a thirty (30) year fixed sentence and an indeterminate life sentence for the conspiracy to commit the first-degree murder charge and a fixed life sentence for the first-degree murder conviction of Stoddart. Adamcik filed a motion seeking a reduction of his sentence pursuant to Idaho Criminal Rule 35 ("I.C.R."). This motion was denied after hearing by the trial court. Adamcik then filed an appeal. In *State v. Adamcik*, 152 Idaho 445, 458-59, 272 P.3d 417, 486-87 (2012) ("*Adamcik*"), the Idaho Supreme Court affirmed Adamcik's conviction and sentence. Adamcik filed a Petition for Rehearing. The Idaho Supreme Court denied the relief sought in Adamcik's Petition for Rehearing. Adamcik then filed a Petition for Writ of Certiorari from the United States Supreme Court. This Petition for Writ of Certiorari was denied. *State v. Adamcik*, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Adamcik filed his P.C.R. Petition in September, 2013. His P.C.R. Petition outlines seven (7) separate claims upon which he requested post-conviction relief.[1] The parties filed cross motions for summary disposition pursuant to I.C. §49-4906(c).

After considering the parties' submissions in support of and in opposition to the various motions for summary disposition, the Court issued its Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal. In doing so, the Court granted summary dismissal in favor of the State on a number of Adamcik's claims for post-conviction relief. *See* Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal.

At the summary disposition stage of these proceedings, the Court also denied portions of the parties' cross motions for summary disposition, concluding that there were triable issues of material fact. The claims that the Court ordered would proceed to trial were as follows: (1) Adamcik's "**SECOND CAUSE OF ACTION**: Torey was Denied Effective Assistance of Counsel at Trial in Violation of the 6th Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because Counsel Failed to get Important Expert Testimony before the Jury in part because they Failed to Obtain the Murder Weapons for Testing by the Defense Expert"; (2) "**FIFTH CAUSE OF ACTION**: Torey was Denied Effective Assistance of Counsel at Trial in Violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because

[1]At Adamcik's request, the Court took judicial notice of the trial transcript in *State v. Torey Adamcik*, Bannock County Case CR-2006-17984. This included the Clerk's Record on Appeal and the "files, affidavits, lodged documents, exhibits and other records in that case." *See* Order Taking Judicial Notice. As such, the Court reserves the right to refer to and rely upon the same in these F.F.C.L. & M.D.O.

the Cumulative Effect of all the above Instances of Deficient Performance Prejudiced him";[2] and (3) "**SIXTH CAUSE OF ACTION:** Torey was Denied Effective Assistance Counsel at Trial in Violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because Trial Counsel failed to Communicate a Favorable Plea Offer to him."

FINDINGS OF FACT

To the extent that any of the Court's Findings of Fact are deemed to be Conclusions of Law, they are hereby incorporated into the Court's Conclusions of Law.

1. When Adamcik was sixteen (16) years of age he was arrested and charged with the crimes of first degree murder and conspiracy to commit murder.

2. Shortly after Adamcik's arrest, Adamcik's family retained the law firm of May, Rammell and Thompson, Chartered to represent his interest in these criminal proceedings. Adamcik was represented at trial and at all stages of the pretrial proceedings by this law firm. Adamcik's defense at trial was primarily handled by attorneys, Gregory C. May ("May"), Bron M. Rammell ("Rammell") and Aaron N. Thompson ("Thompson") (referred to collectively as "Defense Team").

3. In Bannock County Case Number CR-2006-17984, Adamcik was convicted by a jury of first degree murder and conspiracy to commit murder.

4. Following Adamcik's conviction, the Honorable Peter D. McDermott sentenced

[2]Although the Court granted the State's request for summary disposition relative to Adamcik's Third Cause of Action and Fourth Cause of Action, the basis for doing so was that the evidence did not establish prejudice under the second prong of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 280 L.Ed.2d 674 (1984) ("*Strickland*"). However, with respect to both Adamcik's Third Cause of Action and his Fourth Cause of Action, the Court did determine that there were genuine issues of material fact concerning deficient performance on the part of the Adamcik Defense Team, the first *Strickland* prong. As a result, at the evidentiary hearing, the Court did allow Adamcik to put on proof of deficient performance relative to Cause of Action Two (which the Court denied at summary dismissal), Cause of Action Three (which the Court granted summary dismissal on with respect to the prejudice prong), and Cause of Action Four (which the Court granted summary dismissal on with respect to the prejudice prong), for the purpose of attempting to establish that the cumulative effect of the deficient conduct of the Defense Team amounted to prejudice under the second *Strickland* prong.

Adamcik to a thirty (30) year fixed sentence and an indeterminate life sentence for conspiracy to commit first-degree murder and a fixed life sentence for the first-degree murder of Stoddart.

Adamcik's Second Cause of Action

5. Adamcik's Second Cause of Action asserts an ineffective assistance of counsel claim on the basis that Adamcik's Defense Team's conduct at trial was deficient under the first *Strickland* prong. The basis for this claim was that Adamcik's Defense Team failed to get important defense testimony before the jury. The focus of this claim surrounds the expert testimony of Rudolph Reit ("Reit").

6. At trial, the State called Dr. Charles O. Garrison, M.D. ("Dr. Garrison"), a forensic pathologist, to testify. Dr. Garrison, upon direct examination, testified that stab wounds to Stoddart's body were caused by at least two (2) separate knives. Trial Transcript (Tr. App.), p. 2223, L. 23. In regard to Dr. Garrison's testimony that there were at least two (2) separate knives, he testified as follows:

> A. It is my opinion that there were at least two knives used, one of which was a nonserrated blade and one of which was a serrated blade.

Tr. App., p. 2225, LL. 16-19. Dr. Garrison presented a slide show depicting the various wounds to Stoddart's body. In doing so, he demonstrated to the jury both wounds that he contends were inflicted by a knife with a serrated blade and other wounds, including Wound # 1, which he testified were caused by a non-serrated knife. Tr. App, pp. 2205-27. Dr. Garrison's slide show demonstrated the distinct characteristics of wounds caused by the two (2) knives and the distinctions between the wounds that would be caused by the two (2) knives. *Id.*

7. Adamcik's Defense Team retained Dr. Edward Leis, M.D. ("Dr. Leis"), a forensic pathologist, to testify at Adamcik's trial. Dr. Leis' testimony contradicted the testimony of Dr. Garrison. Dr. Leis testified that Wound # 1, which was one (1) of the potentially fatal wounds

according to the testimony of Dr. Steven Skoumal ("Dr. Skoumal"), was caused by a knife with a serrated blade. Tr. App., pp. 2610-15. This testimony contradicted Dr. Garrison's testimony that at least two (2) knives had been used in the attack and supported Adamcik's theory that only one (1) knife was used and that Draper was the individual wielding that one (1) knife.[3]

8. Reit was retained by Adamcik's Defense Team to provide forensic testimony concerning the knives admitted into evidence and purported to be the murder weapons. More to the point, Reit was being asked to testify concerning experiments he had conducted with exemplar knives. Specifically, his testimony was intended to establish that the exemplar knives "would make different marks on a body." P.C.R. Petition, p. 14, ¶ 50. The intended purpose behind Reit's testimony was to corroborate and bolster the testimony of Dr. Leis, the forensic pathologist hired by Adamcik's Defense Team. The purpose of the "knife experiment testimony was to show that Wound # 1 was caused by the serrated blade knife." *Id.*

9. During Reit's trial testimony, the State objected to Adamcik's Defense Team's attempt to introduce Exhibits demonstrating Reit's testimony and the results of his testing. These exhibits were Reit's work product associated with his experiments with the exemplar knives. The apparent basis for the State's objection was relevance and foundation.[4]

10. During the course of the argument concerning the admission of Reit's testimony and proposed exhibits, much of which occurred in front of the jury, counsel for the parties' arguments became heated. Adamcik's counsel, Rammell, argued that the Defense Team did "ask about the testing of the knives and were told that that would not be possible because of the unique characteristics or whatever of the knives." Tr. App., p. 2526, L. 25, p. 2527, LL. 1-5.

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[3]Dr. Garrison's opinion regarding at least two (2) knives being used in the attack on Stoddart was in large part based upon his conclusion that Wound # 1 was caused by a knife with a non-serrated blade.

[4]Although the State never actually articulated the legal basis as being foundation, the argument surrounding the objection is most suggestive of lack of foundation. The State essentially argued that since tests were performed by exemplar knives, rather than the actual knives, both the tests and the opinions derived from such tests are not reliable and should not be admissible. *See* Tr. App., p. 2524, LL. 8-19.

Therefore, Adamcik's Defense Team argued that they were required to use exemplar knives.

11. Counsel for the State, Mark L. Heideman ("Heideman") aggressively disputed Rammell's contention in this regard. Heideman asserted that the State had "given them full access to all the evidence." Heideman ultimately stated that "for Mr. Rammell to stand here now and say the prosecutors or the police prohibited them [Adamcik's Defense Team] from using those knives, that's – that's a lie. That is not true." Tr. App. p. 2528, LL. 10-13.

12. Reit was not allowed to testify at trial concerning his knife experiments and the conclusions drawn from those experiments. Additionally, the exhibits that were the product of his work product were refused admission into evidence. The trial court sustained the State's objection and concluded as follows:

> THE COURT: All right. Mr. Rammell, this is a court of law and articles being similar to one in evidence and tests being done on an article similar to one in evidence is not sufficient.
>
> The items in evidence could have been released for testing to your witness, as some were, but -- not going to allow this fellow to testify to -- testify on tests run on knives he thinks are similar to one.
>
> Just not going to allow it, so we can shorten this up right now. These will not be admitted, and I'm not going to allow him to give opinions on them. I don't think this is something the jury -- it could mislead them, I don't think it's proper. He hasn't been proven to be an expert in this field.
>
> Also, he has not used the items in evidence for his testing. So on two grounds he should not be allowed to give an opinion -- confuse and mislead the jury, and I don't think it would be proper.
>
> So, we might as well end this right now unless you got more to offer.
>
> Mr. Rammell: Okay. Well, Your Honor, I think that the standard actually is substantially similar. We looked at that and I appreciate --
>
> The Court: Mr. Rammell, this is a homicide case. If you wanted the witness to examine evidence, you could have made a motion and it would have been granted.

> He could have examined the items that we had, not talked about something that he thinks -- I emphasize thinks is similar.
>
> I mean, we're talking – we should be talking apples and apples here, but we're talking about items that were found at Black Rock, and then you want – and then he comes in and says, well, he went out and bought some that looked like. Well, that's not good enough in my opinion. That's not good enough in a homicide case like this.

Tr. App. p. 2524, LL. 20-25, p. 2525, LL. 1-25, and p. 2526, LL. 1-13.[5]

13. While making an offer of proof and outside the presence of the jury, it was later established that Brian Cheney, a former associate with Adamcik's Defense Team's firm, had discussed with Detective Ballard, the evidence custodian at the Bannock County Sheriff's Office, Adamcik's Defense Team's desire to "take the knives with him" apparently for the purpose of conducting tests. This request was denied with Detective Ballard advising Mr. Cheney that he could not do so without a Court Order. Tr. App., p. 2534, LL. 21-25, p. 2535, LL. 1-2.

14. It was further discussed, as part of the offer of proof hearing outside the presence of the jury, that Mr. Cheney had a similar conversation with Vic A Pearson ("Pearson") of the Bannock County Prosecuting Attorney's Office and second chair to Heideman at trial. The substance of this conversation was that Mr. Cheney had asked that the Defense Team be allowed access to the knives for testing purposes. This request was rejected due to the approaching Draper trial. Rammell argued that Mr. Cheney took this to mean that the Defense Team "could never test the knives." Tr. App., p. 2535, LL. 14-25. Pearson asserted that such an assumption was entirely unfounded. He argued that during his conversation with Mr. Cheney, "I never told him he couldn't have the knives." Tr. App. p. 2536, LL. 7-10. Pearson asserted that what he told Mr. Cheney was "we were going to be using them for the Draper trial, and that if they

[5]Again, like the State, Judge McDermott does not articulate the legal basis upon which he sustains the State's Objection, but a review of his rationale as articulated above clearly demonstrates that it is based, in part, upon lack of foundation for the testimony.

wanted to use them, he would have to petition the Court to get a Court Order to use them to test them." Tr. App. p. 2536, LL. 12-15.

15. Adamcik asserts, as a basis for his P.C.R. Petition's Second Cause of Action, that the Defense Team's performance was deficient under the first *Strickland* prong. Specifically, Adamcik argues that the Defense Team's failure to obtain the actual knives, either by stipulation or court order, for testing, was deficient under the first *Strickland* prong.

16. Adamcik had Reit testify at the P.C.R. Petition evidentiary hearing. In advance of this testimony, Adamcik obtained access to the actual knives pursuant to a stipulation with the State and an order of the Court. Reit conducted testing with the knives in question and testified at the post-conviction relief evidentiary hearing concerning the tests he had conducted and the opinions he developed incident to the testing.

17. Approximately two (2) to three (3) weeks in advance of trial, Reit performed some tests with the knives at the sally port at the Bannock County Courthouse. The purpose of the testing was to obtain some "exemplars to see if they were similar to what we saw in the photos of the victim." Transcript of Post-Conviction Relief Evidentiary Hearing ("Tr. P.C.R. Ev. Hrg.") p. 262, LL. 17-18. Reit used "pig skin" to conduct his testing "since pig skin simulated human skin." Tr. P.C.R. Ev. Hrg., p. 263, L. 13. In this case, Reit testified that he used a "pork belly". Tr. P.C.R. Ev. Hrg, p. 263, LL. 15-16.

18. Reit used the two (2) knives admitted into evidence at Adamcik's trial, one (1) which has been referred to as a knife with a serrated blade, referred to by Reit as the "Rambo Knife" (Admitted into Evidence at trial as Exhibit 74-A) and the other which has been referred to as a knife with a non-serrated blade, referred to by Reit as the "Tanto Knife". Tr. P.C.R. Ev. Hrg. p.

264, LL. 24-25, p. 265, LL. 1-3.[6]

19. During the course of Reit's testimony, eight (8) different photographs were introduced into evidence reflecting eight (8) different "stabbing demonstrations." Exhibit "I" reflects a "stabbing demonstration" utilizing the Tanto Knife "going all the way in." Tr. P.C.R. Ev. Hrg., p. 270, LL. 22-25, p. 271, LL. 1-2. Exhibit "J" "is a photograph of the Rambo knife with a stab that went all the way to the hilt." Tr. P.C.R. Ev. Hrg., p. 271, LL. 16-17. Exhibit "K" is a photograph reflecting a "stabbing demonstration" "from the tanto knife, and it's halfway in rather than all the way in." Tr. P.C.R. Ev. Hrg., p. 273, LL. 16-17. Exhibit "L" is a photograph of a "stabbing demonstration" made by the Rambo Knife in the same manner as Exhibit "K" "part way." Tr. P.C.R. Ev. Hrg., p. 273, L. 25, p. 274, LL. 1-2. Exhibit M is a "stabbing demonstration" with the Tanto Knife "where the hilt has been colored by eyebrow pencil ... show[ing] where the hilt hit the [pig] skin." Tr. P.C.R. Ev. Hrg., p. 275, LL. 12-15. Exhibit "N" is the same photograph as Exhibit "M" except with the Rambo Knife. Tr. P.C.R. Ev. Hrg., p. 276, LL 14-25, p. 277, LL. 1-5. Finally, Exhibit "O" and "P" depict "stabbing demonstrations" with the knives being "tilted, as might sometimes occur with a stabbing." Tr. P.C.R. Ev. Hrg., p. 277, LL 18-20. Exhibit "O" reflects the "stabbing demonstration" utilizing the Tanto Knife and Exhibit "P" reflects the "stabbing demonstration" utilizing the "Rambo Knife".

20. The conclusion drawn by Reit as a result of these "stabbing demonstrations" utilizing the Tanto Knife and the Rambo Knife was "that wounds made by the Rambo knife could in part be similar to the wounds made by the tanto knife and that the tanto knife wound could be totally accounted for by the Rambo knife, if the Rambo knife is not plunged all the way into the skin." Tr. P.C.R. Ev. Hrg., p. 279, LL. 8-14.

[6]This knife has also been referred to during the trial and these post-conviction relief proceedings as the "Sloan" knife.

21. In explaining this conclusion, Reit testified as follows:

Q. So would you tell us what is different between exhibit K and exhibit L?

A. They both have characteristics of a knife blade that is sharp, sharp. That is, a sharpened edge on the back and a sharpened edge on what you would normally say is the cutting surface.

Q. Okay. And why does exhibit L with the Rambo knife have a sharp, sharp edge in this photograph?

A. Because it had gone part way in. It is sharpened on the back side approximately halfway back on the blade. And then it goes to a squared off thickened blade back. So had it been introduced all the way, it would have a blunt area, but part way it would appear sharp, sharp.

Q. Okay. So exhibit L could -- exhibit K, the tanto wound, and exhibit L appear similar because they are sharp on both sides?

A. That's correct.

Q. Okay. So in this scenario, a wound made by either knife would appear similar?

A. Yes.

Tr. P.C.R. Ev. Hrg., p. 274, LL. 6-25, p. 275, L. 1.

Adamcik's Fifth Cause of Action

22. Adamcik's Fifth Cause of Action asserts an ineffective assistance of counsel claim based upon the cumulative or combined effect of the claims of ineffective assistance of counsel as outlined in Adamcik's P.C.R. Petition, Causes of Action Two, Three, and Four. Adamcik asserts that the combined effect of these claimed deficiencies resulted in prejudice to Adamcik at trial under the second *Strickland* prong.

23. Although the Court did grant summary dismissal on Adamcik's Causes of Action Three and Four, the Court did so on prejudice grounds. The Court did conclude that there were genuine issues of material fact that warranted a trial on the merits concerning whether Adamcik's

Defense Team's performance was deficient under the first *Strickland* prong. *See* Footnote No. 2. As such, the Court must make a determination concerning whether the Adamcik Defense Team's performance, relative to the claims outlined in Adamcik's Causes of Action Three and Four, was deficient. If a determination is made that the Defense Team's performance was deficient, the Court must next determine whether the combined effect of this deficient performance, coupled with the deficient performance with respect to Cause of Action Two, amounted to prejudice under the second *Strickland* prong.

24. Adamcik asserts in his P.C.R. Petition's Third Cause of Action that it was his Defense Team's intention to "call several character witnesses during the trial. P.C.R. Petition, p. 23, ¶ 87. Adamcik's P.C.R. Petition asserts further that it was also his Defense Team's intent "to call witnesses to testify about Brian Draper's prior bad acts." *Id.*, p. 24, ¶ 93. Adamcik asserts in his P.C.R. Petition that "counsel's deficient performance prejudiced Torey because he was deprived of the character evidence which formed a large basis of the defense." *Id.*, p. 32.

25. On September 27, 2006, Detective Tom Sellers of the Idaho State Police submitted an Affidavit of Probable Cause in support of a search warrant. *See* Exhibit "C". This Affidavit of Probable Cause sought a warrant to search the residence located at 1598 Pointview Drive in Pocatello, Idaho. The Court understands this to have been the residence of Adamcik and his family. It also sought a warrant to search a red 1994 Geo Prism.

26. The Affidavit of Probable Cause outlined a lengthy "Statement of Facts in Support of Probable Cause". It then makes a specific request concerning the items law enforcement wishes to "search for and seize as evidence". These requested items were "bodily fluids, stains, hair fibers, and other trace evidence as well as clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephone and cellular

telephone account information, fingerprints." *See* Exhibit "C". This Affidavit of Probable Cause was "subscribed and sworn" to before the Honorable Gaylen L. Box on September 27, 2006.

27. On September 27, 2006, Judge Box signed a Search Warrant authorizing a search of the property and vehicle outlined in the Affidavit of Probable Cause. It also authorized law enforcement to "search for and seize all evidence including but not limited to bodily fluids, stains, hair fibers and other trace evidence as well as fingerprints." *See* Exhibit "B".

28. It is perplexing to this Court that the warrant itself does not authorize the search for or seizure of a computer, even though the Affidavit of Probable Cause request includes computers. In fact, the Search Warrant does not address or include "clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, computers, computer programs, cellular telephones and cellular telephone account information."

29. The Honorable Gaylen L. Box testified at Adamcik's post-conviction relief evidentiary hearing. When Judge Box was asked why computers were not specifically listed on the Search Warrant, he responded as follows:

> I issued the warrant as it was presented to me. I recall no specific discussion concerning the computer.

Tr. P.C.R. Ev. Hrg., p. 136, LL. 2-3.

30. On cross-examination, Judge Box testified, that following his review of the Probable Cause Affidavit, he made no effort to cross-out or delete anything from the Search Warrant itself. Tr. P.C.R. Ev. Hrg., p. 136, LL. 22-25, p. 137, LL. 1-2. However, he did require that the Affidavit of Probable Cause be modified to "provide some basis for the issuance of a nighttime search warrant." *See* Exhibit "C", ¶ 11 and Tr. P.C.R. Ev. Hrg., p. 136, LL. 2-5.

31. Finally, Judge Box testified that when he signs a search warrant he intends to give permission to search for the items identified on the warrant and does not intend to grant

permission to search for items not listed on the search warrant. Tr. P.C.R. Ev. Hrg., p. 139, LL 16-23.

32. Pursuant to the Search Warrant issued by Judge Box on September 27, 2006, law enforcement conducted a search of the Adamcik residence. Incident to that search, law enforcement seized as evidence a "computer tower." *See* Exhibit "D". A review of Exhibit "D" reflects that twenty-five (25) separate items were seized incident to the search of the Adamcik residence and not one of the seized items were "bodily fluids, stains, hair fibers, other trace evidence or fingerprints." In fact, each one of the seized items exceeded the scope of the enumerated items in the Search Warrant.

33. During the course of Adamcik's jury trial, the State notified the Defense Team that it had obtained a computer that had been seized as evidence incident to the September 27, 2006 Search Warrant. The State notified the Defense Team that if it attempted to introduce character evidence, the State would attempt to introduce evidence obtained from the computer. The computer in question contained what has been characterized by Adamcik throughout these post-conviction relief proceedings as "kiddie porn." A CD containing the photographs that have been described as "kiddie porn" was introduced into evidence at the post-conviction relief evidentiary hearing. While the images and photographs are distasteful and do show some nude images, this Court would not characterize the same as "kiddie porn." However, the Court can certainly understand the Defense Team's desire not to have those images and photographs introduced into evidence and shown to the jury.[7]

34. As a result, the Defense Team made a strategic decision not to put on the character evidence that it had originally planned to introduce at trial. Neither did the Adamcik Defense

[7]In this Court's personal view, more concerning from Adamcik's and his Defense Team's perspective, would be the images focusing on Adamcik's fixation with violence and slasher/horror movies. *See* Exhibit "A".

Team attempt to prohibit the threatened introduction of this evidence by way of a motion in *limine* or motion to suppress.[8]

35. The Court heard character testimony evidence from numerous friends, acquaintances and family members touching upon their impression of Adamcik and various positive and upstanding character traits and qualities which they attribute to him.

36. Adamcik himself testified at the post-conviction relief evidentiary hearing addressing issues concerning his Defense Team, trial strategy, and offers or the lack thereof. Finally, he testified in detail concerning is version of the crime and facts and circumstances surrounding the commission of the crime.

37. Adamcik asserts in his P.C.R. Petition's Fourth Cause of Action that his Defense Team was ineffective in its failure to move to exclude Adamcik's invocation of the right to counsel pursuant to *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) ("*Doyle*").

38. Thompson candidly admits that Adamcik's invocation of his right to counsel which occurred during a recorded interview/interrogation that was the subject of a broader motion to suppress "got lost in the shuffle." Tr. P.C.R. Ev. Hrg., p. 34, L. 18.[9] Thompson states that his focus was "on suppressing the entire video." Thompson acknowledges that the *Doyle* argument should have been brought forward.

Adamcik's Sixth Cause of Action

39. Adamcik asserts in his P.C.R. Petition's Sixth Cause of Action that his Defense Team was ineffective because they failed to communicate a favorable plea offer to him.

40. During the course of the post-conviction relief evidentiary hearing, there was

[8]The Court previously ruled on Adamcik's claim that this failure was deficient, concluding that it was not. *See* Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal, p. 17, Footnote No. 16.

[9]Had the broader motion to suppress been granted, certainly that portion of the interrogation where Adamcik invokes his right to counsel would have been excluded along with the balance of the interrogation.

considerable testimony offered by Adamcik that the State made an offer to Adamcik's Defense Team and that the content of this offer was never communicated or passed on to Adamcik or his family.

41. Both of these issues were disputed. The Adamcik Defense Team both disputed the conveyance of the offer, and there failure to communicate offers to Adamcik.

42. The offer testified to by both Heideman and Pearson provided that if Adamcik would enter a guilty plea to the murder count, the state would recommend a life sentence with a thirty (30) year determinate sentence. The offer also provided that the conspiracy charge would be dismissed.

43. Adamcik testified at the post-conviction relief evidentiary hearing that he would have accepted such an offer if the same had been communicated to him.

44. At the post-conviction relief evidentiary hearing, the Honorable Peter D. McDermott was asked to testify.

45. Judge McDermott was asked "what his sentence would have been had Torey accepted this plea offer and entered a plea under the plea agreement." Tr. P.C.R. Ev. Hrg., p. 315, LL 22-25, p. 317, LL 3-4. Judge McDermott initially expressed difficulty in answering this hypothetical question. However, in doing so he stated "looking back on everything, all I can say is that I believe the sentence that I imposed was appropriate given all that I heard in the courtroom and all of the documents that I reviewed." *Id.*, p. 316, LL. 13-16. When additional questions were asked addressing this same topic Judge McDermott responded further. The dialogue went as follows:

> Q. Okay. So what I understand your testimony is, you cannot come to a conclusion?
>
> A. Well you know, Dennis, we're talking eight years ago. If that would have

been presented to me, its likely that I would have not gone along with it.

Q. Would there be a reasonable probability that you would have given a sentence less than life without the possibility of parole?

A. You know, I don't think so. I think, given the crime and all that transpired in the courtroom, and all of the documents I read, I feel that the sentence was appropriate.

Id., p. 317, LL. 19-25, p. 318, LL. 1-5.

CONCLUSIONS OF LAW

To the extent that any of the Court's Conclusions of Law are deemed to be Findings of Fact, they are hereby incorporated into the Court's Findings of Fact.

1. Adamcik filed his P.C.R. Petition on September 27, 2013.

2. At the summary disposition stage of these proceedings, the Court granted the State's Motion for Summary Dismissal with respect to Adamcik's First Cause of Action as contained in his P.C.R. Petition. The Court now reaffirms those conclusions of law.

3. At the summary disposition stage of these proceedings, the Court granted the State's Motion for Summary Dismissal with respect to Adamcik's Third Cause of Action as contained in his P.C.R. Petition. The Court now reaffirms those conclusions of law.

4. At the summary disposition stage of these proceedings, the Court granted the State's Motion for Summary Dismissal with respect to Adamcik's Fourth Cause of Action as contained in his P.C.R. Petition. The Court now reaffirms those conclusions of law.

5. At the summary disposition stage of these proceedings, the Court granted the State's Motion for Summary Dismissal with respect to Adamcik's Seventh Cause of Action.[10]

6. At the summary disposition stage of these proceedings, the Court denied summary

[10]The Court would note that Adamcik recently filed his Second Motion for Reconsideration on this issue. This matter has been set for hearing and the Court will consider the arguments of counsel regarding this Second Motion for Reconsideration. The Court understands that this Second Motion for Reconsideration is based, in large part, upon the United States Supreme Court's recent decision in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

disposition with regard to Adamcik's Second Cause of Action, Fifth Cause of Action[11], and Sixth Cause of Action, concluding that there were genuine and triable issues of fact that required an evidentiary hearing.

7. In July of 2015, the Court conducted an evidentiary hearing. The Court heard testimony from the following witnesses: (1) Mary Nelson; (2) Nathan Nelson; (3) David Nelson; (4) Ann Adamcik; (5) Aaron Thompson; (6) Shannon Adamcik; (7) Sean Adamcik; (8) Honorable Gaylen L. Box; (9) Barbara Adamcik; (10) Rusty Adamson; (11) Lacey Adamcik; (12) Joy Nelson; (13) Robert Nelson; (14) Mark Heideman; (15) Vic A Pearson; (16) Rudolf Reit; (17) Bron Rammell; (18) Honorable Peter D. McDermott; (19) Kelly Kumm; (20) David Luras; and (21) Torey Adamcik. Certain exhibits were admitted into evidence. The Court took judicial notice of other documents. *See* Order Taking Judicial Notice.

8. Post-Conviction relief proceedings are governed and authorized by the Uniform Post-Conviction Procedure Act ("UPCPA") which is codified at I.C. § 19-4901 through 4911.

9. A petition for post-conviction relief initiates a civil proceeding, a proceeding governed by the I.R.C.P. *Rhodes* v. *State*, 148 Idaho 247, 249, 220 P.3d 1066, 1068 (2009).

10. Just as a plaintiff in a civil lawsuit must establish their claims by a preponderance of the evidence, a petitioner in a post-conviction relief proceeding must "prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based." *State v. Yakovac*, 145 Idaho 437, 443, 180 P.3d 476, 482 (2008). *See also* Idaho Criminal Rule I.C.R. 57(c).

[11]Adamcik's Fifth Cause of Action asserts that Adamcik was denied effective assistance of counsel at trial in violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 and *Strickland* because of the cumulative effect of all of the claimed issues of ineffective assistance of counsel as outlined in Adamcik's First through Fourth Causes of Action. As noted above, the Court granted the State's Motion for Summary Dismissal on Adamcik's Third and Fourth Causes of Action. The Court did so based upon the second *Strickland* prong, prejudice. However, with respect to both Adamcik's Third and Fourth Causes of Action, the Court did find that there were genuine and triable issues of fact concerning whether Adamcik's Defense Team's performance was deficient. Therefore, the Court in considering Adamcik's Fifth Cause of Action, must necessarily consider and make a determination concerning whether Adamcik's Defense Team's performance was deficient with respect to Adamcik's Second, Third and Fourth Causes of Action and if so whether said deficiencies, when combined together, satisfy the second *Strickland* prong of prejudice.

11. "A post-conviction applicant has the burden of proving the grounds upon which he seeks relief" by a preponderance of the evidence. *Sanders v. State*, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct.App.1990). The trial court, as the finder of fact in post-conviction relief proceedings, is to assess "the credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence." *Grube v. State*, 134 Idaho 24, 27, 995 P.2d 794, 798 (2000).

12. Where there is competent and substantial evidence to support the district court's decision made after an evidentiary hearing on an application for post-conviction relief, that decision will not be disturbed on appeal. *Id.*

Adamcik's Second Cause of Action

13. The standard the Court must employ in determining whether or not defense counsel's performance was ineffective has its genesis in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) ("*Strickland*"). The applicable standard for a trial court, when presented with a claim of ineffective assistance counsel, is summarized by the Idaho Supreme Court in *Booth v. State*, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011) ("*Booth*"):

> "The right to counsel in criminal actions brought by the state of Idaho is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho State Constitution." *McKay v. State,* 148 Idaho 567, 570, 225 P.3d 700, 703 (2010). A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Baxter v. State,* 149 Idaho 859, 862, 243 P.3d 675, 678 (Ct.App.2010). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *McKeeth v. State,* 140 Idaho 847, 850, 103 P.3d 460, 463 (2004); *Strickland,* 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.3d2d at 693.

14. In *Baldwin v. State*, 145 Idaho 148, 154 177 P.3d 362, 368 (2008) ("*Baldwin*"), this ineffective assistance of counsel standard was described as follows:

> To establish deficient assistance, the burden is on the petitioner to show that his attorney's conduct fell below an objective standard of reasonableness. *Ivey v. State,* 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). This objective standard embraces a strong presumption that defense counsel was competent and diligent. *Ivey,* 123 Idaho at 80, 844 P.2d at 709. Thus, the claimant has the burden of showing that his attorney's performance fell below the wide range of reasonable professional assistance. *Berg,* 131 Idaho at 520, 960 P.2d at 741.

15. The second *Strickland* prong is the prejudice prong. In addressing this prong of the *Strickland* two (2) prong test, the *Strickland* Court stated that the evidence must establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

16. *Strickland* also provides additional guidance by defining the phrase "reasonable probability" as "a probability sufficient to undermine confidence in the outcome." *Id.*

17. In *Harrington v. Richter,* 562 U.S. 86, 111-12, 131 S.Ct. 770, 791-92, 178 L.Ed.2d 624 (2011) ("*Harrington*"), the United States Supreme Court once again articulated this standard in the following terms:

> In assessing prejudice under *Strickland,* the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. See *Wong v. Belmontes,* 558 U.S. 15, 27, 130 S.Ct. 383, 390, 175 L.Ed.2d 328 (2009) *(per curiam)* (slip op., at 13); *Strickland,* 466 U.S., at 693, 104 S.Ct. 2052. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.,* at 696, 104 S.Ct. 2052. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.,* at 693, 697, 104 S.Ct. 2052. The likelihood of a different result must be substantial, not just conceivable. *Id.,* at 693, 104 S.Ct. 2052.

18. In the present case, the Court concludes, after considering all of the evidence and pursuant to the Court's findings of fact, that Adamcik's Defense Teams' performance relative to the issue of obtaining the knives, testing the knives and presenting testimony concerning the knives and the theory espoused by Reit, which was supportive of the expert testimony of Dr. Leis, was deficient

and did fall below an objective standard of reasonableness.

19. The Court concludes that Adamcik's one (1) knife theory was an important component of the Adamcik defense. It matters not in this Court's analysis whether the Adamcik Defense Team was told "no" when they requested access to the knives for testing purposes or whether they just mistakenly concluded, based upon the conversations Mr. Cheney had with Detective Ballard and Pearson, that the State's position was that they could not have access to the knives as was testified to by Pearson. The deficient performance was the Defense Team's failure to insist upon access to the knives either by way of further dialogue with the State, which presumably would have identified and cleared up any confusion or miscommunication, if such confusion existed, or by motion practice before the trial court, specifically requesting access to the knives.[12]

20. However, without access to these knives, the Defense Team was not able to lay the foundation necessary to get Reit's opinions and test results before the jury. Reit's opinions, as presented at the post-conviction relief evidentiary hearing did support and corroborate Dr. Leis' opinion. Dr. Leis' opinion, coupled with Reit's opinion and testing, did support Adamcik's "one knife theory."

21. The Court concludes that while the first prong of *Strickland* has been satisfied, the prejudice prong has not been met. This Court, after considering the evidence before the Court and the Court's Findings of Fact, concludes that Adamcik has not established prejudice flowing from the Defense Team's deficient conduct relative to the knives, Dr. Reit and his testing and

[12]The Court must assume that such a motion would have been granted, in fact Judge McDermott intimated as much in his ruling. *See* Finding of Fact No. 12. The Court also concludes that it is unfortunate that Judge McDermott, after allowing the dialogue outlined in Findings of Fact Nos. 10, 11, and 12 to occur in the presence of the jury, did not craft some type of curative instruction to the jury designed to alleviate the remarks of Heideman characterizing Rammell as a liar. The discussions which occurred during Rammell's offer of proof clearly established that the Defense Team had been denied access to knives by both Detective Ballard and Pearson. It matters not to this Court that the Defense Team may have read more into those refusals than intended. The characterization of Rammell as a liar was both inaccurate and unprofessional in the setting in which it occurred. *See* Findings of Fact Nos. 13-14. However, the Court concludes that no prejudice under the second *Strickland* prong resulted from this characterization. See Conclusion of Law No. 21 and Footnote No. 13.

opinions.[13]

22. This Court did not preside over the jury trial which resulted in Adamcik's conviction. As a result the Court did not see and hear all of the evidence presented to the jury. However, the Court, in its consideration of Adamcik's P.C.R. Petition, the summary disposition proceedings and presiding over the evidentiary hearing, has read large portions of the transcript of the trial and reviewed and considered many of the exhibits introduced at said trial. This Court acting in its capacity as the presiding judge in Adamcik's post-conviction proceeding subscribes to the same viewpoint expressed by the Idaho Supreme Court in Adamcik's direct appeal to the Idaho Supreme Court. In this decision, the Idaho Supreme Court in addressing the sufficiency of the evidence introduced at Adamcik's trial stated as follows:

> Contrary to Adamcik's argument, there is substantial evidence in the record upon which a jury could reasonably conclude, beyond a reasonable doubt, that Adamcik was guilty of first-degree murder. Dr. Skoumal, the medical examiner who performed the autopsy on Stoddart, testified that Stoddart died from *multiple* stab wounds to the trunk. Dr. Skoumal also testified that twelve of the thirty knife-related wounds on Stoddart's body had the potential to be fatal. Of those twelve, Dr. Skoumal was unable to identify the specific wounds that caused Stoddart's death, but it is clear from his testimony that she died as a result of more than one of those twelve stab wounds. According to Dr. Skoumal, one of those wounds, referred to as wound number 1;
>
> > was located in Stoddart's mid, upper chest....
> >
> > The tissues that it penetrated included the skin, muscle, soft tissue, right rib number three, the mediastinum—which is in the middle of the chest—the pericardial sac—which is the sac overlining the heart—the right ventricle—

[13]A review of Adamcik's Proposed Findings of Fact and Conclusions of Law and Closing Argument suggests that because Heideman called Rammell a "liar" and because the trial court "chastised" Rammell in front of the jury concerning his performance and approach with respect to Reit, that Adamcik was prejudiced. While this Court agrees that trial counsel never wants to be reprimanded by the trial court in the presence of the jury, this Court cannot find that this discussion and chastisement, as it has been characterized by Adamcik's current counsel, amounted to prejudice as that term has been defined and applied in *Strickland* and its progeny. First, this Court has confidence that the Adamcik jury possessed the capacity to set aside this dialogue between the prosecutor, the trial court and Rammell and decide Adamcik's guilt or innocence based upon the admitted evidence and not a dialogue between the trial court and counsel as instructed by the trial court in its jury instructions. Second, in order to establish prejudice under the second *Strickland* prong, the evidence must reach a heightened level that but for this chastisement and dialogue, there is a reasonable probability a different result would been reached by the jury. The Court cannot reach such a conclusion on this record. The fact that this dialogue occurred and that Rammell was called a "liar" by Heideman and "chastised" by the trial court, does not "undermine" the Court's "confidence in the outcome" of this jury trial based upon its review of the testimony admitted both at the underlying trial phase and in the post-conviction relief proceedings.

which is a part of the heart. And there were two cups of blood in the pericardial sac surrounding the heart.

It's my opinion that the vital structures were injured, and it had the potential to be fatal.

In response to a subsequent question from the prosecutor, as to whether wound number 1 was "potentially fatal," Dr. Skoumal answered in the affirmative.

Dr. Garrison testified that at least two knives were used in the murder of Stoddart, one with a serrated blade, and another with a non-serrated blade. Dr. Garrison based this conclusion on the fact that some of the wounds contained excoriations and tears around their edges, which is consistent with the use of a knife with a serrated blade, while other wounds contained no such excoriations or tears, which is consistent with the use of a knife with a non-serrated blade. Dr. Garrison further testified that wound number 1 did not contain any irregular cuts, which would be expected if wound number 1 was inflicted by a knife with a non-serrated blade. From the testimony of these two witnesses, taken together, a reasonable jury could conclude that wound number 1, which was a potentially fatal wound, was inflicted by a knife with a non-serrated blade. Therefore, the jury could have reasonably concluded that two knives were used during the attack on Stoddart, and that both knives inflicted wounds that could have caused Stoddart's death. [Footnote 5 deleted by the Court]

Adamcik's friend, Joe Lucero, testified that he bought four knives for Adamcik and Draper. Lucero said that he used $45 to pay for the knives—$40 from Draper and $5 from Adamcik. Lucero identified four of the State's exhibits as the knives he bought. One of the knives had a serrated blade; the other three knives were non-serrated. Police found all four knives at the BRC site. Lucero testified that Draper made a point to claim ownership of the serrated knife.

The jury was presented with evidence that two knives inflicted potentially fatal wounds, and that Adamcik and Draper collaborated in the murder. This collaboration is supported by the BRC tape wherein Draper and Adamcik discuss their joint plan to kill Stoddart. The jury was also provided with evidence suggesting that Adamcik and Draper were together immediately after Stoddart's murder, and jointly attempted to hide weapons and clothing used during the commission of the murder. The jury watched the video of police interviewing Adamcik, during which Adamcik made verbal and nonverbal assertions that can reasonably be construed as his confessing to stabbing Stoddart. This evidence, coupled with the testimony provided by the State's experts, is sufficient for a reasonable jury to conclude that: (1) two knives were used to murder Stoddart; (2) both knives inflicted potentially fatal wounds; (3) Draper favored the knife with the serrated blade which inflicted most of the potentially fatal wounds; and (4) the other knife was used by Adamcik to inflict the other stab wound that injured Stoddart's vital structures and which had the potential to be fatal. No evidence was introduced that would contradict such conclusions.

State v. Adamcik, 152 Idaho 445, 460-62, 272 P.3d 417, 432-34 (2012).[14]

23. Certainly, Reit's aborted testimony and testing was intended by the Adamcik Defense Team to corroborate and strengthen Dr. Leis' testimony and bolster and support Adamcik's one (1) knife theory. However, this Court cannot find that it is "reasonably probable" that had the Defense Team obtained the knives in question, conducted the tests that were performed in the post-conviction relief proceeding, elicited the testimony from Reit that was elicited at the post-conviction evidentiary hearing, and introduced the exhibits that were admitted at the post-conviction relief proceeding at Adamcik's trial, that "the result of the proceeding would have been different."

24. This Court did not have the opportunity to observe and hear the testimony of Dr. Garrison and Dr. Leis. However, the jury did. It appears that the jury found Dr. Garrison to be more credible than Dr. Leis with respect to this issue. The jury heard a great deal of detailed testimony from Dr. Garrison on this point concerning his opinion that more than one knife was used in the attack and murder of Stoddart. *See* Finding of Fact No. 6.

25. Reit's testing and testimony in no way disproves Dr. Garrison's conclusion that two (2) knives were used during the course of the Stoddart attack and murder. While Reit's testimony and testing is consistent with Dr. Leis' testimony, his testimony and testing are equally consistent with Dr. Garrison's testimony and opinions. The only thing established by Reit's post-conviction evidentiary hearing testimony is that the effect of stab wounds by both knives would appear, and did appear in his testing, similar if the knife that has been referred to as the

[14]The only correction or clarification this Court would make with respect to the foregoing statement, based upon this Court's review of the transcript, evidence and presiding over the post-conviction relief evidentiary hearing, is the last sentence of the foregoing quote, that "no evidence was introduced that would contradict such conclusions." This Court believes that there was evidence offered by the Adamcik Defense Team contradicting the evidence that two (2) knives were used and that two (2) knives inflicted the potentially fatal wounds. This contradicting evidence was introduced in the form of Dr. Leis' testimony which suggested that Dr. Garrison's conclusion of "at least two knives" was inaccurate, at least as it related to "Wound 1." *See* Finding of Fact No. 7.

Rambo Knife only penetrated half way into the knife blade as opposed to all the way to the hilt of the knife. *See* Findings of Fact Nos. 19 and 20.

26. While it is certainly possible that Reit's testimony and testing could have been viewed by jurors as supporting Dr. Leis' testimony; it is more probable, in this Court's view, that such testimony would have been viewed as supporting Dr. Garrison's testimony.[15] To conclude that Defense Team's failure to secure the knives and have Reit testify concerning his testing and opinions at trial as he did in the post-conviction relief proceeding effected the outcome of Adamcik's trial would require this Court to speculate to a point that this Court is not comfortable as the finder of fact in these post-conviction relief proceedings. The addition of Reit's testimony and testing does not "undermine [this Court's] confidence in the outcome" of Adamcik's jury trial. In fact, if anything it confirms in this Court's mind Dr. Garrison's testimony. *See* Footnote 15. As stated by the United States Supreme Court in *Harrington*, "the likelihood of a different result must be substantial, not just conceivable." 562 U.S. 86, 111-12, 131 S.Ct. 770, 791-92.

27. Based upon the foregoing, the Court will **DENY** Adamcik's P.C.R. Petition with respect to his Second Cause of Action. Although the Court has found that the first *Strickland* prong was established by a preponderance of the evidence, the Court concludes that Adamcik has failed to establish the second *Strickland* prong. Specifically, Adamcik has not established "a reasonable probability that, but for [Adamcik's Defense Team's] unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. Additionally the introduction of this evidence at the post-conviction relief evidentiary hearing does not "undermine [this Court's] confidence in the outcome" of Adamcik's jury trial and the subsequent

[15]In this Court's mind, as the finder of fact in this post-conviction relief proceeding, it is a far more probable inference that the stabbing would have resulted in the knife being inserted in such a manner that it would have been stopped by the impact of the hilt upon the person or body of the victim. It is less probable that the stab would stop halfway up the blade. This was a violent attack accompanied by high emotion and great force. It seems improbable to the Court that the emotions, adrenaline and physicality associated with this attack would result in a circumstance where the knife would be withdrawn before it was forcibly stopped due to the hilt's impact with the victim's person or body.

verdict. *Id.*

Adamcik's Fifth Cause of Action

28. For purposes of Adamcik's Fifth Cause of Action, this Court hereby incorporates Conclusions of Law Nos. 13 through 17 as if set forth in full herein.

29. Adamcik's asserts that the actions, or rather the omissions, of the Defense Team in making the strategic decision not to offer character evidence on Adamcik's behalf was deficient under the first *Strickland* prong. Adamcik also asserts that the Defense Team's failure to file a motion in *limine* or a motion to suppress the State's threats of using the so called "kiddie porn" evidence was deficient under the first *Strickland* prong.

30. This Court concludes that it was not deficient conduct under the first prong of *Strickland* for Adamcik Defense Team to fail to move to suppress the evidence of so called "kiddie porn".

31. As outlined in *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct.App.1989) (*Davis*), a post-conviction relief petitioner bears a heavy burden in proving that his attorney's performance was deficient. Due to the distorting effects of hindsight associated with evaluating defense counsel's conduct at trial, "there is a strong presumption that counsel's performance was within the wide range of reasonable professional assistance – that is, sound strategy" *Id.* (Citing *Strickland*). The *Davis* Court continues by stating that because of the presumption in favor of trial counsel's performance being reasonable, "strategic or tactical decisions made by trial counsel will not be second guessed on review, unless those decisions are made upon a basis of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation." *Id.*

32. This Court concludes, upon a complete and thorough review of the Affidavit of

Probable Cause, Exhibit "C", that the scope of the Search Warrant signed by Judge Box was more restrictive than the request made by the Affidavit of Probable Cause was due exclusively to a scrivener's error.

33. The Probable Cause Affidavit requesting authority to conduct the search was very detailed in the facts outlined in support of a search warrant. It was very descriptive concerning the information and facts upon which the Search Warrant was being requested.

34. In this Court's view, the Affidavit of Probable Cause established probable cause for the issuance of a warrant allowing a search for and seizure of evidence as outlined in the Affidavit of Probable Cause, i.e. "clothing, knives scripts, journals, video cameras, video tapes, garbage bags, computer, computer programs, cellular telephones and cellular account information."

35. Each of the foregoing items were specifically requested in the Affidavit of Probable Cause and inexplicably not included in the Search Warrant signed by Judge Box.

36. The Idaho Court of Appeals in *State v. Belden*, 148 Idaho 277, 220 P.3d 1096 (Ct.App.2009) (*"Belden"*) provides a lengthy, but good analysis of what constitutes probable cause for the issuance of a search warrant and the process the issuing magistrate must follow in determining whether a warrant should issue.

> When probable cause to issue a search warrant is challenged on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Illinois v. Gates,* 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed.2d 527, 548–49 (1983); *State v. Josephson,* 123 Idaho 790, 792, 852 P.2d 1387, 1389 (1993); *State v. Lang,* 105 Idaho 683, 684, 672 P.2d 561, 562 (1983). In this evaluation, great deference is paid to the magistrate's determination. *Gates,* 462 U.S. at 236, 103 S.Ct. 2317, 76 L.Ed.2d at 546–47; *State v. Wilson,* 130 Idaho 213, 215, 938 P.2d 1251, 1253 (Ct.App.1997). The test for reviewing the magistrate's action is whether he or she abused his or her discretion in finding that probable cause existed. *State v. Holman,* 109 Idaho 382, 387, 707 P.2d 493, 498 (Ct.App.1985). When a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid. *State v. Kelly,* 106 Idaho 268, 275, 678 P.2d 60, 67 (Ct.App.1984).

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 17, of the Idaho Constitution is virtually identical to the Fourth Amendment, except that "oath or affirmation" is termed "affidavit." In order for a search warrant to be valid, it must be supported by probable cause to believe that evidence or fruits of a crime may be found in a particular place. *Josephson,* 123 Idaho at 792–93, 852 P.2d at 1389–90. When determining whether probable cause exists:

> The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Gates, 462 U.S. at 238, 103 S.Ct. at 2332, 76 L.Ed.2d at 548; *see also Wilson,* 130 Idaho at 215, 938 P.2d at 1253.

37. One cannot read the Affidavit of Probable Cause and not come to the conclusion that there has been an error with respect to the Search Warrant signed by Judge Box.

38. The only rational explanation for exclusion of requested items such as clothing, knives, scripts, journals, video cameras, video tapes, garbage bags, cell phones, items that were specifically mentioned in the Affidavit of Probable Cause and clearly related to the crime and the information uncovered in law enforcement investigation, is some sort of clerical error in the drafting of the the Search Warrant. It is inconceivable to this Court that Judge Box would have intentionally limited the scope of the Search Warrant to items delineated in the Search Warrant to the exclusion of the items outlined in the Affidavit of Probable Cause (that were not included in the Search Warrant)

which have direct bearing on the facts outlined in the Probable Cause Affidavit.[16]

39. Judge Box clearly testified that he did not request that the scope of the Search Warrant be modified or restricted. He merely signed the Search Warrant as presented by law enforcement. *See* Findings of Fact No. 29

40. Therefore, this Court, as the finder of fact in this evidentiary hearing, makes the inference, based upon the evidence before the Court, that Judge Box intended to sign a Search Warrant consistent with the request made by law enforcement as outlined in the Affidavit of Probable Cause. The Court also concludes that there was an error in the preparation of the Search Warrant whereby the individual who prepared the Search Warrant failed to properly include, transfer or reproduce all of the items upon which law enforcement was seeking authority to "search for and to seize" from the Affidavit of Probable Cause to the Search Warrant.

41. Consistent with the holding of the North Dakota Supreme Court's decision in *State v. Bollingberg*, 674 N.W. 2d 281 (2004) ("*Bollingberg*") on a similar set of facts dealing with a scrivener's error, which this Court considers to be persuasive on this issue, this Court concludes that the true intent of Judge Box in issuing this Search Warrant was to authorize a search consistent with the request contained in the Affidavit of Probable Cause and would have done so but for the fact that there was an error in the preparation of the Search Warrant.

42. The Court similarly concludes that the failure of the Search Warrant to include language authorizing a search for "clothing, knives, scripts, journals, video cameras, video tapes, garbage

[16]Perhaps the most blatant and obvious examples are that the Search Warrant excludes the following items which were requested in the Affidavit of Probable Cause: (1) "clothing" (despite the fact that Draper's statement indicates that the clothes Adamcik wore, high top converse tennis shoes and black jeans were not burned); (2) "garbage bag" (despite the fact that Draper's statement states that they went back to Adamcik's home after the murder and retrieved a "blue garbage sack" from the garage to put the costumes and knives into; (3) scripts and journals (despite the fact that the anonymous informant who appears to be a student at Pocatello High School said that Adamcik and Draper were writing a "script for a horror movie"); and (4) knives (the Affidavit of Probable Cause is replete with the facts that the murder was committed with a knife, Draper and Adamcik are obsessed with knives. Incidentally, despite being requested in the Affidavit of Probable Cause and precluded in the Search Warrant itself, each of these items was seized in the search of the Adamcik residence. *See* Exhibit "D". As an aside in today's modern world of computers and word processors where else is it more probable than a computer that script for a horror movie would be stored.

bags, cellular telephones and cellular telephone account information" as requested in the Probable Cause Affidavit was the function of a clerical or scrivener's error and was not the function of Judge Box's determination that the Affidavit of Probable Cause lacked a sufficient showing of probable cause to support a search for these items.[17]

43. Therefore, the Court concludes that it would have been futile for the Defense Team to pursue such a motion and had such a motion been pursued, the Court expects that the motion would have been denied.

44. This Court has previously ruled, at the summary disposition stage of these proceedings, that the failure of the Defense Team to raise the "Doyle" argument and bring a motion to suppress Adamcik's invocation of his right to counsel as reflected in the video admitted into evidence amounted to deficient performance under the first *Strickland* prong. *See* Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal, p. 31. Upon review of the testimony presented at the post-conviction relief evidentiary hearing, the Court concludes that the evidence supported the Court's earlier determination on this issue and the Court concludes that Adamcik's Defense Team was deficient under the first *Strickland* prong by its failure to file a motion in *limine* or motion to suppress Adamcik's invocation of his right to counsel on the video tape that was ultimately played to the jury during the course of Adamcik's trial.

45. As a result, the Court must now determine whether the cumulative effect of the Defense Team's deficient performance under the first *Strickland* prong constitutes prejudice to Adamcik during the course of his jury trial under the second *Strickland* prong. The Court has

[17]As was noted by the Court in its Finding of Fact No. 32, every item seized by law enforcement incident to the search conducted incident to the September 27, 2006 Search Warrant, exceeded the scope of the Search Warrant. This Court cannot imagine law enforcement to be so brazen in its disregard of Judge Box's restrictions to the Search Warrant, if in fact, such restrictions were imposed. In short, there were no restrictions; there was a mistake in the preparation of the Search Warrant.

concluded in its Findings of Fact and Conclusions of Law that the Defense Team's conduct was deficient under the first *Strickland* prong with respect to Adamcik's Second Cause of Action (*See* Finding of Fact Nos. 5 through 21 and Conclusions of Law Nos. 18 through 20). Likewise the Court has concluded in its Findings of Fact and Conclusions of Law that the Defense Team's conduct was deficient under the first *Strickland* prong with respect to Adamcik's Fourth Cause of Action (*See* Findings of Fact Nos. 37 and 38 and Conclusion of Law No. 44).

46. Although the Court concluded that Adamcik's Defense Team's conduct was not deficient under the first *Strickland* prong as it relates to Adamcik's Third Cause of Action, the Court will nonetheless include and consider this claimed failure (for appeal purposes) in considering Adamcik's prejudice claim based upon cumulative nature of Adamcik's Defense Team's conduct.

47. The Court reiterates its Conclusion of Law No. 20. In considering the evidence presented in these post-conviction relief proceedings, including the character witness introduced in support of Adamcik's Third Claim for Relief, this Court concludes that Adamcik has not demonstrated prejudice sufficient for this Court to conclude that but for these combined deficiencies that it is reasonably probable that the result of the jury trial would have been different. *See Strickland*, 466 U.S., at 694. Based upon this Court's review of the record before it, and the Court's fairly thorough review of the trial transcript and evidence submitted at trial, this Court concludes its confidence, as the fact finder in this proceeding, has not been undermined. *Id.* This Court, acting in its capacity as the finder of fact, cannot conclude based upon the evidence presented at the post-conviction evidentiary hearing that the introduction of the same evidence and the exclusion of Adamcik's invocation of counsel at trial would have created a substantial likelihood of a different result. *See Harrington*, 562 U.S., at 112.

48. For the same reasons the Court concluded that these deficiencies (and claimed deficiency relative to Third Cause of Action) did not amount to prejudice individually, this Court concludes they do not amount to prejudice under the second *Strickland* prong collectively. The Court has already articulated this with respect to Adamcik's Second Cause of Action – Reit's testimony does not disprove Dr. Garrison's testimony. In fact, if anything it supports his testimony as is addressed in this Court's Conclusions of Law Nos. 25 and 26. Nothing about combining this deficiency with the others increases quantum of prejudice, or lack thereof, in regards to a jury weighing testimony concerning whether one (1) or two (2) knives were used in the attack and murder of Stoddart. Similarly, the fact that a number of individuals were called to give character evidence on behalf of Adamcik, each of whom spoke highly of Adamcik's character and qualities as they understood and perceived, negates the powerful and substantial evidence introduced in support of his conviction and which is outlined in the Idaho Supreme Court's decision in *State v. Adamcik*, 152 Idaho 445, 460-63, 272 P.3d 417, 432-35 (2012). Finally, as it relates to the failure of the Defense Team's failure to file and pursue a motion to suppress Adamcik's invocation of his right to counsel, this oversight and any prejudice flowing from said failure of the Defense Team is minuscule when compared to Adamcik's responses to his father's queries. The Court continues to adhere to its previous conclusion in granting the State's summary disposition on this issue:

> Any inference of guilt the jury may have drawn from the State's introduction of Adamcik's invocation of his right to counsel is far outweighed by the inferences created from Adamcik's response to his own father's queries, both of which were expressly ruled upon by the trial to be admissible and are not the subject of collateral attack this this post-conviction relief proceeding.

Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal, p. 38.

49. For the reasons outlined above, none of the deficient conduct found by the Court in these Findings of Fact and Conclusions of Law (including the claimed instance of deficient conduct related to the Defense Team's failure to move to suppress law enforcement's seizure of the computer containing the so called "kiddie porn" and the Defense Team's strategic determination not to call character witnesses which the Court found to be strategic and not deficient) either individually or combined qualify as prejudice under the second *Strickland* prong.

50. Therefore, the Court will **DENY** Adamcik's Fifth Cause of Action for post-conviction relief asserting that the combined effect of Adamcik's Defense Team's deficient conduct resulted in prejudice under the second *Strickland* prong.

Adamcik's Sixth Cause of Action

51. For purposes of Adamcik's Sixth Cause of Action, this Court hereby incorporates Conclusions of Law Nos. 13 through 17 as if set forth in full herein.

52. This Court need not resolve the factual dispute concerning whether an offer was made by the State that would have allowed Adamcik to plead guilty to one (1) count of murder accompanied by a recommendation from the State for a thirty (30) year determinate sentence and whether that offer was communicated to Adamcik and his family by the Defense Team.

53. Judge McDermott's trial testimony makes reaching a conclusion on the issue outlined in the foregoing paragraph unnecessary. Even if this Court were to determine that the foregoing offer was made by the State to Adamcik's Defense Team and the Defense Team failed to communicate said offer to Adamcik and his family, the fact that Judge McDermott, the presiding judge over the Adamcik criminal proceeding, clearly stated that he felt the sentence he imposed was appropriate under the facts of this case, resolves the issue relative to prejudice

under the second prong of *Strickland*. He further testified that had the plea agreement referenced above been presented to him "its likely I would not have gone along with it." *See* Finding of Fact No. 45. More importantly when asked, in the context of the hypothetical plea agreement, if "there would be a reasonable probability that you would have given a sentence less than life without the possibility of parole", Judge McDermott responded, "I don't think so. I think, given the crime and all that transpired in the courtroom and all of the documents I read, I feel that the sentence was appropriate." *See* Finding of Fact No. 45.

54. As has been described in length above, the use of the phrase "reasonable probability" by Adamcik's counsel was purposeful. This is the standard for prejudice under the second *Strickland* prong. Judge McDermott's response to this question is the death knell to Adamcik's Sixth Cause of Action. Adamcik cannot prevail on this issue unless it is reasonable probable that the deficient conduct of his Defense Team resulted in prejudice. Judge McDermott's response, as the presiding judge over the criminal proceeding, including his sentencing proceeding, succinctly and simply answers that question. Therefore, even if the Defense Team's conduct, with respect to Adamcik's Sixth Cause of Action were deficient, no prejudice flowed from said conduct because Adamcik has failed to establish that it would have resulted in a "reasonable probability" of a different result or in this case a different sentence being imposed by Judge McDermott.

55. Based upon the foregoing, Adamcik's P.C.R. Petition, Sixth Cause of Action will be **DENIED**.

CONCLUSION

Based upon the Court's Findings of Fact and Conclusions of Law, the Court hereby **DENIES** Adamcik's P.C.R. Petition claims as related to his Cause of Action Two, Cause of

Action Five and Cause of Action Six.

The Court, during the summary disposition stage of these proceedings, previously granted the State's Motion for Summary Dismissal with respect to Adamcik's Cause of Action One, Cause of Action Three, Cause of Action Four, and Cause of Action Seven. The Court will defer preparing a final judgment on Adamcik's P.C.R. Petition until it issues its ruling with respect to Adamcik's Second Motion for Reconsideration as that relates to Adamcik's Cause of Action Seven.

Dated this 21st day of March, 2016.

Mitchell W. Brown

MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of March, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Dennis A. Benjamin PO Box 2772 Boise, ID 83701	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:
Jared Johnson Courthouse Mail	☐ U.S. Mail ☐ E-Mail ☒ Hand Deliver ☐ Fax:

Deputy Clerk

ADDENDUM C

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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TOREY ADAMCIK, Petitioner, vs. STATE OF IDAHO, Respondent.	)	Case No. CV-2013-3682 MEMORANDUM DECISION AND ORDER ON SUMMARYDISPOSITION RE: *MILLER V. ALABAMA*, ___ U.S. ___, 132 S.CT. 2455 (2012)

This matter is before the Court on cross-motions for summary dismissal/disposition arising out of Petitioner's, Torey Adamcik (Adamcik), Petition for Post-Conviction Relief (P.C.R. Petition). Adamcik has filed a Motion for Partial Summary Disposition (Adamcik's M.S.D).[1] The State of Idaho (State) also filed its motion for summary disposition and supporting brief in one (1) document titled Respondent's Dispositive Motion with Brief in Support of Motion for Summary Dismissal (State's M.S.D). Adamcik filed his Response to Respondent's Dispositive Motion (Response Memorandum).[2] Finally, Adamcik submitted a document entitled Supplemental Authority shortly in advance of the oral argument on these cross-motions. The parties argued their cross-motions to the Court, and following argument, the Court took this

[1]Adamcik's M.S.D. was supported by a Brief in Support of Petitioner's Motion for Partial Summary Disposition (Adamcik's Supporting Memorandum).
[2]Adamcik's Response Memorandum was supported by several affidavits: (1) the Affidavit of Mark Heideman (Heideman Affidavit); (2) the Affidavit of Vic Pearson (Pearson Affidavit); (3) the Affidavit of Sean Adamcik (Sean Adamcik Affidavit); (4) the Affidavit of Shannon Adamick [sic] (Shannon Adamcik Affidavit); and (5) the Affidavit of Barbara Adamcik (B. Adamcik Affidavit).

matter under advisement.[3] The Court has previously issued its Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal. However, while the Court issued its decision on six (6) of the seven (7) claims raised by Adamcik in his P.C.R. Petition, the Court did not issue its decision on the seventh claim. Adamcik's seventh claim seeks a declaration by this Court that Adamcik's life without parole sentence is in violation of the Eighth Amendment of the United States Constitution on the basis that life without parole for a juvenile offender who commits a capital offense, is cruel and unusual punishment under the rationale outlined in *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (*Miller*) and other United States Supreme Court precedent upon which *Miller* is predicated.

The Court, having considered the parties' written submissions along with the argument presented, now issues its Memorandum Decision and Order on Adamcik's seventh cause of action (MD&O).

BACKGROUND AND RELEVANT COURSE OF PROCEEDINGS

Adamcik filed his P.C.R. Petition in September, 2013. His P.C.R. Petition outlines seven (7) separate claims upon which he seeks post-conviction relief. This MD&O will address the seventh claim or cause of action raised by Adamcik in his P.C.R. Petition. Each party has moved for summary disposition of Adamcik's Seventh Cause of Action.

Adamcik's P.C.R. Petition arises out of the underlying criminal proceedings in Bannock County Case CR-2006-17984. In this proceeding, Adamcik was charged with and convicted by

[3]It should be noted that incident to this post-conviction relief proceeding, the Court has taken judicial notice of the entire record of the criminal proceedings in Bannock County Case CR-2006-17984 pursuant to Idaho Rule of Evidence 201 (I.R.E.). *See* Order Taking Judicial Notice. Additionally, at the hearing on the cross-motions for summary dismissal/disposition, the parties apprised the Court of their stipulation that the summary dismissal/disposition record will include the depositions taken of Adamcik's defense team, Greg May, Bron Rammell, and Aaron Thompson.

a jury, of committing the first-degree murder of Cassie Jo Stoddart (Stoddart). Adamcik was also convicted of conspiring with co-defendant, Brian Draper (Draper), to commit the first-degree murder of Stoddart. At sentencing, Adamcik was sentenced to a thirty (30) year fixed sentence and an indeterminate life sentence for the conspiracy to commit first-degree murder and a fixed life sentence for the first-degree murder conviction of Stoddart. Adamcik filed a motion seeking a reduction of his sentence pursuant to Idaho Criminal Rule 35 (I.C.R.). This motion was denied after a hearing by the trial court. Adamcik then filed an appeal. In *State v. Adamcik*, 152 Idaho 445, 458-59, 272 P.2d 417, 486-87 (2012), the Idaho Supreme Court affirmed Adamcik's conviction and sentence. Adamcik filed a Petition for Rehearing; the Idaho Supreme Court denied the relief sought in that petition. Adamcik then filed a Petition for Writ of Certiorari from the United States Supreme Court. This petition was denied. *State v. Adamcik*, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

STANDARD OF REVIEW SUMMARY DISMISSAL

Post-Conviction Relief proceedings are generally governed by the Uniform Post-Conviction Procedure Act (UPCPA) which is codified at Idaho Code §§19-4901 through 19-4911 (I.C.) As summarized in *Rhoades v. State,* 148 Idaho 247, 249-50, 220 P.3d 1066, 1068-69 (2009) (*Rhoades*):

> [A]petition for post-conviction relief is a civil proceeding, governed by the Idaho Rules of Civil Procedure. *Pizzuto v. State,* 146 Idaho 720, 724, 202 P.3d 642, 646 (2008). However, "[t]he 'application must contain much more than a short and plan statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1).'" *State v. Payne, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008)* (quoting *Goodwin v. State,* 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct.App.2002)). Instead, the application must be supported by a statement that "specifically set[s] forth the grounds upon which the application is based." *Payne*, 146 Idaho at 561, 199 P.3d at 136 (citing I.C. § 19-4903). "The application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal." *Id.*

The UPCPA applies to the Adamcik's M.S.D. and the State's M.S.D. I.C. §19-4906(c) provides that:

> The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

As stated in *Zepeda v. State*, 152 Idaho 710, 713, 274 P.3d 11, 14 (Ct.App.2012), summary dismissal is the functional or procedural equivalent of summary judgment under Rule 56 of the Idaho Rules of Civil Procedure (I.R.C.P.). In considering a summary judgment, or in this case a motion for summary disposition, this Court applies the same standard applied by the appellate courts on appeal. *Syringa Networks, LLC v. Idaho Dept. of Admin.*, 155 Idaho 55, 63, 305 P.3d 499, 507 (2013).

DeRushe v. State, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (*DeRushe*), provides that "a claim for post-conviction relief will be subject to summary dismissal pursuant to I.C. §19-4906 if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." (*Quoting*, *Berg v. State,* 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)).

As summarized by the *Rhoades* Court on summary dismissal, the trial court:

> [h]as free review of questions of law. *Hopper v. Hopper,* 144 Idaho 624, 626, 167 P.3d 761, 763 (2007). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court determines whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party. *Hauschulz v. State,* 144 Idaho 834, 838, 172 P.3d 1109, 1113 (2007) (citing *Gilpin-Grubb v. State,* 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)). However, "while the underlying facts must be regarded as true, the petitioner's conclusions need not be so accepted." *Phillips v. State,* 108 Idaho 405, 407, 700 P.2d 27, 29 (1985). "[W]here the

> evidentiary facts are not disputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." *State v. Yakovac,* 145 Idaho 437, 443, 180 P.3d 476, 482 (2008).

148 Idaho at 250, 220 P.3d at 1069.

ADAMCIK'S CLAIM THAT HE IS ENTITLED TO SUMMARY DISPOSITION IN HIS FAVOR BECAUSE THE FIXED LIFE SENTENCE IMPOSED PROCEDURALLY AND SUBSTANTIVELY VIOLATED THE EIGHTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE I, §6 IDAHO CONSTITUTION AND THEIR PROTECTIONS AGAINST CRUEL AND UNUSUAL PUNISHMENTS UNDER *MILLER v. ALABAMA*, ___ U.S. ___, 132 S.Ct. 2455 (2012)

In Adamcik's initial appeal to the Idaho Supreme Court, one of the issues raised was that his sentence was "unreasonable or cruel and unusual under the Idaho Constitution." *State v. Adamcik*, 152 Idaho 445, 459, 272 P.3d 417, 431(2012) (*Adamcik*). Although Adamcik asserted that his sentence violated the Article I, Section 6 of the Idaho Constitution, he did not make a similar claim as it relates to the 8th Amendment of the United States Constitution.

In *Adamcik*, the Idaho Supreme Court noted that it had adopted the test "proposed by Justice Kennedy in his concurrence in *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991)" in determining whether or not the cruel and unusual punishment clause of Article I, Section 6 has been violated.

In applying this test to the facts and issues raised in Adamcik's appeal, the Idaho Supreme Court concluded as follows:

> Adamcik's fixed life sentence does not constitute cruel and unusual punishment under Article I, section 6 of Idaho's Constitution because no gross disproportionality exists in this case. Adamcik conspired, carefully planned and executed the cold-blooded stabbing death of his fellow high school student, Stoddart, based solely on his desire to achieve fame as a serial killer. Like the heinous crimes committed by the defendants in *Thomas* and *Brown,* whose fixed life sentences were upheld on appeal, the gravity of the first-degree murder that Adamcik committed supports the severity of his fixed life sentence. Furthermore,

> the fact that Adamcik's fixed life sentence falls within the sentencing parameters set out in I.C. § 18–4004 (entitled "Punishment for murder") indicates that no disparity exists between the sentence imposed by the trial court and the gravity of Adamcik's crime.
>
> Because we do not find the existence of a gross disproportionality, we decline to consider any of Adamcik's proportionality arguments because "intra and inter-jurisdictional" analysis is only proper where the Court makes an initial finding that a gross disproportionality exists. *State v. Matteson,* 123 Idaho 622, 626, 851 P.2d 336, 340 (1993). Adamcik's argument that this Court should find his sentence to be cruel and unusual due to Adamcik's minority and the growing international rejection of life imprisonment for minor offenders is without merit. This Court has never held that extra-jurisdictional international conventions shall be considered in any way in interpreting and applying the Idaho Constitution. Adamcik's sentence comports with Article I, section 6 of Idaho's Constitution and is not cruel and unusual.

Adamcik, 152 Idaho at 487, 272 P.3d at 459.

The Idaho Supreme Court's opinion in *Adamcik* was issued in January of 2012. In June of 2012, the United States Supreme Court issued its decision in *Miller*. In *Miller*, the United States Supreme Court announced that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" 132 S.Ct. at 2460. In *Miller*, the United States Supreme Court further explains its holding in these terms:

> The cases before us implicate two strands of precedent reflecting our concern with proportionate punishment. The first has adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. See *Graham,* 560 U.S., at ——, 130 S.Ct., at 2022–2023 (listing cases). So, for example, we have held that imposing the death penalty for nonhomicide crimes against individuals, or imposing it on mentally retarded defendants, violates the Eighth Amendment. See *Kennedy v. Louisiana,* 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Atkins v. Virginia,* 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). Several of the cases in this group have specially focused on juvenile offenders, because of their lesser culpability. Thus, *Roper* held that the Eighth Amendment bars capital punishment for children, and *Graham* concluded that the Amendment also prohibits a sentence of life without the possibility of parole for a child who

committed a nonhomicide offense. *Graham* further likened life without parole for juveniles to the death penalty itself, thereby evoking a second line of our precedents. In those cases, we have prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death. See *Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion); *Lockett v. Ohio,* 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978). Here, the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. [Footnote Omitted]

Id. at 2463-64. Finally, the *Miller* Court continues as follows:

> We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham,* 560 U.S., at ——, 130 S.Ct., at 2030 ("A State is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper, Graham,* and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper,* 543 U.S., at 573, 125 S.Ct. 1183; *Graham,* 560 U.S., at ——, 130 S.Ct., at 2026–2027. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

Id. at 2469. In conclusion the Supreme Court states:

> *Graham, Roper,* and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of

> proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment. We accordingly reverse the judgments of the Arkansas Supreme Court and Alabama Court of Criminal Appeals and remand the cases for further proceedings not inconsistent with this opinion.

Id. at 2475.

As part of Adamcik's P.C.R. Petition, he asserted his seventh claim which relies upon the United States Supreme Court decision in *Miller*. In his arguments in support of summary disposition, Adamcik argues as follows:

> In light of *Miller*, the District Court violated the Eighth Amendment of Article 1 [sic], §6 of the Idaho Constitution by failing to take into account how children are different from adults and how those differences counsel against irrevocably sentencing a child to a lifetime in prison. *Miller v. Alabama*, ___ U.S. ___, ___, 132 S.Ct. 2455, 2469 (2012). The fixed life sentence also violates the Eighth Amendment and Article 1 [sic], §6 of the Idaho Constitution because a fixed life sentence may only be imposed in the most unusual of circumstances, circumstances which do not exist in this case. *Id.* In the alternative, the fixed life sentence violates the Eighth Amendment and Article 1 [sic] §6 of the fixed life sentences for juveniles are categorically impermissible. *Id.*

Supporting Memorandum, p. 33.

The State argues, in response to Adamcik's seventh claim in his P.C.R. Petition and in support of its own motion for dismissal, that *Miller* has no application in the case at bar. The State asserts "the State of Idaho can still impose a life sentence without the possibility of parole upon a juvenile offender, as long as the crime is that of homicide ... because [life without parole] is not a mandatory sentence within the State." State's M.S.D., p. 19.

A review of Adamcik's submissions relative to this issue reveals essentially three (3) arguments in support of his request for summary disposition on this this issue. Those arguments are capsulized in the foregoing quote from Adamcik's Supporting Memorandum: (1) that the sentencing judge failed "to take into account how children are different from adults and how

those differences counsel against irrevocably sentencing a child to a lifetime in prison"; (2) that the fixed life sentence violates the Eighth Amendment of the U.S. Constitution and Article I, Section 6 of the Idaho Constitution because "a fixed life sentence may only be imposed in the most unusual of circumstances, circumstances which do not exist in this case"; and/or (3) in the "alternative, the fixed life sentence violates the Eighth Amendment and Article 1, [sic] §6 of the fixed life sentences for juveniles are categorically impermissible." Supporting Memorandum, p. 33. The Court will address these arguments starting first with Adamcik's alternative argument that a fixed life sentence violates the Eighth Amendment and Article I, §6.

A. Does Adamcik's Fixed Life Sentence Violate the 8th Amendment's Prohibition on Cruel and Unusual Punishment?

There can be no doubt that the simple answer to this question is no. As was articulated in *Miller*, one of the positions asserted by Jackson's and Miller's counsel was the same position being advanced by Adamcik as his alternative position; that the 8th Amendment proscribes an absolute prohibition against life without parole sentences for juveniles. The Supreme Court's response to this was as follows:

> Because that holding [the holding announced previously in the decision] is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger.
>
> ***
>
> Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

Miller, 132 S.Ct. at 2469. This excerpt from *Miller* clearly establishes that in appropriate, albeit rare and uncommon factual circumstances, life without parole is a permissible sentence under the

cruel and unusual punishment clause of the 8th Amendment. What appears to be required is that the sentencing be "individualized" affording the sentencing court "the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 2475. Encompassed within this individualized sentencing, the sentencing court is required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469.

Therefore, the Court rejects Adamcik's alternative argument that Adamcik's fixed life sentence is, as a matter of law, violative of the cruel and unusual punishment clause of the 8th Amendment.

B. Did the Sentencing Court Fail to take into Account how Children are Different from Adults and how those Differences Counsel Against Irrevocably Sentencing a Child to a Lifetime in Prison?

Adamcik asserts that the sentencing court violated the mandate of *Miller* because the sentencer failed to take into account how children are different from adults and how those differences counsel against irrevocably sentencing a child to a lifetime of prison. However, upon review of the sentencing transcript and the transcript of Adamcik's Rule 35 proceeding, this Court must disagree with Adamcik's assertion in this respect.

The sentencing court had the benefit of the pre-trial psychological report which was prepared by Kenneth P. Lindsey, Ph.D., a psychologist. This report noted, among other things, that Adamcik was immature for his age, that he had difficulty seeing things from the perspective of others, and that his MMPI-A showed depression and obsessive anxiety. Supporting Memorandum, pp. 27-28, ¶¶123-127.

The sentencing court also heard and considered the testimony of Dr. Mark Corgiat, Ph.D., a psychologist. Dr. Corgiat concurred in Dr. Lindsey's assessment that Adamcik was immature for his age and "less mature [than] he would expect in a seventeen-year old male with normal brain development." He also opined that Adamcik "demonstrated a pattern of neurocognitive difficulties that indicated less than age appropriate judgment, impulse control and complex problem solving abilities." Dr. Corgiat testified that "adolescent brains are not fully developed, particularly in the precortex area" and that "in males, the development continues until their mid-to-late twenties." Dr. Corgiat also testified that an average adolescent "possesses less than adult capabilities in planning, reasoning and judgment", and "is less capable of autonomous choice-making, self-management, has poorer judgment, is more impulsive, has less capacity for regulating his emotions, and has a risk-taking propensity that can overcome whatever development he has for regulating judgment." Dr. Corgiat emphasizes that "research ... unequivocally demonstrates that the adolescent brain does not function the same as the adult brain." Dr. Corgiat continues in his testimony that Adamcik "functions even below age appropriate levels", has a "history of ADHD and his IEP [Individual Education Plan] at school were indicators of frontal lobe immaturity." Supporting Memorandum, pp. 29-30, ¶¶131-139.[4]

Dr. Corgiat's testimony at sentencing also provides the opinion that Adamcik would be "a good candidate for rehabilitation because of his age and ... [his] amenability to education and training is better than someone with more advanced brain development." Dr. Corgiat concluded that Adamcik was "a very low risk to reoffend" and possessed a greater capacity for change due to his "current underdevelopment and consequent ability to make a greater change than someone

[4]The quotations of Dr. Corgiat's testimony at sentencing is not a direct quote from the sentencing transcript, but rather is a direct quote from Adamcik's Supporting Memorandum characterizing Dr. Corgiat's testimony at sentencing.

fully developed." Dr. Corgiat's opinions were driven in part upon his conclusions that Adamcik's "absence of a pathological drive or pathological desire to commit offenses", "no evidence of sociopathy", and that Adamcik "does not have the personality pattern associated with violent crime." Supporting Memorandum, pp. 30-31, ¶¶140-141.

Despite this individualized sentencing hearing, where the sentencing court heard and considered precisely the type of testimony mandated by *Miller,* focusing on the individual characteristics of Adamcik, including Adamcik's "youth (and all that accompanies it)"; the sentencing court, after hearing and considering this evidence and testimony, in the exercise of its discretion, found Adamcik' s conduct to be one those "uncommon" cases where the "harshest possible penalty for juveniles" was warranted.

Specifically, at sentencing the sentencing court noted as follows:

> [M]r. Adamcik, I believe pretty much on this, you're an entirely different individual than portrayed by your family and friends. You do have ADHD, the frontal lobe of your brain not being fully developed due to your age.... They say you have knowledge within normal limits, but your processing is below normal.

Sentencing Transcript, p. 55, LL. 20-25, p. 56, LL. 1-2.

However, it is clear that the sentencing court, in its discretion having heard and considered both the mitigating testimony including Adamcik's "youth (and all that accompanies it)" and the aggravating factors associated with Adamcik's crime, determined that the most serious sentence for a juvenile was appropriate in this case. In doing so, the sentencing court stated as follows:

> Dr. Garrison said there were two knives used in killing Cassie Jo, in his opinion. On the video after the killing, when Mr. Draper was exclaiming his -- I don't know how else to put it -- his excitement and pleasure at just killing Cassie, you said, Shut the F up. We've got to get our act together. You didn't say, Why did you kill Cassie? I thought it was a joke.

***

[Y]ou both methodically and intelligently planned to murder Cassie Stoddart.

This was not a joke. I'm convinced neither one of you thought it was a joke. You put your masks on, you took your real knives, you went back to the house with the definite intention of killing her, which you did. You both wanted to be famous as killers.

***

You both have been convicted of murder in the first degree, and it's clear to the Court and the evidence at the trials, Cassie was savagely stabbed many times. The horror, fright and pain she surely encountered before death was certainly immense. You disguised yourselves with masks in darkness, which made it more frightening for her. You both were excited after the murder about the killing, and you both attempted to destroy the evidence initially. The killing was a barbarous, cold-blooded horrific act.

[Y]ou both have forfeited your privilege to live in a free society, and based on all the evidence and all that I've read, I'm convinced beyond a reasonable doubt that if you two, or either one of you, were released that you will kill again....

I'm not unmindful of how young you fellows are, but you commit a crime of this nature, and it's got to be -- it's got to be known, not only by those who commit it, but to others in the community that the punishment will not -- will not be so merciful. There's no mercy. Guys, I'm sorry. Guys, like I said, you guys are kids, but I just feel like this is a just sentence, given all the evidence that I had to look at. So I -- I'm sorry. I hope you two can have some kind of a life in the state correctional facility. At least it's more than Cassie has.

Sentencing Transcript, pp. 56-59.

This Court will not substitute its judgment for the judgment of the sentencing court. The sentencing court, although it did not have the benefit of the *Miller* decision, based upon this Court's review of the record of the underlying criminal proceedings and specifically the sentencing transcript, concludes that the sentencing court conducted an individualized sentencing taking into account all aggravating and mitigating factors, including Adamcik's "youth (and all that accompanies it)." However, upon doing so, the sentencing court concluded, in its discretion,

that the "barbarous, cold-blooded" actions of Adamcik were one of those "uncommon" situations where the most serious penalty for a juvenile offender was warranted.

The same conclusion is supported by the sentencing court's ruling at Adamcik's Rule 35 hearing. In announcing the sentencing court's decision on Adamcik's Rule 35 motion, the sentencing court stated as follows:

> [w]e're here because Mr. Adamcik willfully and deliberately conspired to kill Cassie, and he did kill her. Every time a knife entered Cassie's body, she certainly was afraid and in pain until her life bled from her, and this is just unconscionable conduct.
>
> ***
>
> I took everything into consideration at sentencing, and I'm not unmindful of how young Torey is -- and was at the time he killed Cassie. I'm not unmindful of Dr. Corgiat's testimony and all other testimony we have had at the sentencing.
>
> In our society, at least in my opinion, when someone engages in this type of conduct, they should be punished as severe as the law allows. There is no justification, no excuse that condones this type of conduct.
>
> Mr. Adamcik wore a mask, Cassie was alone in the dark, and when the knives were going in and out of her body, it just had to be horrible for her. And I believe the sentence this Court imposed was a righteous sentence given the conduct, and I don't believe Mr. Adamcik should be ever released from prison. I'm going to deny your motion.

Transcript, pp. 3110-3111.[5]

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[5]The sentencing court has been criticized by Adamcik for this language. Specifically, Adamcik argues that the sentencing court's use of the language "this type of conduct" is illustrative of the fact that the sentencing court "did what the *Miller* court said no one can: Impose a juvenile fixed life sentence based solely upon the acts of the offense." Adamcik argues that "just as the Alabama Legislature may not mandate a fixed life sentence for every first degree murder conviction, an individual court may not impose that sentence based solely on its evaluation of heinousness of the offense." Response Memorandum, p. 26. However, the Court disagrees with Adamcik's rationale on two (2) levels. First, under *Miller* the Court certainly may impose a fixed life sentence based upon the heinousness of the offense, as long as it considers all mitigating factors, "including youth (and all that accompanies it)." If upon completing that analysis, the sentencing court determines, in its discretion, that the aggravating factors that make the crime so heinous sufficiently outweigh the mitigating factors, "including youth (and all that accompanies it) the sentencing court certainly possess the discretion to impose a life sentence without parole. Second, any suggestion by Adamcik that the statements made by the sentencing court demonstrate that the sentencing court possessed an attitude that life without parole would be the appropriate sentence in every circumstance where a juvenile, convicted of first-degree murder, appeared for sentencing is not borne out by the record. Rather, the sentencing court repeatedly remarked that it considered all of the evidence, both aggravating and mitigating. There is nothing in the record to support Adamcik's claim that the sentencing court possessed an attitude that every time and in every instance that a juvenile presented for sentencing on a first-degree murder conviction it would impose life without parole. What the sentencing court stated was "you commit a crime of this nature ... the punishment

In conclusion, this Court finds that there is nothing in the sentencing court's sentence or sentencing that runs afoul of the directives and requirements of the *Miller* decision of the United States Supreme Court. The sentencing court did conduct an individualized sentencing in which all mitigating factors associated with Adamcik's youth and immaturity were considered by the sentencing court. Adamcik's assertion to the contrary is without merit.

C. Is the Sentencing Court's Fixed Life Sentence in Violation of the Eighth Amendment of the U.S. Constitution because a Fixed Life Sentence may only be Imposed in the Most Unusual of Circumstances, Circumstances which Adamcik Claims do not Exist in this Case?

Utilizing the same analysis outlined in Section B of this MD&O, the Court also concludes that the underlying record, including, but limited to the sentencing record, supports the sentencing court's exercise of its discretion and finding that this is one of those rare and "uncommon" circumstances where imposition of the most serious sentence the court may impose upon a juvenile offender is warranted.

The sentencing court conducted an individualized sentencing. It considered all evidence, both mitigation and aggravating. The mitigating evidence specifically included Adamcik's "youth (and all that accompanies it)" as required by *Miller*. However, the sentencing court in the considering the totality of the information presented at sentencing, which was comprised of both mitigating and aggravating evidence, concluded, in the exercise of its discretion, that this was

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will not -- will not be so merciful. There's no mercy." Sentencing Transcript, p. 59. This Court determines that what the sentencing court was referencing when it speaks in terms of a "crime of this nature" is all of the aggravating factors associated with this specific crime, not the general crime of first-degree murder. This important distinction is perhaps best illustrated by the sentencing court's oral decision with respect to Adamcik's Rule 35 Motion. The sentencing court states "this type of conduct [again referring to the specific aggravating facts of this case, not generally about first degree murder itself] ... should be punished as severe as the law allows. There is no justification, no excuse that condones this type of conduct [again referring to the specific aggravating facts of this case, not generally about first degree murder itself]." Transcript, pp. 3110-11. Finally, the sentencing court again pointing to the specific aggravating facts of this case, not the general charge of first degree murder notes "I believe the sentence this Court imposed was a righteous sentence given the **conduct**." [Bold Emphasis Added].

one of those "uncommon" cases where the most serious sentence possible, life without parole, was warranted.

This Court will not second guess the sentencing court on Adamcik's P.C.R. Petition. The sentencing court heard the testimony, both aggravating and mitigating, at trial and at sentencing. The sentencing court was in a much better position to consider, weigh, assess witness credibility, and make informed judgments concerning this evidence than this Court at this stage of the proceedings. This Court, unlike the sentencing court, has had the benefit of reviewing and considering *Miller* as it reviewed the record of this case and the eventual sentence of life without parole. In doing so, this Court concludes that nothing about this sentence or the sentencing process violates the directives of *Miller*.

CONCLUSION

Based upon the foregoing, the Court concludes that the sentence imposed by the sentencing court is consistent with Idaho's jurisprudence relative to the cruel and unusual punishment clauses of Article I, Section 6 of the Idaho Constitution and the 8th Amendment to the United States Constitution and case law interpreting the same, and specifically the United States Supreme Court decision in *Miller*. Therefore, the Court will **GRANT** the State's motion for summary dismissal of Adamcik's Seventh Cause of Action as outlined in his P.C.R. Petition.

Dated this 23rd day of January, 2015.

Mitchell W. Brown

MITCHELL W. BROWN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of February, 2015, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Dennis A. Benjamin PO Box 2772 Boise, ID 83701	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:
Ian N. Service Courthouse Mail	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:

Deputy Clerk

ADDENDUM D

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

******

TOREY ADAMCIK,	)	Case No. CV-2013-3682
Petitioner,	)	
vs.	)	MEMORANDUM DECISION AND ORDER ON SECOND MOTION FOR RECONSIDERATION
STATE OF IDAHO,	)	
Respondent.	)	

This matter is before the Court on Petitioner's, Torey Adamcik ("Admacik"), Second Motion for Reconsideration.[1] The Respondent, State of Idaho ("State") filed Respondent's Objection to Petitioner's Second Motion for Reconsideration ("Objection"). Finally, Adamcik filed his Reply Memorandum in Support of Motion for Reconsideration ("Reply Memorandum"). The Court heard arguments from the parties concerning Adamcik's Second Motion for Reconsideration. Following said arguments, Adamcik filed a document entitled Third Supplemental Authority. Following oral argument and Adamcik's submission of his Third Supplemental Authority, the Court took this matter under advisement. The Court now issues its Memorandum Decision and Order on Second Motion for Reconsideration ("MD&O").

[1]Adamcik's Second Motion for Reconsideration was not supported by a separate memorandum; rather the authority for Adamcik's Second Motion for Reconsideration was contained in the motion itself. However, Adamcik had filed a document entitled Supplemental Authority roughly twenty-one (21) days prior to filing his Second Motion for Reconsideration. This Supplemental Authority quite clearly deals with the issue raised in Adamcik's Second Motion for Reconsideration and thus the Court has reviewed that submission and the authority cited therein as part of its consideration of Adamcik's Second Motion for Reconsideration.

BACKGROUND AND RELEVANT COURSE OF PROCEEDINGS

Adamcik's Petition for Post-Conviction Relief ("P.C.R. Petition") arises out of the underlying criminal proceedings in Bannock County Case CR-2006-17984. In that proceeding, Adamcik was charged with and convicted by a jury, of committing the first-degree murder of Cassie Jo Stoddart ("Stoddart"). Adamcik was also convicted of conspiring with co-defendant, Brian Draper ("Draper"), to commit the first-degree murder of Stoddart. At sentencing, Adamcik was sentenced to a thirty (30) year fixed sentence and an indeterminate life sentence for the conspiracy to commit the first-degree murder and a fixed life sentence for the first-degree murder conviction of Stoddart. Adamcik filed a motion seeking a reduction of his sentence pursuant to Idaho Criminal Rule 35 ("I.C.R."). This motion was denied after hearing by the trial court. Adamcik then filed an appeal. In *State v. Adamcik*, 152 Idaho 445, 458-59, 272 P.3d 417, 486-87 (2012) ("*Adamcik*"), the Idaho Supreme Court affirmed Adamcik's conviction and sentence. Adamcik filed a Petition for Rehearing. The Idaho Supreme Court denied the relief sought in Adamcik's Petition for Rehearing. Adamcik then filed a Petition for Writ of Certiorari from the United States Supreme Court. This Petition for Writ of Certiorari was denied. *State v. Adamcik*, 133 S.Ct. 141, 184 L.Ed.2d 68 (2012).

Adamcik filed his P.C.R. Petition in September, 2013. Adamcik's P.C.R. Petition outlined seven (7) separate claims upon which he requested post-conviction relief. The parties filed cross motions for summary disposition pursuant to I.C. §49-4906(c).

After considering the parties' submissions in support of and in opposition to the various motions for summary disposition, the Court issued its Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal. In doing so, the Court granted summary dismissal in favor of the State on a number

of Adamcik's claims for post-conviction relief. *See* Memorandum Decision and Order on Adamcik's Motion for Partial Summary Disposition and the State's Motion for Summary Dismissal.

At the summary disposition stage of these proceedings, the Court also denied portions of the parties' cross motions for summary disposition, concluding that there were triable issues of material fact. The claims that the Court ordered would proceed to trial were as follows: (1) Adamcik's "**SECOND CAUSE OF ACTION**: Torey was Denied Effective Assistance of Counsel at Trial in Violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because Counsel Failed to get Important Expert Testimony before the Jury in part because they Failed to Obtain the Murder Weapons for Testing by the Defense Expert"; (2) Adamcik's "**FIFTH CAUSE OF ACTION**: Torey was Denied Effective Assistance of Counsel at Trial in Violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because the Cumulative Effect of all the above Instances of Deficient Performance Prejudiced him";[2] and (3) Adamcik's "**SIXTH CAUSE OF ACTION:** Torey was Denied Effective Assistance Counsel at Trial in Violation of the Sixth Amendment and Idaho Constitution Article I, Section 13 under *Strickland v. Washington*, 466 U.S. 668 (1984), because Trial Counsel failed to Communicate a Favorable Plea Offer to him."

[2]Although the Court granted the State's request for summary disposition relative to Adamcik's Third Cause of Action and Fourth Cause of Action, the basis for doing so was that the evidence did not establish prejudice under the second prong of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 280 L.Ed.2d 674 (1984) ("*Strickland*"). However, with respect to both Adamcik's Third Cause of Action and his Fourth Cause of Action, the Court did determine that there were genuine issues of material fact concerning deficient performance on the part of the Adamcik Defense Team, the first *Strickland* prong. As a result, at the evidentiary hearing, the Court did allow Adamcik to put on proof of deficient performance relative to Cause of Action Two (which the Court denied at summary dismissal), Cause of Action Three (which the Court granted summary dismissal on with respect to the prejudice prong), and Cause of Action Four (which the Court granted summary dismissal on with respect to the prejudice prong), for the purpose of attempting to establish that the cumulative effect of the deficient conduct of the Defense Team amounted to prejudice under the second *Strickland* prong.

In a separate memorandum decision, the Court also granted the State summary dismissal on Adamcik's Seventh Cause of Action. *See* Memorandum Decision and Order on Summary Disposition Re: *Miller v.* Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012). Adamcik's Seventh Cause of Action claimed that "the fixed life sentence imposed on Torey procedurally and substantively violates the Eighth Amendment and Article I, § 6 protection against Cruel and Unusual Punishment under *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012)." P.C.R. Petition, pp. 37-55.

It is from the Court's decision as outlined in its Memorandum Decision and Order on Summary Disposition Re: *Miller v.* Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012) that Adamcik seeks reconsideration in his Second Motion to Reconsider.

STANDARD OF REVIEW

A motion seeking reconsideration of a trial court's interlocutory orders is governed by Rule 11(a)(2) of the Idaho Rules of Civil Procedure (I.R.C.P.). I.R.C.P. 11(a)(2) provides that a motion for reconsideration "may be made at any time before entry of final judgment."

In the Idaho Supreme Court's decision in *Johnson v. North Idaho College*, 153 Idaho 58, 62, 278 P.3d 928, 932 (2012), the purpose for allowing a motion to reconsider a trial court's interlocutory order was succinctly stated in the following terms:

> A motion for reconsideration is a motion which allows the court—when new law is applied to previously presented facts, when new facts are applied to previously presented law, or any combination thereof—to reconsider the correctness of an interlocutory order. In this case, the district court did just that, and in a manner fitting within the broad language articulated in *Rocky Mountain Power,* where the most important consideration is the correctness of the interlocutory order.

In short, a motion to reconsider is designed to allow the trial court an opportunity to "get it right" before a judgment becomes final. Therefore, a motion to reconsider can be based upon the same record that the original motion was based upon, or it can be based upon a supplemented record.

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Rocky Mountain Power v. Jensen*, 154 Idaho 549, 554, 300 P.3d 1037, 1042 (2012). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Id.*

DISCUSSION

The United State Supreme Court has recently issued two (2) decisions addressing juvenile offenders sentenced to life sentences without the opportunity for parole and the Eighth Amendment's prohibition against cruel and unusual punishment. The first of these two (2) decisions is *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) ("*Miller*"). The *Miller* decision was the basis for the Seventh Cause of Action contained in Adamcik's P.C.R. Petition. The Court has previously granted the State's Motion for Summary Disposition relative to Adamcik's Seventh Cause of Action. *See* Memorandum Decision and Order on Summary Disposition Re: *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012). Specifically, the Court concluded that:

> [t]he sentence imposed by the sentencing court is consistent with Idaho's jurisprudence relative to the cruel and unusual punishment clauses of Article I, Section 6 of the Idaho Constitution and the 8th Amendment to the United States Constitution and case law interpreting the same, and specifically the United States Supreme Court decision in *Miller*.

Id. at p.16.

The second case recently issued by the United States Supreme Court addressing juvenile offenders sentenced to life sentences without the opportunity for parole and the Eighth Amendment's prohibition against cruel and unusual punishment is *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) ("*Montgomery*"). Adamcik asserts that *Montgomery* read in conjunction with *Miller* "confirms that there are substantive Eighth Amendment limits on sentences for juvenile homicide offenders." Reply Memorandum, p. 2. Adamcik continues that "absent proof that the defendant is that rare juvenile whose crime reflects irreparable corruption, a juvenile may not be exposed to a fixed life sentence, even under Idaho's discretionary scheme." *Id.* Finally, Adamcik asserts that the sentencing court "did not adequately consider the mitigating circumstances" outlined in *Miller* and revisited in *Montgomery* and that the evidence at Adamcik's sentencing hearing established that he "is not irreparably corrupt" but instead his offense "reflected transient immaturity and that Torey could be rehabilitated." *Id.*

Montgomery, like *Miller*, involves an individual who was sentenced under a statutory sentencing scheme that mandated a sentence of "life without parole" following the defendant's guilty verdict. 136 S.Ct. at 725-26. Justice Kennedy authored the majority opinion in *Montgomery*. In doing so, the holding in *Miller* was restated in the following terms:

> [*M*]*iller* held that mandatory life without parole for juvenile homicide offenders violated the Eighth Amendment's prohibition on " 'cruel and unusual punishments' " *Id.*, at ___, 132 S.Ct., at 2460. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence," mandatory life without parole "poses too great a risk of disproportionate punishment." *Id.* at ___, 132 S.Ct., at 2469. *Miller* required that sentencing courts consider a child's "diminished culpability and heightened capacity for change" before condemning him or her to die in prison. *Ibid.* Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, the

> Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect " 'irreparable corruption.' " *Ibid.* (quoting *Roper v. Simmons*, 543 U.S. 551, 573, 125 S.Ct. 1183, 161 L.Ed. 1 (2005).

136 S.Ct. at 726.

The *Montgomery* decision, in addressing whether the *Miller* holding should be applied retroactively, framed the issue in the following terms:

> This leads to the question whether *Miller's* prohibition on mandatory life without parole for juvenile offenders indeed did announce a new substantive rule that, under the Constitution, must be retroactive.

136 S.Ct. at 732. The Supreme Court answered this question in the affirmative, holding that "*Miller* announced a substantive rule that is retroactive in cases on collateral review." *Id.* In holding that the ruling in *Miller* announced a substantive rule subject to retroactive application, the *Montgomery* Court expounded upon the holding in *Miller*. In doing so it stated as follows:

> *Miller*, then, **did more** than require a sentence to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id.*, at ___, 132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects " 'unfortunate yet transient immaturity.' " *Id.*, at ___, 132 S.Ct., at 2469 (quoting *Roper*, 543 U.S., at 573, 125 S.Ct. 1183). Because *Miller* determined that sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption,' " 567 U.S., at ___, 132 S.Ct., at 2469 (quoting *Roper*, *supra*, at 573, 125 S.Ct. 1183), it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status" –that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry*, 492 U.S., at 330, 109 S.Ct. 2934. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it " ' necessarily carr[ies] a significant risk that a defendant' " –here, the vast majority of juvenile offenders– " ' faces a punishment that the law cannot impose upon him. *Schriro*, 542 U.S., at 352, 124 S.Ct. 2519 (quoting *Bousley v. United States*, 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).

136 S.Ct. at 734. [Bold Emphasis Supplied].

What this Court takes away from *Montgomery* and its "did more" discussion is that the sentencing court must do more than merely "consider a juvenile offender's youth." *Id.* The reason being that "even if a court considers a child's age before [or as a component of] sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment" if the defendant's crime reflects "unfortunate yet transient immaturity." *Id.* Rather, to withstand a Constitutional Eighth Amendment challenge of cruel and unusual punishment, the sentencing court must make a finding that the defendant is one of those "rare juvenile offender[s] whose crime reflects irreparable corruption." *Id.*

This Court has previously found that Judge McDermott conducted an individualized sentencing with respect to Adamcik. In doing so the Court noted that this individualized sentencing considered Adamcik's "youth (and all that accompanies it)." *See* Memorandum Decision and Order on Summary Dismissal Re: *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012). However, in doing so, the Court did not have the benefit of the United States Supreme Court's decision in *Montgomery* and more specifically the discussion of the United States Supreme Court that this Court has referred to as the "do more" discussion. Upon review of the *Montgomery* decision and the "do more" discussion, upon reconsideration of *Miller*, combined with a reconsideration of the particular facts of the Adamcik case, this Court concludes that Judge McDermott did make an appropriate finding under *Miller* and more recently *Montgomery*, that Adamcik's crime qualifies and meets the criteria of being that "rare juvenile offender whose crime reflects irreparable corruption."

The Court specifically adopts its Memorandum Decision and Order on Summary Disposition Re: *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012), the rationale, authority, findings and conclusions contained therein. Further in support of the Court's conclusion that

Judge McDermott concluded and made findings consistent with the "irreparable corruption" standard articulated in *Montgomery* the Court cites to the entirety of Judge McDermott's sentencing discussion. *See* Sentencing Transcript. More specifically, the Court outlined in its Memorandum Decision and Order on Summary Disposition Re: *Miller v. Alabama*, ___ U.S. ___, 132 S.Ct. 2455 (2012) the factors discussed by Judge McDermott which are, in this Court's view, the most salient with respect to the *Miller* holding. Those same excerpts are equally applicable in supporting Judge McDermott's conclusion that are the equivalent of *Montgomery's* requirement of a finding of irreparable corruptness.

> Dr. Garrison said there were two knives used in killing Cassie Jo, in his opinion. On the video after the killing, when Mr. Draper was exclaiming his -- I don't know how else to put it -- his excitement and pleasure at just killing Cassie, you said, Shut the F up. We've got to get our act together. You didn't say, Why did you kill Cassie? I thought it was a joke.
>
> ***
>
> [Y]ou both methodically and intelligently planned to murder Cassie Stoddart.
>
> This was not a joke. I'm convinced neither one of you thought it was a joke. You put your masks on, you took your real knives, you went back to the house with the definite intention of killing her, which you did. You both wanted to be famous as killers.
>
> ***
>
> You both have been convicted of murder in the first degree, and it's clear to the Court and the evidence at the trials, Cassie was savagely stabbed many times. The horror, fright and pain she surely encountered before death was certainly immense. You disguised yourselves with masks in darkness, which made it more frightening for her. You both were excited after the murder about the killing, and you both attempted to destroy the evidence initially. The killing was a barbarous, cold-blooded horrific act.
>
> **[Y]ou both have forfeited your privilege to live in a free society, and based on all the evidence and all that I've read, I'm convinced beyond a reasonable doubt that if you two, or either one of you, were released that you will kill again....**

> I'm not unmindful of how young you fellows are, but you commit a crime of this nature, and it's got to be -- it's got to be known, not only by those who commit it, but to others in the community that the punishment will not -- will not be so merciful. There's no mercy. Guys, I'm sorry. Guys, like I said, you guys are kids, but I just feel like this is a just sentence, given all the evidence that I had to look at. So I -- I'm sorry. I hope you two can have some kind of a life in the state correctional facility. At least it's more than Cassie has.

Sentencing Transcript, pp. 56-59. [Bold Emphasis Added].

Unless Judge McDermott was clairvoyant he could not have foreseen the rulings of the United State Supreme Court that would come down in *Miller* and *Montgomery*. As such, it would be impossible to expect usage of phrases such as "irreparably corrupt" or "unfortunate yet transient immaturity." Yet a review of the sentencing transcript clearly establishes that Adamcik was given a full blown sentencing hearing which consisted of three (3) days of testimony and argument, much of which focused on his age and youthful characteristics. However, the sentencing judge, who is in the best position to weigh the evidence, observe the witnesses and determine the credibility and what weight to attach to it, made the determination that he was "convinced beyond a reasonable doubt that if you two, or either one of you, were released that you will kill again." Without using the phrase coined by the Supreme Court in *Montgomery* and its forerunners of "irreparably corrupt", this finding by Judge McDermott can only be construed as being the equivalent of "irreparably corrupt."[3]

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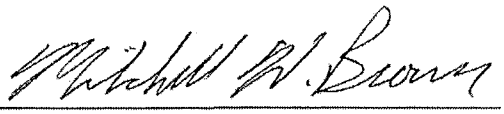
[3]Adamcik has focused on statements expressed by Judge McDermott during the pronouncement of Adamcik's sentence and during the course of denying Adamcik's Rule 35 motion to suggest that Judge McDermott did not consider Adamcik's "youth (and all that accompanies it)" and that Judge McDermott's personal attitudes were such that he would impose a life without parole sentence in every instance where a juvenile committed murder. *See* comments made by Judge McDermott at sentencing ("Teenage killers perhaps should receive no mercy. I don't know") Sentencing Transcript, p. 56 and comments made by Judge McDermott at Adamcik's Rule 35 hearing (In our society, at least in my opinion, when someone engages in this type of conduct, they should be punished as severe as the law allows"). Transcript p. 3110-11. These statements arguably stand for the proposition that Judge McDermott would have imposed this sentence regardless of the evidence and would impose the same sentence for any juvenile convicted of first degree murder. However, the Court does not need to address this specific issue. The Court is convinced, based upon the discussion above, that in this specific case, Judge McDermott made the requisite findings under Eighth Amendment case law to support a finding that Adamcik's crime and the attendant

CONCLUSION

Based upon the foregoing, the Court will **DENY** Adamcik's Second Motion to Reconsider. Incident to the Court's previous ruling on each of Adamcik's Claims as outlined in his P.C.R. Petition, the Court will enter, by separate order, a final Judgment of Dismissal.

IT IS SO ORDERED.

Dated this 19th day of July, 2016.



MITCHELL W. BROWN
District Judge

circumstances surrounding the crime equate to one of the rare instances identified in *Montgomery* where Adamcik's crime reflects "irreparable corruption" on his part.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of July, 2016, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Dennis A. Benjamin PO Box 2772 Boise, ID 83701	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:
Jared W. Johnson Courthouse Mail	☐ U.S. Mail ☒ E-Mail ☐ Hand Deliver ☐ Fax:

Brandy Eck

Deputy Clerk