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### Arellano v. State Clerk's Record Dckt. 45179

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# In the Supreme Court of the State of Idaho

JUAN MANUEL ARELLANO.	)	
	)	
Petitioner-Appellant.	)	ORDER AUGMENTING APPEAL
	)	
v.	)	Supreme Court Docket No. 45179-2017
	)	Cassia County No. CV-2013-390
STATE OF IDAHO.	)	
	)	
Respondent.	)	

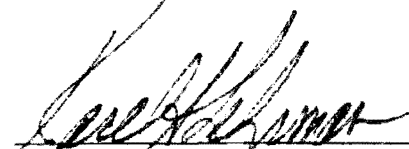
A Clerk's Record was filed with this Court in prior appeal No. 41995, *Arellano v. State* (Cassia County No. CV-2013-390). Therefore,

IT HEREBY IS ORDERED that this Record on Appeal shall be AUGMENTED to include the Clerk's Record filed in prior appeal No. 41995, *Arellano v. State* (Cassia County No. CV-2013-390).

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a CLERK'S RECORD with this Court, which shall contain the documents requested in this Notice of Appeal together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 41995. The CLERK'S RECORD shall be filed with this Court by September 5, 2017.

DATED this 3<sup>rd</sup> day of July, 2017.

For the Supreme Court

  
Karel A. Lehrman, Clerk

cc: Counsel of Record  
District Court Clerk  
District Judge Michael R. Crabtree

## Post Conviction Relief

Date		Judge
5/3/2013	New Case Filed - Post Conviction Relief	Michael R Crabtree
	Affidavit of Facts in Support of Post-Conviction Petition	Michael R Crabtree
	Motion and Affidavit in Support for Appointment of Counsel	Michael R Crabtree
	Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Michael R Crabtree
5/6/2013	Order GRANTING Motion for Appointment of Counsel - PUBLIC DEFENDER	Michael R Crabtree
5/21/2013	Answer to Petition for Post Conviction Relief	Michael R Crabtree
6/3/2013	Hearing Scheduled (Court Trial 09/16/2013 01:30 PM)	Michael R Crabtree
	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	Michael R Crabtree
9/13/2013	Hearing Scheduled (Motion 09/30/2013 09:00 AM) Motions	Michael R Crabtree
	Motion to Vacate Trial and Motion to Extend Deadline and Schedule for filing of Dispositive Motions	Michael R Crabtree
	Notice of Hearing - Motion to Vacate Trial and Motion to Extend Deadline and Schedule for filing of Dispositive Motions	Michael R Crabtree
9/16/2013	Hearing result for Court Trial scheduled on 09/16/2013 01:30 PM: Hearing Vacated	Michael R Crabtree
9/30/2013	Court Minutes Hearing type: Motion Hearing date: 9/30/2013 Time: 10:32 am Courtroom: Court reporter: Denise Schloder Minutes Clerk: Tara Gunderson Tape Number: Party: Juan Arellano, Attorney: Timothy Schneider Party: State of Idaho - Douglas Abenroth	Michael R Crabtree
	Hearing result for Motion scheduled on 09/30/2013 09:00 AM: Hearing Held Motion to Vacate Trial and Motion to Extend Deadline and Schedule for filing of Dispositive Motions	Michael R Crabtree
	Order to vacate trial and order to extend deadline and schedule for filing of dispositive motions	Michael R Crabtree
	Hearing Scheduled (Court Trial 02/14/2014 01:30 PM)	Michael R Crabtree
	Notice of Hearing - Court Trial	Michael R Crabtree
11/14/2013	State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
	Affidavit of Douglas G. Abenroth	Michael R Crabtree
	Brief in Support of Motion for Summary Disposition	Michael R Crabtree
11/15/2013	Hearing Scheduled (Motion 12/30/2013 01:30 PM) State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
12/2/2013	Notice of Conflict	Michael R Crabtree
12/6/2013	Continued (Motion 01/13/2014 09:00 AM) State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
	Stipulation to Continue	Michael R Crabtree

## Post Conviction Relief

Date		Judge
12/6/2013	Order Allowing Additional Time to File Reply Brief and to Continue Hearing	Michael R Crabtree
12/20/2013	Stipulation to Continue	Michael R Crabtree
12/23/2013	Order Allowing Additional Time to File Reply Brief	Michael R Crabtree
	Continued (Motion 01/27/2014 09:30 AM) State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
12/24/2013	Stipulation to Continue	Michael R Crabtree
	Order Allowing Additional Time to File Reply Brief and to Continue Hearing	Michael R Crabtree
1/9/2014	Motion for Appointment of Substitute Counsel	Michael R Crabtree
	Affidavit of Juan Manuel Arellano	Michael R Crabtree
	Memorandum of Law in Support of Motion for Appointment of Substitute Counsel	Michael R Crabtree
	Clerk's Certificate Of Service	Michael R Crabtree
1/13/2014	Motion to Permit Attorney to Withdraw	Michael R Crabtree
1/14/2014	Order DENYING the Petitioner's Motion to Permit Attorney to Withdraw	Michael R Crabtree
1/15/2014	Continued (Court Trial 02/24/2014 09:00 AM)	Michael R Crabtree
	Continued (Motion 02/14/2014 11:00 AM) State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
1/16/2014	Stipulation to Continue	Michael R Crabtree
	Order Extending Time to File Brief & to Continue Hearings	Michael R Crabtree
2/5/2014	Objection to Motion for Summary Disposition	Michael R Crabtree
2/11/2014	Stipulation to Vacate Hearing (Motion for Summary Disposition)	Michael R Crabtree
	Notice of Hearing Vacated	Michael R Crabtree
	Hearing result for Motion scheduled on 02/14/2014 11:00 AM: Hearing Vacated State's Motion for Dismissal or Alternatively, Motion for Summary Disposition	Michael R Crabtree
2/12/2014	Reply Brief in Support of Motion for Summary Disposition	Michael R Crabtree
2/18/2014	Order GRANTING the State's Motion for Summary Disposition	Michael R Crabtree
	Judgment	Michael R Crabtree
	Hearing result for Court Trial scheduled on 02/24/2014 09:00 AM: Hearing Vacated	Michael R Crabtree
	Civil Disposition entered for: State of Idaho, Defendant; Arellano, Juan Manuel, Subject. Filing date: 2/18/2014	Michael R Crabtree
2/21/2014	Memorandum of Law in Support of Motion for Counsel	Michael R Crabtree
	Affidavit of Juan Manuel Arellano	Michael R Crabtree
	Motion for Substitute Counsel	Michael R Crabtree
3/19/2014	Notice of Appeal	Michael R Crabtree
	Motion and Affidavit in Support for Appointment of Counsel	Michael R Crabtree
	Motion and Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Michael R Crabtree
3/20/2014	Order Granting Motion for Appointment of Counsel (SAPD)	Michael R Crabtree

## Post Conviction Relief

Date		Judge
5/29/2015	2015 Opinion No. 30 Filed: May 27, 2015 Stephen W. Kenyon, Clerk	Michael R Crabtree
6/22/2015	Hearing Scheduled (Court Trial 08/21/2015 01:30 PM) Notice of Hearing - Court Trial	Michael R Crabtree Michael R Crabtree
	Order Regarding Post-Conviction Evidentiary Hearing	Michael R Crabtree
	Order Re-Appointing Public Defender	Michael R Crabtree
6/24/2015	Motion to Permit Attorney to Withdraw	Michael R Crabtree
	Order Permitting Attorney to Withdraw and Appointing Conflict Public Defender (David Haley)	Michael R Crabtree
	Remittitur	Michael R Crabtree
7/7/2015	Subpoena Returned**Kent Jensen	Michael R Crabtree
8/20/2015	Notice of Hearing Vacated	Michael R Crabtree
	Hearing result for Court Trial scheduled on 08/21/2015 01:30 PM: Hearing Vacated	Michael R Crabtree
8/21/2015	Order Appointing Conflict Public Defender - Michael P. Tribe	Michael R Crabtree
8/26/2015	Hearing Scheduled (Court Trial 10/15/2015 01:30 PM)	Michael R Crabtree
8/27/2015	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	John K Butler
9/3/2015	Petitioner's Disclosure of Witnesses	Michael R Crabtree
	Motion for Payment of Attorney's Fees	Michael R Crabtree
9/4/2015	Affidavit of Michael P Tribe for Payment of Attorney Fees	Michael R Crabtree
	Order For Payment of Attorney Fees	Michael R Crabtree
9/11/2015	Court Trial Witness List (State)	Michael R Crabtree
9/16/2015	Motion to Continue	Michael R Crabtree
	Continued (Court Trial 01/22/2016 09:00 AM)	Michael R Crabtree
	Order Continuing Evidentiary Hearing	Michael R Crabtree
9/30/2015	Motion For Payment Of Attorney Fees's	Michael R Crabtree
	Affidavit Of Michael P. Tribe For Payment Of Attorney Fees	Michael R Crabtree
10/2/2015	Order for Payment of Attorney's Fees	Michael R Crabtree
10/22/2015	Subpoena Returned ** Kent Jensen	Michael R Crabtree
11/4/2015	Motion for Payment of Attorney's Fees	Michael R Crabtree
	Affidavit of Michael P Tribe for Payment of Attorney Fees	Michael R Crabtree
11/5/2015	Order for Payment of Attorney Fees	John K Butler
12/3/2015	Motion for Preparation of Transcript	Michael R Crabtree
	Motion for Transport	Michael R Crabtree
12/4/2015	Order for Transport	Michael R Crabtree
	Order for Preparation of Transcript	Michael R Crabtree
12/10/2015	Motion for Payment of Attorney's Fees	Michael R Crabtree
	Affidavit of Michael P Tribe for payment of Attorney Fees	Michael R Crabtree
12/11/2015	Order for Payment of Attorney Fees	G R Bevan

## Post Conviction Relief

Date		Judge
1/8/2016	Motion for Payment of Attorney's Fees	Michael R Crabtree
	Affidavit of Michael P Tribe for payment of Attorney Fees	Michael R Crabtree
	Ex Parte Motion to Disclose Presentence Investigation	Michael R Crabtree
	Order for payment of Attorney fees	Michael R Crabtree
	Hearing Scheduled (Motion 01/19/2016 04:15 PM)	Michael R Crabtree
1/11/2016	Transcript Filed	Michael R Crabtree
	Sentencing (held 04/08/2011 in CR 2010-4251)	
1/14/2016	Stipulated Motion to continue Evidentiary Hearing	Michael R Crabtree
1/19/2016	Court Minutes	Michael R Crabtree
	Hearing type: Motion	
	Hearing date: 1/19/2016	
	Time: 4:13 pm	
	Courtroom:	
	Court reporter: Maureen Newton	
	Minutes Clerk: Theresa Forthun	
	Tape Number:	
	Hearing result for Court Trial scheduled on 01/22/2016 09:00 AM:	Michael R Crabtree
	Hearing Held	
	Hearing Scheduled (Evidentiary 02/29/2016 01:30 PM)	Michael R Crabtree
	Order Continuing Evidentiary Hearing	Michael R Crabtree
	Order Ailowig Disclosure of Presentence Investigation	Michael R Crabtree
	Hearing result for Motion scheduled on 01/19/2016 04:15 PM: Hearing	Michael R Crabtree
	Held Motion to Disclose Presentence Investigation	
2/1/2016	Motion for Payment of Attorney Fees	Michael R Crabtree
	Affidavit of Michael P. Tribe for Payment of Attorney Fees	Michael R Crabtree
2/2/2016	Order for Payment of Attorney Fees	Michael R Crabtree
2/5/2016	Subpoena Returned-Kent Jensen	Michael R Crabtree
2/10/2016	Respondent's Exhibit List	Michael R Crabtree
	Motion for Transport	Michael R Crabtree
2/11/2016	Order for Transport	Michael R Crabtree
2/17/2016	Hearing Scheduled (Motion 02/23/2016 03:00 PM) Motion for Appointment	Michael R Crabtree
	of New Attorney for Petitioner	
	Notice of Hearing	Michael R Crabtree
	Motion for Appointment of New Attorney for Petitioner	Michael R Crabtree
2/23/2016	Court Minutes	Michael R Crabtree
	Hearing type: Motion to W/Draw	
	Hearing date: 2/23/2016	
	Time: 3:13 pm	
	Courtroom:	
	Court reporter: Roxanne Patchell	
	Minutes Clerk: Tara Gunderson	
	Tape Number:	
	Party: Juan Arellano, Attorney: Michael Tribe	
	Party: State of Idaho, Attorney: Douglas Abenroth	

## Post Conviction Relief

Date		Judge
2/23/2016	Hearing result for Motion scheduled on 02/23/2016 03:00 PM: Hearing Held Motion for Appointment of New Attorney for Petitioner	Michael R Crabtree
2/29/2016	Court Minutes Hearing type: Status Hearing date: 2/29/2016 Time: 1:33 pm Courtroom: Court reporter: Minutes Clerk: Tara Gunderson Tape Number: Party: Juan Arellano, Attorney: Michael Tribe Party: State of Idaho, Attorney: Douglas Abenroth	Michael R Crabtree
	Hearing result for Status scheduled on 02/29/2016 01:30 PM: Hearing Held	Michael R Crabtree
	Order Appointing Conflict Public Defender - STEVEN R. MCRAE	Michael R Crabtree
	Hearing Scheduled (Scheduling Conference 03/24/2016 09:00 AM)	Michael R Crabtree
	Notice of Hearing - Scheduling Conference	Michael R Crabtree
3/1/2016	State's Response to Request for Discovery	Michael R Crabtree
3/2/2016	Ex-Parte Motion for Payment Affidavit of Steven R. McRae	Michael R Crabtree Michael R Crabtree
3/3/2016	Order for Payment	Michael R Crabtree
3/7/2016	Motion for Payment of Attorney's Fees Affidavit of Michael P Tribe for Payment of Attorney Fees	Michael R Crabtree Michael R Crabtree
3/9/2016	Order for Payment of Attorney Fees	Randy Stoker
3/17/2016	Hearing result for Scheduling Conference scheduled on 03/24/2016 09:00 AM: Hearing Vacated	Michael R Crabtree
	Hearing Scheduled (Pretrial Conference 05/03/2016 09:00 AM)	Michael R Crabtree
	Hearing Scheduled (Evidentiary 05/09/2016 02:00 PM)	Michael R Crabtree
	Notice of Hearing Vacated and Reset	Michael R Crabtree
4/1/2016	Continued (Evidentiary 06/03/2016 02:00 PM) Notice of Hearing	Michael R Crabtree Michael R Crabtree
4/11/2016	Affidavit Of Steven R. McRae Ex Parte Motion For Payment	Michael R Crabtree Michael R Crabtree
4/12/2016	Order For Payment	Michael R Crabtree
4/14/2016	Subpoena Returned**Kent Jensen, new address 304 W 24th Burley	Michael R Crabtree



## Post Conviction Relief

Date		Judge
5/3/2016	Court Minutes Hearing type: Pretrial Conference Hearing date: 5/3/2016 Time: 9:15 am Courtroom: Court reporter: Denise Schloder Minutes Clerk: Tara Gunderson Tape Number: Party: Juan Arellano, Attorney: Steven McRae Party: State of Idaho, Attorney: Douglas Abenroth	Michael R Crabtree
	Hearing result for Pretrial Conference scheduled on 05/03/2016 09:00 AM: Hearing Held	Michael R Crabtree
5/4/2016	Order to transport	Michael R Crabtree
5/5/2016	Ex Parte Motion for Payment	Michael R Crabtree
5/31/2016	Subpoena Returned ** Kent Jensen	Michael R Crabtree
6/3/2016	Continued (Evidentiary 08/19/2016 09:00 AM)	Michael R Crabtree
	(Petitioner's) Exhibit List	Michael R Crabtree
	Notice of Hearing Vacated and Reset	Michael R Crabtree
	Minute Entry	Michael R Crabtree
6/7/2016	Exparte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R McRae	Michael R Crabtree
6/8/2016	Order for Payment	Michael R Crabtree
	Subpoena Returned Kent Jensen	Michael R Crabtree
	Continued (Evidentiary 09/29/2016 09:00 AM)	Michael R Crabtree
	Notice of Hearing Vacated and Reset	Michael R Crabtree
7/5/2016	Order to Transport	Michael R Crabtree
7/7/2016	Affidavit of Steven McRae	Michael R Crabtree
	Ex-Parte Motion for Payment	Michael R Crabtree
7/8/2016	Order for Payment	Michael R Crabtree
7/14/2016	Subpoena Returned**Kent Jensen	Michael R Crabtree
8/2/2016	First State's Supplemental Discovery Response	Michael R Crabtree
	(State's) Exhibit List	Michael R Crabtree
	(State's) Witness List	Michael R Crabtree
8/9/2016	EX parte Motion for payment	Michael R Crabtree
	Affidavit of Steven R Mcrae	Michael R Crabtree
	Order for Payment	Michael R Crabtree
9/6/2016	Motion to transport	Michael R Crabtree
9/7/2016	Order to Transport	Michael R Crabtree
9/9/2016	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
	Order for Payment	Michael R Crabtree

## Post Conviction Relief

Date		Judge
9/21/2016	Court Minutes Hearing type: Status Hearing date: 9/21/2016 Time: 3:36 pm Courtroom: Court reporter: Maureen Newton Minutes Clerk: Tara Gunderson Tape Number: Party: Juan Arellano, Attorney: Steven McRae Party: State of Idaho, Attorney: Douglas Abenroth	Michael R Crabtree
	Hearing result for Evidentiary scheduled on 09/29/2016 09:00 AM: Continued	Michael R Crabtree
9/28/2016	Order to Transport	Michael R Crabtree
10/6/2016	Ex Parte Motion for Payment Affidavit of Steven R. McRae	Michael R Crabtree Michael R Crabtree
10/7/2016	Hearing Scheduled (Court Trial 12/05/2016 09:00 AM) Notice of Hearing - Court Trial	Michael R Crabtree Michael R Crabtree
10/19/2016	Continued (Court Trial 01/13/2017 09:00 AM) Notice Vacating and Resetting Of Evidentiary Hearing	Michael R Crabtree Michael R Crabtree
10/27/2016	Subpoena Returned**Kent Jensen	Michael R Crabtree
11/7/2016	Ex Parte Motion for Payment Affidavit of Steven R. McRae	Michael R Crabtree Michael R Crabtree
11/8/2016	Order for Payment Subpoena Returned - Kent Jensen	Michael R Crabtree Michael R Crabtree
11/22/2016	Motion to Transport	Michael R Crabtree
11/28/2016	Order to Transport	Michael R Crabtree
12/7/2016	Ex Parte Motion for Payment Affidavit of Steven R. McRae Order for Payment	Michael R Crabtree Michael R Crabtree Michael R Crabtree
1/6/2017	Second State's Supplemental Discovery Response	Michael R Crabtree
1/10/2017	Ex Parte Motion for Payment Affidavit of Steven R. McRae	Michael R Crabtree Michael R Crabtree
1/11/2017	Order for Payment	Michael R Crabtree
1/13/2017	Court Minutes Hearing type: Court Trial Hearing date: 1/13/2017 Time: 9:01 am Courtroom: Court reporter: Maureen Newton Minutes Clerk: Tara Gunderson Tape Number: Party: Juan Arellano, Attorney: Steven McRae Party: State of Idaho, Attorney: Douglas Abenroth	Michael R Crabtree

## Post Conviction Relief

Date		Judge
1/13/2017	Hearing result for Court Trial scheduled on 01/13/2017 09:00 AM: Hearing Held	Michael R Crabtree
	Order for Preparation of Transcript	Michael R Crabtree
2/7/2017	Transcript Filed - Hearing held on 01/13/2017	Michael R Crabtree
2/8/2017	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
	Order for Payment	Michael R Crabtree
3/7/2017	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
3/8/2017	Order for Payment	Michael R Crabtree
3/16/2017	Petitioner's Post Trial Brief	Michael R Crabtree
4/10/2017	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
4/11/2017	Order for Payment	Michael R Crabtree
4/18/2017	Stipulation for Extension of Time to File Respondent's Brief	Michael R Crabtree
4/20/2017	Order for Extension of Time to File Respondent's Brief	Jonathan Brody
4/21/2017	Stipulation for Extension of Time to File Respondent's Brief	Michael R Crabtree
4/24/2017	Order for Extension of Time to File Respondent's Brief	Michael R Crabtree
4/26/2017	Repondent's Post-Trial Brief	Michael R Crabtree
4/28/2017	Petitioner's Reply Post-Trial Brief	Michael R Crabtree
5/3/2017	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
5/8/2017	Order for Payment	Michael R Crabtree
5/18/2017	Findings Of Fact And Conclusions Of Law	Michael R Crabtree
	Judgment	Michael R Crabtree
	Civil Disposition entered for: State of Idaho, Defendant; Arellano, Juan Manuel, Plaintiff. Filing date: 5/18/2017	Michael R Crabtree
6/5/2017	Notice of Appeal	Michael R Crabtree
	Motion for Appointment of State Appellate Public Defender	Michael R Crabtree
6/6/2017	Notice and Order For Appointment of State Appellate Public Defender	Randy Stoker
6/8/2017	Ex Parte Motion for Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
	Order for Payment	John K Butler
7/10/2017	Order Augmenting Appeal	Michael R Crabtree
7/11/2017	Ex Parte Motion For Payment	Michael R Crabtree
	Affidavit of Steven R. McRae	Michael R Crabtree
	Order for Payment	Michael R Crabtree

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41995

2015 MAY 27 11:47 AM  
JHC

JUAN MANUEL ARELLANO,	)	2015 Opinion No. 30
	)	
Petitioner-Appellant,	)	Filed: May 27, 2015
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael R. Crabtree, District Judge.

Judgment of the district court summarily dismissing petition for post-conviction relief, affirmed in part, vacated in part, and case remanded.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Nicole L. Schafer, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Juan Manuel Arellano appeals from the judgment of the district court summarily dismissing his petition for post-conviction relief. For the reasons that follow, we affirm in part, vacate in part, and remand.

I.

FACTS AND PROCEDURE

Underlying this post-conviction relief action, Arellano entered a guilty plea to the first degree murder of his wife, except that he entered an *Alford*<sup>1</sup> plea to the element of malice aforethought, Idaho Code § 18-4001, and to the element of premeditation, I.C. § 18-4003(a).

<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

This Court affirmed his judgment of conviction and sentence in *State v. Arellano*, Docket No. 38880 (Ct. App. May 7, 2012) (per curiam) (unpublished).

Arellano then filed a pro se petition for post-conviction relief with sixty-four assertions. He also moved the district court to appoint counsel, and counsel was appointed for him. Subsequently, the State moved the court to summarily dismiss the petition, and Arellano filed an objection to the motion for summary dismissal. The district court then issued an order summarily dismissing the petition. In that order, the court consolidated the sixty-four assertions into fourteen claims of ineffective assistance of defense counsel and one claim of an insufficient factual basis to support the *Alford* plea. In particular, the district court consolidated some of the assertions into what the court characterized as a claim that defense counsel provided ineffective assistance because counsel “told Mr. Arellano that evidence of the victim’s intentions and his mental state was not relevant.” Arellano appeals, challenging the summary dismissal of this ineffective assistance of defense counsel claim.

## II.

### ANALYSIS

On appeal, Arellano argues that the district court erred by summarily dismissing what the court characterized as a claim that defense counsel provided ineffective assistance because counsel “told Mr. Arellano that evidence of the victim’s intentions and his mental state was not relevant.” The district court dismissed this claim after finding that the claim was bare and conclusory, that Arellano did not provide admissible evidence of deficient performance, and that Arellano did not provide admissible evidence of prejudice.

Idaho Code section 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to motion of a party or upon the court’s own initiative. Summary dismissal of a petition pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under Idaho Rule of Civil Procedure 56. A claim for post-conviction relief will be subject to summary dismissal if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims upon which the petitioner bears the burden of proof. *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009). Thus, summary dismissal is permissible when the petitioner’s evidence has raised no genuine issue of material fact that, if resolved in the petitioner’s favor, would entitle the petitioner to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Goodwin v. State*,

138 Idaho 269, 272, 61 P.3d 626, 629 (Ct. App. 2002). Summary dismissal of a petition for post-conviction relief may be appropriate, however, even where the State does not controvert the petitioner's evidence because the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986).

Because this appeal involves an ineffective assistance of counsel claim, we note that a claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Where, as here, the petitioner was convicted upon a guilty plea, to satisfy the prejudice element, the petitioner must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. *Plant v. State*, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006). 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. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

In his pro se petition, Arellano made several assertions concerning his mental state in killing his wife:

29. Petitioner asserts that he lacked the ability to act deliberately and with violence against his wife, and the killing of his wife occurred by accident because of the blind rage upon seeing her come back into the bar after her lover had escorted her out.

30. A jury would have been allowed to infer that the requisite mental state was lacking on all the assault charges as he was under the influence of two drugs and the culmination of emotions that his wife intentionally provoked.

....

51. No one knows wh[at] petitioner's intent was when he pulled out a gun and walked out onto the dance floor. All petitioner knows is that his emotions overwhelmed him, and wanted to rant and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passion as he was attempting to scare her. He never intended to kill her, but the rage within was so overwhelming that he was out of control and even more by the acts of others.

....

54. Petitioner alleges he committed homicide and attempted assaults with a weapon in the heat of passion upon the appearance of his wife as she intentionally came back into the bar.

Arellano also asserted that defense counsel provided deficient performance and prejudiced him:

53. Under the professional norms counsel's assistance amounted to incompetence. Counsel failed entirely in his representation.

....

55. Counsel's representation was so seriously defective he was not functioning as the counsel guaranteed by the Sixth Amendment.

56. Petitioner asserts that there exist[s] a reasonable probability that but for counsel's representation, he would not have pleaded guilty and would have insisted on going to trial.

57. Counsel's failures prejudice[d] petitioner and if he would have fulfilled his obligations he would never have been convicted of any of the charges filed by information.

58. Petitioner advised his attorney [of] his version of the facts surrounding the death of his wife. Yet counsel insisted that some of these facts were irrelevant, and that if he went to trial he would be found guilty. As a result of counsel refusing to participate in petitioner's defense he entered a guilty plea.

This Court interprets assertion 58, based on the other relevant assertions listed in the petition, to aver that Arellano informed defense counsel about his mental state when he killed his wife and that defense counsel informed him that facts concerning his mental state were irrelevant. This interpretation is bolstered by Arellano's objection to the motion for summary dismissal, in which counsel explained that Arellano "avers that his [defense] counsel advised him that his mental state at the time of the alleged incident was not relevant to the case." This interpretation is also consistent with the district court's characterization of the claim, in which it explained that "Arellano contends that [defense counsel] told him that evidence of the victim's intentions and his mental state . . . was not relevant."

However, unlike the district court, we are persuaded that the claim is not bare and conclusory, and we are also persuaded that there is admissible evidence supporting the claim.

Arellano's pro se claim is not artfully pled, yet the assertions listed above do add up to a claim asserting that defense counsel provided deficient performance by advising him that facts concerning Arellano's mental state when he killed his wife were irrelevant. Taking the other factual assertions offered by Arellano as true about the circumstances leading up to his wife's death, Arellano's mental state was relevant, as Arellano explained that he was in "a blind rage" after seeing his wife return to the bar and that his rage was "overwhelming." Indeed, evidence challenging the premeditation element of first degree murder might lead a jury to convict of the lesser charge of second degree murder, I.C. § 18-4003(a) and (g), and the unlawful killing of a human being in the heat of passion is voluntary manslaughter, not murder, I.C. § 18-4006. Therefore, Arellano's assertions support a prima facie case of deficient performance by defense counsel when, as Arellano alleges, counsel insisted that facts concerning Arellano's mental state when Arellano killed his wife were irrelevant.

Arellano's assertions also set forth a prima facie case of prejudice. Beyond claiming that he would not have pled guilty and insisted on going to trial, Arellano asserted that he pled guilty "[a]s a result of counsel refusing to participate in [his] defense." These assertions compliment the fact that Arellano entered an *Alford* plea by which he refused to admit to the elements of malice aforethought and premeditation--elements that separate voluntary manslaughter from murder and separate second degree murder from first degree murder respectively. Taken together, Arellano has presented prima facie evidence of a reasonable probability that he would not have pled guilty and would have insisted on going to trial, but for defense counsel's alleged deficient performance.

Although the district court also stated that Arellano did not "provide[] admissible evidence," this is not so. Arellano's assertions concerning his mental state, what he told defense counsel, and what counsel told him were within his personal knowledge; these assertions were set forth in a verified petition, in which Arellano swore that "all statements" in his petition were "true and correct to the best of his or her knowledge and belief." See I.C. § 19-4902(a) (requiring "[f]acts within the personal knowledge of the [petitioner] . . . be sworn to affirmatively as true and correct."); I.C. § 19-4903 (similarly requiring facts within the petition based upon personal knowledge to be verified, as provided in I.C. § 19-4902). The district court, in considering whether to grant the State's motion for summary dismissal, must consider "the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact,



together with any affidavits submitted.” I.C. § 19-4906(c). Therefore, for purposes of summary dismissal, a petitioner’s assertions in a petition based upon personal knowledge and properly verified are admissible evidence and must be accounted for in deciding whether to grant summary dismissal. Here, Arellano’s assertions were admissible evidence.

In summary, Arellano’s claim, as characterized by the district court, was not bare and conclusory, and the claim did allege a prima facie case of deficient performance and prejudice. The claim was backed by assertions that were admissible evidence for the district court to consider in deciding whether to grant the State’s motion for summary dismissal. Hence, the State was not entitled to judgment as a matter of law on this claim.<sup>2</sup> Accordingly, we vacate that portion of the judgment summarily dismissing this claim. As to all other claims alleged in Arellano’s petition for post-conviction relief, the judgment is affirmed. The case is remanded for further proceedings consistent with this opinion.

Judge LANSING and Judge GRATTON **CONCUR**.

---

<sup>2</sup> We do not express an opinion on whether Arellano’s claim will prevail in the district court following an evidentiary hearing. Rather, our scope of review is limited to ascertaining whether the district court properly summarily dismissed the claim.

DISTRICT COURT  
CLERK OF DISTRICT COURT

FILED

2015 JUN 22 AM 11:35

CLERK OF THE COURT



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2013-390

**ORDER REGARDING POST-  
CONVICTION EVIDENTIARY  
HEARING**

The Petitioner Juan Manuel Arellano (hereafter “Mr. Arellano”) entered an *Alford* plea of guilty to the offense of murder in the first degree with a sentence enhancement for the use of a firearm in Cassia County case CR-2010-4251. On May 3, 2013, Mr. Arellano filed the Petition for Post-Conviction Relief (hereafter “Petition”) in this case. The State filed a Motion for Dismissal Pursuant to Section 19-4906(b) or Alternatively, Motion for Summary Disposition Pursuant to Section 19-4906(c) (hereafter “motion for summary disposition”). On February 18, 2014, the court entered an order granting the State’s motion for summary disposition and dismissed Mr. Arellano’s Petition in its entirety.

Mr. Arellano filed an appeal. The Idaho Court of Appeals affirmed this court’s order granting the State’s motion for summary disposition in part, vacated it in part, and remanded the case for further proceedings. *See Arellano v. State*, No. 41995, 2015 WL 2457811 (Idaho. Ct.

App. May 27, 2015). In the opinion on appeal, the Idaho Court of Appeals quoted the following paragraphs from Mr. Arellano's Petition:

29. Petitioner asserts that he lacked the ability to act deliberately and with violence against his wife, and the killing of his wife occurred by accident because of the blind rage upon seeing her come back into the bar after her lover had escorted her out.

30. A jury would have been allowed to infer that the requisite mental state was lacking on all the assault charges as he was under the influence of two drugs and the culmination of emotions that his wife intentionally provoked.

....

51. No one knows wh[at] petitioner's intent was when he pulled out a gun and walked out onto the dance floor. All petitioner knows is that his emotions overwhelmed him, and wanted to rant and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passion as he was attempting to scare her. He never intended to kill her, but the rage within was so overwhelming that he was out of control and even more by the acts of others.

53. Under the professional norms counsel's assistance amounted to incompetence. Counsel failed entirely in his representation.

54. Petitioner alleges he committed homicide and attempted assaults with a weapon in the heat of passion upon the appearance of his wife as she intentionally came back into the bar.

55. Counsel's representation was so seriously defective he was not functioning as the counsel guaranteed by the Sixth Amendment.

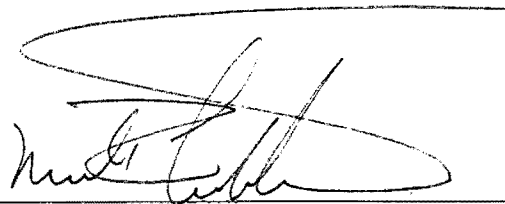
56. Petitioner asserts that there exist[s] a reasonable probability that but for counsel's representation, he would not have pleaded guilty and would have insisted on going to trial.

57. Counsel's failures prejudice[d] petitioner and if he would have fulfilled his obligations he would never have been convicted of any of the charges filed by information.

58. Petitioner advised his attorney [of] his version of the facts surrounding the death of his wife. Yet counsel insisted that some of these facts were irrelevant, and that if he went to trial he would be found guilty. As a result of counsel refusing to participate in petitioner's defense he entered a guilty plea.

The foregoing paragraphs from the Petition set forth the only claim that remains following the appeal. This case is currently set for an I.C. § 19-4907 evidentiary hearing regarding this claim on August 21, 2015. Since the Idaho Court of Appeals affirmed the dismissal of all of Mr. Arellano's other post-conviction claims, the court considers evidence regarding the dismissed post-conviction claims to be irrelevant and inadmissible pursuant to I.R.E. 401 and 402.

It is so **ORDERED** this 22<sup>d</sup> day of June, 2015.


A handwritten signature in black ink, appearing to read "Michael R. Crabtree", is written over a horizontal line. The signature is stylized and cursive.

MICHAEL R. CRABTREE  
District Judge


CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Cassia County Prosecuting Attorney      ✓ e-mail - [dnoriyuki@cassiacounty.org](mailto:dnoriyuki@cassiacounty.org)  
1459 Overland Avenue  
P.O. Box 7  
Burley, ID 83318
  
2. Cassia County Public Defender      ✓ e-mail - [mspeers@cassiacounty.org](mailto:mspeers@cassiacounty.org)  
P.O. Box 188  
Burley, ID 83318

By   
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
On: 8/27/2015 02:35 PM  
JOSEPH W. LARSEN  
CLERK OF THE DISTRICT COURT  
Filed By: 

JUAN MANUEL ARELLANO

Plaintiff,

vs

STATE OF IDAHO,

Defendant.

CASE NO. CV-2013-0000390 D

SCHEDULING ORDER,  
NOTICE OF TRIAL SETTING  
AND INITIAL PRE-TRIAL ORDER

Presiding Judge: Michael R. Crabtree

Pursuant to I.R.C.P. 16 and 40, **unless the parties stipulate otherwise using the Stipulation for Scheduling and Planning document accompanying this Order, IT IS HEREBY ORDERED:**

1. **TRIAL:** This case is set for **COURT TRIAL** as follows:

**Court Trial: Thursday, October 15, 2015, Time: 01:30 PM**

A total of ½ day has been reserved.

2. **DEADLINES WILL BE ENFORCED AT COURT'S DISCRETION:** The deadlines set forth in this Order are for the benefit of the Court in managing this case, and they will be enforced at the Court's discretion. Any party seeking to alter any deadline shall file a motion and notice of hearing.

3. **ALTERNATE JUDGES:** Notice is given that the presiding judge intends to utilize the provisions of I.R.C.P. 40(d)(1)(G). An alternate judge may be assigned to preside at trial or at any other hearing or proceeding in the case. The panel of alternate judges consists of the following judges who otherwise have not been disqualified in this action: Judges Bevan, Brody, Butler, Elgee, Hurlbutt, McDermott, Schroeder, Stoker, Wildman and Williamson.

4. **DEADLINE FOR PRE-TRIAL MOTIONS:** All non-dispositive pre-trial motions must be filed and scheduled to be heard not less than **fourteen (14) days** before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY DISPOSITION:**

- a. Motions for summary disposition must be filed and served so as to be heard no later than **thirty (30) days** before trial.
- b. The party moving for summary disposition shall prepare as **separate** documents: (a) motion, (b) legal memorandum containing a statement of reasons in support of the motion, and (c) a concise statement of the material facts. Each statement of a fact shall include a reference to the particular place in the record which supports that fact. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.
- c. The party opposing a motion for summary disposition shall prepare as **separate** documents: (a) legal memorandum containing a statement of reasons in opposition to the motion, and (b) a concise statement of the facts which are genuine issues of material fact and/or which are material facts omitted from the moving party's statement of facts. Each statement of a fact must be supported by admissible evidence and shall include a reference to the place in the record which supports that fact. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.
- d. The schedule for service of briefs and affidavits set forth in I.R.C.P. 56(c) is hereby **MODIFIED** as follows:
  - i. The motion, affidavits and supporting brief shall be served at least **thirty-five (35) days** before the time fixed for the hearing.

- ii. The adverse party shall serve an answering brief and opposing affidavits, if any, at least **twenty-one (21) days** prior to the date of the hearing.
- iii. The moving party may thereafter serve a reply brief not less than **fourteen (14) days** before the date of the hearing.
- e. The hearing on a motion for summary disposition will be set **AFTER** the moving party has submitted the motion, legal memorandum and statement of facts. The hearing date can then be obtained from the judge's court clerk. This pertains to all motions for summary disposition and motions for partial summary disposition.

**6. MOTION FILING AND HEARINGS:** All motions must be filed and served at least **fourteen (14) days** prior to hearing. Scheduling of hearings will be through Deputy Clerk Tara Gunderson ((208) 878-7152). Hearings on motions (except motions for summary disposition or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4). Counsel requesting a hearing by conference call will be responsible for the cost of the call, for setting up the call, and for joining the opposing party on the call.

**7. WITNESS DISCLOSURES:**

- a. Each party shall disclose the existence and identity of intended or potential expert or lay witnesses not less than **forty-two (42) days** before trial. Any witness who has not been timely disclosed will not be permitted to testify at trial upon objection by the aggrieved party.
- b. The disclosure of expert witnesses shall include a complete statement of all opinions to be expressed; the basis and reasons for the opinion; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness; the compensation to be paid for the testimony; and a listing of any other cases in which



the witness has testified as an expert at trial or by deposition within the preceding four years.

**8. EXHIBITS AND EXHIBIT LISTS:**

- a. A party must identify and disclose any exhibits that party intends or reserves the right to offer at trial. Not less than **seven (7) days** prior to trial, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exhibit 1) and one duplicate marked set of that party's proposed exhibits for the Court's use during trial; and (B) deliver to counsel for the other party a copy of the exhibit list and a copy of the party's marked exhibits.
- b. **Any exhibit which has not been timely disclosed will be excluded.** The exhibit list and duplicate copies need not include exhibits offered solely for the purpose of impeachment.
- c. Exhibits shall be **pre-marked**. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "1," and the defendant shall identify exhibits beginning with letter "A."

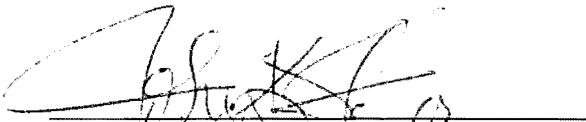
**9. ELEMENT SHEETS:** Element Sheets shall be filed with the Clerk (with copies to the presiding judge's chambers) no later than **seven (7) days** before trial. Each party's Element Sheet shall set forth the elements of each claim and the proposed evidence, in specific detail, which the party believes in good faith will prove each element of the claim and/or affirmative defense. The Element Sheets will be similar to final "issue" instructions given to juries (*see* IDJI 1.40.1 through 1.41.4.3).

**10. REQUEST TO VACATE TRIAL SETTING:** A request to vacate or continue an existing trial setting, with or without a stipulation, will be granted only for unusual and unforeseen circumstances and when the interests of substantial justice to the litigants so require. A party

requesting to vacate or continue a trial shall file a written statement concerning the reasons for the request. The requesting party shall certify that the request or stipulation has been discussed with the other parties.

**11. JUDICIAL NOTICE:** A request for the Court to take judicial notice of any documents not in the post-conviction file must comply with I.R.E. 201. Counsel shall provide authenticated copies of the documents to be judicially noticed under separate cover.

DATED this 27 day of August, 2015.

  
MICHAEL R. CRABTREE  
District Judge

**CERTIFICATE OF SERVICE**

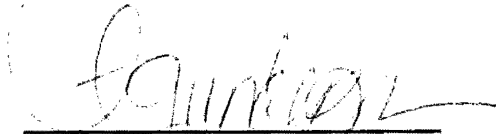
The undersigned hereby certifies that this 27 day of August, 2015, I caused a true and correct copy of the foregoing SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER to be served upon the following persons in the following manner:

1. Michael Patrick Tribe  
Attorney at Law  
P.O. Box 396  
Rupert ID 83350

✓ email: mpt@idlawfirm.com

2. Douglas G Abenroth  
Cassia County Prosecuting Attorney  
P.O. Box 7  
Burley ID 83318

✓ email: dnoriyuki@cassiacounty.org



Tara Gunderson  
Deputy Clerk

JUAN MANUEL ARELLANO

Plaintiffs,

Vs.

STATE OF IDAHO,

Defendant.

Case No: CV-2013-0000390 D

**Exhibit List**

\_\_Plaintiff \_\_Defendant

Identifier	Description	Identified By	Date Offered	Admitted

Exhibit 1 to Scheduling Order

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

CV-2013-0000390

Juan Manuel Arellano, Plaintiff vs State Of Idaho, Defendant

Hearing type: Motion

Hearing date: 1/19/2016

Time: 4:13 pm

Judge: Michael R Crabtree

Courtroom: 1

Court reporter: Maureen Newton

Minutes Clerk: Theresa Forthun

Interpreter: Noemi Alanis

- 4:15pm Court introductions
- 4:15pm All parties are present and with Counsel  
Interpreter is present for petitioner
- 4:16pm Doug Abenroth addresses court re: Set Evidentiary Hearing for Feb. 29, 2016 @ 1:30pm
- 4:18pm Court discusses 2<sup>nd</sup> motion
- 4:18pm Mike Tribe addresses court.
- 4:20pm Court addresses Mike Tribe
- 4:20pm Mike Tribe addresses court re: Information in PSI. Would like to thoroughly review all matters in PSI.
- 4:21pm Doug Abenroth **OBJECTS** to PSI. Cites reasons.
- 4:22pm Court addresses Counsel regarding State vs. Adams
- 4:26pm Court grants motion. Court states that Counsel will need to get in touch with clerk regarding PSI
- 4:26pm Court signs Order
- 4:27pm Hearing Concludes

2016 FEB 23 PM 4:01

CLERK OF THE COURT

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY**

**COURT MINUTES**

**CV-2013-0000390**

**Juan Manuel Arellano, Plaintiff vs State Of Idaho, Defendant**

**Hearing type: State's Motion for Appointment of New Counsel**

**Hearing date: 2/23/2016**

**Time: 3:13 pm**

**Judge: Michael R Crabtree**

**Courtroom: # 1**

**Court reporter: Roxanne Patchell**

**Minutes Clerk: Tara Gunderson**

**Party: Juan Arellano, Attorney: Michael Tribe**

**Party: State of Idaho, Attorney: Douglas Abenroth**

The Court reviews the State's motion for appointment of new counsel.

Douglas Abenroth reviews considerations for the State's Motion for Appointment of New Counsel; cites considerations.

3:17 p.m. Michael Tribe has no objection; defers to the Court.

3:17 p.m. The Court would like consent in writing; cites considerations.

Michael Tribe addresses the Court.

The Court leaves the trial as set and transport on.

Michael Tribe addresses the Court.

Douglas Abenroth addresses the Court.

The Court converts the trial on Monday to a Status Conference.

3:26 p.m. Court in recess.

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
Filed By: Tara  
On: 2/29/2016 at 01:34 PM  
JOSEPH LARSEN  
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

JUAN MANUEL ARELLANO

Plaintiff,

Vs

STATE OF IDAHO,

Defendant,

CASE NO. CV-2013-0000390 D

COURT MINUTES

Status Conference

Hearing date: 2/29/2016  
Judge: Michael R Crabtree  
Minutes Clerk: Tara Gunderson

Time: 1:33 pm  
Courtroom: # 1

Party: Juan Arellano, Attorney: Michael Tribe  
Party: State of Idaho, Attorney: Douglas Abenroth

Noemi Alanis is present to interpret.

Counsel waive the presence of the Court Reporter, no objection to proceeding with the electronic recording.

The Court does not conclude that there is an actual conflict with Michael Tribe; cites considerations.

1:36 p.m.

Michael Tribe addresses the Court; cites they have agreed that it would be best to have new counsel be appointed; cites considerations.

The State has no further comments.

The Court thanks Mr. Tribe for his services and grants the motion to withdraw and will appoint new counsel.

1:38 p.m.

Court in recess.

IN THE DISTRICT COURT OF  
THE FIFTH JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO

CASE NO. \_\_\_\_\_  
FILED AT \_\_\_\_\_ M  
DATE May 3, 2016 \_\_\_\_\_

CLERK \_\_\_\_\_

DEPUTY CLERK \_\_\_\_\_

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR CASSIA COUNTY

COURT MINUTES

CV-2013-0000390

Juan Manuel Arellano, Plaintiff vs State Of Idaho, Defendant

Hearing type: Pretrial Conference

Hearing date: 5/3/2016

Time: 9:15 am

Judge: Michael R Crabtree

Courtroom: # 1

Court reporter: Denise Schloder

Minutes Clerk: Tara Gunderson

Party: Juan Arellano, Attorney: Steven McRae

Party: State of Idaho, Attorney: Douglas Abenroth

The defendant is not present.

Douglas Abenroth addresses the Court.

The Court inquires of Counsel re: transport order.

Steven McRae cites he will need a transport order; reviews status of case.

Evidentiary hearing is set for June 03, 2016 at 2:00 p.m.

9:17 a.m.

Court in recess.



Arellano's Exhibit List

Steven R. McRae [ISB No. 7984]  
 Brian J. Hilverda [ISB No. 7952]  
 Guy B. Zimmerman [ISB No. 9765]  
 HILVERDA MCRAE, PLLC  
 812 Shoshone Street East  
 P.O. Box 1233  
 Twin Falls, ID 83303-1233  
 Telephone No. (208) 944-0755  
 Facsimile No. (208) 736-0041  
 smcrae@magicvalleylegal.com

2016 JUN -3 AM 9:14  
 CLERK OF DISTRICT COURT

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE  
 OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO, )  
 )  
 Plaintiff, ) Case No. CV-2013-390  
 )  
 vs. ) EXHIBIT LIST  
 )  
 STATE OF IDAHO, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

NO.	DESCRIPTION	Identified by	Date Offered	Admitted
101	Invoice of Kent Jensen			
102	Kent Jensen's Notes			
103	Transcript of Preliminary Hearing			
104	Transcript of Arraignment, Change of Plea and Sentencing			
105	Sentencing Memorandum with Authority Cited			
106	Guilty Plea Advisory			
107	Plea Agreement			


Arellano's Exhibit List

108	Judgment of Conviction and Order			
109	Psychological Report			
110	Memorandum in Support of Rule 35 Motion with Authority Cited			
111	Rule 35 Motion			
112	Affidavit in Support of Criminal Complaint			
113	Notice That Death Penalty Will Not be Sought Re: First Degree Murder			
114	Affidavit of Irma Ovalle			
115	Amended Information			
116	Information			
117	State's Response to Discovery Request			
118	First State's Supplemental Discovery Response			
119	Second State's Supplemental Discovery Response			
120	Third State's Supplemental Discovery Response			
121	Fourth State's Supplemental Discovery Response			
122	Fifth State's Supplemental Discovery Response			
123	Seventh State's Supplemental Discovery Response			
124	Eighth State's Supplemental Discovery Response			
125	Ninth State's Supplemental Discovery Response			
126	Tenth State's Supplemental Discovery Response			
127	Eleventh State's Supplemental Discovery Response			
128	Twelfth State's Supplemental Discovery Response			

Arellano's Exhibit List

DATED this 3<sup>rd</sup> day of June, 2016.

HILVERDA MCRAE, PLLC

By:   
\_\_\_\_\_  
Steven R. McRae  
Attorney for Plaintiff

1 DOUGLAS G. ABENROTH (ISB #7181)  
*Prosecuting Attorney*  
McCORD LARSEN (ISB #8507)  
2 *Deputy Prosecuting Attorney*  
PAUL C. JEFFERIES (ISB #9054)  
*Deputy Prosecuting Attorney*  
3 **Cassia County, Idaho**  
1459 Overland Ave., Rm. 103  
Post Office Box 7  
4 Burley, Idaho 83318  
Telephone: 208.878.0419  
Facsimile: 208.878.2924

5 Attorneys for State of Idaho  
13-84

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
7 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

8  
9 **JUAN MANUEL ARELLANO,**

Case No. **CV2013-390**

10 Petitioner-Appellant,

11 vs.

**EXHIBIT LIST**

12 **STATE OF IDAHO,**

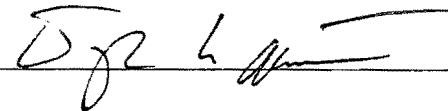
13 Respondent.  
\_\_\_\_\_ /

14 COMES NOW Douglas G. Abenroth, Prosecuting Attorney for Cassia County, Idaho,  
15 and moves the Court to submit the following exhibit list for the evidentiary hearing scheduled for  
16 **September 29, 2016, at 9:00 a.m.:**

- 17 1. Photos cell phone text messages and cell phone call log;  
18 2. Transcript of translated text messages from Spanish to English;  
19 3. Transcript on Appeal;  
20 4. Presentence Report.

1 DATED this 2nd day of August, 2016.

2 DOUGLAS G. ABENROTH  
3 Prosecuting Attorney

4  
5 By 

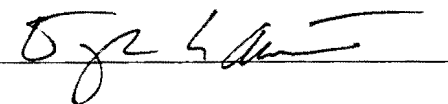
6  
7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on the 2nd day of August, 2016, I caused a true and correct copy  
9 of the foregoing Exhibit List to be served upon following:

10 Steve McRae  
11 Attorney at Law  
12 P O Box 1233  
13 Twin Falls, Idaho 83303

14 by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to  
15 said attorney at the foregoing address.

16 DOUGLAS G. ABENROTH  
17 Prosecuting Attorney

18  
19 By 

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
Filed By: Tara  
On: 9/21/2016 at: 03:39 PM  
JOSEPH LARSEN  
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO

Plaintiff,

Vs

STATE OF IDAHO,

Defendant.

CASE NO. CV-2013-0000390 D

COURT MINUTES

Status Conference

Hearing date: 9/21/2016  
Judge: Michael R Crabtree  
Court reporter: Maureen Newton  
Juan Arellano, Attorney: Steven McRae  
State of Idaho, Attorney: Douglas Abenroth

Time: 3:36 pm  
Courtroom: # 1  
Minutes Clerk: Tara Gunderson

All parties are present with Counsel.

Noemi Alanis is present to interpret.

Steven McRae addresses the Court, moves the Court for continuance of trial; cites considerations.

3:41 p.m. Douglas Abenroth addresses the Court.

3:44 p.m. Response by Steven McRae.

3:45 p.m. The Court addresses Counsel; will vacate trial.

Counsel to get back with the clerk to reschedule the trial date.

3:49 p.m. Court in recess.

**SCANNED**

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
Filed By: Tara  
On: 1/13/2017 at: 09:02 AM  
JOSEPH LARSEN  
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,  
Plaintiff,  
Vs.  
STATE OF IDAHO,  
Defendant.

Case No. CV-2013-0000390 D

COURT MINUTES  
Post-Conviction Court Trial

Hearing date: 1/13/2017  
Judge: Michael R Crabtree  
Court reporter: Maureen Newton  
Juan Arellano, Attorney: Steven McRae

Time: 9:01 am  
Courtroom: # 1  
Minutes Clerk: Tara Gunderson  
State of Idaho, Attorney: Douglas Aberneth

Naomi Alanis and Heather Hagen are present to interpret.

Steven McRae addresses the Court re: concurrent and consecutive interpretation.

Interpreter addresses the Court.

Steven McRae cites the parties stipulate to the admission of Plaintiff's Exhibit 128A - Disk; addresses the Court re: written closing arguments; cites considerations.

Douglas Aberneth cites the State is in agreement.

9:07 a.m. Counsel waive opening statements.

Steven McRae calls ***Plaintiff's # 1 Witness - Kent Jensen***, witness sworn by clerk.

9:08 a.m. Direct examination of witness by Steven McRae.

9:17 a.m. Steven McRae moves for the admission of Plaintiff's Exhibit # 102 - Kent Jensen's notes.

No objection by the State.

***Plaintiff's Exhibit # 102 - Kent Jensen's Notes - ADMITTED.***

9:36 a.m. Steven McRae moves for the admission of Plaintiff's Exhibit # 101 - Invoice of Kent Jensen.

Douglas Aberneth cites the State stipulates to the admission.

SCANNED

***Plaintiff's Exhibit # 101 - Invoice of Kent Jensen - ADMITTED.***

9:47 a.m. Counsel stipulate to the admission of Plaintiff's Exhibit 106 - guilty plea advisory form.  
***Plaintiff's Exhibit # 106 - Guilty Plea Advisory Form - ADMITTED.***

10:01 a.m. Steven McRae moves for the admission of Plaintiff's Exhibit # 109 - Psychological Report.  
No objection by the State.

10:02 a.m. ***Plaintiff's Exhibit # 109 - Psychological Report - ADMITTED.***

10:14 a.m. Court in recess.

10:28 a.m. Court resumes.

10:29 a.m. Kent Jensen remains under oath and continues to review plaintiff exhibit # 102; Direct examination of witness by Steven McRae continues.

10:36 a.m. ***Plaintiff's Exhibit # 103 - Transcript of Preliminary Hearing - ADMITTED*** by stipulation.

10:37 a.m. ***Plaintiff's Exhibit # 104 - Transcript of Arraignment, Change of Plea and Sentencing Hearings - ADMITTED*** by stipulation

10:42 a.m. Counsel Stipulate to the Admission of Plaintiff's Exhibits 117 through 128A.

10:43 a.m. ***Plaintiff's Exhibits # 117 through # 128A are ADMITTED.***

10:52 a.m. Counsel stipulate to the admission of Plaintiff's exhibit 105- Sentencing Memorandum with Authority Cited.  
***Plaintiff's exhibit # 105- Sentencing Memorandum with Authority Cited - ADMITTED.***

10:53 a.m. Counsel stipulate to the admission of Plaintiff's exhibit 107 - Plea Agreement.  
***Plaintiff's exhibit # 107- Plea Agreement - Admitted.***

10:55 a.m. Counsel stipulate to the admission of Plaintiff's exhibit 108 - Judgment of Conviction.  
***Plaintiff's exhibit # 108 - Judgment of Conviction.***

10:56 a.m. Witness reviews Plaintiff's Exhibit 105 - sentencing memorandum.

11:08 a.m. Counsel stipulate to the admission of Plaintiff's Exhibits # 110 and # 111.  
***Plaintiff's Exhibit # 110 - Memorandum in Support of Rule 35 Motion - ADMITTED***  
***Plaintiff's Exhibit # 111 - Rule 35 Motion - ADMITTED.***

11:11 a.m. Counsel stipulate to the admission of Plaintiff's exhibits # 113  
***Plaintiff's Exhibit # 113 - Notice re: Death Penalty - ADMITTED.***  
Counsel stipulate to the admission of Plaintiff's exhibits # 115 & 116



***Plaintiff's Exhibit # 115 - Amended Information - ADMITTED.***

***Plaintiff's Exhibit # 116 - Information - ADMITTED.***

11:13 a.m. Court in recess.

11:20 a.m. Court resumes.

Steven McRae has no further questions.

11:21 a.m. Cross examination of witness by Douglas Abenroth on behalf of the State.

11:27 a.m. Douglas Abenroth moves for the admission of Defendant's Exhibit # A - photo of text messages.

No objection by the Plaintiff.

***Defendant's Exhibit A - Photos of Text Messages - ADMITTED.***

11:35 a.m. Counsel stipulate to the admission of Defendant's Exhibit B - translated text messages.

***Defendant's Exhibit B - translated text messages - ADMITTED.***

Counsel offer clarification re: exhibit.

11:40 a.m. Objection by Steven McRae; to offer understanding and clarification - cites considerations.

11:58 a.m. Court in recess.

1:32 p.m. Court resumes.

Cross examination, of Plaintiff's # 1 Witness - Kent Jensen, continues.

1:41 p.m. Re-direct examination of witness by Steven McRae.

Counsel have no further questions - the witness steps down.

The State holds the subpoena in case of rebuttal.

Kent Jensen is excused, instructs the witness that he remains under subpoena and to not discuss this case.

1:48 p.m. Court in recess

1:52 p.m. Court resumes.

Steven McRae calls ***Plaintiff's # 2 witness - Juan Manuel Arellano***, sworn by Clerk.

Direct Examination of witness by Steven McRae.

2:18 p.m. Cross Examination of witness by Douglas Abenroth.

2:19 p.m. Objection by Steven McRae.

Objection Overruled.

2:21 p.m. Objection by Steven McRae, cites asked and answered.

Objection overruled.

2:23 p.m. Objection by Steven McRae, cites asked and answered.

The Court cites the point is clear, instructs counsel to next question.

2:32 p.m.

Counsel have no further questions - the witness steps down.

The Petitioner rests.

2:32 p.m.

Court in recess.

2:46 p.m.

Court resumes.

Douglas Abenroth cites the State has no witnesses to call.

The Court cites this concludes the proof.

McRae reviews briefing requests; requests preparation of transcript.

Plaintiff's brief due 30 days after filing of transcript.

State has will have 30 days to respond.

Plaintiff's Final Reply due 14 days thereafter.

Counsel waive any formal argument.

2:48 p.m.

Court in recess.

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
On: 03/16/2017 at 3:05 p.m.  
JOSEPH W. LARSEN  
CLERK OF THE DISTRICT COURT  
Filed By: tg

Steven R. McRae [ISB No. 7984]  
Brian J. Hilverda [ISB No. 7952]  
Guy B. Zimmerman [ISB No. 9765]  
HILVERDA MCRAE, PLLC  
812 Shoshone Street East  
P.O. Box 1233  
Twin Falls, ID 83303-1233  
Telephone No. (208) 944-0755  
Facsimile No. (208) 736-0041  
e-mail: SMcRae@MagicValleyLegal.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,	)	
	)	Case No. CV-2013-390
Plaintiff,	)	
	)	
vs.	)	<b>PETITIONER'S POST-TRIAL BRIEF</b>
	)	
STATE OF IDAHO,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the Petitioner, Juan Manuel Arellano ("Arellano"), by and through his attorney of record, Steven R. McRae of the firm Hilverda McRae, PLLC, and submits this Post-Trial Brief following trial in this matter.

**ARGUMENT**

The argument in this matter is framed by the Idaho Court of Appeals decision in this case in *Arellano v. State*, Idaho Ct. of Appeals Docket No. 41995, May 27, 2015. At its essence, the issue presented on this post-conviction matter is whether Arellano's attorney in the underlying case, Kent Jensen ("Jensen"), properly advised him as to the law and elements as they relate to first-degree murder, second-degree murder, and voluntary manslaughter and whether Jensen advised Arellano appropriately in the application of the facts to each of these three charges. *Id.*

At this time, after the trial in this matter, Arellano wishes to further define the scope of his argument. As is discussed below, Arellano now argues that Kent Jensen was deficient in his performance as Arellano's attorney as follows: 1) Jensen failed to advise Arellano as to the elements and application of facts as they relate to second-degree murder (and the difference of second-degree murder from first-degree murder) and specifically the elements of malice aforethought and premeditation, and 2) Jensen failed to understand and/or communicate with Arellano the impact of a potential second-degree murder conviction.

As is set forth in the Court of Appeals decision, this matter is based upon an ineffective assistance of counsel claim, and as such, "To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency." *Id.* citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

**1. Jensen's performance as Arellano's attorney was deficient in his advice on second-degree murder and the application of the facts of the case as they relate to the same.**

Arellano first asserts that it is clear from the facts of his underlying criminal matter and from testimony presented at trial that Jensen had a duty to inform Arellano as to the application of the elements and facts of the case to first-degree murder, the lesser included charge of second-degree murder, and voluntary manslaughter. Arellano does not herein seek to set forth all of the facts that would set forth this clear application to the case<sup>1</sup>. In fact, Jensen admitted at trial that the primary issue in Arellano's case was what charge would be appropriate in the underlying facts. *See Transcript* at 17, Ll. 8-18. However, in the event that the State seeks to argue that Jensen was not required to analyze the case under each of these potential charges (and specifically to second-degree murder), Arellano will set forth such foundation in his reply.

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<sup>1</sup> Such an analysis would review all of the facts contained in the discovery in the underlying criminal case, as was admitted as Exhibits 117-128A at trial, the notations of Kent Jensen as were admitted in Exhibit 2 at trial, as well as the testimony produced by Jensen at trial.

However, with this basic understanding that Jensen was required to analyze the case – and discuss such analysis with Arellano – as to all three potential charges, this matter becomes primarily a factual inquiry as to whether Jensen fulfilled such required performance as Arellano’s attorney.

**a. Jensen focused only upon voluntary manslaughter and failed to analyze second-degree murder when considering the facts of Arellano’s case.**

To start the factual inquiry in this matter, Arellano asserts that Jensen focused on voluntary manslaughter in his analysis of Arellano’s case and failed to analyze or discuss the potential of second-degree murder. Throughout all of Jensen’s testimony, he made it absolutely clear that his primary focus was on making a voluntary manslaughter argument in Arellano’s case. *See Transcript* at 17, Ll. 23 through 18, Ll. 1; at 19, Ll. 16-25; 23, Ll. 3-9 (“My focus was on the idea of voluntary manslaughter, okay? *I don’t recall whether I had a specific discussion at the time with him regarding the differences between the two*, but I did explain to him what voluntary manslaughter was, and that’s why we were focusing on his state of mind, the marriage, the problems that were ongoing at the time.”) (emphasis added); at 59, Ll. 23 through 60, Ll. 16; at 82, ll. 8-10 (. . . *we were focusing on voluntary manslaughter* . . .) (emphasis added); at 84, Ll. 7-9 (wherein Jensen shows his focus is only on voluntary manslaughter and first degree murder); at 106, Ll. 4-19; and at P. 113, Ll. 5-8 (wherein Jensen establishes again that his focus was on only voluntary manslaughter and first degree murder).

In fact, Jensen admitted that the sole defense that he was focused on was voluntary manslaughter. *Transcript* at 31, Ll. 3-6. Jensen describes voluntary manslaughter was Arellano’s “best defense” and as such was the sole focus of Jensen’s inquiry. *Id.* at 47, Ll. 12-15 and at 48, Ll. 2-11.

Jensen further admitted in his testimony that he had no discussions with Arellano in regards to second-degree murder, but instead focused only upon making a case for voluntary manslaughter:

Q. What did you tell – or what did you explain to Mr. Arellano *was the difference between first degree murder and second degree murder?*

A. *Well, the explanation centered on, before we were looking at manslaughter. You go to the bar, you're there, all of a sudden your wife comes in with another man, you're upset, you walk out, shoot her. Explained to him that that's something that happens in the heat of passion. The law looks at that differently. There's a potential maximum penalty, 15 years, as I recall for voluntary manslaughter. I explained that to him.*

I then explained to him once we got this text message it changed the focus there. I said, the problem that you have at this point in the case is that you were in the bar with your pistol. There was no indication that you left the bar, went out to the car and got your pistol and came back in and shot her. You were there with your pistol, she walked in and you shot her, and now they have a message that you sent within a few hours of this occurring, saying that you were going to, basically, kill her. At least that's what the message seems to indicate.

I explained to him that that changes that. *We were going to have an impossible task of convincing a jury that you did this in the heat of passion, based on the fact that you sent a text message out, you had your pistol inside the bar, and this was a place she was going to be showing up at, by probabilities, and they you shoot her.*

Transcript at 39, Ll. 19 through 40, Ll. 21. (emphasis added). Thus, even upon being asked about second-degree murder, Jensen only focuses on a heat of passion / voluntary manslaughter defense in his answer at the trial in this matter. Further, Jensen testified:

Q. . . . And I heard you discussing a lot about voluntary manslaughter. Did you have any discussions with Mr. Arellano about the difference between first degree and second degree murder?

A. *You know, I don't recall how detailed those discussions would have been. I'd looked at it, I know I researched and looked at the statutes and talked to him about it. I'm pretty sure I told him that there wasn't a whole lot of difference between the two statutes, but there wouldn't be any death penalty involved with second degree murder. But I don't know how specific. I just don't recall.*

*Id.* at 41, Ll. 7-18. (emphasis added). Jensen later admitted that he did not consider second-degree murder “in play” in Arellano’s case:

A. . . . I couldn’t get [the prosecutor] to accept anything less than [first degree murder]. ***So as far as second degree murder goes, I don’t recall if it was ever in play, other than I guess it could have been a potential lesser included offense than the first degree murder if the case had gone to trial.***

*Id.* at 76, Ll. 14-19. (Emphasis added). Finally, Jensen admitted outright that he did not speak with Arellano in regards to the difference between first degree murder and second degree murder:

Q. And you don’t specifically recall having discussion with him about the difference between a first degree murder charge and a second degree murder charge?

A. ***To tell you the truth, I don’t. And I believe part of the reason for that was that Mr. Cannon just didn’t make that offer to us at all.***

*Id.* at 101, Ll. 17-20. With this clear admission of Jensen, Arellano was never advised as to the potential of a second degree murder charge or its interplay with the facts of Arellano’s case – simply because Jensen did not think that the prosecutor would offer it, and despite his admission that it would be a potential lesser included offense had the case gone to trial.

Additionally, Jensen’s focus solely on voluntary manslaughter became readily apparent after the text message was discovered to Jensen and Arellano<sup>2</sup>. After receiving the discovery of the text message of Arellano, Jensen admitted that he only focused on this evidence’s application to voluntary manslaughter and not to second-degree murder:

A. ***The conversation involved looking at the evidence from what would be established and if we went ahead with the voluntary manslaughter defense.*** They would use the text to show that he had designs to carry out this crime, that he’d thought about it and sent a text message ahead. Mr. Arellano disagreed with that particular point.

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<sup>2</sup> The specific text message at issue was interpreted to say, “I’m going to kill that whore”, as was discussed at length in trial.

***So, I didn't think we could win a voluntary manslaughter defense, so at that point we were trying to figure out the best option for Mr. Arellano.***

I discussed with him that he could enter a plea. He wouldn't have to acknowledge that particular element of the crime, we could take advantage of the plea agreement which had been offered and we could – as I stated earlier, we could actually argue for less at sentencing.

*Id.* at 59, Ll. 23 through 60, Ll. 16 (emphasis added). From this testimony, it is clear that Jensen solely focused on the voluntary manslaughter defense, as he could not describe in any detail, any explanation or analysis he may have discussed with Arellano as it related to second-degree murder. Moreover, Jensen stated further in regards to the text message:

***A. . . . But once that text message showed upon that changed the calculus because it was going to be very hard for us to walk in and argue that he did all of this in the heat of passion, having just sent this text earlier.*** So at that juncture I know we had that discussion about the prospects of going to trial and the difference. Whereas then the intent, premeditated and all that stuff, comes into play and that bolsters the state's case. We had that discussion, yes.

*Id.* at 24, Ll. 12-20. Here, again, Jensen admits that the only consideration after receiving the text was that it would hurt the heat of passion / voluntary manslaughter argument. He later explained that he thought the text, “blew a hole right through the voluntary manslaughter defense”, again, with no discussion as to how it may or may not have affected a second-degree murder argument for Arellano's case. *See Transcript* at 85, ll. 15-20. *See also Transcript* at 98, Ll. 6-13 (“***When I saw this particular text message within two or three hours of the actual killing, in my opinion, we no longer had that argument that was it was done in passion or in the heat of the moment.***”).

Furthermore, it is clear that Jensen should have discussed second degree murder elements and application to Arellano's case, specifically in consideration of information that Arellano provided to Mr. Jensen. In Jensen's notes, as admitted at trial as Exhibit 102 (and the 4<sup>th</sup> page thereof), Jensen took a note from Arellano, in which Jensen wrote, “Says went to shoot wife –



but not there when arrived & how would know". In discussing this statement with Arellano,

Jensen admits that it was a critical piece of information:

A. Says: Went to shoot wife, but not there when arrived. How could know.

Q. So what does that mean to you?

A. This would have been a comment that Mr. Arellano made to me.

Q. And so to make sure I read it, it says, I quote, it says: Went to shoot wife – but not there when arrived. And: how would know, end quote.

A. Correct.

Q. Why do you think that would have been important to take note of?

A. ***Seemed to be a critical piece of information Mr. Arellano was telling me.***

*Transcript* at 46, Ll. 5-17 (emphasis added). In analyzing this note from Arellano, it is clear that he communicated to Jensen that he was at the bar before his wife (the victim), and there was no indication in the facts of the case that Arellano would have known that his wife was going to show up at the bar. This is highly relevant in fighting the premeditation element of first-degree murder; as such, it is relevant to both a voluntary manslaughter defense and potential outcome of second-degree murder at trial. However, Jensen, in discussing this statement of Arellano and his note on the same, testified that he only discussed the application of the note in regards to voluntary manslaughter:

A. Well, I don't know. Again, you can look at this two ways. ***At the time the note had been made we were still thinking of voluntary manslaughter.*** So if he's telling me he didn't know she was going to be there and she did show up, then we could make an argument. But that's the way I just wrote it down. ***I don't know that we had anymore discussion about him going to the bar at that point.***

Q. You just said you were still going for voluntary manslaughter?

A. Correct.

Q. ***Does that mean that second degree murder was not in your focus at all?***

**A. Well, I'd probably – I doubt it, because, again, it gets back to what was the best defense available to him, and voluntary manslaughter appeared to be the best one at that point.**

*Id.* at 46, Ll. 25 through 47, Ll. 15 (emphasis added). At another time, Jensen admits that he doesn't even know if he and Arellano discussed this information at all, let alone in the context of how the contents thereof might apply to second-degree murder. Jensen stated, "I don't recall if we did or not focus on that particular point." *Id.* at 42, ll. 21-22.

Finally, another notation of Jensen is in the same line of reason and demonstrates (with Jensen's testimony on the same) that he failed to discuss second-degree murder with Arellano, despite the need to do so. Also on Exhibit 2, on the third to the last page of the same, Jensen wrote (while watching a video of Arellano), "I didn't expect her to show." During his testimony on the same, Jensen explained:

Q. Just a couple of questions on I believe just two lines. If you look at the first page that has the 1 with the circle on top, about two-thirds down it says – if I read this right – "I guess so." Then the next line, "I didn't expect her to show."

A. Correct.

Q. And what – do you recall why you wrote that down?

A. ***Well, again, it would be – the whole idea of voluntary manslaughter defense would be that – basically the classic example is somebody comes home and finds their spouse or significant other in bed with somebody and shoots them in the heat of passion.*** In that particular point I made a note of that, that – well, he said, knew he was there – on, no, "I didn't expect her to show up", yeah. Again, using that with regard to a voluntary manslaughter defense, where he's there, doesn't expect her to show up, all of a sudden she does show up with another man, is out dancing with that particular man. So that's why I would have made that particular note.

*Transcript* at 56, Ll. 1-20 (emphasis added). Again, the fact that Arellano was not expecting his wife (the victim) to show is critical in considering whether there was premeditation – and as such, would apply to both potentials at trial of voluntary manslaughter and second-degree

murder. And, when Jensen explains the application, he again completely misses the potential application towards second-degree murder.

All of the foregoing demonstrate that there was a significant need for Jensen to explain and discuss all of the elements of first-degree murder, second-degree murder and voluntary manslaughter with Arellano. However, it is clear that Jensen only focused on first-degree murder and voluntary manslaughter, leaving out in its entirety a significant potential outcome of Arellano's case – a potential second degree murder conviction. Arellano, in not having any explanation as to second-degree murder in entering his Alford plea to first-degree murder, entered his plea without being provided the needed details for him to make a reason and informed decision in entering his plea. And, this deficiency is clearly based upon Jensen failing to discuss the elements and application of the facts to the same on second-degree murder.

**b. Jensen's knowledge of the difference between first-degree murder and second-degree murder was clearly flawed, and as such, Jensen clearly could not have adequately advised Arellano prior to his entering a guilty plea.**

Next, in considering whether Jensen appropriately advised Arellano as to the potential outcome of second-degree murder, it is clear from Jensen's testimony that Jensen did not even understand difference between first-degree murder nor did he understand the difference that having a second-degree murder conviction would make at sentencing.

First, as to the elements of first degree murder and second degree murder, at trial, Jensen testified:

Q. . . . [C]an you tell me all of the elements – mental elements of first degree murder that you discussed with Mr. Arellano?

A. Well, I can't tell you specifically. It's been too long ago. But the discussion would have revolved around the facts. The fact that he was sending a text; the fact of him going in with a pistol, a loaded gun, and to a place where he could anticipate she would show up, and that those specific things indicated that he had a plan that he was devising or had devised that he was going to use in carrying out the crime.

*Transcript* at 113, Ll. 8-18. Jensen was unable to identify the elements (or the difference in elements) as to first-degree murder and second-degree murder. In every question relating to the elements of second-degree murder, Jensen always testified as to the facts of the case without providing any detail as to what he knew the elements to be.

What's worse is that in Jensen's testimony as to the elements of first-degree murder (and the difference between second-degree murder), Jensen was wrong as to what malice is. Jensen testified (in discussing Arellano's change of plea as an Alford plea):

Q. . . . And here the court was talking about – had said malice aforethought or premeditation element. And did you see those two elements as being the same thing?

A. *No, not necessarily, because I think if you have malice aforethought that's a little higher standard than premeditation.*

Q. What do you mean by that?

A. *Malice generally implies that it's something a little beyond just – I guess I would consider malice aforethought as to where somebody sits down and decides to – plans to commit a crime probably maybe even in a way that could be way beyond what we would even consider – if there was anything to be said about a normal murder type of a case – but it certainly reflects more of an evil intent than what I would consider premeditation.*

*Transcript* at 63, Ll. 19 through 64, Ll. 5 (emphasis added). Jensen's consideration of malice aforethought as a higher standard than premeditation flies in the face of the law in the State of Idaho. It is clear under Idaho law that malice is an element of both first and second degree murder. *See Idaho Code* §§ 18-4001, 4002, and 4003; *State v. Dunlap*, 125 Idaho 530, 531, 873 P.2d 784, 785 (1993); and *State v. Aragon*, 107 Idaho 358, 362, 690 P.2d 293, 297 (1984). In fact, it is clear from the aforementioned citations that it is premeditation that distinguishes first degree murder from second degree murder. As such, Jensen, in thinking that "malice aforethought that's a little higher standard than premeditation" is completely incorrect. And, it

appears, then, that Jensen could not and did not properly advise Arellano as to the appropriate elements of first-degree murder and second-degree murder.

This is even more important in considering that Arellano entered an Alford plea to the malice aforethought and premeditation. *See, Exhibit 104, Transcript of Change of Plea Hearing ("COP Transcript")* at 18, Ll. 18-23. What is important to review in the COP Transcript is that no person – either Jensen or the Court – actually explained to Arellano what malice aforethought or premeditation was. The prosecutor at that hearing addressed this in stating:

Your Honor, maybe before I do that, I wonder if – to the extent there might be a difference between malice aforethought and premeditation, I don't know if there needs to be an additional question to the defendant about acknowledging the premeditation as part of the guilty plea pursuant to Alford or if that's already been done?

*COP Transcript* at 26, Ll. 12-19. Following this inquiry, Mr. Cannon set forth what he saw the facts to be that would support premeditation. *Id.* at 27-29. However, after the facts were stated, no person inquired of Mr. Arellano as to whether he understood what malice aforethought was, whether he understood what premeditation was, or whether he believed the stated facts would show malice aforethought or premeditation. Instead, the following inquiry occurred:

THE COURT: Thank you, Mr. Cannon. Mr. Arellano, if the evidence was presented to a jury as Mr. Cannon just described, I think there is a sufficiently strong indication that a jury could find you guilty of the element of premeditation or malice aforethought, and I will so indicate to you with respect to your North Carolina vs. Alford plea on that element. **Mr. Arellano, do you want to have a trial?** We have a trial date scheduled for you in January.

THE DEFENDANT: No.

*COP Transcript* at 29, L. 22 through 30, Ll. 7. At no time did anyone ask Arellano any question that would indicate that he actually understood the elements of malice aforethought or premeditation. And, if Jensen did have a discussion with Arellano on the same (which is most likely not the case, as explained above), Jensen would have provided incorrect legal information on these elements.

Finally, the record is also clear that Jensen simply viewed the role of a potential second-degree murder conviction in an incorrect way – as being the same as a first-degree murder conviction. Jensen testified:

Q. Mr. Jensen, you testified earlier during direct that it was your feeling that voluntary manslaughter was the best defense for the defendant, instead of second degree murder, lesser included on first degree. Why is that?

A. *First degree and second degree murder have life sentences. If we're looking at an alternate outcome obviously, I guess, for visual aspects, second degree looks better than first degree, but they still have the same maximum penalty. So I didn't see there was a big difference there to be gained. But if we could win a voluntary manslaughter defense then obviously we've taken the life sentence off the table and gotten the maximum sentence down to 15 years.*

*Transcript* at 108, Ll. 10-18. Jensen, in failing to see a difference between first-degree murder and second-degree murder, completely failed to analyze the elements of the charges, the potential penalties for the charges, or the potential outcomes at a sentencing hearing for both charges.

What is the most ironic part of this matter is that Jensen, in preparing for sentencing, thought that Arellano had entered a plea to second-degree murder. Jensen lodged with the Court a Sentencing Memorandum (introduced as Exhibit 105 at trial in this matter), in which Jensen states, “Mr. Arellano pled guilty to second-degree murder . . .”<sup>3</sup> The most ironic part of Jensen’s Sentencing Memorandum, though, is that he cited cases to support a lesser penalty for Arellano – and, all of the cases that he cited were second-degree murder cases. And, it’s clear that he cited the cases in the Sentencing Memorandum because they were the most similar to what Jensen wanted to argue, in way of sentencing. These cases – and the sentencing memorandum – simply demonstrate that a second degree murder conviction would have greatly benefitted Arellano, despite Jensen not seeing the difference between first and second degree murder convictions.

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<sup>3</sup> Jensen continued his belief that Arellano plead guilty to second degree murder at the trial in this matter until his thought was corrected by counsel. *See Transcript* at 68, Ll. 9-10.

With all of the comments above, it is clear that Jensen failed to address a second degree murder potential, failed to understand the difference between the elements of first and second degree murder, failed to understand the difference that a conviction to second degree murder could make at sentencing, failed to understand what Arellano actually entered a plea to, and failed entirely in advising Arellano as to the potential outcome of a second-degree murder conviction. As such, when Arellano entered his Alford plea, he simply could not have been doing so knowingly and voluntarily because of Jensen's deficient performance as Arellano's counsel. And, with that, the first prong of *Strickland* is clearly met.

**2. Had Jensen's performance as Arellano's attorney not been deficient in his advice on second-degree murder and the application of the facts of the case as they relate to the same, Arellano would not have entered his plea and would have proceeded to trial.**

Arellano testified clearly at the trial in this matter that now that he has learned of the differences between first and second degree murder (and the elements of malice aforethought and premeditation), that he wants to proceed to trial. *Transcript* at 125-126. Arellano testified that he wants to go to trial because he did not have the intention to kill his wife. *Id.* at 126, Ll. 11-19. Furthermore, in looking at all of the facts (as described above), there is a real potential for an outcome of a second-degree murder conviction at trial. As such, had Jensen advised Arellano appropriately as to a potential argument of second-degree murder (both in the elements and potential penalties on the same), Arellano would have gone to trial. With this, the second prong of *Strickland* is clearly established.

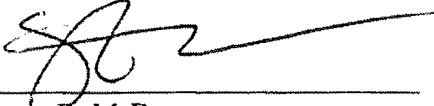
In the very least, Arellano should have the ability to understand the elements of the crime for which he is charged, the potential defenses, and the potential lesser-included offenses of which he could be found guilty before entering a guilty plea to first degree murder.

**CONCLUSION**

Petitioner requests that this Court allow Petitioner to withdraw his guilty plea and proceed forward to trial.

DATED this 16<sup>th</sup> day of March, 2017.

HILVERDA MCRAE, PLLC

By:   
\_\_\_\_\_  
Steven R. McRae  
Attorney for Defendant

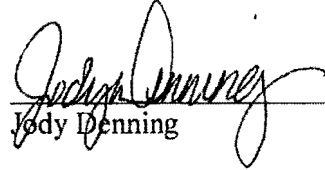


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16<sup>th</sup> day of March, 2017, I served a true and correct copy of the within and foregoing document upon the following:

Cassia County Prosecutor  
P.O. Box 7  
Burley, ID 83318  
Fax: (208) 878-2924

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile

  
\_\_\_\_\_  
Jody Denning

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
On: 04/26/2017 at 4:55 p.m.  
JOSEPH W. LARSEN  
CLERK OF THE DISTRICT COURT  
Filed By: tg

1 DOUGLAS G. ABENROTH (ISB #7181)  
*Prosecuting Attorney*  
2 McCORD LARSEN (ISB #8507)  
*Deputy Prosecuting Attorney*  
3 PAUL C. JEFFERIES (ISB #9054)  
*Deputy Prosecuting Attorney*  
4 Cassia County, Idaho  
1459 Overland Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7  
Burley, Idaho 83318  
Telephone: 208.878.0419  
Facsimile: 208.878.2924

5 Attorneys for State of Idaho  
13-84

7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

9 JUAN MANUEL ARELLANO, Case No. CV 2013-390  
10 Petitioner,  
11 vs. RESPONDENT'S POST-TRIAL BRIEF  
12 STATE OF IDAHO,  
13 Respondent.

14 COMES NOW, Respondent, the State of Idaho, by and through Cassia County Prosecuting  
15 Attorney Douglas G. Abenroth, and does hereby provide this post-trial brief in opposition to  
16 Petitioner Juan Manuel Arellano's Petition for Post-Conviction Relief pursuant to Idaho Code  
17 Section 19-4906(c).

18 I.  
19 Factual And Procedural History

20 On December 30, 2010, the Petitioner Juan Manuel Arellano (hereinafter "Arellano") pled  
21 guilty to murder in the first degree with an enhanced penalty for use of a firearm or deadly weapon in  
22 violation of Idaho Code §§ 18-4001, 18-4002, 18-4003, and 19-2520 in the District Court of the Fifth  
23 Judicial District of the State of Idaho, in and for Cassia County in Cassia County Criminal Case No.  
24 CR-2010-4251 (hereinafter "underlying criminal case").



1           On April 28, 2011, the District Court of the Fifth Judicial District of the State of Idaho, in and  
2 for Cassia County, entered a judgment of conviction against Arellano in the underlying criminal case,  
3 for murder in the first degree with an enhanced penalty for use of a firearm or deadly weapon in  
4 violation of Idaho Code §§ 18-4001, 18-4002, 18-4003, and 19-2520. The District Court sentenced  
5 Arellano to a unified term of life, with a minimum period of confinement of twenty-two (22) years, and  
6 this sentence was imposed. Arellano was sentenced to the custody of the Idaho Department of  
7 Corrections to serve his unified life sentence.

8           On May 16, 2011, Arellano filed a motion for relief under Idaho Criminal Rule 35 seeking a  
9 reduction of his sentence. On May 19, 2011, the State of Idaho filed an objection to Arellano's Rule 35  
10 motion. The District Court of the Fifth Judicial District of the State of Idaho, in and for Cassia County,  
11 entered an order denying Arellano's Rule 35 motion on May 23, 2011.

12           Arellano filed a Notice of Appeal of his judgment of conviction and the denial of his Rule 35  
13 motion with the Idaho Court of Appeals. On appeal, Arellano argued his sentence was excessive. The  
14 Idaho Court of Appeals affirmed the trial court's judgment of conviction and his sentence on May 7,  
15 2012. The Idaho Court of Appeals issued a Remittitur on May 31, 2012.

16           On May 1, 2013, Arellano filed a petition for post-conviction relief, a supporting brief, his own  
17 affidavit in support of said petition, and attached exhibits to said affidavit. The State of Idaho filed an  
18 answer to the above-entitled post-conviction petition on May 20, 2013. On November 14, 2013, the  
19 State of Idaho filed a motion for summary dismissal and motion for summary disposition with a  
20 supporting brief and affidavit. On February 5, 2014, Arellano filed an objection to the State's motion  
21 for summary disposition. On February 12, 2014, the State filed a reply brief in support of its motions  
22 for summary dismissal and summary disposition. On February 18, 2014, the Court issued an order  
23 granting the State's motion for summary disposition.  
24

1 On March 19, 2014, Arellano filed a notice of appeal with the Idaho Supreme Court and the  
2 Supreme Court assigned the case to the Idaho Court of Appeals. Specifically, Arellano appealed the  
3 Court's granting of the State's motion for summary disposition. On May 27, 2015, the Idaho Court of  
4 Appeals issued an opinion affirming the District Court's decision to grant the State's motion for  
5 summary disposition, in part, and also vacating in part the District's decision on said motion. The  
6 Court of Appeals remanded the case to District Court for an evidentiary hearing on one issue raised in  
7 Arellano's petition for post-conviction relief.

8 Upon remand, the one issue remaining to litigate in Arellano's petition for post-conviction  
9 relief is whether Arellano allegedly informed his defense counsel, Kent Jensen (hereinafter "Mr.  
10 Jensen), about his mental state when he killed his wife and whether Mr. Jensen allegedly informed him  
11 that facts concerning his mental state were irrelevant in his underlying criminal case. *See Arellano v.*  
12 *State of Idaho*, Idaho Court of Appeals 2015 Opinion No. 30, May 27, 2015, pp. 4-5. The Idaho Court  
13 of Appeals held Arellano had alleged a *prima facie* case of ineffective assistance of counsel against Mr.  
14 Jensen in his petition for post-conviction relief on this issue of mental intent and remanded for an  
15 evidentiary hearing on this limited issue. *Id.* The District Court held an evidentiary hearing on this  
16 issue on January 13, 2017.

17 Based upon the applicable law and the evidence presented at the evidentiary hearing, the Court  
18 should deny Arellano's ineffective assistance of counsel claim against Mr. Jensen regarding this  
19 limited issue of mental intent and dismiss his petition for post-conviction relief.

## 20 II. 21 Legal Standards

### 22 A. General Standards

23 An application for post-conviction relief initiates a new civil proceeding and the petitioner  
24 bears the burden of establishing, by a preponderance of the evidence, that he is entitled to relief.

1 *Workman v. State*, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); *State v. Bearshield*, 104 Idaho 676,  
2 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v.*  
3 *State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App.1992); *Martinez v. State*, 126 Idaho 813, 816,  
4 892 P.2d 488, 491 (Ct. App. 1995). “Like a plaintiff in a civil action, the applicant for post-conviction  
5 relief must prove by a preponderance of evidence the allegations upon which the application for post-  
6 conviction relief is based.” *Workman*, 144 Idaho at 522, 164 P.3d at 802, citing *Grube v. State*, 134  
7 Idaho 24, 995 P.2d 794 (2000); *see also* I.C. § 19-4907; *see also Russell v. State*, 118 Idaho 65, 67, 794  
8 P.2d 654, 656 (Ct. App. 1990).

9 The post-conviction petitioner must make factual allegations showing each essential element of  
10 the claim, and a showing of admissible evidence must support those factual allegations. *Roman v.*  
11 *State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); *Stone v. State*, 108 Idaho 822, 824, 702  
12 P.2d 860, 862 (Ct. App. 1985). The district court may take judicial notice of the record of the  
13 underlying criminal case. *Hays v. State*, 113 Idaho 736, 739, 745 P.2d 758, 761 (Ct. App. 1987), *aff'd*  
14 115 Idaho 315, 766 P.2d 785 (1988), *overruled on other grounds State v. Guzman*, 122 Idaho 981, 842  
15 P.2d 660 (1992).

16 B. Legal Standards Applicable for Proving a Claim of Ineffective Assistance of Counsel

17 To prevail on an ineffective assistance of counsel claim, the defendant must demonstrate both  
18 that (a) his counsel’s performance fell below an objective standard of reasonableness and (b) there is a  
19 reasonable probability that, but for counsel’s errors, the result of the proceedings would have been  
20 different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *LaBelle v. State*, 130 Idaho 115, 118,  
21 937 P.2d 427, 430 (Ct. App. 1997). “Because of the distorting effects of hindsight in reconstructing the  
22 circumstances of counsel's challenged conduct, there is a strong presumption that counsel’s  
23 performance was within the wide range of reasonable professional assistance -- that is, ‘sound trial  
24 strategy.’” *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989) (quoting

1 *Strickland*, 466 U.S. at 689-90); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). A  
2 petitioner must overcome a strong presumption that counsel “rendered adequate assistance and made  
3 all significant decisions in the exercise of reasonable professional judgment” to establish that counsel’s  
4 performance was “outside the wide range of professionally competent assistance.” *Claibourne v.*  
5 *Lewis*, 64 F.3d 1373, 1377 (9th Cir.1995) (quoting *Strickland*, 466 U.S. at 690).

6 “When evaluating an ineffective assistance of counsel claim, this Court does not second-  
7 guess strategic and tactical decisions, and such decisions cannot serve as a basis for post-conviction  
8 relief unless the decision is shown to have resulted from inadequate preparation, ignorance of the  
9 relevant law or other shortcomings capable of objective review.” *State v. Payne*, 146 Idaho 548,  
10 561, 199 P.3d 123, 136 (2008), citing *Pratt v. State*, 134 Idaho 581, 584, 6 P.3d 831, 834 (2000).

11 “There is a strong presumption that counsel's performance fell within the wide range of professional  
12 assistance.” *State v. Payne*, 146 Idaho at 561, 199 P.3d at 136, citing *State v. Hairston*, 133 Idaho  
13 496, 511, 988 P.2d 1170, 1185 (1999) (internal quotations omitted) (quoting *Aragon v. State*, 114  
14 Idaho 758, 760, 760 P.2d 1174, 1176 (1988)).

15 Thus, the first element – deficient performance – “[ ] requires showing that counsel made errors  
16 so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth  
17 Amendment.” *Strickland*, 466 U.S. at 687. The second element – prejudice – requires a showing that  
18 counsel’s deficient performance actually had an adverse effect on his defense; i.e., but for counsel’s  
19 deficient performance, there was a reasonable probability the outcome of the trial would have been  
20 different. *Id.* at 693; *Cowger v. State*, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

21 Regarding the second element, a Petitioner has the burden of showing that his or her trial counsel’s  
22 deficient conduct “so undermined the proper functioning of the adversarial process that the trial cannot  
23 be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686; *Ivey v. State*, 123 Idaho 77,  
24 80, 844 P.2d 706, 709 (1992). As explained in *Ivey v. State*, the “constitutional requirement for

1 effective assistance of counsel is not the key to the prison for a defendant who can dredge up a long  
2 series of examples of how the case might have been tried better.” *Id.*, 123 Idaho at 80, 844 P.2d at 709.

3  
4 **III.**  
**Argument**

5 Arellano alleges that his defense counsel, Kent Jensen, was ineffective in representing Arellano  
6 in his underlying criminal case. Specifically, the factual claim before the Court on remand from the  
7 Idaho Court of Appeals is whether Arellano allegedly informed Mr. Jensen about his mental state when  
8 he killed his wife and whether Mr. Jensen allegedly informed him that facts concerning his mental state  
9 were irrelevant in his underlying criminal case. *See Arellano v. State of Idaho*, Idaho Court of Appeals  
10 2015 Opinion No. 30, May 27, 2015, pp. 4-5. However, Arellano’s ineffective assistance of counsel  
11 claim against Mr. Jensen fails to state any claim for relief. As such, Arellano was not denied due  
12 process of law by any alleged ineffectiveness of counsel in his underlying criminal case. Therefore, the  
13 Court should deny Arellano’s ineffective assistance of counsel claim and dismiss Arellano’s petition  
14 for post-conviction relief.

15 In framing the issue for the ineffective assistance of counsel claim, the Idaho Court of Appeals  
16 first relied upon certain factual allegations contained within Arellano’s petition for post-conviction  
17 relief regarding his mental state in killing his wife which are as follows:

18 29. Petitioner asserts that he lacked the ability to act deliberately and with violence against his  
19 wife, and the killing of his wife occurred by accident because of the blind rage upon seeing her  
20 come back into the bar after her lover had escorted her out.

21 30. A jury would have been allowed to infer that the requisite mental state was lacking on all  
22 the assault charges as he was under the influence of two drugs and the culmination of emotions  
23 that his wife intentionally provoked.

24 . . . .

51. No one knows wh[at] petitioner’s intent was when he pulled out a gun and walked out onto  
the dance floor. All petitioner knows is that his emotions overwhelmed him, and wanted to rant  
and rave.

52. Petitioner asserts her death was an accident and misfortune in the heat of his passion as he  
was attempting to scare her. He never intended to kill her, but the rage within was so  
overwhelming that he was out of control and even more by the acts of others.

. . . .

1 54. Petitioner alleges he committed homicide and attempted assaults with a weapon in the heat  
2 of passion upon the appearance of his wife as she intentionally came back into the bar.

3 *See Arellano v. State of Idaho*, Idaho Court of Appeals 2015 Opinion No. 30, May 27, 2015, pp. 3-4,  
4 *see also* Petition for Post-Conviction, pp. 6, 9.

5 The Court of Appeals then relied upon the following assertions by Arellano against Mr. Jensen  
6 in support of its decision that a *prima facie* case existed in supporting Arellano's ineffective assistance  
7 of counsel claim regarding his mental intent:

8 53. Under the professional norms counsel's assistance amounted to incompetence. Counsel  
failed entirely in his representation.

9 . . . .

10 55. Counsel's representation was so seriously defective he was not functioning as the counsel  
guaranteed by the Sixth Amendment.

11 56. Petitioner asserts that there exist[s] a reasonable probability that but for counsel's  
representation, he would not have pleaded guilty and would have insisted on going to trial.

12 57. Counsel's failures prejudice[d] petitioner and if he would have fulfilled his obligations he  
would never have been convicted of any of the charges filed by information.

13 58. Petitioner advised his attorney [of] his version of the facts surrounding the death of his wife.  
Yet counsel insisted that some of these facts were irrelevant, and that if he went to trial he  
14 would be found guilty. As a result of counsel refusing to participate in petitioner's defense he  
entered a guilty plea.

15 *See Arellano v. State of Idaho*, Idaho Court of Appeals 2015 Opinion No. 30, May 27, 2015, p. 4, *see*  
16 *also* Petition for Post-Conviction, p. 9.

17 Based upon Idaho law, Arellano had the burden of proving these specific assertions as alleged  
18 in his petition for post-conviction relief by a preponderance of the evidence during his evidentiary  
19 hearing held on January 13, 2017. *See Workman v. State*, 144 Idaho at 522, 164 P.3d at 802. Arellano  
20 failed to satisfy his burden of proof during the evidentiary hearing in proving these specific allegations.

21 During the evidentiary hearing, and in his post-trial brief, Arellano attempts to reframe the  
22 relevant issue as articulated by the Idaho Court of Appeals. Rather than trying to prove 1) whether  
23 Arellano allegedly informed Mr. Jensen about his mental state when he killed his wife and 2) whether  
24 Mr. Jensen allegedly informed him that facts concerning his mental state were irrelevant, Arellano



1 attempts to prove and argue a different claim of ineffective assistance of counsel against Mr. Jensen.  
2 Arellano now claims Mr. Jensen was deficient, in violation of *Strickland v. Washington, supra*, in the  
3 following manner: 1) Mr. Jensen failed to advise Arellano as to the elements and facts relating to  
4 second-degree murder, including the difference between first-degree murder and second-degree murder  
5 and specifically the elements of malice aforethought and premeditation, and 2) Mr. Jensen failed to  
6 understand and/or communicate with Arellano the impact of a potential second-degree murder  
7 conviction. *See* Petitioner's Post-Trial Brief, p. 2.

8 First, Arellano's attempt to refine, amend, or change his claim(s) of ineffective assistance of  
9 counsel against Mr. Jensen in his post-trial brief is not permitted under the Idaho Rules of Civil  
10 Procedure. Arellano never moved to amend his claim(s) as alleged in his petition for post-conviction  
11 relief prior to, or during, the evidentiary hearing pursuant to the Idaho Rules of Civil Procedure.  
12 Moreover, the Court never granted an amendment of Arellano's claim(s) prior to, or during, the  
13 evidentiary hearing on January 13, 2017. As such, Arellano is prohibited from amending his claim at  
14 this stage of the proceedings as the State of Idaho would be prejudiced for lack of notice of said  
15 claim(s).

16 Second, even if the Court allows Arellano to allege, and argue, his amended claims of  
17 ineffective assistance of counsel against Mr. Jensen, he has failed to satisfy the burden of proof for said  
18 claims. During the evidentiary hearing, Arellano presented the testimony of two witnesses: Mr. Jensen  
19 and himself. Arellano also presented numerous exhibits which the Court admitted by stipulation  
20 between the parties or by Arellano laying sufficient foundation. Further, the State of Idaho presented  
21 multiple exhibits which the Court admitted by way of stipulation between the parties.

22 On its own, the testimony of Mr. Jensen establishes that a) his performance as counsel for  
23 Arellano during the underlying criminal proceeding did not fall below an objective standard of  
24 reasonableness, and b) that Arellano was not prejudiced by the alleged deficiency of Mr. Jensen. *See*

1 *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *see also* Transcript, p. 8, L. 20-p. 117, L. 25.  
2 Moreover, State's Exhibits A and B, which were admitted into evidence during the evidentiary hearing,  
3 assist in establishing Mr. Jensen was not deficient in his performance as counsel for Arellano nor did  
4 any alleged deficiency of, or by, Mr. Jensen prejudice Arellano in his underlying criminal case. In  
5 short, Mr. Jensen testified he discussed the requisite mental intent for first-degree murder with  
6 Arellano, and specifically, did so after receiving discovery containing text messages sent by Arellano  
7 to a friend a few hours prior to killing his wife. *See* Transcript, p. 8, L. 20-p. 117, L. 25, *see also* State's  
8 Exhibits A and B.

9 Mr. Jensen's testimony, and State's Exhibits A and B, establish 1) Mr. Jensen discussed  
10 Arellano's mental state (i.e. mental intent) when he killed his wife and 2) Mr. Jensen did not inform  
11 Arellano that facts concerning his mental state were irrelevant. *See Arellano v. State of Idaho*, Idaho  
12 Court of Appeals 2015 Opinion No. 30, May 27, 2015, pp. 3-5; *see also* Petition for Post-Conviction,  
13 pp. 6, 9. In contrast, Mr. Jensen did discuss Arellano's mental state/mental intent when he killed his  
14 wife with Arellano. *See* Transcript, p. 8, L. 20-p. 117, L. 25, *see also* State's Exhibits A and B. Mr.  
15 Jensen also did not tell Arellano his mental state/mental intent at the time he killed his wife was  
16 irrelevant. *See* Transcript, p. 8, L. 20-p. 117, L. 25, *see also* State's Exhibits A and B. Therefore,  
17 Arellano has not satisfied either the first or second prongs of *Strickland v. Washington, supra*, and has  
18 not proven an ineffective assistance of counsel claim against Mr. Jensen on the issue remanded by the  
19 Idaho Court of Appeals to the District Court. As a result, the Court should dismiss Arellano's petition  
20 for post-conviction relief.

21 In addition, Arellano expends much effort in arguing Mr. Jensen's deficiency, and subsequent  
22 prejudice to Arellano, regarding Mr. Jensen's failure to explain the mental intent required for second-  
23 degree murder. *See generally* Petitioner's Post-Trial Brief. The record disproves this argument. Mr.  
24 Jensen testified that he "couldn't get [the prosecutor] to accept anything less than [first degree murder].

1 So as far as second degree murder goes, I don't recall if it was ever in play, other than I guess it could  
2 have been a potential lesser included offense than the first degree murder if the case had gone to trial."  
3 See Transcript, p. 76, Ll. 14-19. Moreover, Mr. Jensen did not recall having a discussion with Arellano  
4 about the difference between first-degree murder and second-degree murder and testified he believed  
5 part of the reason for that "was [the prosecutor] just didn't make that offer to us at all." See Transcript,  
6 p. 101, Ll. 17-20. Since the parties resolved the underlying criminal case through plea negotiations  
7 wherein the prosecutor for the State of Idaho never offered second-degree murder or voluntary  
8 manslaughter to Arellano pursuant to those negotiations, it is not deficient performance by Mr. Jensen  
9 to not discuss a crime (i.e. second-degree murder and/or voluntary manslaughter) which is not offered  
10 by the State to the defendant (i.e. Arellano). Second-degree murder was not even option for Arellano to  
11 consider during plea negotiations, and as such, it is reasonable for Mr. Jensen to not discuss something  
12 with Arellano that is not ever offered by the State in negotiations. See Transcript, p. 76, Ll. 14-19; see  
13 also Transcript, p. 101, Ll. 17-20. Therefore, Mr. Jensen satisfied the requirements of *Strickland v.*  
14 *Washington, supra.*

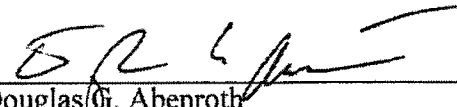
15 Furthermore, since the underlying criminal case never went to trial, Mr. Jensen did not have the  
16 opportunity to even present a lesser included defense, or jury instruction, for second-degree murder or  
17 voluntary manslaughter to a jury. However, even though the underlying criminal case never went to  
18 trial, the record establishes Mr. Jensen did discuss with Arellano his mental state/mental intent at the  
19 time he killed his wife and discussed the relevancy of said mental state/mental intent with Arellano.  
20 See Transcript, p. 8, L. 20-p. 117, L. 25, see also State's Exhibits A and B. Thus, Mr. Jensen satisfied  
21 the requirements of *Strickland v. Washington, supra.*

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**IV.**  
**Conclusion**

Arellano's petition for post-conviction relief fails to establish his claim of ineffective assistance of counsel for the issue remanded by the Idaho Court of Appeals to the District Court. The Court should deny Arellano's ineffective assistance of counsel claim against Mr. Jensen regarding the limited issue of mental intent, and its relevancy to Arellano's underlying criminal case, and dismiss his petition for post-conviction relief.

DATED this 26<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
Douglas G. Abenroth  
Prosecuting Attorney

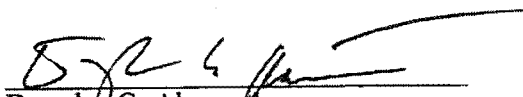
**CERTIFICATE OF MAILING**

I hereby certify that on this 26<sup>th</sup> day of April, 2017, I served a copy of the within and foregoing RESPONDENT'S POST-TRIAL BRIEF upon:

Steven R. McRae  
HILVERDA MCRAE, PLLC  
812 Shoshone Street East  
P.O. Box 1233  
Twin Falls, ID 83303-1233  
Facsimile No.: 1-208-736-0041  
*Email: SMcRae@MagicValleyLegal.com*

Juan Manuel Arellano, #99235  
ICC, Center D Block  
P.O. Box 70010  
Boise, ID 83707

by depositing a copy thereof in the United States Mail, postage prepaid, in an envelope addressed to said attorney/individual at the foregoing address, by facsimile at the foregoing number, and by email at the foregoing email address.

  
\_\_\_\_\_  
Douglas G. Abenroth  
Prosecuting Attorney

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
On: 04/28/2017 at 2:42 p.m.  
JOSEPH W. LARSEN  
CLERK OF THE DISTRICT COURT  
Filed By: tg

Steven R. McRae [ISB No. 7984]  
Brian J. Hilverda [ISB No. 7952]  
Guy B. Zimmerman [ISB No. 9765]  
HILVERDA MCRAE, PLLC  
812 Shoshone Street East  
P.O. Box 1233  
Twin Falls, ID 83303-1233  
Telephone No. (208) 944-0755  
Facsimile No. (208) 736-0041  
e-mail: [SMcRae@MagicValleyLegal.com](mailto:SMcRae@MagicValleyLegal.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,	)	
	)	Case No. CV-2013-390
Plaintiff,	)	
	)	
vs.	)	<b>PETITIONER'S REPLY POST-TRIAL</b>
	)	<b>BRIEF</b>
STATE OF IDAHO,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the Petitioner, Juan Manuel Arellano ("Arellano"), by and through his attorney of record, Steven R. McRae of the firm Hilverda McRae, PLLC, and submits this Reply Post-Trial Brief (this "Reply") in response to the State's *Respondent's Post-Trial Brief* (the "*Respondent's Brief*").

#### ARGUMENT

This Reply is made to address the specific issues raised in the *Respondent's Brief*. Petitioner continues to rely on the *Petitioner's Post-Trial Brief* as has been filed previously and relies on the arguments set forth therein.

**1. THE STATE CAN NO LONGER ARGUE THAT PETITIONER'S PETITIONER FAILS TO STATE ANY CLAIM FOR RELIEF.**

The State argues, "Arellano's ineffective assistance of counsel claim against Mr. Jensen fails to state any claim for relief." *Respondent's Brief* at 6. The State then asks this Court to deny Petitioner's petition on such grounds. This argument has already been decided and framed by the Idaho Court of Appeals decision in this case. *Arellano v. State*, 2015 Opinion No. 30, May 27, 2017. The Court of Appeals held in the same that Petitioner's petition did state a claim for relief, and the same further defined the issue that was to be tried at evidentiary hearing (as is described in detail below).

The State's argument that Petitioner's claims (and in particular those claims ruled by the Idaho Court of Appeals) should be summary dismissed have been decided, and this Court must now analyze the information as was presented at evidentiary hearing in conjunction with the issues allowed to be presented by the Idaho Court of Appeals decision.

**2. PETITIONER'S ARGUMENTS ARE DIRECTLY WITHIN THE PARAMETERS AS SET FORTH BY THE IDAHO COURT OF APPEALS DECISION.**

The State next argues that Petitioner has attempted to "refine, amend, or change" his claims following the hearing in this matter. *Respondent's Brief* at 8. Petitioner framed the issues in his Post-Trial Brief as follows:

. . . Arellano now argues that Kent Jensen was deficient in his performance as Arellano's attorney as follows: 1) Jensen failed to advise Arellano as to the elements and application of facts as they relate to second-degree murder (and the difference of second-degree murder from first-degree murder) and specifically the elements of malice aforethought and premeditation, and 2) Jensen failed to understand and/or communicate with Arellano the impact of a potential second-degree murder conviction.

*See Petitioner's Post-Trial Brief* at 2.

This framework for the Petitioner's argument is within the scope set forth by the Idaho Court of Appeals decision. The relevant portion of the same is as follows:

This Court interprets assertion 58, based on the other relevant assertions listed in the petition, to aver that *Arellano informed defense counsel about his mental state when he killed his wife and that defense counsel informed him that facts concerning his mental state were irrelevant.* This interpretation is bolstered by Arellano's objection to the motion for summary dismissal, in which counsel explained that Arellano "*avers that his [defense] counsel advised him that his mental state at the time of the alleged incident was not relevant to the case.*" This interpretation is also consistent with the district court's characterization of the claim, in which it explained that "Arellano contends that [defense counsel] told him that evidence of the victim's intentions and his mental state . . . was not relevant."

However, unlike the district court, we are persuaded that the claim is not bare and conclusory, and we are also persuaded that there is admissible evidence supporting the claim. *Arellano's pro se claim is not artfully pled, yet the assertions listed above do add up to a claim asserting that defense counsel provided deficient performance by advising him that facts concerning Arellano's mental state when he killed his wife were irrelevant.* Taking the other factual assertions offered by Arellano as true about the circumstances leading up to his wife's death, Arellano's mental state was relevant, as Arellano explained that he was in "a blind rage" after seeing his wife return to the bar and that his rage was "overwhelming." *Indeed, evidence challenging the premeditation element of first degree murder might lead a jury to convict of the lesser charge of second degree murder, I.C. § 18-4003(a) and (g), and the unlawful killing of a human being in the heat of passion is voluntary manslaughter, not murder, I.C. § 18-4006.* Therefore, Arellano's assertions support a prima facie case of deficient performance by defense counsel when, as Arellano alleges, counsel insisted that facts concerning Arellano's *mental state when Arellano killed his wife were irrelevant.*

Arellano's assertions also set forth a prima facie case of prejudice. Beyond claiming that he would not have pled guilty and insisted on going to trial, Arellano asserted that he pled guilty "[a]s a result of counsel refusing to participate in [his] defense." *These assertions compliment the fact that Arellano entered an Alford plea by which he refused to admit to the elements of malice aforethought and premeditation--elements that separate voluntary manslaughter from murder and separate second degree murder from first degree murder respectively.* Taken together, Arellano has presented prima facie evidence of a reasonable probability that he would not have pled guilty and would have insisted on going to trial, but for defense counsel's alleged deficient performance.

*Arellano v. State*, 2015 Opinion No. 30, May 27, 2017 at 4-5 (emphasis added). The highlighted portions of this Opinion (as set forth above) show that the Idaho Court of Appeals narrowed the issue to be heard at evidentiary hearing as to the relevancy of Petitioner's mental status upon killing his wife and whether Jensen properly advised Petitioner of the same.

Petitioner has now narrowed the issue within the parameters set forth by the Idaho Court of Appeals because the Petitioner's argument remains that Jensen failed to discuss the relevancy of Petitioner's mental state in relation to second-degree murder. In fact, the issue of whether Jensen failed to properly advise Petitioner of the possibility of a second-degree murder conviction (by discussing the elements and application of the facts of Petitioner's case to the same) and the potential outcomes of a second-degree murder conviction is directly discussed by the Idaho Court of Appeals. In the above language, the Idaho Court of Appeals discusses why discussion of the elements of, application of, and effect of a second-degree murder possibility was critical to Arellano's representation:

*Indeed, evidence challenging the premeditation element of first degree murder might lead a jury to convict of the lesser charge of second degree murder, I.C. § 18-4003(a) and (g) . . .*

...

*These assertions compliment the fact that Arellano entered an Alford plea by which he refused to admit to the elements of malice aforethought and premeditation--elements that separate voluntary manslaughter from murder and separate second degree murder from first degree murder respectively.*

*Id.* Arellano remains within the scope of the issues permitted by the Idaho Court of Appeals, and his refinement of the issues is entirely appropriate, and the State had notice of the parameters of the issues when the Idaho Court of Appeals entered its Opinion in this case.

**3. PETITIONER FULFILLED HIS BURDEN OF PROOF IN SHOWING BOTH PRONGS OF STRICKLAND AT THE EVIDENTIARY HEARING.**

The State finally argues that Petitioner "has failed to satisfy the burden of proof for said claims." *Respondent's Brief* at 8. Petitioner does not wish to entirely restate the fulsome analysis as set forth in his Post-Trial Brief, Petitioner does wish to respond to some of the arguments as raised by the State.



First, the State argues that Jensen's explanation as to why he did not discuss with Petitioner the elements and application of the facts of second-degree murder was acceptable.

*Respondent's Brief* at 9-10. The State relies on Jensen's testimony that he:

... couldn't get [the prosecutor] to accept anything less than [first degree murder]. So as far as second degree murder goes, I don't recall *if it was ever in play*, other than I guess it could have been a potential lesser included offense than the first degree murder if the case had gone to trial.

Transcript, P. 101, Ll. 17-20. (emphasis added). In essence, as is outlined by the State in *Respondent's Brief*, Jensen did not see any application of second-degree murder because the prosecutor in the case didn't make the offer for a plea to an amended second-degree murder charge. *Respondent's Brief* at 10. The State summarizes this assertion in stating, "Second-degree murder was not even [sic] option for Arellano to consider during plea negotiations, and as such, it is reasonable for Mr. Jensen to not discuss something with Arellano that is not ever offered by the State in negotiations." *Id.* The State finally argues that this argument is bolstered by the fact that Petitioner entered a guilty plea, and this case never went to trial.

First, this analysis flies entirely in the face of the Idaho Court of Appeals Opinion in this matter. Again, the following language of the Idaho Court of Appeals decision comes into play:

**Indeed, evidence challenging the premeditation element of first degree murder might lead a jury to convict of the lesser charge of second degree murder, I.C. § 18-4003(a) and (g) . . .**

...

**These assertions compliment the fact that Arellano entered an Alford plea by which he refused to admit to the elements of malice aforethought and premeditation--elements that separate voluntary manslaughter from murder and separate second degree murder from first degree murder respectively.**

*Arellano v. State*, 2015 Opinion No. 30, May 27, 2017 at 4-5 (emphasis added).

This language first entirely contradicts the State's assertion that Jensen did not need to discuss the elements and application of facts to second degree murder because (as even Jensen recognized in his testimony), a very real possibility had the case gone to trial would have been a

second-degree murder conviction. Furthermore, the State's assertion that because this case never went to trial, Jensen's failure to advise Petitioner of second-degree murder, is entirely misplaced. At the time that Petitioner entered his guilty plea to first-degree murder, he did so without any knowledge that there was a real possibility of an outcome of trial – and that outcome could have a significantly reduced sentence.

Finally, on this topic, the idea asserted by the State that because the prosecutor didn't offer second-degree murder in plea discussions, Jensen didn't need to consider it or discuss it with Petitioner, is not only without a basis in law but appalling. Jensen – and the State – in asserting this idea are essentially saying that the State has all power to determine what is or is not at consideration in a criminal case. It is at the very essence of providing effective assistance of counsel that a criminal defense attorney should consider – and communicate with his/her client – the potential outcomes at trial, even if a prosecutor doesn't consider such an outcome as a possibility in a plea negotiation.

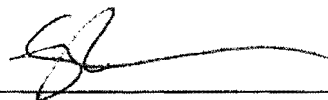
Second, this cited language above acknowledges that the manner in which Petitioner entered his guilty plea – with an *Alford* plea to the mental elements of first-degree murder – show the critical importance of Petitioner understanding the difference between first and second-degree murder when entering his plea. Petitioner further relies on his argument in this regard as set forth in the Petitioner's Post-Trial Brief; however, it is worth reiterating that at no time during the change of plea hearing did anyone ask Arellano any question that would indicate that he actually understood the elements of malice aforethought or premeditation. *See, generally, COP Transcript at 29, L. 22 through 30, Ll. 7 and Petitioner's Post-Trial Brief at 11.*

**CONCLUSION**

The foregoing argument fully addresses all of the issues raised by the State in the *Respondent's Brief*. Petitioner requests that this Court allow Petitioner to withdraw his guilty plea and proceed forward to trial.

DATED this 28<sup>th</sup> day of April, 2017.

HILVERDA MCRAE, PLLC

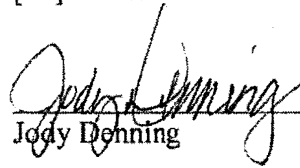
By:   
\_\_\_\_\_  
Steven R. McRae  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28<sup>th</sup> day of April, 2017, I served a true and correct copy of the within and foregoing document upon the following:

Cassia County Prosecutor  
P.O. Box 7  
Burley, ID 83318  
Fax: (208) 878-2924

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile

  
\_\_\_\_\_  
Jody Denning

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2013-390

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**PROCEDURAL BACKGROUND**

In Cassia County case CR-2010-4251 (“the underlying case”), the Petitioner Juan Manuel Arellano (“Mr. Arellano”) pled guilty to the offense of murder in the first degree, with an *Alford*<sup>1</sup> plea to the elements of malice aforethought and premeditation. *See* I.C. §§ 18-4001, 18-4003(a). On April 28, 2011, the court sentenced Mr. Arellano to a unified term of imprisonment of life with twenty-two years determinate and committed him to the custody of the Idaho Department of Correction to serve his sentence.

On May 3, 2013, Mr. Arellano filed the petition for post-conviction relief (“Petition”) in this case. The Respondent State of Idaho (“the State”) filed a motion for summary disposition.

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<sup>1</sup> *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S.Ct. 160, 167, 27 L.Ed.2d 162, 171 (1970).

On February 18, 2014, the court granted the State's motion for summary disposition and entered a judgment, dismissing the Petition in its entirety.

Mr. Arellano filed an appeal. The Idaho Court of Appeals vacated the judgment as to one of the claims in the Petition, affirmed the court's judgment as to all other claims in the Petition, and remanded the case for further proceedings. *See Arellano v. State*, 158 Idaho 708, 351 P.3d 636 (Ct.App.2015).

On January 13, 2017, the court conducted a trial on the one claim for post-conviction relief that remained after the appeal, and the parties were given the opportunity for post-trial briefing. On April 28, 2017, the court took the matter under advisement.

The court issues the following findings of fact and conclusions of law pursuant to Idaho Rule of Civil Procedure 52(a) and Idaho Code § 19-4907(a).

### **FINDINGS OF FACT**

The court determines that the facts set forth below were proved by a preponderance of substantial, material, and competent evidence produced at the trial in this case.

Mr. Arellano and his wife, Ramona Monica Arellano Nanez ("Ms. Nanez"), had a very tumultuous relationship. On the evening of May 29, 2010, Mr. Arellano sent several text messages to Crystal Castaneda ("Ms. Castaneda"), a mutual friend of Mr. Arellano and Ms. Nanez. One of Mr. Arellano's text messages read, in reference to Ms. Nanez: "Voi amatar esa piruja." (Def.'s Ex. A.) A certified interpreter translated this text message from Spanish into English as follows: "I'm going to kill that whore." (Def.'s Ex. B.)

That same evening, Mr. Arellano went to a bar in Burley, Idaho, known as "El Paralito," and he took a handgun with him. He stayed at El Paralito for a period of time before Ms. Nanez arrived. When Ms. Nanez arrived and went out onto the dance floor with another man, Mr.

Arellano walked towards her, pointed his handgun at her, and fired a single shot that killed her. Mr. Arellano was arrested shortly thereafter. During his initial interview with law enforcement officers, Mr. Arellano admitted that he had planned to kill Ms. Nanez that night.

The State filed multiple charges against Mr. Arellano, including the charge of first degree murder.<sup>2</sup> Kent Jensen (“Mr. Jensen”) was Mr. Arellano’s defense attorney.

In developing a defense to the first degree murder charge, Mr. Jensen focused on the evidence of Mr. Arellano’s mental state and intent. Prior to receiving discovery from the State, Mr. Jensen discussed the case with Mr. Arellano, and Mr. Arellano told Mr. Jensen about his tumultuous relationship with Ms. Nanez. At that time, Mr. Jensen believed that the evidence in the case would not support the malice aforethought and premeditation elements of the offense of first degree murder. *See* I.C. §§ 18-4001, 18-4002, 18-4003. At the trial in this case, Mr. Jensen testified as follows regarding his initial view of the underlying case and his discussions with Mr. Arellano:

So it appeared to me that where he’s at a bar, [Ms. Nanez] shows up with another man, he sees that, that falls into that category of voluntary manslaughter, where in the heat of passion the crime is committed. So that was the discussion initially with the case and how we proceeded from the point forward.

...

So I explained to him at that time at that if his emotions were such that if he saw that and his emotions were inflamed because of what she was doing there, that he could be justified to the point, not of getting away with the crime and being absolved, there wouldn’t be any -- there were no self-defense issues as I explained to him -- but that he would be able to avoid the charge as it was initially filed. And if the jury agreed with our version of events and he could bear that out and show that it was in the heat of passion, then he’d get voluntary manslaughter.

(Hr’g Tr. 18:9-14, 19:16-20:1 (Jan. 13, 2017).)

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<sup>2</sup> The other charges included aggravated battery, attempted murder, and enhancements on each charge for the use of a deadly weapon. The aggravated battery charge was based upon the allegation that the bullet that killed Ms. Nanez exited her body and struck another person standing nearby. The attempted murder charge is based upon the allegation that Mr. Arellano threatened to kill and attempted to shoot another person at the bar who tried to intervene.

Later, in discovery, Mr. Jensen received evidence of the text message that Mr. Arellano sent to Ms. Castaneda approximately three or four hours before killing Ms. Nanez. Mr. Jensen testified as follows regarding how the text message affected his view of the case:

. . . after I received that particular bit of evidence I went back and talked to Mr. Arellano about that, because in my opinion that changed the nature of the case. Because the texts were sent within hours of this occurring it suddenly changed the nature of the case from one of heat of passion, to one of intent.

And then that's when I know we had that discussion at length about the difference of what he was facing, because at that point, you know, you're looking at -- if you go to trial and you've got a pretty good idea of what voluntary manslaughter is, you can present that defense to the jury, and in my opinion at that time the state didn't have any evidence that would indicate otherwise and I thought we had a pretty good shot at it.

But once that text message showed up that changed the calculus because it was going to be very hard for us to walk in and argue that he did all of this in the heat of passion, having just sent this text earlier. So at that juncture I know we had that discussion about the prospects of going to trial and the difference. Whereas then the intent, premeditated and all that stuff, comes into play and that bolsters the state's case. We had that discussion, yes.

(Hr'g Tr. 23:23-24:20 (Jan. 13, 2017).)

Mr. Jensen explained to Mr. Arellano the effect of the text message on his defense of the case. Although Mr. Jensen explained to Mr. Arellano the difference between first degree murder and voluntary manslaughter, Mr. Jensen did not recall if he discussed the difference between first degree murder and second degree murder. However, he testified that he did not believe that the distinction between first degree murder and second degree murder was important in the underlying case:

Whether it was a first degree case, looking at premeditation; second degree case, looking at the intent issue on a potential lesser standard, it didn't matter to me under the facts of the circumstances at that point because of that text message. Because to me that -- you know, it didn't -- maybe the prosecutor wasn't going to push it into the premeditated range, but it certainly came out of the range of voluntary manslaughter in the heat of passion, because it did show that there was at least some rudimentary thought process or planning that was going into committing this crime, looking at it from the State's perspective and advising my client.



(Hr'g Tr. 42:2-13 (Jan. 13, 2017).)

The parties eventually negotiated a plea agreement. Before Mr. Arellano entered into the plea agreement, Mr. Jensen and Mr. Arellano had a conversation about the strength of the State's evidence that would support the first degree murder charge. Mr. Jensen testified about this conversation as follows:

The conversation involved looking at the evidence from what would be established and if we went ahead with the voluntary manslaughter defense. They would use the text to show that he had designs to carry out this crime, that he'd thought about it and sent a text message ahead. Mr. Arellano disagreed with that particular point.

We then had a discussion about the plea bargain which was offered to him and whether that would mitigate -- it wasn't perfect, it was something that was offered to him, that he could take advantage of. If we went to trial of course that offer would not be on the table.

So I didn't think that we could win a voluntary manslaughter defense, so at that point we were trying to figure out the best option for Mr. Arellano. I discussed with him that he could enter a plea. He wouldn't have to acknowledge that particular element of the crime, we could take advantage of the plea agreement which had been offered and we could -- as I stated earlier, we could actually argue for less at sentencing.

(Hr'g Tr. 59:23-60:16 (Jan. 13, 2017).)

Mr. Arellano entered into the plea agreement with the State. As set forth above, Mr. Arellano pled guilty to the offense of first degree murder, with an *Alford* plea to the elements of malice aforethought and premeditation. At the trial in this case, Mr. Arellano testified that at the time he entered his plea, he did not have an understanding of those elements. At the change of plea hearing, the prosecuting attorney, Blaine Cannon ("Mr. Cannon"), summarized the evidence that the State would present at trial to show the factual basis for the *Alford* plea. Mr. Cannon discussed Mr. Arellano's text message to Ms. Castaneda, Mr. Arellano's admission to law enforcement officers that he was planning to kill Ms. Nanez that night, and the circumstances surrounding the events at El Paralito. (*See* Ex. 104, Tr. on Appeal 27:4-29:21 (Dec. 30, 2010).)

## CONCLUSIONS OF LAW

In the opinion on appeal, the Idaho Court of Appeals characterized the one remaining post-conviction claim as follows: “[Mr.] Arellano informed defense counsel about his mental state when he killed his wife and . . . defense counsel informed him that facts concerning his mental state were irrelevant.” *Arellano v. State*, 158 Idaho 708, 711, 351 P.3d 636, 639 (Ct.App.2015).

Following trial, Mr. Arellano now contends that he is redefining the scope of his claim within the parameters of the appellate opinion. He no longer contends that Mr. Jensen gave him incorrect advice.<sup>3</sup> Instead, he contends that Mr. Jensen failed to give him advice regarding the elements of second degree murder, the application of the facts to the elements of second degree murder, and the impact of a second degree murder conviction. (*See* Pet’r’s Post-Trial Br. 2.) He contends that Mr. Jensen’s failure to give this advice was conduct that fell below an objective standard of reasonableness and that he suffered prejudice as a result.

The court will not determine whether Mr. Arellano’s new post-trial argument constitutes an unpleaded claim that requires analysis under Idaho Rule of Civil Procedure 15(b)(2) or whether Mr. Arellano has redefined the scope of his claim. The court simply addresses the new argument that Mr. Arellano raised in his post-trial briefing.

### 1. **Legal Authority**

To obtain post-conviction relief, a petitioner “must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based.” *Thomas v. State*, 161 Idaho 655, ---, 389 P.3d 200, 202 (Ct.App.2017). “To prevail on an ineffective assistance of

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<sup>3</sup> Since Mr. Arellano did not make any argument or identify any evidence produced at trial to support the allegation that Mr. Jensen “informed him that facts concerning his mental state were irrelevant,” the court considers this earlier argument to have been waived.

counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency." *Blackburn v. State*, 161 Idaho 769, ---, 391 P.3d 654, 657 (Ct.App.2017) (citing *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S.Ct. 2052, 2064–65 (1984)).

Under the deficient performance prong of a *Strickland* ineffective assistance of counsel claim, "the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness." *Blackburn*, 161 Idaho at ---, 391 P.3d at 658. "[S]trategic and tactical decisions will not be second guessed or serve as a basis for post-conviction relief under a claim of ineffective assistance of counsel unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review." *State v. Abdullah*, 158 Idaho 386, 500, 348 P.3d 1, 115 (2015) (quoting *Pratt v. State*, 134 Idaho 581, 584, 6 P.3d 831, 834 (2000)).

Under the prejudice prong of a *Strickland* ineffective assistance of counsel claim, where the petitioner pled guilty in the underlying case, the petitioner must show "that as a result of counsel's deficient performance "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *Ridgley v. State*, 148 Idaho 671, 676, 227 P.3d 925, 930 (2010) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985)). The petitioner must "convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Icanovic v. State*, 159 Idaho 524, 529, 363 P.3d 365, 370 (2015) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372, 130 S.Ct. 1473, 1485 (2010)). To meet this burden, the petitioner must draw a causal connection between the alleged deficiency and the petitioner's decision to plead guilty. *See Ridgley*, 148 Idaho at 677, 227 P.3d at 931.

“Murder is the unlawful killing of a human being . . . with malice aforethought . . .” I.C. § 18-4001. Express malice exists “when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.” I.C. § 18-4002. Implied malice exists “when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.” *Id.* “All murder . . . which is perpetrated by any kind of willful, deliberate and premeditated killing is murder of the first degree.” I.C. § 18-4003(a).

## 2. Analysis

### A. **Mr. Arellano did not meet his burden of proving deficient performance under the first prong of *Strickland*.**

In this case, Mr. Jensen spoke with Mr. Arellano and understood his version of the events. Mr. Jensen was aware that Mr. Arellano and Ms. Nanez had a tumultuous relationship, that Mr. Arellano stated he did not know Ms. Nanez would be at El Paralito on the night in question, that Mr. Arellano denied that he had intended to kill Ms. Nanez, and that Mr. Arellano was unwilling to admit to the malice aforethought and premeditation elements of first degree murder. However, Mr. Jensen was also aware that the State had evidence to support the malice aforethought and premeditation elements of first degree murder. The State had Mr. Arellano’s text message and his statements to law enforcement officers regarding his intent to kill Ms. Nanez. Additionally, the State had evidence that Mr. Arellano took his handgun, went to El Paralito, waited for a period of time, and then approached and shot Ms. Nanez.

Mr. Jensen reviewed, analyzed, and weighed the evidence in the underlying case, and he discussed it with Mr. Arellano. Even though Mr. Arellano denied that he intended to kill Ms. Nanez, Mr. Jensen negotiated a plea agreement for Mr. Arellano due to the strength of the State’s evidence. Mr. Arellano chose to plead guilty to first degree murder with an *Alford* plea as to the

elements of malice aforethought and premeditation. This plea allowed him to maintain his position that he lacked the requisite mental intent.

Although Mr. Arellano now contends that Mr. Jensen should have advised him regarding the offense of second degree murder, Mr. Arellano was not charged with second degree murder. The State did not express any intention to amend the charge to second degree murder or make a plea offer for second degree murder. Further, Mr. Jensen correctly perceived that the State had evidence of premeditation to support the first degree murder charge if the case went to trial.

Mr. Arellano did not cite to any rule, statute, or case law that requires a defense attorney, in negotiating a plea deal, to give advice to a criminal defendant regarding an uncharged, included offense. Further, he did not provide any specific evidence, in the form of testimony from an expert witness or otherwise, to establish that such advice would be required under an objective standard of reasonableness. The evidence and circumstances in the underlying case do not give rise to a reasonable inference that Mr. Jensen had an affirmative duty to advise Mr. Arellano regarding the offense of second degree murder. Therefore, Mr. Arellano did not meet his burden of proving that Mr. Jensen's performance in this regard fell below an objective standard of reasonableness under the first prong of *Strickland*.

**B. Mr. Arellano did not meet his burden of proving prejudice under the second prong of *Strickland*.**

As set forth above, Mr. Arellano contends that if Mr. Jensen had advised him regarding the elements, application, and impact of a second degree murder conviction, he would not have pled guilty and he would have insisted on going to trial.

Mr. Arellano did not provide evidence or testify at trial in this case regarding the specific reasons for his decision to plead guilty to first degree murder. In the absence of such evidence, it is not possible to evaluate a potential causal connection between Mr. Jensen's failure to advise

Mr. Arellano regarding second degree murder and Mr. Arellano's decision to plead guilty. However, it is likely that Mr. Arellano pled guilty for the same reasons that many criminal defendants plead guilty: he was aware of the evidence against him, he recognized the potential for a conviction on any or all of the charges if the case went to trial, and he wished to take advantage of the benefits offered in the plea agreement. If these were Mr. Arellano's reasons for pleading guilty, it is not clear how his lack of information and advice regarding the offense of second degree murder contributed to his decision to plead guilty.

In post-trial briefing, Mr. Arellano contends that he would have insisted on going to trial because he did not have the intention to kill Ms. Nanez. However, this assertion is not new. The reason he entered an *Alford* plea to the elements of malice aforethought and premeditation was that he would not admit that he intended to kill Ms. Nanez. Mr. Arellano also contends that he would have insisted on going to trial because "there is a real potential for an outcome of a second-degree murder conviction at trial." (Pet'r's Post-Trial Br. 13.) However, Mr. Arellano did not provide sufficient evidence to support this conclusion. Although Mr. Arellano testified that he did not expect Ms. Nanez to be at El Paralito on the night in question, the State's evidence of premeditation consisted of Mr. Arellano's own statements that he intended and planned to kill Ms. Nanez, as shown in his text message to Ms. Castaneda and in his statements in his initial interview with law enforcement officers. Therefore, Mr. Arellano's version of the events does not persuade the court that there was "real potential" for a jury to acquit Mr. Arellano on the first degree murder charge and then convict on the included offense of second degree murder.

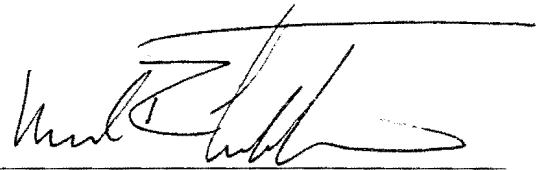
If Mr. Jensen had given Mr. Arellano advice and information regarding second degree murder, the court is not convinced that a decision to reject the State's plea offer would have been rational under the circumstances. Such advice would not change the strength of the State's

evidence against Mr. Arellano or the benefits offered in the plea agreement. The court is not persuaded that, but for Mr. Jensen's failure to advise Mr. Arellano regarding second degree murder, there was a reasonable probability that Mr. Arellano would not have pleaded guilty and would have insisted on going to trial. Therefore, Mr. Arellano did not meet his burden of proving prejudice under the second prong of *Strickland*.

### CONCLUSION

Based on the foregoing findings of fact and conclusions of law, Mr. Arellano's application for post-conviction relief is denied.

It is so **ORDERED** this 18<sup>th</sup> day of May, 2017.



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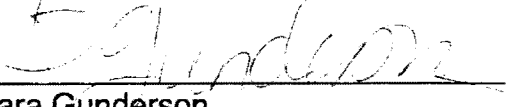
MICHAEL R. CRABTREE  
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 18<sup>th</sup> day of May, 2017, I caused a true and correct copy of the foregoing document to be served upon the following persons in the following manner:

1. Steven Rey McRae  
Attorney at Law  
P.O. Box 1233  
Twin Falls ID 83303-1233  
 email: [smcrae@magicvalleylegal.com](mailto:smcrae@magicvalleylegal.com)  
[jdenning@magicvalleylegal.com](mailto:jdenning@magicvalleylegal.com)
  
2. Douglas Gregg Abenroth  
Attorney at Law  
P.O. Box 7  
Burley ID 83318  
 email: [dabenroth@cassiacounty.org](mailto:dabenroth@cassiacounty.org)  
[dnoriyuki@cassiacounty.org](mailto:dnoriyuki@cassiacounty.org)

Joseph W. Larsen  
Clerk of the District Court

  
\_\_\_\_\_  
Tara Gunderson  
Deputy Court Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

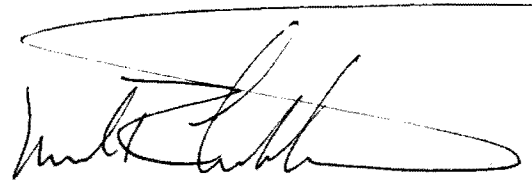
Case No. CV-2013-390

**JUDGMENT**

JUDGMENT IS ENTERED AS FOLLOWS:

Judgment is entered in favor of the Respondent State of Idaho and against the Petitioner Juan Manuel Arellano. The Petitioner's claims for post-conviction relief are dismissed with prejudice.

DATED this 18<sup>th</sup> day of May, 2017.



MICHAEL R. CRABTREE  
District Judge

**RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS**

The Right: The court hereby advises the Petitioner of the right to appeal this Judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. 14(a).

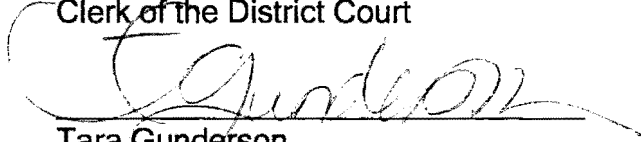
In Forma Pauperis: The court further advises the Petitioner of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the Petitioner.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 18<sup>th</sup> day of May, 2017, I caused a true and correct copy of the foregoing document to be served upon the following persons in the following manner:

1. Steven Rey McRae  
Attorney at Law  
P.O. Box 1233  
Twin Falls ID 83303-1233  
X email: [smcrae@magicvalleylegal.com](mailto:smcrae@magicvalleylegal.com)  
[jdenning@magicvalleylegal.com](mailto:jdenning@magicvalleylegal.com)
2. Douglas Gregg Abenroth  
Attorney at Law  
P.O. Box 7  
Burley ID 83318  
X email: [dabenroth@cassiacounty.org](mailto:dabenroth@cassiacounty.org)  
[dnoriyuki@cassiacounty.org](mailto:dnoriyuki@cassiacounty.org)

Joseph W. Larsen  
Clerk of the District Court



Tara Gunderson  
Deputy Court Clerk

IN THE DISTRICT COURT OF  
 THE 5<sup>th</sup> JUDICIAL DISTRICT  
 CASSIA COUNTY, IDAHO  
 On: 6/5/2017 02:58 PM  
 JOSEPH W. LARSEN  
 CLERK OF THE DISTRICT COURT  
 Filed By: tg

Steven R. McRae [ISB No. 7984]  
 Brian J. Hilverda [ISB No. 7952]  
 Guy B. Zimmerman [ISB No. 9675]  
 HILVERDA MCRAE, PLLC  
 812 Shoshone Street East  
 P.O. Box 1233  
 Twin Falls, ID 83303-1233  
 Telephone No. (208) 944-0755  
 Facsimile No. (208) 736-0041  
 e-mail: smcrae@magicvalleylegal.com

Attorneys for Plaintiff/Appellant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,	)	Case No. CV-2013-390
Plaintiff/Appellant,	)	
	)	<b>NOTICE OF APPEAL</b>
vs.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND ITS  
 ATTORNEY OF RECORD, DOUGLAS ABENROTH, AND THE CLERK OF  
 THE ABOVE-ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named appellant, Juan Manuel Arellano, appeals against the above-named respondent to the Idaho Supreme Court from the Findings of Fact and Conclusions of Law entered on the 18<sup>th</sup> day of May, 2017, by the Honorable Michael R. Crabtree.
2. The party has a right to appeal to the Idaho Supreme Court, and the Order described in Paragraph 1 above is an appealable Order under and pursuant to I.A.R. 11(a)(1).
3. That the issues on appeal will include the Findings of Fact and Conclusions of Law, the Judgment, and other issues to be determined at a later date.

4. The Appellant requests the following documents to be included in the Clerk's record, in addition to those automatically included under I.A.R. 28:

- (a) Findings of Fact and Conclusions of Law, which was entered on May 18, 2017.
- (b) Judgment, which was entered on May 18, 2017.

4. I certify:

- (a) That the Appellant is exempt from paying the estimated fee for the preparation of the Clerk's record because he is indigent;
- (b) That the Appellant is exempt from paying the appellate filing fee because he is indigent;
- (c) That service has been made upon all parties required to be served pursuant to Rule 20 I.A.R. and the Attorney General of Idaho.

DATED THIS 5<sup>th</sup> day of June, 2017.



---

Steven R. McRae  
Attorney for Petitioner/Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5<sup>th</sup> day of June, 2017 I served a true and correct copy of the within foregoing document upon the attorney named below in the manner noted:

Douglas G. Abenroth  
Cassia County Prosecuting Attorney  
P.O. Box 7  
Burley, ID 83318  
Fax: (208) 878-2924

Email  
[dnoriyuki@cassiacounty.org](mailto:dnoriyuki@cassiacounty.org)

Clerk of the Idaho Supreme Court  
P.O. Box 83720  
Boise, Idaho 83720

U.S. Mail

Attorney General's Office  
P.O. Box 83720, Room 210  
Boise, Idaho 83720

U.S. Mail

Office of the State Appellate  
Public Defender  
3050 N. Lake Harbor Lane Ste 100  
Boise, Idaho 83703

U.S. Mail

Cassia County District Court  
1559 Overland Avenue  
Burley, ID 83318

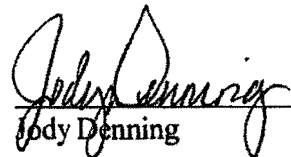
Email  
[tgunderson@cassiacounty.org](mailto:tgunderson@cassiacounty.org)

Maureen Newton  
Cassia County District Court  
1559 Overland Ave.  
Burley, ID 83318

E-Mail  
[modox@pmt.org](mailto:modox@pmt.org)

Roxanne Patchell  
Cassia County District Court  
1559 Overland Ave.  
Burley, ID 83318

E-Mail  
[rpatchell@co.twin-falls.id.us](mailto:rpatchell@co.twin-falls.id.us)

  
\_\_\_\_\_  
Jody Denning

Steven R. McRae [ISB No. 7984]  
Brian J. Hilverda [ISB No. 7952]  
Guy B. Zimmerman [ISB No. 9675]  
HILVERDA MCRAE, PLLC  
812 Shoshone Street East  
P.O. Box 1233  
Twin Falls, ID 83303-1233  
Telephone No. (208) 944-0755  
Facsimile No. (208) 736-0041  
e-mail: smcrae@magicvalleylegal.com

Attorneys for Plaintiff/Appellant

IN THE DISTRICT COURT OF  
THE 5<sup>th</sup> JUDICIAL DISTRICT  
CASSIA COUNTY, IDAHO  
On: 6/5/2017 02:58 PM  
JOSEPH W. LARSEN  
CLERK OF THE DISTRICT COURT  
Filed By: tg

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO, )  
 )  
Plaintiff/Respondent, )  
 )  
vs. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
\_\_\_\_\_ )


Case No. CV-2013-390

**MOTION FOR APPOINTMENT  
OF STATE APPELLATE PUBLIC  
DEFENDER**

COMES NOW Steven R. McRae, attorney for the Plaintiff/Appellant, and moves the Court for an Order appointing the Idaho State Appellate Public Defender's Office to represent the Plaintiff/Appellant, in all matters relating to the Plaintiff/Appellant's appeal to the Idaho Supreme Court.

DATED this 5<sup>th</sup> day of June, 2017.

HILVERDA MCRAE, PLLC

By:   
\_\_\_\_\_  
Steven R. McRae  
Attorney for Plaintiff/Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5<sup>th</sup> day of June, 2017, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

Doug Abenroth  
Prosecuting Attorney for Cassia County  
P.O. Box 7  
Burley, ID 83318  
Fax: (208) 878-2924

E-Mail  
[dnoriyuki@cassiacounty.org](mailto:dnoriyuki@cassiacounty.org)

Clerk of the Idaho Supreme Court  
P.O. Box 83720  
Boise, Idaho 83720

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Attorney General's Office  
P.O. Box 83720, Room 210  
Boise, Idaho 83720

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Office of the State Appellate  
Public Defender  
3050 N. Lake Harbor Lane, Suite 100  
Boise, Idaho 83703

U.S. Mail

Cassia County  
Clerk of the District Court  
1559 Overland Ave.  
Burley, ID 83318  
Fax: (208) 878-1010

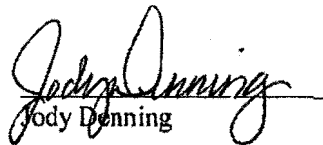
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[rpatchell@co.twin-falls.id.us](mailto:rpatchell@co.twin-falls.id.us)

  
Jody Denning

Steven R. McRae [ISB No. 7984]  
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Twin Falls, ID 83303-1233  
Telephone No. (208) 944-0755  
Facsimile No. (208) 736-0041  
e-mail: smcrae@magicvalleylegal.com

Attorneys for Plaintiff/Appellant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CASSIA

JUAN MANUEL ARELLANO,	)	
	)	CV
Petitioner/Appellant,	)	Case No. <del>CR</del> -2013-390
	)	
vs.	)	<b>NOTICE AND ORDER FOR</b>
	)	<b>APPOINTMENT OF STATE</b>
STATE OF IDAHO,	)	<b>APPELLATE PUBLIC DEFENDER</b>
	)	
Respondent.	)	
_____	)	

**TO: THE OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER**

The Petitioner has requested the aid of counsel in pursuing a direct appeal from the Order Granting the State's Motion for Summary Dismissal in this District Court.

The Court being satisfied that said Petitioner is a needy person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code §19-852 and §19-854 and the services of the State Appellate Public Defender are available pursuant to Idaho Code §19-863A;

IT IS HEREBY ORDERED, in accordance with Idaho Code §19-870, that the State Appellate Public Defender is appointed to represent the Petitioner in all matters as indicated herein, or until relieved by this Court's order.

IT IS FURTHER ORDERED that Steven R. McRae remain as appointed counsel for the purpose of filing any motion(s) in the District Court which, if granted, could affect judgment, order or sentence in the action. Steven R. McRae shall remain as appointed counsel until all



motions have been decided and the time for appeal of those motions has run.

IT IS FURTHER ORDERED that pursuant to Idaho Code §18-963, that the County shall bear the cost of and produce to the State Appellate Public Defender a copy of the following within a reasonable time:

1. The entire Clerk's Record to include all preliminary, pretrial, trial, sentencing and post-trial motions, minutes, documents, briefs, pleadings or related items which are regularly kept in the Clerk's file;
2. All transcripts for all preliminary, pretrial, trial, evidentiary hearing and post-trial proceedings, conferences, voir dire, motion arguments, or related proceedings which are recorded by the Court and which have been previously prepared. All other transcripts to be provided in accordance with timelines set forth by the Idaho Supreme Court after the Notice of Appeal has been filed;
3. The pre-sentence investigation report;
4. All exhibits which can be copied onto an 8 1/2 by 11 inch paper size;
5. A list of all exhibits which cannot be copied onto an 8 1/2 inch paper size, and
6. A docket sheet for both Magistrate and District Court documents or proceedings.

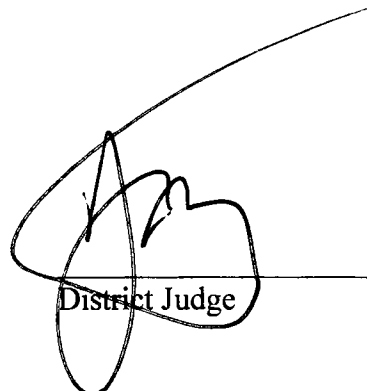
If the State Appellate Public Defender's Office discovers during appellate preparation that an item, within control of the Clerk or Reporter is missing, omitted or not requested and it is necessary to the appeal, the items shall be produced and the cost shall be paid by the County.

The State Appellate Public Defender's Office is provided the following information by the Court:

1. The Defendant's current address is:

Juan M. Arellano #99235  
ISCC, Unit J-210B  
P.O. Box 70010  
Boise, Idaho 83707

DATED this 6 day of June, 2017.

  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 15<sup>th</sup> day of June, 2017, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

Steven R. McRae  
Hilverda McRae, PLLC  
P.O. Box 1233  
Twin Falls, ID 83303-1233

E-mail  
[smcrae@magicvalleylegal.com](mailto:smcrae@magicvalleylegal.com)

Douglas G. Abenroth  
Cassia County Prosecuting Attorney  
P.O. Box 7  
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P.O. Box 83720  
[supremecourtdocuments@idcourts.net](mailto:supremecourtdocuments@idcourts.net)  
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Boise, Idaho 83720

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[ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

Office of the State Appellate  
Public Defender  
3050 N. Lake Harbor Lane Ste 100  
Boise, Idaho 83703

E-Mail  
[efredericksen@sapd.state.id.us](mailto:efredericksen@sapd.state.id.us)

Maureen Newton  
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Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

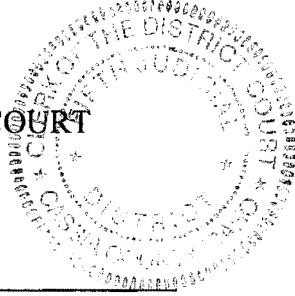
JUAN MANUEL ARELLANO,	)	
	)	
	)	Supreme Court Case No. 45179
Petitioner-Appellant,	)	
	)	District Court Case No. CV 2013-390
vs.	)	
	)	
STATE OF IDAHO,	)	<b>CLERK'S CERTIFICATE</b>
	)	
Respondent,	)	
_____	)	

I, Joseph W. Larsen, Clerk of the District Court, of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the foregoing documents in the above-entitled cause were compiled under my direction and are true and correct copies of the pleadings, documents and papers designated to be included under Rule 28, Notice of Appeal and the entire reporter's transcript of the Sentencing Hearing.

I do further certify that all exhibits offered or admitted in the above-entitled cause and confidential exhibits will be lodged with the Clerk of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court on the 9th day of August, 2017.

Joseph W. Larsen  
CLERK OF THE DISTRICT COURT



By: *Alejandra Valera*  
Alejandra Valera, Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

JUAN MANUEL ARELLANO,	)	
	)	
Petitioner/Appellant,	)	Supreme Court Case No. 45179
	)	
vs.	)	District Court Case No. CR 2013-390
	)	
STATE OF IDAHO,	)	<b>CLERK’S CERTIFICATE OF EXHIBITS</b>
	)	
Respondent,	)	
_____	)	

I, Joseph W. Larsen, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that the following is a list of exhibits that have been lodged with the Supreme Court.

EXHIBIT NO.	DESCRIPTION	DATE FILED
Plaintiff’s Exhibit 101	Invoice of Kent Jensen	1/13/17
Plaintiff’s Exhibit 102	Kent Jensen’s Notes	1/13/17
Plaintiff’s Exhibit 103	Transcript of Preliminary Hearing	1/13/17
Plaintiff’s Exhibit 104	Transcript of Arraignment, Change of Plea and Sent	
Plaintiff’s Exhibit 105	Sentencing Memorandum with Authority Cited	
Plaintiff’s Exhibit 106	Guilty Plea Advisory	1/13/17
Plaintiff’s Exhibit 107	Plea Agreement	
Plaintiff’s Exhibit 108	Judgment of Conviction and Order	
Plaintiff’s Exhibit 109	Psychological Report	1/13/17

CERTIFICATE OF EXHIBITS

Plaintiff's Exhibit 110	Memorandum in Support of Rule 35 Motion with Authority Cited	
Plaintiff's Exhibit 111	Rule 35 Motion	
Plaintiff's Exhibit 112	NOT ADMITTED	
Plaintiff's Exhibit 113	Notice That Death Penalty Will Not be Sought Re: First Decree Murder	1/13/17
Plaintiff's Exhibit 114	NOT ADMITTED	
Plaintiff's Exhibit 115	Amended Information	1/13/17
Plaintiff's Exhibit 116	Information	1/13/17
Plaintiff's Exhibit 117	State's Response to Discovery Request	1/13/17
Plaintiff's Exhibit 118	First State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 119	Second State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 120	Third State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 121	Fourth State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 122	Fifth State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 123	Seventh State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 124	Eighth State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 125	Ninth State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 126	Tenth State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 127	Eleventh State's Supplemental Discovery Response	1/13/17
Plaintiff's Exhibit 128	Twelfth State's Supplemental Discovery Response	
Plaintiff's Exhibit 128 A CD	Search Warrant photos of cell phones messages & log	1/13/17
Defendant's Exhibit A	Photos cell phone text messages & phone call log	1/13/17

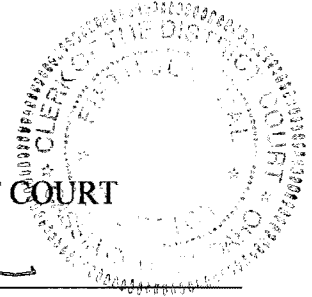
CERTIFICATE OF EXHIBITS

Defendant's Exhibit B	Transcript of translated text messages from Spanish to English	1/13/17
-----------------------	----------------------------------------------------------------	---------

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of Said Court  
on the 13<sup>th</sup> day of August, 2017.

Joseph W. Larsen  
CLERK OF THE DISTRICT COURT

By:   
Alejandra Valera, Deputy Clerk



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA**

JUAN MANUEL ARELLANO	)	
	)	
Petitioner-Appellant,	)	Supreme Court Case No. 45179
	)	
vs.	)	District Court Case No. CV 2013-390
	)	
STATE OF IDAHO,	)	<b>CLERK'S CERTIFICATE OF SERVICE</b>
	)	
Respondent,	)	
_____	)	

I, Alejandra Valera, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Cassia, do hereby certify that I have personally served or mailed, by X United States mail, \_\_\_ hand delivery, one copy of the Clerk's Record and Court Reporter's Transcript to the following Attorney's in this cause as follows:

Lawrence Wasden  
Attention: Appellate Unit  
700 West Jefferson Street  
Boise, Idaho 83720-0010

Eric D. Fredericksen  
State Appellate Public Defender  
322 E Front Street, Suite 570  
Boise, Idaho 83702

IN WITNESS WHEREOF, I have hereunto set my hand the affixed seal of the said Court  
this 9th day of August, 2017.

Joseph W. Larsen  
CLERK OF THE DISTRICT COURT

By: Alejandra Valera  
Alejandra Valera, Deputy Clerk

