8-4-2017

State v. Robins Respondent's Brief Dckt. 44296

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44296**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2015-126**
	)	
ANTHONY J. ROBINS, JR.,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature Of The Case

Anthony J. Robins, Jr., appeals from the judgment entered upon the jury verdict finding him guilty of two counts of aiding and abetting first degree murder, and one count of aiding and abetting attempted first degree murder. Robins contends the district court erred in (1) not dismissing his case or disqualifying the prosecuting attorney from prosecuting his case after notes he claimed were intended for his attorney were inadvertently disclosed to the state; (2) denying his motion requesting the ability to call his attorney anytime he wanted during business hours; (3) denying his motion to sever his case from a co-defendant's case based on his assertion that one exhibit was only admissible against his co-defendant; and (3) awarding restitution to Idaho Medicaid State Operations for medical expenses it paid on behalf of two of the victims.

Statement Of The Facts And Course Of The Proceedings

The state charged Robins with two counts of aiding and abetting first degree murder, and one count of aiding and abetting attempted first degree murder based on his involvement in the murders of Elliott Bailey and Travonte[1] Calloway, and the attempted murder of Jeanette Juraska. (R., pp.114-116.) The jury found Robins guilty of both counts of aiding and abetting and guilty of aiding and abetting the attempted first degree murder of Jeanette Juraska. (R., p.481.) The court imposed concurrent unified life sentences, with 40 years fixed, for both

[1] There are various spellings of Travonte included in the record. (R., p.114; PSI, pp.23, 94.) The state will use the same spelling used in the charging document.

of the aiding and abetting first degree murder convictions, and a concurrent fixed 15-year sentence for the aiding and abetting attempted first degree murder conviction. (R., pp.500-503.)

Robins filed a timely notice of appeal. (R., pp.505-509, 524-529.)

ISSUES

Robins states the issues on appeal as:

A. What is the appropriate remedy for the state's violation of Mr. Robins's attorney-client privilege?

B. Did the state unlawfully interfere with Mr. Robins's access to his attorney pre-trial and what remedy is appropriate?

C. Did the court abuse its discretion in denying the motion to sever defendants and then admitting Exhibit 133 at trial over objection and without a limiting instruction?

D. Did the court abuse its discretion in awarding $72,791.50 in restitution to Medicaid and by taking judicial notice of the existence of a contractual relationship between Medicaid and the health care providers here?

(Opening Brief of Appellant ("Appellant's Brief"), p.7.)

The state rephrases the issues on appeal as:

1. Has Robins failed to show any Sixth Amendment violation based on the inadvertent disclosure of allegedly privileged notes found during a lawful search of his cell, much less that he is entitled to reversal of his convictions and dismissal of the charges based on that disclosure?

2. Has Robins failed to show a Sixth Amendment violation based on the district court's denial of his request to allow him to call his attorney anytime he wanted to during "business hours"?

3. Has Robins failed to show the district court abused its discretion in denying his motion to sever his case from one of his co-defendant's (Douglas), or in its related determination that Exhibit 133, a self-inculpatory document written by Douglas, was admissible against both Robins and Douglas?

4. Has Robins failed to show the district court abused its discretion in awarding restitution to Medicaid for the economic loss Medicaid incurred in paying medical expenses for Jeanette Juraska and Travonte Calloway, two of the directly injured victims in this case?

ARGUMENT

I.
Robins Has Failed To Demonstrate A Constitutional Violation Based Upon The Inadvertent Disclosure Of Notes He Allegedly Made For Counsel And Has, Therefore, Failed To Show He Is Entitled To Any Relief, Much Less The Extraordinary Relief Of Dismissal

A. Introduction

Robins requests reversal of his convictions and dismissal of the charges against him based on the inadvertent disclosure of notes he allegedly prepared for his attorney, which were discovered during a lawful search of his cell that was conducted based on information that Robins and one of his co-defendants, Douglas, were passing notes while incarcerated in the Ada County Jail. (Appellant's Brief, pp.8-21.) Robins is not entitled to the relief he requests, or any other relief, because he suffered no identifiable prejudice as a result of the disclosure of his notes.

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Bromgard, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); State v. Smith, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001).

C. Because The Inadvertent Disclosure Of Robins' Notes Did Not Result In Prejudice, He Has Failed To Show A Constitutional Violation Entitling Him To Any Relief

Prior to trial, the state received information that Douglas and Robins were passing notes while incarcerated at the Ada County Jail, including a letter written "in an attempt to coordinate their stories to minimize liability for Robins." (R., pp.239-242.) As a result, the prosecutor directed jail staff to search Robins' cell, Douglas' cell, and the informant's cell. (R., p.242.) During the search of Robins' cell, an officer found a handwritten document that appeared to be related to the case and forwarded that document to the prosecutor. (R., p.242.) There was no notation on the document that it was confidential, privileged, or intended to be sent to counsel. (Sealed Exhibit 23, 9/23/2015 Hrg.) Nevertheless, after reviewing the document, the prosecutor emailed it to one of Robins' attorneys and notified him that it was discovered during a search of Robins' cell. (R., pp.242-243.) In response, Robins filed a motion "for an Order requiring the state to show cause why th[e] Court should not address and impose appropriate relief in favor of [him] as a result of the State's seizure and review of attorney-client privileged communications prepared by [him] for Counsel." (R., pp.139-140.)

The district court held an evidentiary hearing in relation to Robins' motion, and ultimately declined Robins' request to dismiss the charges against him as a remedy for the alleged breach of his attorney-client privilege. (R., pp.297-303.) In doing so, the district court made several pertinent findings, including:

> The notes at issue were created at the direction of Mr. Robins' attorney. However, the notes were not addressed to his attorneys, nor marked or labeled in any way to indicate that they were private, confidential, or attorney-client communications. The notes were not

> inadvertently delivered to any third party, but were seized pursuant to a lawful search. Indeed, except for now knowing the circumstances of their creation, there would be no way to know with certainty that the notes were intended for Mr. Robins' attorney or perhaps to refresh his memory in a future meeting with his attorney.

(R., p.300.)

The district court further observed that, as an inmate, Robins did "not have an expectation of privacy" and, pursuant to jail policy, Robins' cell could be "searched at any time." (R., p.300; see also pp.237-238.) Thus, "it is entirely reasonable to expect and require that if an inmate wants to ensure the confidentiality of communications, they should at least be properly labeled, for ease of identification for the jailers." (R., p.300.) Robins did not do so. Rather,

> [i]n this case, it appears that the Deputies did not thoroughly review the notes, but rather quickly scanned the notes to determine whether they were something that met the description of their directive. Since the notes were not labeled as attorney-client privileged communications, they likely appeared, on quick review, to possibly be the improper inmate communications they were looking for. Likewise, it appears that Sargent Ivie likely did not thoroughly read the notes, but simply passed them to the Prosecutor with an email stating that he was not sure if they were the contraband notes at issue. Only after the Prosecutor reviewed the notes with sufficient care did she realize that the notes were not in fact the contraband letter, but apparently private notes probably intended for a lawyer.

(R., p.301.)

Based on the "sequence of events," the district court found the discovery and review of the notes was "akin to an inadvertent disclosure of attorney-client privileged material that sometimes occurs in discovery." (R., p.301.)

Although the district court found that the "disclosure of attorney-client privileged material" was inadvertent, it also considered whether Robins was

prejudiced. (R., pp.301-303.) In ruling on Robins' pre-trial request for relief based on the prosecutor's review of his handwritten notes, the district court found that Robins' "case may have been prejudiced by the State's exposure to the notes" to the extent it gave the state "an inside look as to how Mr. Robins view[ed] his case and his defense." (R., p.302.) However, the court also found it was "impossible to determine whether there will ever be any actual prejudice to the defense." (R., p.302.) Because the state indicated it was prepared to identify an "independent source for each statement contained within Robins's notes," the district court declined to "impose the extreme sanctions of dismissal of the case or recusal of the Prosecutor as suggested by" Robins. (R., pp.302-303.) The court instead afforded Robins the following remedies: (1) exclusion of the notes; and (2) return of all copies of the document and "any notes or memos" the state "made regarding the contents." (R., p.302.) The court further advised that

> if, during the course of the trial, the defense believes that the prosecution is offering evidence or argument that could only have been obtained by way of [the] notes, the defense must object (and as the State suggests it is able to do) the State will then have the burden to demonstrate that the evidence or argument was known separate and apart from [the] notes. If the State is successful, the evidence will not be inadmissible on that basis alone; however, if the State cannot persuade the Court that it had some independent knowledge of the fact(s) in dispute, then the evidence will be inadmissible.

(R., p.303.)

The remedy fashioned by the district court is consistent with Stuart v. State, 118 Idaho 932, 801 P.2d 1283 (1990), and State v. Martinez, 102 Idaho 875, 643 P.2d 555 (Ct. App. 1982). In Stuart, the Idaho Supreme Court considered the proper course of action when confidential attorney-client

conversations were allegedly surreptitiously recorded by law enforcement and disclosed to the prosecutor. 118 Idaho at 933, 801 P.2d at 1284. In addressing this issue the Court held that "[a]ttorney-client conversations are constitutionally protected and cannot be invaded by the State," and that "monitoring and recording" such conversations "may deny a defendant the constitutional right of effective assistance of counsel," and "the constitutional right to due process." Id. at 935, 801 P.2d at 1286 (citations omitted). Because the issue arose in the context of a post-conviction petition, which was summarily dismissed despite the existence of material issues of fact, the Court remanded "to the trial court with instructions to hold an evidentiary hearing" to determine: "(1) whether there was recording of attorney-client conversations on the part of the Sherriff's Department; and (2) whether [Stuart's] constitutional rights were violated." Id. The Court further ordered that, if the privileged conversations were recorded, the state would be "required to show that the evidence at trial had an origin independent of the eavesdropping" because, "[a]ny knowledge wrongfully gained by the government cannot be used against a defendant." Id. (citations omitted).

The Court of Appeals considered a similar issue in Martinez, 102 Idaho 875, 643 P.2d 555. In that case, "[t]he sheriff, believing that Martinez posed a severe security risk, monitored and tape recorded all phone calls made by Martinez, including one call made to an attorney." Id. at 878, 643 P.2d at 558. Martinez's mail was also photocopied, some of which "contained information concerning the existence of his common law marriage to a woman who was a potential witness in the case." Id. Martinez claimed he was entitled to dismissal

as a result of "interference with his right to counsel." Id. The Court of Appeals disagreed that such an "extraordinary remedy" was appropriate in Martinez's case absent a showing of prejudice; indeed, Martinez could not even demonstrate he was entitled to a new trial. Id. at 878-879, 643 P.2d at 558-559. The Court reasoned that Martinez did not suffer prejudice because "[n]one of the information gathered through surveillance of Martinez's mail or phone calls was used as evidence in his trial." Id. at 879, 643 P.2d at 559. The Court concluded: "Although we do not condone the practice of monitoring phone calls in either of these situations, the conduct did not prejudice Martinez's right to a fair trial." Id. at 879, 643 P.2d at 559. It also "did not deny Martinez effective assistance of counsel." Id. Accordingly, Martinez was not entitled to either "dismissal of the information or a grant of [a] new trial." Id.

Robins did not make any objections during trial on the basis "that the prosecution [was] offering evidence or argument that could only have been obtained by way of [the] notes." (See generally Trial Trs.) Robins acknowledges as much on appeal (Appellant's Brief, p.11), and acknowledges that "[i]nsofar as the district court held that the onus was on the defense in this case to object to specific pieces of evidence produced at trial, its decision was arguably in accord with the federal practice," which is also consistent with the Idaho Supreme Court's decision in Stuart, supra (Appellant's Brief, pp.13-14). Nevertheless, Robins contends "more prejudice was involved in this case than simply the acquisition of certain pieces of evidence." (Appellant's Brief, p.14.) Specifically, Robins argues "the state obtained knowledge [about potential defense strategies]

as well as potential evidence." (Appellant's Brief, pp.14-15.) Robins further asserts the district court "abused its discretion in fashioning [its] remedy because it did not act consistently with the applicable legal standards," apparently referring to legal standards never adopted by, and different than those set forth in, Stuart. (Appellant's Brief, pp.16-19.) Robins then asks for the extraordinary remedy of vacating his convictions and dismissing the charges with prejudice. (Appellant's Brief, p.19.) All of Robins' arguments fail.

Although Robins' claim of error is predicated on the state's acquisition of *potential* defense strategies and evidence, he never identifies any actual strategy or evidence the state became privy to as a result of its acquisition of his notes. Robins asks this Court to ignore the absence of any proof of prejudice, and to presume prejudice and dismiss his case. (Appellant's Brief, pp.15-21.) Robins argues that, because a trial was held, dismissal with prejudice is the only remedy because "a second trial, even with a new prosecutor, will not arise from a vacuum" since a "new prosecutor will review the previous trial and thus carry the fruits of the state's misdeeds forward in shaping the second trial," whatever those unidentified "fruits" of the "misdeeds" may be. (Appellant's Brief, pp.19, 21.) Dismissal was not the remedy in Stuart or Martinez, it has never been the remedy compelled by the United States Supreme Court for the type of violation Robins alleges, and it is not the proper remedy in this case.

"Cases involving Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." United

States v. Morrison, 449 U.S. 361, 667-668 (1981). Supreme Court precedent "reflects this approach." Id. Thus, for example, retrial, not dismissal of the indictment, has been recognized as the proper remedy in cases involving the complete denial of counsel and ineffective assistance of counsel. Id. (citing cases). Retrial is also the proper remedy when "law enforcement officers improperly overheard pretrial conversations between a defendant and his lawyer." Id.; see also Martinez, 102 Idaho at 879, 643 P.2d at 559 ("Governmental intrusion into the attorney-client relationship may be grounds for a new trial" only if the defendant shows "substantial prejudice caused by the intrusion.").

"The premise" of Supreme Court precedent on this point "is that the constitutional infringement identified has had or threatens some adverse effect upon the effectiveness of counsel's representation or has produced some other prejudice to the defense." Morrison, 449 U.S. at 365. But, "absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate." Id.; The Supreme Court has expressly applied this principle to situations in which "conversations with counsel have been overheard." Weatherford v. Bursey, 429 U.S. 545, 552 (1977). In those circumstances, the Court concluded, "the constitutionality of the conviction depends on whether the overheard conversations have produced, directly or indirectly, any of the evidence offered at trial." Id. A "per se rule" in which "trial prejudice to the defendant is deemed irrelevant" is improper.

While Robins has cited cases from other jurisdictions in which the extraordinary remedy of dismissal was given, that remedy is not consistent with either Supreme Court precedent or Idaho precedent. (Appellant's Brief, pp.19-20.) Moreover, the cases upon which Robins relies involve the intentional eavesdropping on or interference with privileged communications, which is not what occurred in Robins' case. (Appellant's Brief, pp.19-20 (citing State v. Cory, 382 P.2d 1019 (Wash. 1963) (microphone installed in conference room where defendant met with his attorneys)[2]; United States v. Levy, 577 F.2d 200 (3rd Cir. 1978) (knowing invasion of attorney-client relationship by co-defendant who was government informant); Commonwealth v. Manning, 367 N.E.2d 635 (Mass. 1977) (addressing "a deliberate and intentional attack by government agents on the relationship between Manning and his counsel in a calculated attempt to coerce the defendant into abandoning his defense"); People v. Moore, 57 Cal.App.3d 437 (Cal.App.4th Dist. 1976) (addressing "active[ ] interfere[nce] with an attorney-client relationship established to defend Moore against the charges for which he had been jailed").)

[2] The Court in Martinez specifically declined to adopt the remedy from Cory finding the rule "inapposite" because there was no evidence that "trial tactics or strategy" were revealed to Martinez's trial attorney. Martinez, 102 Idaho at 879, 643 P.2d at 559. Significantly, the Court also noted that, while "[g]overnment intrusion into the attorney-client relationship may be *grounds for a new trial*," "a defendant must show substantial prejudice caused by the intrusion." Id. (emphasis added). Robins attempts to reconcile Cory and Martinez by arguing that "the privileged materials viewed by the prosecutor gave the state forewarning about the defense strategy," but he does not identify what strategy was forewarned or how it was used by the state, nor does he explain why Martinez's statements that a defendant must show substantial prejudice and the remedy for "intrusion into the attorney-client relationship" is a new trial do not apply to him.

The more reasoned approach to disclosures of privileged information, particularly inadvertent ones, is the one already taken by the United States Supreme Court, Idaho's courts, including the district court in this case, and courts from other jurisdictions. See, e.g., State v. Russum, 333 P.3d 1191 (Or. 2014) (inadvertent opening of inmate's privileged mail does not create presumption of prejudice; dismissal not proper remedy absent a showing of purposeful intrusion and prejudice); Brown v. Commonwealth of Kentucky, 416 S.W.2d 302 (Ky. 2013) (no Sixth Amendment violation based on inadvertent acquisition of privileged material without showing of prejudice); Carter v. State, 817 A.2d 277 (Md. App. 2003) (remedy for use of privileged documents at trial was new trial); Haworth v. State, 840 P.2d 912 (Wy. 1992) (to establish Sixth Amendment violation based on intrusion into attorney-client privilege, defendant must show substantial prejudice); State v. Warner, 722 P.2d 291 (Ariz. 1986) (concluding remedy for alleged Sixth Amendment violation based on interference with attorney-client relationship depends on whether defendant was prejudiced by the intrusion).

Robins has failed to show the district court's compliance with Idaho precedent constituted an abuse of discretion, and has failed to show his Sixth Amendment rights were violated. As a result, Robins has failed to show he is entitled to any relief, much less the drastic remedy of dismissal with prejudice.

II.
Robins Has Failed To Show His Sixth Amendment Right To Counsel Was Violated When The District Court Denied His Request To Have The Ability To Call His Attorney Anytime He Wanted During "Business Hours"

A. Introduction

Robins claims the district court erred in denying his motion requesting access to his attorney in the form of being able to call counsel anytime he wanted to during "business hours." (Appellant's Brief, pp.22-26.) Neither the facts nor the law support Robins' claim that he was denied meaningful access to his attorney.

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. Bromgard, 139 Idaho at 380, 79 P.3d at 739.

C. Robins' Sixth Amendment Right To Counsel Was Not Violated When The District Court Denied His Request To Call Counsel Anytime During "Business Hours"

Robins was represented by two private attorneys – Brian McMonagle from Philadelphia and local counsel, Scott McKay. (R., pp.50-51.) Approximately four months prior to trial, Robins filed a motion seeking an order "compelling the State of Idaho and officials of the Ada County Jail to permit him reasonable access to a telephone in order to call his defense attorneys," claiming he was being "denied reasonable access to counsel." (R., p.218.) More specifically, Robins complained that because he only had "access to the telephone to call his

attorneys" one hour a day, which "often occurs during non-business hours," he was "unable to contact his attorneys when it [was] necessary for him to do so." (R., p.222.) As an example, Robins noted that, on September 2, 2015, his access to the phone was from 6:00 a.m. to 7:00 a.m. MDT. (R., p.222 n.1.) McKay filed a declaration in support of the motion noting that, "[o]n many days, [he] do[es] not arrive at [his] office prior to 7:00 a.m." (R., p.227.) McKay further stated he had been advised by Robins "that he ha[d] been unable to contact his lawyers at times that he has needed to call his lawyers because of the limited time he is permitted telephone access." (R., p.227.) Robins did not detail what those times were or what efforts he made "to contact his lawyers" when he "needed to." (See generally R., pp.221-224, 226-227.) Nevertheless, Robins claimed he was subject to an "ongoing deprivation" of his Fifth, Sixth, and Fourteenth Amendment rights, and his rights under Article I, Section 13 of the Idaho Constitution. (R., p.219.)

The state filed a response to Robins' motion. (R., pp.248-258.) In its response, the state described the limitations on Robins' access to the telephone in the maximum security unit where he was confined. (R., p.249.) In that unit, "each inmate is allowed out of [his] cell one hour a day to go to the dayroom. While in the dayroom, the inmate may shower, watch T.V., read books, use the telephone or go outside." (R., p.249.) That one hour period is scheduled on a rotating basis between 6:00 a.m. and 7:00 p.m. (R., p.249.) For example, if an inmate's one hour period is scheduled from 6:00 a.m. to 7:00 a.m. on one day, he will be scheduled from 7:00 a.m. to 8:00 a.m. the following day, and from 9:00

a.m. to 10:00 a.m. the day after that. (R., p.249.) "It takes two weeks to go through the entire day room schedule." (R., p.249; see, e.g., R., p.260.) The state's response further explained that in-person attorney visits "are unlimited." (R., p.249.) "They can occur twenty-four (24) hours a day without prior notice to the jail." (R., p.249.) Inmates may also communicate with their attorneys in writing. (R., p.249.) The state's response also outlined Robins' telephone use during the 235 days he had been in custody. That use included "1,071 calls out" and 494 "completed calls," totaling 149 hours on the phone. (R., p.250.) Of those 1,071 calls, Robins "*never* dialed his attorney of record, Brian McMonagle at either his cell or office phone, and he only dialed McKay on four occasions, three of which were on the same day." (R., p.250 (emphasis original).)

At the hearing on his motion to compel, Robins argued that, "when he needs to call his lawyer, he needs to call his lawyer," and his access to counsel is "functionally denied" if he is forced to call "on a schedule." (9/23/2015 Tr., p.169, L.8 – p.170, L.14.) Robins proposed the following "solution" – if he asks to call his lawyer, the jail must accommodate that request. (9/23/2015 Tr., p.170, Ls.15-17.)

The court denied Robins' motion "unless and until" Robins showed he was actually prejudiced by the telephone schedule. (9/23/2015 Tr., p.183, Ls.5-8.) The district court did not err in denying Robins' request to call his attorney outside his scheduled access to the telephone.

The Sixth Amendment to the United States Constitution affords criminal defendants the right to counsel. Strickland v. Washington, 466 U.S. 668, 685

(1984). It does not, however, give defendants the right to unfettered access to counsel. Robins, however, contends his Sixth Amendment right to the effective assistance of counsel was violated because, he argues, "the jail interfered with an opportunity for meaningful consultation with counsel by limiting [his] phone access to one hour a day, at times at an hour outside of business hours so that counsel could not be reached at their offices." (Appellant's Brief, pp.22-25.) Fatal to Robins' claim is that he has never demonstrated, below or on appeal, that he was actually denied access to his attorneys as a result of the telephone schedule. In fact, the evidence in the record demonstrates that Robins rarely bothered even trying to call his attorney. Of the four calls Robins made to local counsel four months prior to filing his motion, three were on the same day. (R., p.262.) Although those calls were unanswered, likely because they were made between 6:00 a.m. and 7:00 a.m., Robins was able to get a message to his attorney through his sister, which resulted in local counsel visiting the following Monday, three days after the calls were made. (R., pp.262-263.) Under no standard does this example demonstrate a lack of meaningful access to counsel. This is true regardless of the time of day Robins had access to the telephone because the same result – three unanswered calls – could occur regardless of whether Robins made the calls at 6:00 a.m. or during "business hours." As Robins acknowledges on appeal, attorneys do not sit around their offices waiting for their clients to call. (Appellant's Brief, p.25.) Rather, if a client wishes to speak to his attorney, the common practice surely involves the client leaving a message for counsel, which is precisely what occurred when Robins asked his

sister to contact his attorney. This example illustrates why Robins' argument that "counsel cannot know other than by a phone call that the jailed client has an issue he wants to discuss" (Appellant's Brief, p.25) does not support his claimed Sixth Amendment violation.

Robins tries to minimize the evidence that he was not actually denied access to counsel given his all but non-existent efforts to contact counsel by arguing that just because he "did not need to call counsel before the motion for access, did not mean that he would not need to call counsel after the motion." (Appellant's Brief, p.25.) According to Robins, "the most reasonable expectation is that the need for communication would escalate, not remain constant or decline." (Appellant's Brief, p.25.) This very well may be true, but it also fails to demonstrate an actual constitutional violation. Moreover, the district court did not foreclose Robins' ability to return to the court and seek relief if he was ever actually prejudiced by the telephone schedule. (9/23/2015 Tr., p.183, Ls.5-8.) Robins never did. Robins is not entitled to relief based on a speculative constitutional violation.[3]

[3] Robins argues that "[g]iven there was a violation, the burden is upon the state to prove harmlessness beyond a reasonable doubt" and indicates he will "respond to whatever harmlessness arguments the state presents in his Reply Brief." (Appellant's Brief, p.26.) Since Robins has failed to argue, much less demonstrate, that he was actually deprived of his Sixth Amendment right to counsel, there is no constitutional violation that would require a harmless error analysis. The state can hardly be expected to guess what unarticulated prejudice Robins thinks he suffered at trial based on the jail's telephone schedule and make a harmless error argument in response.

III.
Robins Has Failed To Show The District Court Erred In Denying His Motion To Sever

A. Introduction

Robins contends the district court abused its discretion in denying his motion to sever his case from his co-defendant Douglas's case, claiming "the facts of his trial demonstrate that unfair prejudice resulted from the joint trial and denied him a fair trial." (Appellant's Brief, p.9.) To the contrary, a review of the record shows that the district court applied the correct legal standards in denying Robins' pretrial motion to sever.

B. Standard Of Review

"[A]n abuse of discretion standard is applied when reviewing the denial of a motion to sever joinder pursuant to I.C.R. 14; however, that rule presumes joinder was proper in the first place." State v. Field, 144 Idaho 559, 564, 165 P.3d 273, 278 (2007). The same abuse of discretion standard applies to reviewing the admission of evidence. State v. Perry, 150 Idaho 209, 218, 245 P.3d 961, 970 (2010) (citations omitted). In determining whether the district court abused its discretion, this Court considers "(1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." State v. Ellington, 157 Idaho 480, 485, 337 P.3d 639, 644 (2014) (quotations and citation omitted).

C. The District Court Properly Exercised Its Discretion In Denying Robins' Motion To Sever

Robins aided and abetted Douglas in the first degree murders of Elliott Bailey and Travonte Calloway, and in the attempted first degree murder of Jeanette Juraska (R., pp.114-116.) The state originally filed separate cases against Robins and Douglas, but later moved to consolidate them "on the grounds and for the reasons that the facts, evidence and witnesses are the same in each case." (R., pp.42-43.) The district court granted the state's motion, and the cases were consolidated prior to the preliminary hearing at which both defendants were bound over to district court. (R., pp.44, 100-106, 113.)

Approximately four months later, Robins filed a Motion for Relief from Prejudicial Joinder, arguing severance was required because Robins would "suffer unfair prejudice if he [was] tried jointly with" Douglas. (R., p.161.) Robins filed a memorandum in support of his motion in which he more specifically argued that severance was warranted due to the "admissibility of a letter that" Douglas "allegedly" wrote to Robins after their arrest. (R., p.164.) According to Robins, "the introduction of such evidence in a joint trial" would violate his "constitutional right to cross-examine witnesses and would unfairly prejudice him." (R., p.164.) The letter at the center of Robins' motion to sever was written to Robins by Douglas while he and Robins were in custody at the Ada County

Jail.[4] (R., p.305; see also pp.199-200, 379 (stipulation that Exhibit 133 "was written and authored by John C. Douglas").) In the letter, Douglas wrote:

> This is how we gonna play this. You get with your Ls tell him you want to cut a deal. But this is what you tell them, Tone ordered 30 ps. Them dudes took the 30 ps from Tone. He called you asked you did you know anybody who wanted to put in some work. You called me told me somebody, 'Tone," wanted to holler at me so Tone flew me down there Boise told me what he wanted me to do. Only reason you and Cook was down there was to pick me up and head out to Vegas or somewhere to party for Cook's birthday. So when y'all got down there we all kicked it for a couple of days. The day of the murder you went where you went and Cook went to the strip club. When you got back that's when I said ya we out. That's when you said Cook had the van keys. That's when you called girl to take us to the stip club, you still didn't know what happened at this time. We got Cook, came back. You hit girl. We packed and left. People started hiting you up telling you what happened. That's when you asked me what what's up. That's when i told you i bodyed them 2 dudes. Now listen, this is the story you have to fill in the blanks. You tell them everything he said you did you tell them he did. Once you get back at me and let me know you got the deal you want, i will let them know i want to plea out. That's when i will back your story about Tone was the driver and he gave me money, gun, everything, not you. Run this by your Ls and get back with me. Ant[5], no need both of us going down. I already know y'all will play y'all part because love & loyalty. Tell your Ls to get at me so we can put this shit in motion A.S.A.P. P.S. or do you want to go with i plea out and you go to trial? Call me for witness and tell them Tone drove the van, gave me the gun. I put this hit together, it's your call. Get with your tell him to come see me or what ever. Let me know which way to go.
>
> Peace Love
> Big Homie J

[4] As noted by the district court, it is this letter "that was the subject of the search" that resulted in the collection of the document that was the subject of Robins' breach of attorney-client privilege claim. (R., p.304 n.18.)

[5] Robins suggests this word is "aint" (Appellant's Brief, p.27); the state submits it is "Ant," which is Robins' nickname (see 1/25/2016 Tr., p.10, Ls.9-10).

(Exhibit 133[6] (some punctuation and capitalization added for readability, otherwise verbatim).)

In rejecting Robins' request for severance, the court determined that, because the letter would be admissible at separate trials, severance was unnecessary. (R., pp.305-312.) The district court's admissibility determination was predicated on I.R.E. 804(b)(3), the statement against interest exception to hearsay. (R., pp.306-307.) This exception "allows for the admission of a statement which was at the time of its making so far contrary to the declarant's penal interest that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true." State v. Averett, 142 Idaho 879, 890, 136 P.3d 350, 361 (Ct. App. 2006). In Averett, the Court referenced a three-part test for determining whether a statement qualifies for admission under I.R.E. 804(b)(3). 142 Idaho at 890, 136 P.3d at 361. That test requires consideration of whether the statement (1) is "genuinely self-inculpatory to the declarant"; (2) "is made to a private person and does not seek to curry the favor of law enforcement authorities"; and (3) "does not shift blame."[7] Averett, 142 Idaho at 890, 136 P.3d at 361. Whether a statement is "genuinely self-incriminatory" "requires an examination of context and the factual setting in which

[6] The letter (Exhibit 133) is included as Appendix A in the Appellant's Brief.

[7] In State v. Meister, 148 Idaho 236, 243, 220 P.3d 1055, 1062 (2009), the Idaho Supreme Court adopted a seven-factor test to apply "to determine whether the third-party confessions are sufficiently corroborated in accordance with I.R.E. 804(b)(3). Robins has not, however, raised the corroboration requirement as an issue (Appellant's Brief, pp.30-33), nor was it raised as an issue in his motion to sever (R., pp.164-168).

it was given." Averett, 142 Idaho at 890, 136 P.3d at 361. Averett illustrates how I.R.E. 804(b)(3) should be applied.

While in jail, Averett's co-conspirator, Johnston, made statements to her cellmate describing the process she used to make methamphetamine and claiming that "Averett was involved in making methamphetamine, both for his own use and for his personal war against the government." Averett, 142 Idaho at 889-890, 136 P.3d at 360-361. The district court admitted the statements under I.R.E. 804(b)(3). Id. The Court of Appeals applied the three-part test for admission under I.R.E. 804(b)(3), and held "that the major portion of Johnston's declaration [fell] squarely within the [exception]" because the statements "were genuinely self-incriminatory, admitting to Johnston's knowledge, association and direct involvement with the manufacture of methamphetamine, evidencing her desire to enlist [her cellmate] to secrete evidence from the police, as well as attempting to solicit [her cellmate] to help her make more methamphetamine upon her release." Averett, 142 Idaho at 890-891, 136 P.3d at 361-362. The Court reasoned that, "[i]n context, these statements, while uttered in a jail setting, were not given to police as a self-serving confession but to a cellmate in an attempt to expand Johnston's criminal involvement; nor did these declarations attempt to curry favor or shift blame away from Johnston and onto Averett." Id. at 891, 136 P.3d at 362. The only statement the Court of Appeals found should not have been admitted was "Johnston's statement that Averett made methamphetamine for his own use and for his personal war against the government"; this statement was not admissible under I.R.E. 804(b)(3) because it

"was in no way self-inculpatory as to Johnston." Id. The admission of the statement was, however, harmless error. Id.

The district court considered the conditions articulated in Averett and correctly concluded they were satisfied, reasoning:

> Here, the letter is genuinely self-inculpatory as to Mr. Douglas as he places the blame on himself for committing the murders. In fact, no part of the letter seeks to shift the blame to Mr. Robins, but rather seeks to give Mr. Robins an alibi, so that both Defendants do not have to "go down" for the crime. In addition, the letter was meant to be delivered to Mr. Robins, not to law enforcement. Indeed, the context would clearly indicate that Mr. Douglas would not want law enforcement to see it. The letter contains statements that were not intended to be given to law enforcement as a self-serving confession, but rather to another inmate in an attempt to create a story which Mr. Douglas believed would help both Defendants in their cases. *See State v. Averett*, 142 Idaho 879, 891, 136 P.3d 350, 362 (Ct. App. 2006).

(R., p.306.)

On appeal, Robins does not contend that Exhibit 133 was inadmissible in its entirety. (Appellant's Brief, pp.30-33.) Robins instead argues that "the court abused its discretion because it admitted [Exhibit 133] *in toto* without individualized consideration of the many statements to determine which fell within the hearsay exception," and that the "court's erroneous ruling on the admissibility of the letter also led it to deny the motion to sever." (Appellant's Brief, p.30.) Robins' argument fails to show reversible error in either the district court's determination regarding the admissibility of Exhibit 133, or in the district court's denial of Robins' request to sever based upon Exhibit 133.

Although the district court did not analyze each statement in Exhibit 133, its analysis did not run afoul of Averett because the entire letter is, in context, a

single self-incriminatory statement in that it details Douglas' willingness to inculpate himself in the murders and absolve Robins, and outlines a story Robins can provide to further this end. In this way, there is no meaningful distinction between Exhibit 133 and the statements deemed admissible in Averett. Robins' claim that the district court failed to comply with Averett is based on a narrow and incorrect reading of what Averett actually requires as evidenced by his argument that the "only portion" of Exhibit 133 that qualified for admission as a statement against interest was Douglas' statement, "I bodyed them 2 dudes." (Appellant's Brief, p.32.) This argument ignores Averett's acknowledgement that context matters, and that statements are admissible if they are self-inculpatory, as all of Douglas' letter was. Averett, 142 Idaho at 890-891, 136 P.3d at 361-362. Exhibit 133 satisfies the Averett criteria. Robins has failed to show otherwise.

Because the district court correctly concluded that Exhibit 133 was admissible against both Robins and Douglas, Robins was not entitled to severance on the basis that Exhibit 133 was not admissible against him. See I.C.R. 14 (severance required only if defendant is prejudiced by joinder); see also State v. Tankovich, 155 Idaho 221, 227, 307 P.3d 1247, 1253 (Ct. App. 2013) ("When reviewing an order denying a severance motion, the inquiry on appeal is whether the defendant has presented facts demonstrating that unfair prejudice resulted from a joint trial.").

Even if Robins is correct that the district court should have redacted some of the statements contained within Exhibit 133, any error in the admission of those statements was harmless. Idaho Criminal Rule 52 provides that "[a]ny

error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." I.C.R. 52. The inquiry is whether "'the guilty verdict actually rendered in this trial was surely unattributable to the error.'" State v. Joy, 155 Idaho 1, 11, 304 P.3d 276, 286 (2013) (quoting Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) (emphasis omitted)).

The only statement Robins identifies as one that "should have been redacted," is the statement, "no need both of us going down." (Appellant's Brief, pp.32-33.) Robins claims this statement "is not an admission of guilt, but rather an evaluation of the state's case which included an eyewitness identification of Mr. Douglas by the surviving victim and the informant testimony of Mr. Raider." (Appellant's Brief, pp.32-33.) In context, Douglas' statement "no need both of us going down" is clearly self-inculpatory. Robins' claim to the contrary is without merit. Regardless, even assuming the statement should have been redacted, any error in its admission was harmless in light of the evidence presented at trial supporting the jury's verdicts finding Robins guilty of aiding and abetting Douglas in the murders of Elliott Bailey and Travonte Calloway, and the attempted murder of Jeanette Juraska. (See, e.g., Exhibits 97-99 (phone records); 1/22/2016 Tr., pp.26-137 (Juraska's testimony); 1/25/2016 Tr., pp.6-192 (Raider's testimony).) Given the evidence presented, any error in the admission of the Exhibit 133 was harmless.[8]

[8] The same harmless error analysis would apply to the motion to sever.

IV.
Robins Has Failed To Show The District Court Abused Its Discretion In Awarding Restitution To Medicaid For Payments It Made On Behalf Of Jeanette Juraska And Travonte Calloway For Medical Services They Received After Being Shot

A. Introduction

The district court awarded restitution to several entities, including Medicaid State Operations ("Medicaid"). (R., p.14.) The award to Medicaid was based on its payment for medical services rendered to Jeanette Juraska and Travonte Calloway after Douglas shot them. (PSI, pp.93-94.) Robins asserts, as he did below, that Medicaid is not entitled to restitution because it does not qualify as a victim for purposes of the restitution statute because there was no evidence that it made the payments pursuant to a contract. (Appellant's Brief, pp.35-40.) Application of the correct legal principles to the facts of this case shows Robins has failed to meet his burden of showing error in relation to the district court's restitution order.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

The appellate court exercises free review over the application and construction of statutes. State v. Hickman, 146 Idaho 178, 191 P.3d 1098 (2008).

C. Robins Has Failed To Show The District Court Abused Its Discretion In Determining That Medicaid Qualifies As A Victim For Purposes Of Restitution Based On Its Conclusion That Medicaid Incurred Economic Losses By Paying For Medical Services Rendered To Two Directly Injured Victims As A Result Of Robins' Criminal Conduct

The district court ordered restitution in the following amounts, to be paid joint and several between Robins, Douglas, and Winn:

VICTIMS COMPENSATION PROGRAM	$ 10,000.00
ADA COUNTY PARAMEDICS	$ 2,626.00
ST ALPHON[S]US	$ 101,670.74
GEM STATE RADIOLOGY	$ 24.20
MEDICAID STATE OPERATIONS	$ 72,791.50

(R., pp.521-522.)

Prior to entering the restitution order, the court scheduled a "restitution review status conference" at which the court indicated it received emails "which narrowed the issues" with respect to restitution. (9/9/2016 Tr., p.427, Ls.5-9.) Counsels' arguments indicated those issues were (1) whether restitution was appropriate based on Robins' inability to pay; and (2) whether Medicaid is a "directly injured victim as contemplated by the statute." (9/9/2016 Tr., p.427,L.17 – p.431, L.1.) As to the second issue, Robins argued:

> If you look at Idaho Code 19-5304, subsection (E), defines victim. And there are different subsets under (E) sub (I), double (I), triple (I), and quadruple (I). And the only one of these that could even be

> argued to apply in this situation is this sub four section: "A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim," but then it goes on to say: "Pursuant to a contract, including but not limited to an insurance contract."
>
> And so that's the statute that the State relies on to recover restitution on behalf of insurance companies. Say you are Blue Cross or you're Blue Shield or an insurance company which has paid the directly injured victim. But that is paid pursuant to a contract, that's not the situation with Medicaid. And there certainly is no evidence in this record that establishes that that obligation -- whatever Medicaid paid here -- was pursuant to a contract.

(9/9/2016 Tr., p.430, Ls.6-24 (verbatim).)

The state responded to Robins' objection to ordering restitution payable to Medicaid, stating, in relevant part: "clearly Medicaid and Saint Alphonsus Hospital sign up and enter into their own contracts as far as complying. They can't get reimbursed unless they enter into agreements with and contracts with Medicaid." (9/9/2016 Tr., p.432, Ls.18-22.) The state asked the court "to understand that there's contracts present, that's how they recover," but indicated that if the "court need[ed] further information on that, [she'd] move to reopen on that" issue and "provide further information." (9/9/2016 Tr., p.433, Ls.6-14.) In response, Robins argued:

> With respect to Medicaid; there's no evidence. I don't know what counsel was referring to when she refers to contracts that may exist between the hospital or Medicaid or how these were paid. And that's just unsupported representations by counsel and if the court were to look at State versus Cheney at 144 Idaho 294, a 2007 decision from the Idaho Court of Appeals, that's a decision that talked about restitution and inappropriateness of the court's reliance on unsupported representations of counsel to make a finding of restitution.

> There's no contractual obligation that's in this record that supports the award of restitution to Medicaid in this case and we object to it.

(9/9/2016 Tr., p.434, L.18 – p.435, L.5.)

When asked if he would "agree" that "Medicaid is provided by statute," Robins answered, "Yes." (9/9/2016 Tr., p.435, Ls.6-8.) The district court thereafter overruled both of Robins' objections to restitution. (9/9/2016 Tr., p.435, L.9 – p.437, L.13.) Regarding whether Medicaid qualified as a victim for purposes of restitution, the district court, relying on I.C. § 19-5304, stated:

> I think that Medicaid is required to pay pursuant to statute, and I do think that it's a well-known fact that Medicaid contracts are required between the providers and Medicaid and, in fact, Medicaid pays substantially less than most insurance companies and certainly less than people who are charged who don't have either insurance or Medicaid. And as a consequence of that, the hospitals and doctors and such as that who do accept Medicaid cannot request additional monies from the victims for the difference in terms of what they might normally charge and what they do receive and that's pursuant to contract and pursuant to statute.
>
> Finally, Medicaid is certainly in the nature of insurance. And so for all those reasons, I'm going to find that the defendant does have to pay the Medicaid amounts pursuant to that particular section of the code.

(9/9/2016 Tr., p.436, L.10 – p.437, L.11.)

Robins has failed to show error in the district court's restitution decision. For purposes of the restitution statute, the term "victim" includes:

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

I.C. § 19-5304(1)(e)(iv). "Economic loss," in turn, includes "medical expenses resulting from the criminal conduct." I.C. § 19-5304(1)(a).

The Court of Appeals has recognized that "Section 19-5304(1)(e)(iv) unambiguously includes in the definition of victim any person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly-injured victim pursuant to a contract." State v. Cheeney, 144 Idaho 294, 297, 160 P.3d 451, 454 (Ct. App. 2007). This statutory language applies to "third parties who incurred a loss pursuant to a contractual obligation to make payments to or on behalf of a directly injured victim." Id. "Such third-party victims could include insurance companies or any other party that makes payments to or on behalf of the directly injured victim pursuant to a contract." Id. "[W]hether payments were made pursuant to a contract is a question of fact for the trial court." Id.

Robins does not dispute that Medicaid incurred economic loss for $72,791.50 in medical expenses paid on behalf of two directly injured victims, Jeanette Juraska and Travonte Calloway, and this amount is supported by documents submitted with the presentence investigation report.[9] (PSI, pp.85-86, 93-94.) Rather, Robins argues, as he did below, that the restitution awarded to Medicaid was impermissible because the state did not present evidence that Medicaid paid those expenses pursuant to a contract. (Appellant's Brief, pp.33-40.) Robins is correct that the state did not present such evidence, but the

[9] "Pursuant to Section 19-5304(6), the court may consider such hearsay as may be contained in the PSI, victim impact statement, or otherwise provided to the court." Cheeney, 144 Idaho at 299, 160 P.3d at 456.

absence of such evidence does not require reversal of the restitution award. This is true for two reasons.

First, the district court found that Medicaid qualified as a victim "pursuant to contract and pursuant to statute." (9/9/2016 Tr., p.437, Ls.6-7 (emphasis added); see also p.436, Ls.21-22 ("I think Medicaid is required to pay pursuant to statute").) Robins claims error only in relation to the contract basis of the district court's decision, but not the statutory basis of the court's decision. (Appellant's Brief, pp.35-39.) In fact, Robins agreed below that Medicaid is "provided by statute" (9/9/2016 Tr., p.435, Ls.6-8), and he acknowledges on appeal that "it seems more likely that the Medicaid payments were made pursuant to federal statutes and regulations, not 'pursuant to a contract'"[10] (Appellant's Brief, p.39). Because the plain language of I.C. § 19-5304(1)(e)(iv) includes "payments to or on behalf of a directly injured victim . . . pursuant to statute," and because Robins does not claim error in the district court's determination that Medicaid also made payments "pursuant to statute," this Court may affirm on the unchallenged basis. State v. Goodwin, 131 Idaho 364, 366–367, 956 P.2d 1311, 1313–1314 (Ct. App. 1998) (appellate court may affirm on unchallenged basis).

Second, although the Court in Cheeney indicated that "[e]ach party has the right to present evidence on whether a person or entity qualifies as a victim," including evidence of "whether payments were made pursuant to a contract," the

[10] Medicaid is not solely a creature of federal law; it is funded and regulated by the federal government and the states. https://www.healthandwelfare.idaho.gov; https://www.ssa.gov/disabilityresearch/wi/medicaid.htm.

state was relieved of presenting evidence regarding the details of any contract[11] as a result of the district court's determination that Medicaid is "in the nature of insurance" and "it's a well-known fact that Medicaid contracts are required between the providers." (9/9/2016 Tr., p.436, Ls.22-24, p.437, Ls.8-9.) Robins, however, claims the district court could not "take judicial notice of a contract" because such a fact does not comply with the requirements of I.R.E. 201 because, he argues, "[t]he rule on judicial notice does not permit the court to take note of obscure 'facts' not capable of ready determination." (Appellant's Brief, pp.37-38.) Whether Robins perceives a fact as obscure is irrelevant to whether judicial notice was proper. Rule 201, I.R.E., authorizes a court to take judicial notice of an adjudicative fact so long as it is either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." "A court's decision to take judicial notice of an adjudicative fact is a determination that is evidentiary in nature" and is reviewed for an abuse of discretion. Fortin v. State, 160 Idaho 437, 442, 374 P.3d 600, 605 (Ct. App. 2016).

Even if it is not "generally known within the territorial jurisdiction" that Medicaid "is in the nature of insurance" for its qualifying recipients, such a fact is

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[11] The evidence of Medicaid's economic loss was available to the district court in the form of summaries from the Idaho Medicaid Management Information System Restitution Claims Detail documents, which itemize the expenses paid to various providers on behalf of Jeanette Juraska and Travonte Calloway. (PSI, pp.93-94.) The request for restitution from Medicaid State Operations was also referenced in the PSI. (PSI, p.6.)

"capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," *i.e.*, the Idaho Code and the Idaho Department of Health and Welfare ("IDHW"). Individuals must apply for Medicaid benefits, which includes medical coverage, just as one would apply for private health insurance. http://healthandwelfare.idaho.gov/Default.aspx?TabId=123; see also I.C. § 31-3503E (Medicaid eligibility determinations for medical indigence); I.C. § 31-3504 (applications for assistance). Medicaid is no less an insurance provider than a private insurer like Blue Cross just because a Medicaid recipient does not pay insurance premiums. It can also be determined by resort to IDHW's website that IDHW contracts with providers to render services to Medicaid recipients. http://healthandwelfare.idaho.gov/Providers/Providers-Medicaid/tabid/214/Default.aspx. Saint Alphonsus Regional Medical Center, the main recipient of payments itemized on the Idaho Medicaid Management Information System Restitution Claims Detail documents for both Jeanette Juraska and Travonte Calloway, is one such provider. (Compare http://healthandwelfare.idaho.gov/Portals/0/Medical/LicensingCertification/AlphaHospital.pdf with PSI, pp.93-94.) Robins' claim that the district court abused its discretion by judicially noticing how Medicaid works fails.

Robins has failed to show the district court abused its discretion in awarding restitution to Medicaid for payments it made on behalf of two individuals who were directly injured by Robins' criminal conduct.

CONCLUSION

The state respectfully requests that this Court affirm the judgment and sentences entered upon the jury verdicts finding Robins guilty of two counts of aiding and abetting first degree murder and one count of aiding and abetting attempted first degree murder.

DATED this 4th day of August 2017.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of August, 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/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

JML/dd