"Closing Arguments For Evidentiary Hearing"

As Stated For the Court in the Opening Argument, the Amended Petition Was Filed on February 6, 2017 And Carried Forward From the Pro Se Petition Which Was Filed March 7, 2011. Cumulatively, there were issues Raised For Which testimony Was heard on January 8th And 10th of this Year.

the issue And Subsequent Sub-issues As identified in the Amended Petition All Fall Under the Petitioner's Right to Effective Assistance of Counsel under both the State And Federal Constitution. And Also, the testimony Given Shows that there is Sufficient evidence to Substantiate the Arguments Presented by the Petitioner For Habeas Corpus Relief.

First And Foremost is the issue OF the Polygraph. The Petitioner Asserted Through his Petitions And the testimony Given under Oath that his decisions based on the USE OF the Polygraphs were Predicated on False information Provided to him by his defense Counsel, Mr. Riggs. As the Record Shows on July 22, 2008 Mr. Riggs Verbally disclosed to the State And the Court that Petitioner had Passed A Polygraph examination. Mr. Riggs then Provided the Actual Polygraph Charts For Polygraphs that were inconclusive And ~~remap~~ inculpatory to the defendant As well As the State. Naturally, the State Would investigate the Accuracy OF Mr. Riggs Assertion. the State Contracted Mr. Hoats to Review the Charts Provided by Mr. Riggs And Concluded that they Served to Solidify their Prosecution Against the defendant.

Mr. Riggs testified that intrigued him, And that " the best Cases to utilize A Polygraph is Where the Facts of the Case were Fairly Simple, that the Number of Witnesses were Fairly Limited. But this Was Not that Kind of Case. This Was A Very Complex Case." [1-10-2019 TR-14, 18-21] It therefore Appears that Although this Was Not A Case Where A Polygraph Could be best utilized, Mr Riggs Made it his Principle tool For defending the defendant. Mr. Riggs Was Very Clear When he Said," In My Mind, this Was Not the best Case For A Polygraph, but We Came to A Point Where We had to Accomplish Something." [1-10-19 TR 23, 21-23]

the testimony OF the Petitioner And Mr. Riggs Agree on One Very distinctive Point: That the Polygraph Was Presented As A Potential tool With No Risk involved to the defense. Mr. Riggs Said it best in his own Words, " If You Pass it, it is A tool that We Can use; if You Fail it, its buried. You Know, We Are under No obligation to disclose it." [1-10-19 TR-24, 21-23] Yet When Mr. Riggs Verbally Presented the Polygraph Results to the Court And the State he Negated this Very Promise. Also, As Mr. Riggs Stated, he had used Virtually Every Polygraph in the State And " Was Very Familiar With the Field of Polygraphers And their Styles - Strategy." [1-10-19 TR-24, 8-16] Which Means in Essence, he Knew What it Meant to Say that the defendant had Passed A Polygraph. With Mr. Riggs' thirty (30) Years OF Criminal Law Experience, And At that Point in his Career Where he Admitted to having utilized Polygraphers "Two or three times A Year," [1-10-19, TR-24, 8-9] he Was Very Knowledgable About What it Meant to Pass An Exam, And Whether We Examine the testimony of Mr Pierangeli (the examiner of the initial Polygraphs). ← Dr. Hoats (the State's Chosen Expert), or Mr. Lucero (the Polygrapher Expert Contracted by the defense For the Purpose of the Habeas Corpus Proceedings) the Consensus is Clear! the defendant's Polygraph

was inconclusive at best. Yet it was Mr. Riggs strategy to utilize inculpatory evidence as a means to cause confusion which he himself stated was his goal. "Confusion was the centerpiece of the defense and the polygraph was just a simple aspect of it." [1-10-19, TR-68, 22-23] It is the petitioner's belief that inculpatory evidence as the centerpiece of the defense is clearly ineffective assistance of counsel and prejudicial to the petitioner.

Mr. Riggs stated that "the worse thing for a defense lawyer was a polygraph that could be easily attacked, and they're always going to be attacked. But I wanted the clear charts, I wanted clear tracings, I wanted, you know, as certain a result as I could have." [1-10-19, TR-26, 20-24]

It turned out that "the worse thing was exactly what Mr. Riggs presented to the state as well as the court, inculpatory evidence that not only harmed the defendant at trial, but also harmed in the negotiation of a favorable plea, a negotiation process that Mr. Riggs stated as "ongoing for several months." [1-10-19, TR-38, 25]

When cross-examined for his strategic move of disclosing inconclusive and inculpatory polygraph results to the state, Mr. Riggs said that it was what he had to do to convince the prosecutors to shift their attention towards (someone else) as the shooter. [1-10-19, TR-40, 18-20] Mr. Riggs said that he disclosed it in furtherance of negotiation, and as an effort to them to target Clay. [1-10-19, TR-41, 1-2] but as defense counsel to the petitioner, his top priority needed to be the petitioner's defense and not the potential prosecution of Clay.

Following Mr. Riggs disclosure of inconclusive and inculpatory polygraph results to the state, he believed that he was making in-roads in the state's belief that Mr. Chavez was not the shooter, and that that was the basis for the prosecutors wanting to have their own person do a polygraph. [1-10-19, TR-42, 1-2]. It didn't seem to occur to Mr. Riggs that the prosecution's motive may have been to ensure that said inculpatory evidence would most certainly be admitted as evidence at trial. Because that was the most logical outcome given that the initial polygraphs were inconclusive at best.

It is standard logic to deduce that the exact same inputs will produce the exact same outputs. And with the same questions applied by the same means of a polygraph examination, it was highly probable if not certain, that the outcome would always be the same - inconclusive and inculpatory.

Mr. Riggs shared his surprise that the state would even propose a retest with yet another polygrapher. "I don't think I had ever had, when I used a polygraph, the state want to do another one." [1-10-19, TR-41, 7-11]. Yet based on the evidence on record, it was probably the prosecutors who were surprised by a defense attorney disclosing an inconclusive and inculpatory piece of evidence to them. It was Mr. Riggs' hope that another polygraph would somehow yield a different outcome, as he stated, but it was not a hope based on the inputs being applied to the event. [1-10-19, TR-41, 21-23] It was furthermore not a strategic move based on a sound reason, logic, or his obligation as a lawyer to defend the interest of his client.

What is even more curious about Mr. Riggs' recollection of the events surrounding the polygraph was his statement that "Mr. Honts was, expectedly, critical of the Pierangeli polygraph. [1-10-19, TR-43, 8-9] It is not therefore clear as to why Mr. Riggs would be surprised by this move by the state. The state's objective was to win and with the inculpatory evidence provided to them by Mr. Riggs, they were

being Positioned to do Just that. As Mr. Byers, the initial Prosecutor on the Case, Said in his testimony, " Anytime there Was no Lead that Came up, they Ran it to the Ground, And Not Everything Pointed back to Mr. Chavez. That's Just the Way You Work the Case." [1-08-16, TR-66, 12-14]

the State's objective Was to Win. Their initial theory Was based on Mr. Chavez As being the Shooter And Regardless of Whether or Not All the Evidence Supported that theory, there Was enough Circumstantial Evidence to Potentially Convince a Jury of Such, And With the Added help of Mr. Riggs disclosure of inculpatory evidence Against his client, the state's task Was Certainly Less Arduous.

Mr. Riggs Repeatedly defended his strategy of having disclosed the inculpatory Evidence Against his Client As the best And only hope of Proving that Mr. Chavez Was Not the Shooter [1-10-19, TR-44, 16-17] A Statement that Coincides Neither With the Reality of the Case or the Evidence on Record, Mr. Riggs defended his Actions by Stating that the Case Against the two defendants Was incredibly Strong And that "[T]he Evidence Against the two of them Consisted Largely of Scientific Evidence or documentary evidence. [1-10-19, TR-7, 19-22] A Statement intended to Suggest that the defense Was Somehow An impossible Feat to Achieve. A Suggestive Statement that he Would hope Should Somehow excuse the Fact that he Presented inculpatory evidence to the State, A decision that had A domino effect in Placing More inculpatory Evidence in the State's Arsenal for Prosecution.

When Mr. Riggs Was Pressed under Cross-examination As to the Nature of the Supposed " OverWhelming Amount of Evidence Available to Convict," [1-10-19, TR-47, 23-25] or As he Also Put it, " there Was A Mountain of Evidence Against Mario. there Was No Viable defense." [1-10-19, TR-54, 3-4] Mr. Riggs Admitted What has been Repeatedly Argued on the trial And Appellate Records that the State's Case Presented No Eyewitnesses As to the homicide, No DNA or Physical Evidence Connecting Either defendant to the Scene of the Crime, And that the Evidence Presented Was Circumstantial. [1-10-19, TR-95, 23-24] And [1-10-19, TR-96, 1-4].

As to the Scientific Evidence that Mr. Riggs Alludes to - other than the inculpatory Polygraph Evidence that he himself disclosed to the State under the Guise of Strategy - there Was handwritten Analysis Paid For And Pursued by the State Which Proved that Eloy Montano had Written A Sort of Script that Was used As Circumstantial Evidence of Criminal Planning of Some Sort. Again Exculpatory Evidence in the Sense that it Showed that the defendant had Not been its Author, And though the defendant's Fingerprints Were Found on the Written Page in question, there Was No Evidence to Prove that the defendant had Read the document or Participated in its drafting.

the Fingerprint Could Very Well have been Placed on the Paper long before the Paper Was ever Written on. As Mr. Byers Said, " Not Everything Pointed back to Mr. Chavez." [1-10-19, TR-66, 12-14]

Mr. Riggs insisted time And time Again that there Was No Viable defense to Present At trial Without the inculpatory Evidence of the Polygraph. [1-10-19, TR-54, 2-4] Mr. Treich, in his direct Examination of Mr. Riggs, even Went So Far As to Suggest that Mr. Riggs' Actions Were All Part of A tactical tool For Pointing the Finger At Eloy Montano. How Exactly inculpatory Evidence that Would both Solidify the Prosecution's Case And Negates the defendant's Position For Negotiating A Favorable Plea bargain Could be Seen As A Viable Strategy or tactical tool is unclear. More than

unclear, its absurd. [1-10-19, TR-54, 8-11]

As presented in Claim # 3 of the Amended Petition, it was argued that Mr. Riggs was also ineffective for failing to require experts and otherwise investigate the case thoroughly so as to shed light on such investigative questions that the State was unable to answer. Such as, how the wallet of the victim ended up in the same locker room of the same health club where Mr. Chandler's ex-business associate and well known enemy was documented having been on the same day the wallet was found, or how it was highly impossible that Mr. Chandler could have made the phone call that lured Mr. Taylor to the residence where he was later killed.

When Mr. Riggs was presented with the alleged claim of his otherwise ineffectiveness, as a lawyer, he answered the question in a way that perhaps sheds some light as to why the Polygraph was the only tool in his proper bind toolbox, money. He said, "As a lawyer defending a case, I had a budget. I only had a limited amount of money ... we made judgments as we made along as to what was the greater priority and what was less. The Polygraph area became very expensive, and more funds were expended there than in other areas. Although he claimed Mr. Chandler was consulted on these matters of money, he goes on to say that "in the end the final decision was [his] as to -- to how we chose to spend the money." [1-10-19, TR-57, 2-22]

As shown in the testimony given by Mr. Chandler when he and his family first consulted with Mr. Riggs on the possibility of stepping up to defend the case instead of the Public Defender's office, Mr. Riggs asserted emphatically that for the negotiated amount, that the Chandler family could afford to pay in the amount of $30,000.00 USD, it would be sufficient to properly defend Mr. Chandler. Yet in hindsight, when pressed to defend his decisions, it came down to the fact that he had made the final decision to spend what resources were available to him on a Polygraph that he himself admitted was not a suitable tool for this particular kind of case [1-10-19, TR-19, 18-21] In doing so, Mr. Riggs went against not only logic, but his own standards for when and how to apply Polygraph evidence.

He stated that it was consistent with his style not to deal with a Polygraph until all the evidence was known. "It was not the first thing in [his] toolbox." [1-10-19 TR-23, 18-23] Yet, in this case, it was the only tool that he used.

What further aggravates Mr. Riggs initial error of having disclosed the inculpatory Polygraph evidence to the State, is the fact that when he was presented with the opportunity to amend his error, Judge Knowles presented Mr. Riggs with the opportunity to not admit any of the inculpatory Polygraph evidence, however, Mr. Riggs makes the decision to double down on an already bad decision by making an even worse decision of having the Polygraph evidence admitted. [1-10-19, TR-53, 11-19] And, attempting to answer the question as to why Mr. Riggs would do such a things, he answer's that question in stating, "In my mind, this was not the best case for a Polygraph, but we came to a point where we had to accomplish something." [1-10-19, TR-22, 21-23] He then added, "To have just stopped at that point and gone to trial without the Polygraph would have been malpractice."

Since no other funds had been diverted to any other area of investigation, it would have been "malpractice" for Mr. Riggs to present a case at trial without having "advanced the defense in some way..." [1-10-19, TR-24, 1-4]

There were many ways by which to advance the defense and prove Mr. Chavez's innocence as the record shows, and as Mr. Riggs cross-examination showed, as there was a very simple way to contradict the State's theory that Mr. Chavez was the shooter, and that was by asking the Judge to make Eloy Montano testify regardless of his Fifth Amendment right because Eloy had already been granted immunity for his cooperation. Yet when Eloy was on the stand refusing to testify, Mr. Riggs was silent. When asked whether it was possible to request Judge Knowles to order Eloy to testify, Mr. Riggs admitted, "I don't recall having requested that." [1-10-19, TR-83, 16-23]

Mr. Riggs didn't subpoena Eloy and he didn't request that the Court compel Eloy to testify under the threat of being in Contempt of Court.

The inculpatory polygraph evidence was available, but it was affordable, and since other avenues of investigation were out of the question due to budgetary constraints, Mr. Chavez was left with a defense based on Mr. Riggs' "hopes" and "strategies of confusion," which leads us to the next issue related to the hearsay testimony of Dawn Pollard.

As presented in the opening argument, to further exacerbate the situation, the other alleged murderer in the case Eloy Montano, had made several statements, very inculpatory in nature and brought in under evidence Rule 11-803 (B) NMRA - excited utterance. At the time of trial there existed evidentiary Rule guidelines and extensive caselaw which were neither presented or argued by Mr. Riggs. Trial transcripts show that by his own words he was unprepared to defend Mr. Chavez from the hearsay testimony being presented by the State, Yet curiously enough and fourteen (14) years later, Mr. Riggs recollection of the issue and the events surrounding it are contradictory. When asked about it in his testimony at the evidentiary hearing, he said "We were well prepared for the --- excited utterance. It was clear that it was coming, and -- and -- from all the pretrial interviews and everything, so we had briefed it, but it was one of those issues that all of the facts and all of the laws were against us, and --- and the facts were not cast based upon the state of the law, and there is a fair amount of subjectivity in the judge's decision-making power about it that this was no issue, so we did even more research than normal... but we had exhaustively, exhaustively researched the laws on excited utterance. And -- and, you know, we knew the law; I knew the law well." [1-10-19, TR-60, 16-24; TR-61, 14-21]

Now 14 years later Mr. Riggs would have the Court believe that he was a well prepared attorney on the issue of excited utterances, and yet, the record shows something alarmingly contrary to Mr. Riggs' testimony under oath.

It stands to reason that for Mr. Riggs to have been as prepared as he now claims to have been, then at the very least he would have had at least one argument to present. But the record clearly shows that not only was he unprepared, but he presented no argument. Based on the caselaw presented at the time, the trial court abused its discretion in admitting the hearsay testimony of Dawn Pollard,

Concerning Statements Made by her husband Clay Montano, the Co-defendant in the Case.

Clay Montano Exercised his Fifth Amendment Right Not to Give testimony at the trial, even though he possessed qualified immunity. Its Already established that Mr. Riggs did Not Push the issue by Asking the Court to insist under the threat of Contempt of Court that Mr. Montano testify.

Mr. Montano Was the First Suspect in the Murder investigation, Who, When Approached by Detectives, Proceeded to Give the First of Several Statements implicating Mario Chavez, Who then became the Primary Suspect in the investigation.

On direct Appeal to the New Mexico Supreme Court, Kathleen Mc Carry, Counsel to the defendant, Presented An Argument For Why the Hearsay testimony of Dawn Pollard did Not Meet the Standard Set Forth by the Wigmore Test For the Admissibility of Excited utterances under 11-803(B) NMRA, however, Justice Daniels Was Selective in how he Quoted Rule 11-803(B) NMRA Stating "[T]he theory underlying the Excited utterance exception is that the exciting Event induced the declarant's Surprise, Shock or Nervous Excitement which temporarily Stems Capacity for Conscious Fabrication And Makes it unlikely that the Speaker Would Relate other than the truth." State V. Flores, 2010-NMSC-002 ¶ 47, — N.M. —, — P.3d — 2010.

Unfortunately For Mr. Chavez, his Appellate Attorney on direct Appeal Neglected to Present the entirety of the Circumstances Related to Mr. Montano's Alleged excited utterance to the New Mexico Supreme Court in the Presented Brief. Justice Daniels Was Not Presented With the entirety of the Facts Which showed that the Proceeding Events Prior to Mr. Montano's Statements to his Wife included Several hours Where the evidence Showed that he tampered With evidence And had Plenty of time, Motive, And opportunity to Protect himself From Suspicion And Arrest.

The Wigmore Test For the Admissibility of excited utterances Sets Forth three (3) Prongs For Consideration: First, the Must be Some Shock, Startling Enough to Produce this Nervous excitement And Render the utterance Spontaneous And Unreflecting. Second, the utterance Must have been before there has been time to Contrive And Misrepresent, i.e., While the Nervous Excitement May be Supposed Still to dominate And the Reflective Powers to be Yet in Abeyance. And third, the utterance Must Relate to the Circumstances of the occurrence Preceding it. (Maestas I at 141, quoting State V. Buck, 133 N.M. 334, 336-37, 266 P. 917, 918 (1937)).

There Was Ample Caselaw in New Mexico For Mr. Riggs to have Chosen From in Refuting the Application of the evidence Rules here at issue. And From the Cases Available to Mr. Riggs At the time of trial, the Following Governing Principles were Apparent:

Under Rule 11-803(B), the declaration Should be Spontaneous, Made before there is time to, And For Fabrication, And Made under the Stress of the Moment, Maestas. However, No Particular Amount of time lapse Will Render a Statement Admissable or inadmissable, Robinson; Maestas. As long As the Statement is Produced by the Stress of the Moment. But, if the Statement is the Result of deliberation it is Not Admissable - Cozzens.

The entirety of the evidence, Related to Montano's Statements to his Wife, Needed to be Analyzed to determine Whether the Motive behind Montano's Statements Was Caused by the Stress of the Moment or the Result of deliberation.

In State v. Macias, 2009-NMSC-028, A Contemporary Case to that of Mr. Chavez, that had its Finial Ruling Prior to the Case Against Mr. Chavez, Chief Justice Chavez When obviously Presented With A More Complete Panorama of the Circumstances Related to An Alleged excited utterance, Adds Some Clarity At 30. The theory underlying the excited utterance exception is that "The exciting event induced the declarant's Surprise, Shock, or Nervous excitement which temporarily Steals Capacity For Conscious Fabrication and Makes it unlikely that the Speaker would Relate other than the truth." State v. Martinez, 99 N.M. 48, 51, 653 P.2d 879, 882 (Ct. App. 1982)

Here, Dawn Pollard testified that She Was At her Sister's house When Eloy Montano Called her And Asked her to Come home. This Was Approximately 2-3 hours After the Murder had taken Place. When She Arrived At her Residence And inquired As to the Matter, Eloy Responded. These Circumstances did Not Meet the Wigmore Standard. This Was Not A Spontaneous outburst because he had Asked her to Come home And Must have been thinking of What to tell her When She Got there.

Eloy Montano's own Admitted Actions to detectives Following The Murder WERE Not the Actions of A Victim Who Was Assaulted or Nearly Killed. Montano Stated that he drove Around, Stole A License Plate, disposed of the Murder Weapon And A Shirt, As Well As other Activities Related to Tampering With Evidence. It Wasn't until After he had Spent hours Actively trying to Protect himself From Suspicion And Arrest that he Arrived home, Called his Wife, And Asked her to Come home. Only then did he blame his Circumstances on Mario Chavez, to the One Person (his Wife) Who had A Marital Interest in Believing Montano.

As Chief Justice Chavez Wisely Pointed out in Macias, " in Some Circumstances Where, in our Judgment, the evidence of A defendant's Guilt is Sufficient Even in the Absence of the trial Court's ERROR, We May Still be obligated to Reverse the Conviction if the Jury's Verdict Appears to have been Tainted by ERROR."

Appellate Judges, Persuaded by the Record that the defendant Committed Some Crime, Are often Reluctant to open the Way to A New Trial Given Not only the Risk of draining Judicial Resources, but Also the Risk that A Guilty defendant May Go Free. The very Reluctance of Judges to Confront Such Risks, however, Serves to Condone ERROR(S) that May Affect A Judgment And thus, Endangers A Still More Serious Risk, the Risk of impairing the integrity of Appellate Review.

If Mr. Riggs Would have been As Prepared As he claimed, in All his testimony, he Would have Presented A Version of At Least one of these Arguments And Perhaps the trial Court Would have held the evidence Presented to the Same Standard of Review As Wigmore Requires.

Mr. Riggs' Statements under Oath don't Coincide With the Reality of his Statements At trial. He Wasn't Prepared And the New Mexico Supreme Court Rulings Were Very Clear And Easy to Argue.

In his testimony, Mr. Riggs tried to further gloss over the fact that he argued absolutely nothing to protect Mr. Chavez from Hennessy testimony which could not possibly be cross-examined, by saying in regards to Montano's utterance to his wife," there was no evidence of an attempt to fabricate or create or think through the consequences." [1-10-19, TR-64, 5-7] A statement not substantiated by the record.

When pressed under cross-examination and presented with the fact that Wigmore and the caselaw that existed at the time was very clear, that there's a difference between the excitement that the person has from just having witnessed the homicide - which was not what Eloy Montano was exhibiting - and the excitement that the person has from realizing that they are in trouble or they've got to do something to get out of trouble, and they're freaking out because they are going to prison for life. Mr. Riggs was asked, "two different excitements, right? And the excitement that Damon Pollard saw in Eloy Montano was the second kind, wouldn't that be a correct characterization? [1-10-19, TR-64, 17-25; TR-65, 1-2]

In response, Mr. Riggs attempted to rewrite the record with, "And so I would agree with you, that's probably what I agreed, that he had time to fabricate; he had time to think up whatever he was thinking up..." then he added," I think we made as persuasive an argument based upon the law that we could." But once again, the statements of Mr. Riggs don't coincide with the reality of the record. And when asked if he presented any caselaw to the appellate counsel, Mr. Riggs admitted that he did not discuss any specific caselaw. [1-10-19, TR-66, 18-19]

Furthermore, in State v. Miera, 2018-NMCA-020, a criminal case represented by Mr. Riggs, a similiar circumstance was presented on appeal to State v. Chavez. The issue in Miera related to the state presenting a psychological evaluation that was part of a plea negotiations at trial for purposes of impeaching the defendant. As seen at [83] "defense counsel had no immediate response to the state's argument, advising the district court that he had not seen the evaluation."

The court then had a recess where counsel was provided with an opportunity to gather written authorities and as seen at [83] "after the recess, defense counsel advised the court that he had no authority to support the exclusion of the evaluation to impeach defendant..."

As can be seen the circumstances are very similar, and what came out of that decision was the duty to apprise oneself of legal standard, As seen at [32], It is beyond dispute that "no lawyer should approach any task without knowledge of the applicable statutes, court rules, and case law[.]" Garcia v. State, 2010-NMSC-023 ¶ 40, 148 N.M. 414, 237 P.3d 716; State v. Lopez, 1996-NMSC-036 ¶ 9 n.1, 122 N.M. 63, 920 P.2d 1017 (expressing dismay at the trial court's, prosecutor's, and defense counsel's failure to apprise themselves of the current state of the law three years after caselaw altered the legal standard, noting that "[a] lawyers and judges have an obligation to keep abreast of current changes in the law.") In this instant case, defense counsel apparently failed to apprise himself of the applicable legal authority governing the admissibility of the evaluation...

In the case at hand, as Mr. Riggs affirmed in his given testimony it was no surprise

that Dawn Polkura would be testifying and he was well-prepared for the excited-utterance, although the reality was otherwise. As was written in Miera, continuing at {32}: Instead it appears from the record that defense counsel simply accepted the states representation that no contrary authority existed.

Though it most certainly did, in both Miera and in the case at hand. And as the Court stated at {33}: We see no reasonable professional calculation that could support Attorney Padilla's failure to conduct any pretrial investigation into the existence and content of the evaluation. Furthermore, it is inconceivable that defense counsel's total failure to apprise himself of the law governing the use of information gathered during plea negotiations for impeachment might be considered sound trial strategy. See Garcia, 2010-NMSC-023, ¶ 40

Likewise it is inconceivable that Mr. Riggs, in the case at hand, was not aware of rule 11-803(B), the caselaw surrounding it, and the requirements to apply it. In addition to apprising himself of the ~~reasoned~~ relevant laws, counsel has a duty to investigate. See State v. Barnett, 1998-NMCA-105 ¶30, 125 NM 739, 965 P2d 323 ("Failure to make adequate pretrial investigation and preparation may... be grounds for finding ineffective assistance of counsel.")

As the elicited testimony shows that Mr. Riggs built a defense on the sole confusion that he believed would come about through what he termed "the battle of the polygraphs..." [1.10.19, TR-48, 24-25] He did this even though he himself admitted that Mr. Chavez's case was not a good case for a polygraph. He did this even though it was his polygrapher's policy (Mr. Pierangeli) that "when you did not get a good result, meaning a -- a clear, conclusive passing result, only then he would write a report. If it was inconclusive, he would not write a report. If it was failing -- which we knew we would not disclose to anyone -- he would not write a report..." [1.10.19, TR-33, 23-25] And yet, despite the alternate avenues of defense available to Mr. Riggs he made the ultimate decision to expend the majority of his budget on polygraph exams; and also made the defining decision to disclose inculpatory evidence to the State, under the false pretenses of a "passed" exam, as a sort of hail-mary pass of hope that ultimately led to a domino-effect of decisions made by Mr. Chavez based on a false understanding that he had passed a polygraph.

Mr. Riggs, erroneously, pinned the defense to the idea that there was

no deception on two of the questions. And with that convinced the defendant to sign away all of that privileged material and give it to Dr. Honts, to take a test with Dr. Honts, which found him, again, to be deceptive; and then to go to trial relying on a strategy of confusion, rather than actual investigation and preparation for which effective assistance of counsel requires, as the only means of which to exculpate him when he had tremendous inculpatory evidence facing him now from the State, and he was impeached.

Of course, because of Mr. Riggs' decision to disclose inculpatory evidence to the State during plea negotiations — for which, Mr. Riggs claims were ongoing with a "strenous effort" on his part — the negotiations dovetailed, in large part, because the defendant had no reason, based on what he was being told, to enter into a plea. And therefore it was an accumulation of all of the above presented errors that resulted in Mr. Chavez going to trial with ineffective assistance of counsel.

To further exacerbate the situation, the other alleged murderer in the case, Eloy Montano, was granted immunity, and though he took the fifth, Mr. Riggs could very well have petitioned the Court to compel Montano to testify but simply chose not to. And so the statements of Eloy Montano, which were very inculpatory, were brought in as alleged hearsay under the excited utterance exception, and through the admission of Mr. Riggs, at trial, he was unprepared and thereby unable to argue against the admission of Montano's inculpatory statements.

Cumulatively we believe Mr. Riggs' defense of Mr. Chavez was ineffective on many points here above presented. Mr. Riggs accepted a case for which he did not have the resources to effectively defend, and had Mr. Chavez's case been left with the Public Defender's office he would have had the benefit of having the true reality of his circumstances presented to him so that he could have made decisions related to potential plea offers or whether to testify based on the actual facts of his case.

Accordingly, we petition this Honorable Court to set aside the Petitioner's judgement and sentence and restore the parties to their respective positions prior to the entry of the judgement and sentence. For the foregoing

reasons and in the interest of justice, Petitioner respectfully urges the Court to grant him the Habeas relief requested herein.

Respectfully submitted,

Mario Chávez