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NO. 35063-1

WASHINGTON STATE COURT OF APPEALS DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

MANUEL ARGOMANIZ-CAMARGO,

Appellant.

RESPONDENT'S BRIEF

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I. INTRODUCTION

Argomaniz-Camargo was charged with premeditated murder in the first degree with two aggravating circumstances for brutally murdering his girlfriend in front of their three-year-old child. Police found Argomaniz-Camargo walking away from the murder scene covered in blood. Argomaniz-Camargo's DNA was identified on the handle of the knife and screwdriver used to stab the victim, and on the hammer he used to bludgeon her. When contacted by police, Argomaniz-Camargo asked if he would serve his prison time in Washington or his home state of Illinois. The State's evidence of guilt was very strong.

Argomaniz-Camargo reached a plea agreement with the State wherein he pled guilty to murder in the first degree and possession of methamphetamine in exchange for the removal of both aggravating circumstances, thereby precluding an exceptional sentence of up to life in prison. The court accepted the plea. Before sentencing, Argomaniz-Camargo moved to withdraw his guilty plea. The court granted his attorneys' motion to withdraw as counsel, and appointed a new attorney, Tim Trageser, to represent him in his motion to withdraw his guilty plea.

Trageser faced a record that firmly established that Argomaniz-Camargo did not have any meritorious claims to support a motion to withdraw a guilty plea. Nevertheless, Trageser presented comprehensive

briefing, testimony, and argument that Argomaniz-Camargo should be permitted to withdraw his guilty plea because he felt pressured to plead guilty, was confused, did not enter into the plea knowingly and voluntarily, and because his attorneys provided ineffective assistance of counsel by not reviewing the entire discovery with him prior to his guilty plea.

Despite this competent representation, Trageser's arguments were ultimately unsuccessful in light of the unfavorable facts. The court denied the motion to withdraw the guilty plea, finding that Argomaniz-Camargo, faced with strong evidence against him, knowingly, intelligently, and voluntarily took advantage of a plea offer that guaranteed him a standard range sentence.

Argomaniz-Camargo appeals, claiming that Trageser provided ineffective assistance of counsel by failing to advocate for him. His argument fails, because his counsel used a legitimate strategy to advocate for Argomaniz-Camargo throughout the motion to withdraw proceedings. Trageser performed at an objective standard of reasonableness, and his performance did not result in prejudice.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

When an attorney pursues a legitimate strategy to argue that a defendant who properly entered into a guilty plea should nonetheless be permitted to withdraw that guilty plea and no prejudice results from counsel's performance has the defendant received effective assistance of counsel?

III. STATEMENT OF THE CASE

A. Facts

On March 1, 2016, several hours after midnight, Trooper Burt observed defendant Manuel Argomaniz-Camargo walking down the shoulder of Interstate 90 near milepost 203 in Adams County. CP 2, 165. Argomaniz-Camargo was shirtless, shoeless, and covered in blood. CP 2, 15, 165. He was carrying a young child. CP 2, 165. When ordered to raise his hands, Argomaniz-Camargo put down the child who then ran to Trooper Burt. CP 2. Trooper Burt arrested Argomaniz-Camargo and placed him in his patrol car. CP 11, 166.

Law enforcement responded to the area and found a dark-colored SUV on the side of Interstate 90 near milepost 201. CP 12, 75. The front passenger door and back cargo hatch were open. CP 75, 147. The driver's door window was broken out and remnants of the broken tempered glass were on the roadway around the driver's side of the vehicle, as well as inside

the vehicle. CP 147-48. There was a large amount of blood on the passenger's side of the vehicle. CP 75. Clothing from luggage inside the vehicle lay strewn across the ground outside the cargo hatch. CP 75, 148. Investigators found a packaged white crystalline substance behind the passenger's side taillight. CP 13. The substance field-tested positive for amphetamines. CP 4. A duffle bag found near the crime scene contained a substantial amount of a similar crystal substance. CP 4.

A deceased nude woman was laying next to the vehicle. CP 12-13, 23-24. Argomaniz-Camargo identified the deceased as his wife, Ana Veronica Montelongo Garcia, and the child he was carrying as their three-year-old son. CP 18.

The victim's body was laying just off the roadway along the driver's side of the defendant's vehicle on top of some clothing, tools, and broken tempered glass. Her blood-soaked sweatpants and underwear were down around her ankles. CP 148. Ms. Montelongo Garcia's blood-soaked bra was pulled down exposing both her breasts. CP 148. A screwdriver was protruding from her chest. CP 148. Approximately 2.5 centimeters of the screwdriver's 18.7 long centimeter shank was visible. CP 148. A tooth was resting on her chin. CP 149.

Investigators collected a bloodstained claw hammer from underneath the victim's body and a bloody knife on the ground near the

driver's side door. CP 149-50. Argomaniz-Camargo's DNA was on the handle of the claw hammer, the handle of the knife, and the handle of the screwdriver. CP 157-58. The victim's DNA was on the head of the claw hammer, on the bit end of the screwdriver, and on the passenger seat. CP 157-58.

Ms. Montelongo Garcia had multiple visible stab wounds to her chest, neck, and torso, ligature abrasions on her neck, and obvious blunt force injuries to her face. CP 132, 148-49. An autopsy concluded she was killed by multiple episodes of blunt and sharp force trauma to her head and seventeen stab wounds inflicted to her head, neck, and torso. CP 132.

Police transported Argomaniz-Camargo to the hospital. RP 23. Hospital staff treated him for a minor cut to his finger, and pursuant to a search warrant collected physical evidence from his person. CP 166. While at the hospital, Argomaniz-Camargo asked police whether he would go to jail in Washington or Illinois (Argomaniz-Camargo's residence is in Illinois). CP 166.

B. Procedural History

1. Plea negotiations

On March 3, 2016, the State filed an Information charging Manuel Argomaniz-Camargo with one count of murder in the first degree. CP 7-9. The Information alleged that Argomaniz-Camargo stabbed and

bludgeoned to death his girlfriend¹, Ana Victoria Montelongo Garcia. CP 1-6. The Information further alleged that Argomaniz-Camargo committed the murder with two aggravating circumstances, deliberate cruelty and a crime of domestic violence committed in sight or sound of a minor child. CP 7-9.

The court appointed attorney Michael Morgan to represent Argomaniz-Camargo. RP 309-310. Morgan investigated the case and reviewed the discovery with Argomaniz-Camargo. RP 310.

On July 22, 2016, the State offered to remove both aggravating circumstance allegations if Argomaniz-Camargo pled guilty to murder in the first degree with a deadly weapon enhancement and unlawful possession of a controlled substance (methamphetamine). CP 79. Removing the aggravating circumstances would remove the possibility of a life sentence and limit the court's discretion to the standard range sentence of 274-357 months on count one and 0-6 months on count two. CP 79, 176. The plea offer allowed Argomaniz-Camargo to ask the court to impose the low end of the standard range. CP 79.

Morgan discussed the State's offer with Argomaniz-Camargo. CP 312-13. Morgan made counteroffers that the State rejected. RP 313.

¹ Argomaniz-Camargo identified the deceased to law enforcement as his wife, but the couple was not married.

As the deadline to accept or reject the plea offer arrived, Argomaniz-Camargo rejected the State's plea offer. RP 313. A week or two after rejecting the offer, Argomaniz-Camargo contacted Morgan to ask if the State's offer was still available. RP 316. Morgan contacted the prosecutors who advised that it was still available. RP 317.

2. Entry of guilty plea

On August 30, 2016, pursuant to the plea agreement, the State filed an Amended Information charging one count of murder in the first degree with a deadly weapon and one count of unlawful possession of methamphetamine. CP 13. The court accepted the Amended Information. CP 12. That same day, Argomaniz-Camargo entered a plea of "guilty" and made the following statement to the court:

As to Count I, on March 1, 2016 I intentionally caused the death of Anna Veronica Montelongo Garcia. The victim and I lived with each other for several years and had one child in common. This was not the result of an orchestrated plan. Nonetheless, I acknowledge my conduct meets the legal definition of premeditation because I inflicted multiple wounds over the course of a violent struggle. I used a deadly weapon in the commission of this crime: a knife. This act occurred in the State of Washington. As to Count II, on March 1, 2016 I was in possession of a controlled substance, that is, methamphetamine. This act also occurred in the State of Washington.

CP 30; RP 280-81.

A court-certified Spanish interpreter certified under penalty of perjury that she “interpreted this document for the defendant.” CP 29. Argomaniz-Camargo affixed his signature to the plea form, attesting that “I make this plea freely and voluntarily.” CP 28. Argomaniz-Camargo also attested, “No one has threatened harm of any kind to me or to any other person to cause me to make this plea.” CP 28. Argomaniz-Camargo told the court in his written statement, “No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.” CP 28.

Prior to accepting the guilty plea, the court engaged Argomaniz-Camargo in a colloquy, assisted by the Spanish-speaking interpreter, in order to verify that his decision to plead guilty was knowing, intelligent, and voluntary. RP 284-293.

Argomaniz-Camargo acknowledged that he had no difficulty understanding the Spanish interpreter. RP 272. Argomaniz-Camargo acknowledged that he understood the charges in the Amended Information. RP 274. Argomaniz-Camargo acknowledged that he had reviewed the written plea agreement with his attorney, that he understood it and that he had no questions about it. RP 274-75. Argomaniz-Camargo acknowledged in his written statement that if he pled guilty, the State would recommend a sentence of 357 months prison and he would ask for 274 months. CP 22.

Argomaniz-Camargo acknowledged that he had reviewed the statement of defendant on plea of guilty with his attorney and with the interpreter, that he understood it and that he did not have any questions about it. RP 276. Argomaniz-Camargo acknowledged he understood that by pleading guilty he gave up his right to trial, his right to call witnesses, his presumption of innocence, and other rights. RP 277-78. Argomaniz-Camargo verbally confirmed that his plea of guilty was being made freely and voluntarily and without threat or promise. RP 279-80. Following the colloquy and the defendant's affirmation of his guilty plea, the court entered a finding that the guilty plea was made "knowingly, intelligently, and voluntarily." RP 281. The court scheduled a sentencing hearing for October 4, 2016. RP 282.

3. Post guilty plea proceedings

On September 16, 2016, Morgan filed a motion asking the court to appoint new counsel for Argomaniz-Camargo. CP 31. Morgan supported his motion with a declaration. The declaration stated that Argomaniz-Camargo wished to withdraw his guilty plea for two reasons: (1) He did not enter the guilty plea knowingly and intelligently because he was confused, and (2) Morgan did not properly investigate the case, and proper investigation would have improved his bargaining position or prospects at trial. CP 32. Morgan declared he had a conflict of interest as to the second

ground, because that ground claimed he provided ineffective assistance of counsel. CP 32.

On September 19, 2016, the court held a hearing to address Morgan's motion to withdraw. The State notified the court that it did not object to appointment of new counsel. The State also explained that if the court appointed new counsel the State was seeking a court order waiving the attorney-client privilege between Argomaniz-Camargo and Morgan so the State could interview Morgan and potentially call him as a witness in Argomaniz-Camargo's motion to withdraw his guilty plea. RP 287-88.

The court granted Morgan's motion to withdraw as counsel and appointed Tim Trageser to represent Argomaniz-Camargo for the motion to withdraw guilty plea. CP 35.² The court set a court date for October 3, 2016 to give new counsel time to respond to the State's motion to waive attorney-client privilege. RP 290-91. Argomaniz-Camargo waived his right to speedy sentencing, and the court reset sentencing to November 1, 2017. RP 290-91. The court notified the parties that the sentencing date was tentative, and that the court would move it in order to accommodate a hearing on the motion to withdraw that could be set after

² The court also allowed attorney Kyle Smith, who had filed a notice of association and was assisting Morgan, to withdraw.

the court ruled on the State's motion to waive attorney client privilege. RP 292.

On October 3, 2016, the court held a hearing to address the State's motion to waive attorney client privilege. RP 295. Trageser advised the court that he had reviewed the court file, interviewed Morgan, listened to a recording of the plea hearing, and reviewed case law regarding motions to withdraw a guilty plea. RP 296. Trageser further represented that, with the aid of an interpreter, he met with Argomaniz-Camargo three times and discussed the charging document, the plea that was entered, the State's intent to interview Morgan, and the court rule and case law governing a motion to a withdraw guilty plea. RP 296. Trageser then advised the court that Argomaniz-Camargo understood the benefit of the plea agreement he had entered into, and that he no longer wished to withdraw his guilty plea. RP 296-97.

The State asked to proceed with the motion to waive attorney-client privilege so the State would have a ruling on this issue if Argomaniz-Camargo changed his mind again. RP 298. The State advised the court that Trageser expressed concern regarding the scope of any potential waiver, and the State intended to limit its inquiry to matters directly pertaining to the motion to withdraw the guilty plea. RP 298. The court declined to hear the motion indicating it was now moot, and stated if that changed, the

parties could attempt to reach a stipulation setting forth the appropriate parameters for questioning. RP 299. Sentencing remained set for November 1, 2016.

On October 21, 2016, approximately ten days prior to the scheduled sentencing hearing, Argomaniz-Camargo filed a motion to withdraw his guilty plea and a declaration in support of the motion. CP 38-47. On October 24, 2017, Argomaniz-Camargo filed an amended motion to withdraw his plea and request for a fact-finding hearing. CP 48-57. Trageser acknowledged that the pleadings were substantially the same. He asked that the amended motion replace the original motion, because he filed it after he had a chance to review the entire discovery with Argomaniz-Camargo. CP 48.

On November 1, 2016, the court held a status hearing to address Argomaniz-Camargo's motion to withdraw his plea. The court struck the November 1, 2016 sentencing date, and set a date of December 1, 2016 to hear Argomaniz-Camargo's motion to withdraw his guilty plea.

On November 21, 2016, the court signed an agreed order permitting the limited disclosure of attorney-client communications for hearing on motion to withdraw guilty plea. CP 58-60. This order allowed the State to interview Argomaniz-Camargo's prior attorneys, and limited the questioning to areas pertaining to Argomaniz-Camargo's claim that his

prior attorneys coerced him and that they failed to provide him with effective representation. CP 58-60.

4. Motion to withdraw the guilty plea

a. Written motion

In the amended motion to withdraw the plea, Trageser detailed that he had seven meetings with Argomaniz-Camargo during which he reviewed all the relevant portions of discovery with him.³ CP 50-52. Counsel set forth the court rule and case law that governs a motion to withdraw a guilty plea, as well as the law governing ineffective assistance of counsel. CP 42.

The amended motion claimed Argomaniz-Camargo's attorneys coerced him into pleading guilty, and that they provided ineffective assistance of counsel by failing to review the entire discovery with him. CP 52. Among other things, the motion claimed that on the day of the guilty plea prior counsel showed Argomaniz-Camargo gruesome photos of the deceased victim, and stated in "an accusatory fashion" how would you feel if that was your sister." CP 54. Argomaniz-Camargo contended the attorneys did this in order to compel him to plead guilty. CP 54.

Trageser acknowledged that he had interviewed Argomaniz-Camargo's former counsel, and that they denied his allegations. CP 52.

³ Counsel identified several portions of the discovery that were clearly irrelevant, and which Argomaniz-Camargo therefore did not wish to review. CP 39-41.

Nevertheless, Trageser stressed that he “naturally has taken Argomaniz-Camargo [sic] claim seriously.” CP 52.

b. Testimony

On December 1, 2016, the court held a hearing on the motion to withdraw the guilty plea and conducted a fact-finding hearing. Trageser called three witnesses: Argomaniz-Camargo’s prior attorneys, Michael Morgan and Kyle Smith, and Argomaniz-Camargo. RP 309-380.

Morgan testified that he met with Argomaniz-Camargo in the jail approximately twenty times, and also talked with him on the phone two or three times. RP 310-11. An interpreter was always present. RP 331. Morgan acknowledged that he did not review every single page of the voluminous discovery with Argomaniz-Camargo, but instead brought in pieces as necessary to facilitate discussions. RP 322.

The State made a formal plea offer in mid-July, which Argomaniz-Camargo initially rejected. CP 312-13. Morgan explained that Argomaniz-Camargo “really struggled with the decision on what to do.” RP 316. He described him as being “between a rock and a hard place” because the facts of the case were not good for him and the prosecution made it clear they were not willing to make any better plea offers. RP 313, 316. A week or two after rejecting the plea offer, Argomaniz-Camargo contacted Morgan

and asked if the State's offer was still available. RP 316. Morgan contacted the State and confirmed that it was. RP 317.

Morgan and his co-counsel Smith met with Argomaniz-Camargo the day before the plea. RP 319. Morgan testified they showed Argomaniz-Camargo crime scene and autopsy photos because he requested to see them. RP 322. Morgan explained the photos were digital copies on a laptop. RP 322. He denied Argomaniz-Camargo's allegation that he or Smith waived photos in front of his face. RP 322. Morgan acknowledged that Smith made some sort of remark along the lines of "what if this was your sister" when the photos were shown, and explained that was done to explain how a jury would likely react to seeing these kinds of photos. RP 324.

In response to questioning from the prosecutor, Morgan testified that he thoroughly reviewed all necessary discovery with Argomaniz-Camargo. RP 322-23. He explained that prior to the guilty plea, Argomaniz-Camargo did not request to look at every piece of discovery. RP 332. Morgan explained that Smith performed miscellaneous tasks to aid with the defense, and accompanied him to the jail to meet with Argomaniz-Camargo on four or five occasions. RP 329-30. He testified that neither he nor Smith ever yelled at, threatened, or coerced Argomaniz-Camargo into pleading guilty. RP 330. Morgan acknowledged that Argomaniz-Camargo may have felt pressured by the facts and circumstances of the case and the timeline

involved in having to make a decision. RP 339. However, Morgan testified that he made it clear to Argomaniz-Camargo that the decision as to whether to plead guilty was his alone, and that if he chose to proceed to trial Morgan would fight for him one-hundred percent. RP 339-40.

Morgan talked extensively with Argomaniz-Camargo about his possible defenses. RP 334-35. He testified that Argomaniz-Camargo appeared to understand all the sentencing consequences that attached to a guilty plea versus proceeding to trial. RP 336-38. Argomaniz-Camargo did not express any hesitation or confusion on the day he entered his guilty plea. RP 341. Morgan testified he would not have allowed Argomaniz-Camargo to plead guilty if he thought he did not understand something or that he was not entering into the plea freely and voluntarily. RP 342. Morgan concluded by explaining that when Argomaniz-Camargo said he wanted to withdraw his guilty plea he filed a motion to withdraw because he did not have a good-faith basis to file a motion to withdraw the plea. RP 344.

Kyle Smith testified next. He testified that Argomaniz-Camargo did not speak English and that he had an eighth-grade education from Mexico. RP 350. He agreed that since Argomaniz-Camargo was in custody, was non-English speaking, and was poorly educated, he was one-hundred percent reliant on his attorneys. RP 351. Everything Argomaniz-Camargo

learned about the case or had access to came exclusively through his attorneys. RP 351.

Smith met with Argomaniz-Camargo less than five times. RP 353. He was present when Morgan showed Argomaniz-Camargo the crime scene and autopsy photos. RP 354. He explained that Argomaniz-Camargo insisted on seeing the photos. RP 354, 356. Smith denied Argomaniz-Camargo's account that someone waved one of the photos in front of his face or that anyone made any statements to him along the lines of "what if this was your sister" when the photos were shown to him. RP 353-54.

Smith said Argomaniz-Camargo asked, "Why can't I get some type of an offer, you know, where basically I get out and stay out of trouble and this thing gets dismissed?" RP 362. Smith explained it was in this context that he made a statement regarding Argomaniz-Camargo's family members. Smith asked Argomaniz-Camargo to consider if this type of crime happened to "his family or something like that" whether he would consider a no-jail sentence to be a reasonable sentence and Argomaniz-Camargo said, "No." RP 362. Smith testified that Argomaniz-Camargo "wrestled with" the decision of how to proceed with his case, and that neither he nor Morgan ever said or did anything to try to pressure or to persuade him to plead guilty. RP 359-361.

Argomaniz-Camargo testified last. RP 366-392. In response to questioning by Trageser, he testified that he liked Morgan and that they had a good relationship. RP 366-67. However, Argomaniz-Camargo further testified that he wished to withdraw his guilty plea because he had always told Morgan that he wanted to view the entire file. RP 367. He claimed Morgan would put him off in various ways. He claimed his counsel would tell him there was no time, there was too much paperwork, or that he would do it some other time. RP 374. Argomaniz-Camargo explained he was completely dependent on his attorneys, because he had no avenue to prepare this defense other than to go through them. RP 374.

Argomaniz-Camargo testified that he reviewed the discovery with Trageser after he replaced Morgan. RP 368-70. He detailed various items he claimed he reviewed for the first time with Trageser such as photos of physical evidence, Spanish transcripts of interviews with family members, and a recorded interview with his son. RP 370, 375-77.

Argomaniz-Camargo testified that the first time he saw the crime scene and autopsy photos was on the day before he entered his guilty plea. RP 370-71. He explained that seeing the photos made him feel “fear and a little guilty,” and “that’s what made me take the deal.” RP 372.

Argomaniz-Camargo claimed that since the beginning he always wanted to go to trial. RP 372. He testified that he liked Morgan and trusted

him, but that his attorneys pressured him and “convinced me that taking the deal would be better for me.” RP 372-73. He claimed before signing the plea documents that he again asked to see all the discovery and that Morgan told him to sign the papers, and then there would time after the guilty plea to review the evidence. RP 379.

On cross-examination by the State, Argomaniz-Camargo conceded that although Morgan told him his chances at trial were not good, he also told him it was his decision alone whether or not to accept the plea offer. RP 385. Argomaniz-Camargo also conceded that Morgan discussed three possible defenses with him, including self-defense, and told him that if he decided to go to trial Morgan would fight for him one hundred percent. RP 385.

Argomaniz-Camargo acknowledged that after initially rejecting the State’s plea offer he contacted Morgan to ask if the offer was still available. RP 381-82. However, he maintained that he ultimately plead guilty only because he was confused and his attorneys showed him crime scene and autopsy photos shortly before he pled guilty. RP 382, 391. He explained again that those photos made him feel badly and guilty, and he volunteered, “I also think that she is partly to blame too.” RP 386.

Argomaniz-Camargo claimed that although he told the judge he was entering into the plea freely and voluntarily, in actuality he felt confused,

overwhelmed, and pushed into pleading guilty by Morgan. RP 387. He claimed Morgan tried to confuse him, tried to put words in his mouth, and told him he should take the plea deal. RP 389.

Argomaniz-Camargo reiterated his claim that Smith told him something to the effect of, "What would you do if this happened to your family, to your sisters?" However, he acknowledged this occurred when Smith was explaining to him why his case would not be dismissed or deferred. RP 387.

Argomaniz-Camargo denied that he did not ask to see the entire discovery until after he pled guilty. RP 383. He insisted that he repeatedly asked throughout the process to see the entire discovery. RP 391. He denied that he specifically asked to see the crime scene and autopsy photos before the plea, saying instead he had asked to see the entire discovery and suspected a lot of it was not shown to him. RP 391. He opined that if he could have reviewed the entire discovery he could have found something to help his case that his attorney missed. RP 392.

c. Closing argument

Trageser began his closing argument by setting forth the applicable law for withdrawing a guilty plea prior to sentencing. He urged the court to find his client credible, to find his plea was not voluntary and to find that

Morgan's failure to provide Argomaniz-Camargo with all the discovery amounted to ineffective assistance of counsel. RP 395.

Trageser argued that while the plea may have appeared proper on its face when the court accepted it, the court was unaware at the time of the circumstances surrounding the forty-eight hours before the plea. He argued that those events, now set forth in the testimony, demonstrated that the plea was not voluntary. RP 398. Trageser pointed out that all the witnesses testified consistently that Argomaniz-Camargo was "on the fence" when it came to whether to proceed to trial or plead guilty and that he wanted to see all the evidence. RP 396. He argued it was "compelling" that all the evidence was not reviewed with Argomaniz-Camargo before he pled guilty. RP 396.

Trageser spoke at length about how the unique circumstance of Argomaniz-Camargo's background such as his lack of sophistication, lack of education, and lack of experience with the judicial system, resulted in his attorneys having an outsized influence over him that caused him to plead guilty despite his wanting to proceed to trial. RP 397-98. He contended that showing autopsy and crime scene photos to Argomaniz-Camargo shortly before the plea created an unfair and overwhelming environment that contributed to the involuntariness of his plea. RP 398.

Trageser detailed specific pieces of evidence that were allegedly not shown to Argomaniz-Camargo or were not shown to him until the day before the guilty plea. He argued that these failures were “significant,” and that they contributed to Argomaniz-Camargo unwillingly pleading guilty. RP 398-99.

The State noted that it was undisputed that Argomaniz-Camargo reinitiated contact after the plea offer expired to ask if he could still plead guilty. RP 402. The State argued that the plea form and plea colloquy established the voluntary nature of the plea and that any pressure Argomaniz-Camargo felt was the result of the situation he was in and not the result of any improper conduct by his attorneys. RP 400-01.

Regarding the discovery, the State argued counsel was not required to review every page of discovery, and that Morgan’s review of the discovery was objectively reasonable and sufficient to establish effective assistance of counsel.

The State also pointed to the significant benefit Argomaniz-Camargo received in pleading guilty in that he avoided the potential of a life sentence in a case where strong evidence of guilt and aggravating circumstances would have been presented at trial. RP 403-04. Lastly, the State argued the defense failed to meet its burden of establishing actual prejudice.

In rebuttal, Trageser continued to assert Argomaniz-Camargo was denied his right to review the entire discovery and to have that completed within a reasonable time rather than shortly before the plea. RP 408. He claimed that the combination of the inflammatory nature of the photos and the timing of showing them to his client the day before the plea resulted in his client involuntarily pleading guilty. RP 407.

d. The trial court's ruling

The court denied the motion to withdraw the guilty plea. The court found that both attorneys were credible. The court found that Argomaniz-Camargo was not credible, and that he was attempting to manipulate the facts "in order to present himself in the best possible light." RP 408. The court found it significant that Argomaniz-Camargo reinitiated contact to ask if the plea offer was still available, and noted that he received a significant benefit in accepting the plea offer given the strength of the State's evidence.⁴ RP 408-09.

5. Sentencing

Nicolasa Garcia Rubio, the victim's mother, addressed the court at sentencing. She told the judge about the joy of raising her daughter and how blessed she felt when she learned her daughter was pregnant and would

⁴ The judge who presided over the motion to withdraw guilty plea hearing also presided over the 3.5 hearing.

herself become a mother. RP 416-17. She asked the court to consider what Argomaniz-Camargo did to her, and expressed grief that he would get out of jail someday after putting her daughter in a grave she would never be able to leave. RP 417. She asked the court to give Argomaniz-Camargo the maximum sentence. RP 417.

The State emphasized the senseless and prolonged brutality Argomaniz-Camargo displayed when he killed the victim. RP 418. The State noted his lack of restraint, his lack of mercy, his lack of remorse, and asked the court to impose the high-end of the sentencing range. RP 418.

Trageser described the crime as a tragedy for two families, that of the victim and that of Argomaniz-Camargo. RP 422-23. He noted that even the low end of the standard sentencing range in this case was very high, and would adequately meet the purposes of the Sentencing Reform Act. RP 422-23. He described Argomaniz-Camargo's background, which included being one of eleven children and emphasized his lack of criminal history. RP 423-25. Trageser said he spoke with a representative from Argomaniz-Camargo's family who described him as a loving parent and a hard worker. RP 425.

Trageser explained that during his pretrial incarceration Argomaniz-Camargo had very little contact with the outside world. RP 423. Trageser expressed concern that this isolation led to his client receiving conflicting

advice from his trained attorneys and from inmates, and that this situation led to his decision to try to withdraw his guilty plea. RP 423-24. Trageser advised the court that Argomaniz-Camargo regretted that the motion brought additional pain to the victim's family and "diluted his initial acceptance of responsibility and remorse." RP 424. Trageser assured the court Argomaniz-Camargo accepted responsibility for what he did, and that he felt regret for prolonging the grief of the victim's family by filing the motion to withdraw the guilty plea. RP 426.

Argomaniz-Camargo exercised his right to allocution. He told the court that the victim was "the love of my life" and "the mother of my child" and that he was "very sorry." He asked the court for forgiveness and for a second chance. RP 426.

The court adopted the State's sentencing recommendation, imposed the high end of 357 months on the murder count, and ran it concurrent with count two. RP 427.

IV. ARGUMENT

A. Argomaniz-Camargo received effective assistance of counsel

A criminal defendant has the right under the Sixth Amendment to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show both deficient

performance and resulting prejudice. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If a defendant fails to satisfy either prong, the court need not inquire further. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

When reviewing a claim of ineffective assistance of counsel, there is a strong presumption that counsel's representation was effective and competent. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). To establish deficient performance, a defendant has the "heavy burden of showing that his attorney 'made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'" *State v. Howland*, 66 Wn. App. 586, 594, 832 P.2d 1339 (1992) (quoting *Strickland*, 466 U.S. at 687). A defendant may meet this burden by establishing that given all the facts and circumstances, his lawyer's conduct failed to meet an objective standard of reasonableness. *State v. Huddleston*, 80 Wn. App. 916, 926, 912 P.2d 1068 (1996). On direct appeal, the defendant must show ineffective assistance of counsel based on the record below. *McFarland*, 127 Wn.2d at 335.

To establish actual prejudice, an appellant must demonstrate that but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *In re Personal Restraint of Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

Relying exclusively on *State v. Chavez*, Argomaniz-Camargo claims Trageser failed to advocate for him, and thus failed to provide him with the effective assistance of counsel. Appellant's Brief (App. Br.) at 26-27 (citing *State v. Chavez*, 162 Wn. App. 431, 257 P.3d 1114 (2011)).

Argomaniz-Camargo's reliance on *Chavez* is misplaced. Because Argomaniz-Camargo relies solely on this distinguishable case that presented a complex procedural and factual situation, the State describes it in some detail.

In *Chavez*, the defendant was charged with multiple crimes, including witness tampering and no contact order violations. *Chavez*, 162 Wn. App. at 434. Defense counsel and the prosecutor asked that defense counsel be permitted to withdraw, explaining that defense counsel had a possible conflict of interest because he was possibly an accomplice to the witness tampering charges. *Id.* at 435. The court took the withdrawal issue under advisement. *Id.* At a later hearing, the defendant, still represented by initial counsel, pled guilty to the no-contact order charges. *Id.*

Prior to sentencing, defense counsel advised the court that his client wished to withdraw his guilty plea. *Chavez*, 162 Wn. App. at 435. Defense counsel again asked to withdraw as counsel, explaining that he was potentially a witness to the no-contact order charges. *Id.* at 436. The court allowed defense counsel to withdraw, and appointed another attorney

(“motion counsel”) to represent Chavez on his motion to withdraw his guilty plea. *Id.* at 435.

Motion counsel filed a motion to withdraw the defendant’s guilty plea. The bottom of each page contained the descriptor: “Defendant’s Anders Brief.”⁵ *Chavez*, 162 Wn.App.at 436. Motion counsel wrote that after reviewing the materials he could not “find any assignment of error that would support a meritorious challenge to the entry of the guilty plea.” *Id.* The court denied the motion to withdraw the guilty plea. *Id.* at 435.

The court of appeals found that motion counsel’s decision to file an *Anders* brief, especially in light of initial counsel’s apparent conflict of interest, established that Chavez had received ineffective assistance of counsel in his motion to withdraw his guilty plea. *Chavez*, 162 Wn. App. at 439-40. The Court reversed and remanded the case for further proceedings on the defendant’s motion to withdraw his plea. *Id.* at 440.

1. Counsel’s performance for the motion to withdraw guilty plea was objectively reasonable

Argomaniz-Camargo’s claim that Trageser’s representation was the functional equivalent of an *Anders* brief is without merit. Trageser

⁵ An “*Anders* brief” is a court of appeals brief that may be submitted when an attorney believes the appeal has no merit and the attorney therefore wishes to withdraw. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The court of appeals in *Chavez* found that an *Anders* brief was appropriate for a trial court. *Chavez*, 162 Wn. App. at 439.

meaningfully advocated for his client by diligently preparing and filing a brief forwarding specific arguments, eliciting helpful testimony at the fact-finding hearing, and unlike in *Chavez*, never suggested the motion to withdraw the guilty plea lacked merit.

Trageser reviewed the recording of the plea colloquy, reviewed the entire court file including the plea paperwork, and presented a stipulation that limited the areas of inquiry the State could go into with prior defense counsel. Trageser reviewed the entire discovery with Argomaniz-Camargo, and filed a motion to withdraw a guilty plea on his behalf. As the case evolved, he filed updated pleadings.

At the fact-finding hearing, Trageser elicited helpful testimony from multiple witnesses to support the arguments he had presented in his briefing. To support the claim that Morgan and Smith did not provide effective representation, Trageser elicited testimony from Argomaniz-Camargo listing items that prior counsel allegedly failed to review with him. Trageser further elicited testimony from Argomaniz-Camargo's prior attorneys that they did not show him all of the discovery, that Smith made statements to the effect of "what if this was your sister" or "what if this was your family member," and that Argomaniz-Camargo may have felt pressured by the situation facing him.

Trageser also elicited contradictory testimony from Morgan and Smith regarding the circumstances under which Smith made comments regarding the hypothetical situation of a family member being depicted in the crime scene and autopsy photos. Morgan recounted that Smith made the comment to explain the effects such photos could potentially have on a jury, while Smith testified he made the comment to explain to Argomaniz-Camargo that obtaining a plea offer of no jail time was not feasible.

A claim of ineffective assistance of counsel cannot be based on conduct that can be fairly characterized as constituting a legitimate tactic or strategy. *McFarland*, 127 Wn.2d at 334-35. Trageser faced an unfavorable set of facts demonstrating strong evidence of guilt, properly completed plea paperwork, a thorough plea colloquy and a defendant who initiated contact with trial counsel to ask if he could still accept the expired plea offer.⁶ Faced with these facts and circumstances, Trageser pursued two legitimate strategies in the motion to withdraw the guilty plea. First, he argued that notwithstanding the record the court should permit Argomaniz-Camargo to withdraw his guilty plea because he felt confused, overwhelmed, and pressured by how he interpreted the actions of his prior counsel. Second, he

⁶ The "Sixth Amendment does not require that counsel do what is impossible or unethical." *United States v. Cronin*, 466 U.S. 648, 656, n. 19, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). Here, Morgan filed a motion to withdraw as counsel, in part because he believed Argomaniz-Camargo's motion to withdraw his guilty plea had no merit.⁶ CP 32. The record of this case bears out the accuracy of Morgan's declaration.

argued that failure to review the entire discovery with Argomaniz-Camargo constituted ineffective assistance and that he would not have plead guilty had he fully reviewed the entire discovery.

Argomaniz-Camargo's claim that Trageser's civility towards prior counsel evidences a lack of advocacy is meritless. Attorneys demonstrate effective advocacy by advancing legal arguments, not by making baseless attacks against witnesses, in this case, Argomaniz-Camargo's prior counsel. This court should reject any notion that an attorney's professional conduct or expressions of candor to the court demonstrate a lack of advocacy.

Moreover, pursuing a tone and line of questioning that attempts to show that a misunderstanding occurred between Argomaniz-Camargo and his counsel that affected the voluntariness of his plea is a legitimate strategy, one that is not furthered by making unsupportable attacks on prior counsel's integrity or actions.

Argomaniz-Camargo also claims that calling prior counsel as witnesses demonstrates that Trageser was not acting as an advocate, because he knew prior counsel were unsupportive of his claim. This interpretation of counsel's actions also lacks merit. Ignoring unfavorable facts does not constitute effective advocacy. Drawing out harmful facts on direct examination in order to control and minimize the potentially negative

impact of such evidence is a legitimate and common strategy frequently employed by trial attorneys.

Moreover, the defense brought the motion to withdraw the guilty plea so the defense was required to proceed first in putting on a case. Without testimony from prior counsel, Argomaniz-Camargo's motion would have relied solely of his unsubstantiated allegations. A bare allegation from the defendant that a guilty plea was coerced is insufficient to support a motion to withdraw a guilty plea. *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). Here, Trageser elicited helpful testimony from both attorneys, including an acknowledgment that they did not show Argomaniz-Camargo all the discovery, that Argomaniz-Camargo expressed uncertainty about whether to plead guilty, that Argomaniz-Camargo may have felt pressured, and that Smith made statements to the effect of "what if this was your sister or family member."

"If the actions complained of go to the theory of the case," a defendant cannot establish deficient performance. *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) (quoting *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737 (1982)). By questioning prior counsel, Trageser established that Argomaniz-Camargo was completely dependent on his attorneys, had a good relationship with them, and trusted them. This testimony supported Argomaniz-Camargo's claim that his attorneys exerted

an outsized influence over him in persuading him to plead guilty allegedly against his wishes.

Argomaniz-Camargo's claim that Trageser failed to advocate for him when he remarked at sentencing that Argomaniz-Camargo was well-represented and was getting bad advice from other jail inmates is irrelevant to assessing counsel's representation at the motion to withdraw hearing which occurred prior to sentencing. Furthermore, Argomaniz-Camargo displays a similar misunderstanding of advocacy when he characterizes Trageser's statements as a lack of advocacy. In making these remarks, Trageser advised the court that his client regretted the additional anguish the motion brought the victim's family by prolonging the finality of the case. When the trial judge denied the motion to withdraw guilty plea, he expressed his view that Argomaniz-Camargo was trying to manipulate the people around him and the proceedings. Trageser's statements at sentencing, viewed in their entirety, were clearly designed to portray Argomaniz-Camargo's actions in a more favorable light as counsel urged the court to impose something other than the high-end of the sentencing range.

Argomaniz-Camargo also claims his attorney was deficient when "without objection, the Assistant Attorney General essentially elicited a confession from Argomaniz-Camargo." App. Br. at 19. In making this

argument, Argomaniz-Camargo cites to a line of questioning by the State that concluded with: "And you knew all of those things when you told the judge that you were guilty and changed your plea to guilty; correct?" Argomaniz-Camargo answered, "I think so." App. Br. at 20, citing RP 386. This claim of deficient representation fails because the State's line of inquiry was not objectionable, and because the outcome of the hearing would not have been different absent these statements.

Courts considering a motion to withdraw a guilty plea on grounds of involuntariness may consider what motivations the defendant had to change his plea to guilty. *Brady v. United States*, 397 U.S. 742, 749, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). The prosecutor pursued an appropriate line of inquiry when he questioned Argomaniz-Camargo about his knowledge regarding the strong evidence against him, as the State was entitled to argue this motivated him to plead guilty.

Moreover, Argomaniz-Camargo opened the door to this line of questioning when he claimed his attorneys showed him crime scene and autopsy photos to make him "feel guilty" and "badly" in order to pressure him into pleading guilty. RP 371-72. The State was entitled to refute this claim by eliciting testimony that the strong evidence against him could also lead to the feelings he described, and to accepting a plea offer that limited his exposure at sentencing.

Lastly, Argomaniz-Camargo's description of his statements as a "confession" mischaracterizes the nature of the proceeding during which his statements were elicited and inflates their impact. App. Br. at 19. This hearing was not a trial to determine if Argomaniz-Camargo was guilty, but rather a hearing to determine if he had entered into his plea voluntarily. In this context, the questions which elicited Argomaniz-Camargo's statements were not objectionable, and the outcome of the hearing would not have been different had the statements not been made.

A claim of ineffective assistance of counsel cannot be based on conduct that can be fairly characterized as constituting a legitimate tactic or strategy. *McFarland*, 127 Wn.2d at 334-35. Here, Trageser pursued a legitimate strategy to develop arguments potentially available to him given the extremely unfavorable facts and circumstances of this case. His performance was objectively reasonable. This Court should deny the claim of ineffective assistance of counsel on this basis alone, and affirm the conviction.

B. Argomaniz-Camargo was not prejudiced by his counsel's representation

Relying on *United States v. Cronin*, Argomaniz-Camargo contends he is entitled to a finding of presumptive prejudice because his counsel's lack of advocacy amounted to a "complete denial of counsel."

App. Br. at 32, citing *U.S. v. Cronin*, 466 U.S. at 659. “A constructive denial of counsel occurs ... in only a very narrow spectrum of cases where the circumstances leading to counsel’s ineffectiveness are so egregious that the defendant was in effect denied any meaningful assistance at all.” *Childress v. Johnson*, 103 F.3d 1221, 1229 (5th Cir. 1997).

Argomaniz-Camargo’s claim fails because, as demonstrated above, counsel thoroughly explored the facts and circumstances of his case and crafted a strategy consistent with the record available to him. Because the narrow *Cronin* exception to the *Strickland* rule does not apply here, Argomaniz-Camargo must show that his counsel’s performance was deficient and that the deficient performance resulted in prejudice. *McFarland*, 127 Wn.2d at 334-35.

Argomaniz-Camargo fails to demonstrate any reasonable probability that the motion to withdraw his guilty plea would have been granted but for his counsel’s performance. Unlike *Chavez*, where the record revealed an apparent conflict of interest that could have formed a sufficient basis for withdrawing the guilty plea, no such basis to withdraw the guilty plea exists here.

The record here establishes a voluntary guilty plea, and shows that no winnable argument for withdrawing the guilty plea existed. Morgan and Smith testified under oath that neither of them did anything to pressure or

otherwise influence Argomaniz-Camargo's decision to plead guilty. At the plea hearing, Argomaniz-Camargo provided a written statement to the court declaring his guilt to both charges. CP 30; RP 280-81. Argomaniz-Camargo affixed his signature to the plea form, attesting that no one had made any threats or promises to him and that he was making the plea freely and voluntarily. CP 28. Argomaniz-Camargo acknowledged that he reviewed the written plea agreement with his attorney, he understood it, and he had no questions about it. RP 276. Furthermore, he acknowledged that his attorneys made it clear to him that the choice to plea guilty was solely his. RP 385. Morgan testified he would not have allowed Argomaniz-Camargo to plead guilty if he thought he did not understand something or that he was not entering into the plea freely and voluntarily. RP 342.

Prior to accepting the guilty plea, the court engaged Argomaniz-Camargo in a colloquy, assisted by a Spanish-speaking interpreter, in order to verify that his decision to plead guilty was knowing, intelligent, and voluntary, and that he understood the potential sentence he faced. RP 275-76, 284-293. Argomaniz-Camargo verbally confirmed that he was pleading guilty freely and voluntarily, and without any threats or promises. RP 279-80. Following the colloquy and the defendant's affirmation of his guilty plea, the court entered a finding that the guilty plea was made "knowingly, intelligently, and voluntarily." RP 281.

Courts considering a motion to withdraw a guilty plea on grounds of involuntariness may also consider what motivations the defendant had to change his plea to guilty. *Brady v. United States*, 397 U.S. 742, 749, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). Here, those motivations included the extremely strong evidence establishing Argomaniz-Camargo's guilt and the benefit he received by pleading guilty.

Argomaniz-Camargo was arrested as he was walking away from the crime scene where his girlfriend had been killed. CP 2, 12-13, 23-24, 165. He was covered in blood and carrying their young son. CP 2, 165. His girlfriend was killed by being repeatedly stabbed and bludgeoned. CP 132. Argomaniz-Camargo's DNA was on the handle of the screwdriver that was sticking out of her chest, on a bloodstained claw hammer found underneath her body, and on a knife found near her body. CP 157-58. Argomaniz-Camargo expressed his consciousness of guilt when he asked police whether he would go to jail in Washington or Illinois. CP 166.

The benefit Argomaniz-Camargo received by pleading guilty also influenced his decision to accept the State's plea offer. If Argomaniz-Camargo had proceeded to trial and the State presented its strong evidence of premeditated murder and aggravating circumstances to a jury, he would have exposed himself to an exceptional sentence of up to the statutory maximum of life in prison if convicted. CP 79. Instead, he accepted a plea

offer that removed both aggravating circumstances, removed the possibility of a life sentence, and limited his sentencing exposure to a fixed standard range of 274-357 months.

Argomaniz-Camargo was aware of the mountain of evidence against him. He was aware of the benefit he would receive if he pled guilty. Argomaniz-Camargo admitted on cross-examination that Morgan told him his chances at trial were not good, that the decision of whether to plead guilty was his alone, and that if he proceeded to trial Morgan would fight for him one-hundred percent. The virtually incontestable evidence and the substantial benefit he would receive by accepting the plea offer motivated him to plead guilty.

Argomaniz-Camargo does not meet his burden of showing he was prejudiced by his counsel's performance. Instead, he faults his attorney for not presenting any winning exhibits or testimony for the motion to withdraw guilty plea, and then asserts that "it is impossible to say that such evidence did not exist simply because it wasn't brought forth[.]" App. Br. at 31. On direct appeal, a defendant must show ineffective assistance of counsel based on the record below. *McFarland*, 127 Wn.2d at 335. Argomaniz-Camargo's wild speculation as to what evidence might exist outside the record does not establish prejudice.

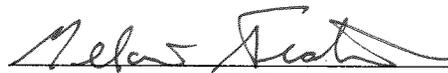
Argomaniz-Camargo has failed to show that but for his counsel's performance, the outcome of the motion to withdraw his guilty plea would be different. His claim of deficient performance and resulting prejudice fails.

V. CONCLUSION

Argomaniz-Camargo has failed to establish that his counsel's performance fell below an objective standard of reasonableness, and that his counsel's performance resulted in prejudice. The trial court's order denying his motion to withdraw his guilty plea should be affirmed.

RESPECTFULLY SUBMITTED this 21st day of December, 2017.

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NO. 35063-1

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

MANUEL ARGOMANIZ-CAMARGO,

Appellant.

DECLARATION OF
SERVICE

I, JOSLYN WALLNBORN, declare as follows:

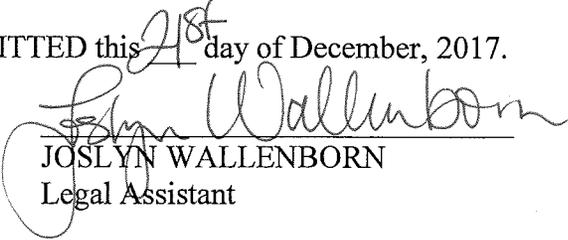
On Tuesday, December 21, 2017, I deposited into the U.S. Mail, first-class, postage prepaid, and sent by electronic mail, a true and correct copy of Respondent's Brief and Declaration of Service, addressed as follows:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this ^{21st} day of December, 2017.


JOSLYN WALLENBORN
Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

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