

**BOISE, TUESDAY, MAY 14, 2024, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 49876**

**STATE OF IDAHO,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **JOSINA MARIE REGAN,** )  
 )  
 **Defendant-Appellant.** )  
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Nancy A. Baskin, District Judge.

Erik R. Lehtinen, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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Josina Marie Regan appeals from her judgment of conviction for first degree murder, preparing false evidence, possession of methamphetamine, conspiracy to commit possession of methamphetamine, grand theft, conspiracy to commit grand theft, possession of bath salts, conspiracy to commit possession of bath salts, and possession of drug paraphernalia after a jury found her guilty. Regan shot and killed the victim at his residence. She then called another person, Todd Potter, and asked him to come to the residence. Once at the residence, Regan, Potter, and a third person, removed items from the residence and took them to a motel. At trial, the State sought to introduce text messages to Regan from someone named “Landlord Tom.” Regan objected to the admission of the text messages, which were ultimately admitted. At the conclusion of the evidence the jury was instructed on the elements for conspiracy which read “Regan ... and/or Todd Potter and/or other unnamed or unknown persons agreed” to commit the substantive crimes. Regan was found guilty of the charges.

On appeal, Regan argues the district court erred in instructing the jury on the conspiracy charges by placing “and/or” after her name. She argues this inclusion allowed the jury to find her guilty of conspiracy even if the jury found that she was not a party to the agreement. Regan also argues that the district court erred in admitting the text messages from “Landlord Tom” that she contends were hearsay. The State argues the jury instructions contain no error and that, even if they did, any error was harmless. The State also argues that the hearsay issue is not preserved

because Regan's objection to the statements at trial were based on relevance, not hearsay. Alternatively, the State argues that even if the issue is preserved for appeal, the statements were not hearsay because they addressed Regan's state of mind.