

11-25-2009

Fields v. State Clerk's Record v. 1 Dckt. 36508

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LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

ZANE JACK FIELDS,
PETITIONER-APPELLANT,

vs.

STATE OF IDAHO,
RESPONDENT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon THOMAS F. NEVILLE, District Judge

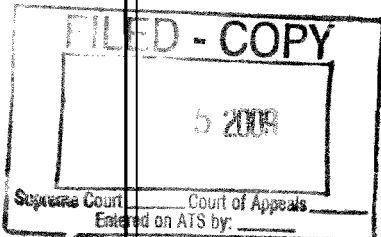
DENNIS BENJAMIN

Attorney for Appellant

LAWRENCE G. WASDEN
Attorney General

Attorney for Respondent

VOLUME I



COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

ZANE JACK FIELDS,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 36508

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE THOMAS F. NEVILLE

DENNIS BENJAMIN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

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6/27/2002	NEWC	DCKENTTK	New Case Filed	Kathryn A. Sticklen
		DCKENTTK	Post Conviction Relief Filing	Kathryn A. Sticklen
6/28/2002	CHJG	CCELWOOL	Change Assigned Judge Neville	Thomas F. Neville
7/19/2002	MOTN	CCKNAPBJ	Motion To Extend Time For Filing Response To	Thomas F. Neville
	CONT	CCKNAPBJ	Petition For Post Conviction Scientific Ts	Thomas F. Neville
7/23/2002	ORDR	DCELLISJ	Order Granting Extension Of Time To Respond	Thomas F. Neville
8/30/2002	RSPS	CCVASQME	State's Response To Petition For Pst Cnvctn	Thomas F. Neville
11/25/2002	RSPS	CCLUNDMJ	State's Amended Response To Petition	Thomas F. Neville
12/3/2002	ORDR	CCBURKML	Order For Release Of Exhibit 22	Thomas F. Neville
	NOAP	CCSTACAK	Notice Of Appearance(benjamin For Fields)	Thomas F. Neville
	RSPS	CCSTACAK	Response To State's Part Motn To Dismiss	Thomas F. Neville
	CONT	CCSTACAK	Petition For Post-conviction Scientific Test	Thomas F. Neville
10/10/2003	MOTN	CCSETESR	Motion For Permission To Conduct Limited Disc	Thomas F. Neville
	MOTN	CCSETESR	Motion For Independent Scientific Testing	Thomas F. Neville
10/30/2003	RSPS	CCBECKMN	Resp 2 Motn 4 Independant Scientific Testing	Thomas F. Neville
11/24/2003	MISC	DCELLISJ	States Resonse To Petitioner's Motion To	Thomas F. Neville
	CONT	DCELLISJ	To Conduct Limited Discovery	Thomas F. Neville
6/28/2004	AMEN	CCVOSEHA	Amend Motion For Permission To Conduct Disc.	Thomas F. Neville
7/22/2004	RSPS	DCELLISJ	State's Response To Petitioner's Amended Motn	Thomas F. Neville
	CONT	DCELLISJ	For Permission To Conduct Limited Disc &	Thomas F. Neville
	CONT	DCELLISJ	State's Motion To Dismiss	Thomas F. Neville
	NOTC	DCELLISJ	Notice Of Hearing August 19, 2004 @ 1:30 P.m.	Thomas F. Neville
	ORDR	DCANDEML	Order To Transport (8/19/04 @ 1:30 P.m.)	Thomas F. Neville
	NOTC	DCANDEML	Notice Of Hearing (8/19 @ 1:30 P.m.)	Thomas F. Neville
8/12/2004	RSPS	CCTHOMCM	Pet's Response To State's Motion To Dismiss	Thomas F. Neville
	RQST	CCTHOMCM	Pet's Request That Court Take Judicial Notc	Thomas F. Neville
	AFFD	CCTHOMCM	Affidavit Of Counsel In Opposition	Thomas F. Neville
8/24/2004	AFFD	CCMONGKJ	Affidavit Of Robert Kerchusky	Thomas F. Neville
	AFFD	CCMONGKJ	2nd Affd Of Counsel Oppsitrn To St.motn/dismis	Thomas F. Neville
8/31/2004	AFFD	CCMONGKJ	2nd Affd Of R. Kerchusky	Thomas F. Neville
9/3/2004	AFFD	CCWATSCL	Affidavit In Opposition To Motn To Dismiss	Thomas F. Neville
9/21/2004	ADVS	DCELLISJ	Case Taken Under Advisement	Thomas F. Neville
3/30/2005	MOTN	CCMONGKJ	Petrns Motn For Production Of Documents	Thomas F. Neville
4/4/2005	AFFD	CCCOLEMJ	Affidavit Of Lisa Allyn Dimeo	Thomas F. Neville
4/21/2005	HRSC	CCMONGKJ	Hearing Scheduled - Motn For Prodtm (05/23/2005) Thomas Neville	Thomas F. Neville
5/23/2005	HRVC	DCELLISJ	Hearing Vacated - Motn For Prodtm	Thomas F. Neville

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Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
6/6/2005	MOTN	CCCOLEMJ	Petitioner's Motion For Access To Evidence
	HRSC	CCCOLEMJ	Hearing Scheduled - Ptner's Motions (07/25/2005) Thomas Neville
6/28/2005	OBJT	CCMONGKJ	St's Objtn To The Petnr Motn For Accss Evidnc
7/25/2005	HELD	DCELLISJ	Motion Held - Ptner's Motions
8/8/2005	ORDR	DCELLISJ	Order Granting Mot To Continue & Preserve
	CONT	DCELLISJ	Evidence
9/12/2005	CERS	CCMARTLG	Certificate Of Service
	AFSM	CCMARTLG	Affidavit In Support Of Motion Access Evidnce
9/15/2005	AFFD	CCMORGMD	Affidavit Of Pamela Marcum In Support
9/27/2005	HRHD	DCELLISJ	Hearing result for Hearing Scheduled held on 09/27/2005 01:30 PM: Hearing Held
5/5/2006	ORDR	DCELLISJ	Order (Nunc Pro Tunc) granting in part petitioner's motion for production of documents and for access to evidence
	HRSC	DCELLISJ	Hearing Scheduled (Status 09/05/2006 04:00 PM)
5/10/2006	ORDR	DCELLISJ	Order RE: Status Conference
8/28/2006	MOTN	CCMARTLG	Petitioner's Motion for Joint Access to Fingerprints and AFIS Testing Thereof
11/20/2006	HRHD	DCELLISJ	Hearing result for Status held on 11/20/2006 01:30 PM: Hearing Held
3/27/2007	HRSC	DCELLISJ	Hearing Scheduled (Status 05/11/2007 01:15 PM)
		DCELLISJ	Notice Of Status Conference
5/11/2007	CONH	DCELLISJ	Hearing result for Status held on 05/11/2007 01:15 PM: Conference Held
	HRSC	DCELLISJ	Hearing Scheduled (Status 06/15/2007 02:15 PM)
6/15/2007	CONH	DCELLISJ	Hearing result for Status held on 06/15/2007 02:15 PM: Conference Held continued further conference to July 6, 2007 @ 3:00 p.m.
11/5/2007	MOTN	CCEARLJD	Motion to Dismiss the Petition for Post Conviction Scientific Testing
12/31/2007	AFFD	CCTEELAL	Affidavit of Counsel with Material in Opposition to Respondent's Motion for Summary Judgment
2/8/2008	HRSC	DCELLISJ	Hearing Scheduled (Hearing Scheduled 06/06/2008 09:00 AM)
4/7/2008	MOTN	CCAMESLC	Motion for Release of Trial Exhibits and for DNA Testing
	MOTN	CCAMESLC	Motion for Request for Production
	AFFD	CCAMESLC	Affidavit of Kelly Nolan

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge	
4/11/2008	REPL	CCBARCCR	Response to State's Motion to Dismiss Petition for Post Conviction Scientific Testing	Thomas F. Neville
4/16/2008	NOHG	CCTOONAL	Notice Of Hearing Re: Motion for Release of Trial (05-01-08@10:30AM)	Thomas F. Neville
	HRSC	CCTOONAL	Hearing Scheduled (Motion 05/01/2008 10:30 AM)	Thomas F. Neville
4/25/2008	RSPS	CCDWONCP	State's Response to Petitioner's Response to the State's Motion for Dismissal	Thomas F. Neville
	MOTN	CCDWONCP	State's Motion for DNA Testing	Thomas F. Neville
	NOHG	CCDWONCP	Notice Of Hearing (05/01/08 at 10:30 AM)	Thomas F. Neville
5/1/2008	ORDR	DCELLISJ	Order For DNA Testing	Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Motion held on 05/01/2008 10:30 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages	Thomas F. Neville
5/2/2008	ORDR	DCELLISJ	Order Releasing Trial Exhibit for DNA Testing and Directing State to Submit Documents for DNA Testing	Thomas F. Neville
6/4/2008		DCELLISJ	Notice Of Hearing	Thomas F. Neville
	CONT	DCELLISJ	Continued (Hearing Scheduled 08/06/2008 01:30 PM) Reset awaiting DNA results per counsel	Thomas F. Neville
8/5/2008	CONT	DCELLISJ	Continued (Hearing Scheduled 09/12/2008 11:30 AM) Reset awaiting DNA results per counsel	Thomas F. Neville
		DCELLISJ	Notice Of Status Conference	Thomas F. Neville
9/11/2008	CONT	DCELLISJ	Continued (Hearing Scheduled 10/17/2008 11:30 AM) Reset awaiting DNA results per counsel	Thomas F. Neville
10/17/2008	CONT	DCELLISJ	Hearing result for Hearing Scheduled held on 10/17/2008 11:30	Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Motion 11/12/2008 01:30 PM)	Thomas F. Neville
	MINE	DCELLISJ	Minute Entry Hearing type: Hearing Scheduled Hearing date: 10/17/2008 Time: 11:30 am Court reporter: In chambers	Thomas F. Neville
11/12/2008	DCHH	DCELLISJ	Hearing result for Motion held on 11/12/2008 01:30 PM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages	Thomas F. Neville
4/3/2009	CDIS	DCELLISJ	Civil Disposition entered for: State of Idaho, Other Party; Fields, Zane Jack, Subject. Filing date: 4/3/2009 MEMO DECISION AND ORDER OF DISMISSAL OF PETITION FOR POST-CONVICTION SCIENTIFIC TESTING	Thomas F. Neville

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Date: 6/24/2009

User: CCLUNDMJ

Time: 12:27 PM

ROA Report

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Case: CV-PC-2002-21895 Current Judge: Thomas F. Neville

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
4/3/2009	STAT	DCELLISJ	STATUS CHANGED: Closed	Thomas F. Neville
5/15/2009	APSC	CCTHIEBJ	Appealed To The Supreme Court	Thomas F. Neville
	MOTN	CCTHIEBJ	Motion That Costs Of Appeal Be At County Expense	Thomas F. Neville
5/21/2009	HRSC	DCELLISJ	Hearing Scheduled (Status 05/22/2009 10:30 AM)	Thomas F. Neville
	STAT	DCELLISJ	STATUS CHANGED: Closed pending clerk action	Thomas F. Neville
5/22/2009	ORDR	DCELLISJ	Order On Motion that Costs of Appeal Be at County Expense	Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Status held on 05/22/2009 10:30 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages	Thomas F. Neville

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FILED
A.M. P.M.

JUN 27 2002

By J. DAVID NAVARRO, Clerk
DEPUTY

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Caldwell, Idaho 83606
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)
Petitioner,)
vs.)
STATE OF IDAHO,)
Respondent.)
_____)

Case No **SP 01 02095900**

PETITION FOR POST-CONVICTION
SCIENTIFIC TESTING

Petitioner ZANE JACK FIELDS petitions this court for postconviction relief pursuant to Idaho Code §§ 19-2719, 19-4901 and 19-4902 for scientific testing of forensic evidence, 19 latent fingerprints and deoxyribonucleic acid ("DNA") collected by the State in the investigation of the murder of Mary Katherine Vanderford for which petitioner was convicted of first degree murder and sentenced to death. In support of his petition Mr. Fields states as follows:

1. Petitioner is innocent of the crime for which he was convicted.
2. Identity was an issue in petitioner's trial. Mr. Fields has consistently denied participating in the murder for which he has been convicted. "At trial, the only element of the State's case challenged by Fields was the identification of Fields as the perpetrator." *State v. Fields*, 127 Idaho 904, 907, 908 P.2d 1211, 1214 (Idaho 1995).
3. Petitioner seeks new scientific testing of three distinct pieces of evidence.

4. The first piece of evidence upon which petitioner requests scientific testing is Defendant's Exhibit 22, admitted at trial, which has been in the possession of the courts since admission at trial, and currently is within the custody and control of Patricia Miller, Appeals Clerk at the Ada County Courthouse, and has not been substituted, tampered with, replaced or altered in any material aspect.
5. Ann Bradley of the State Forensic Services Bureau, commonly called the "Crime Lab," testified at trial that several substances on the back of the Def. Ex. 22, petitioner's coat, identified by Bradley as locations D-7 and D-8 on the coat, could have been human blood, but if so, either were not present in quantities sufficient to be detectable or had been rendered inactive by heat or chemical reaction under her testing. *State v. Fields* Trial Transcript, Vol. VII, pp. 1405-11, sworn testimony of Ann Bradley (attached as Exhibit A).
6. Advanced DNA testing, including Polymerase Chain Reaction ("PCR") and Short Tandem Repeats ("STR"), not available at trial, *see* U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, "The Future of Forensic DNA Testing: Prediction of the Research and Development Working Group," (November 2000), NCJ 183697, at pp. 14-20 (relevant portion attached as Exhibit B) (available on the world Wide Web at <http://www.ojp.usdoj.gov/nij/pubs-sum/183697.htm>), is now available that can establish definitively with very small amounts of source material the precise DNA composition of the substances that Bradley led the jury to believe could be blood on defendant's coat.

7. The significance of this evidence at trial was that it could allow the jury to find that petitioner's coat had human blood on it, in an effort to show that he was more likely to be the murderer of the victim, Mrs. Vanderford.
8. Petitioner believes that DNA testing on his coat, Def. Ex 22, will establish that the substances in locations D-7 and D-8 are probably not human blood at all, and absolutely are not the blood of the victim, Mrs. Vanderford.
9. In that way, DNA testing rebuts the identification of petitioner as the murderer of Mrs. Vanderford.
10. The second piece of evidence which petitioner wishes to be tested are the 19 latent fingerprints obtained from the crime scene by the police investigating the crime.
11. These finger prints were only compared to rescue and police personnel and witnesses who happened on the scene shortly after Mrs. Vanderford was attacked.
12. Petitioner requests that these latent prints be submitted to the national fingerprint database, AFIS, for comparison with known fingerprints of persons contained in the database for a possible match, and to establish definitively that the latent fingerprints from the crime scene do not match petitioner.
13. The latent prints, and presumably the surfaces which were inspected for prints, are in the possession of the investigating authorities with the Boise Police Dept. and state law enforcement authorities, and have been since they were obtained.
14. Petitioner has attempted through his federal habeas counsel, the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho, to review the latent prints and

evidence in the possession of Boise Police Department. See Declaration of Ben Leonard (attached as Exhibit C).

15. Establishing that petitioner's fingerprints are not present at the crime scene rebuts the identification of petitioner as the murderer of Mrs. Vanderford.
16. Petitioner requests that this court order the testing of the latent fingerprints against the national database, AFIS, as such testing is likely to identify the true culprit. The actual killer's fingerprints, whose prints may have been obtained from the scene, may have been entered into the database since the time of trial.
17. Petitioner requests that he be permitted to test Defendant's Exhibit 22 at an accredited laboratory of his choice, at his expense.
18. Petitioner also requests that experts of his choice be granted access to the 19 latent fingerprints and be provided use of the originals themselves for comparison to known prints and access to the surfaces from which the prints were obtained, if they are still in existence, for enhancement of the fingerprints through new technologies that are now available but were not available at the time of trial.
19. Petitioner also requests access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprint testing.
20. New technologies exist that allow fingerprints on certain surfaces to be obtained, or at least obtained with better resolution than at the time of trial, e.g., photoluminescent nanoparticles, among others, *see* Henry C. Lee and R. C. Gaenssle, *Advances in Fingerprint Technology*, CRC Press, Second Edition 2001.

21. Petitioner also requests that he be allowed to perform DNA testing on fingernail scrapings from Mrs. Vanderford, if they exist.
22. Petitioner should be granted access to autopsy reports, notes and work papers, and items preserved from the autopsy, to determine whether or not fingernail scrapings exist and can be tested.
23. If fingernail scrapings were not taken and preserved, then petitioner requests that this court order exhumation of Mrs. Vanderford's body to attempt to obtain fingernail scrapings upon which advanced DNA testing may be performed.
24. The sum total of the testing requested has the potential to produce new, noncumulative evidence that would show that it is more probable than not that the petitioner is innocent.
25. The testing method requested would likely produce admissible results under the Idaho rules of evidence.
26. Petitioner incorporates herein and requests judicial notice of the files and records in his prior state court proceedings in this court in *State v. Fields*, case numbers 16259 and 16259(A), and in the Idaho Supreme Court in case numbers 19185 and 19809, and *Fields v. State*, case number in this court SP-OT-9600369D, case number in the Idaho Supreme Court 24119.

Wherefore, Petitioner requests that this court order that he be granted:

- 1) DNA testing on Defendant's Exhibit 22 and any fingernail scrapings in possession of law enforcement or state medical authorities, at an accredited laboratory of petitioner's choice;
- 2) access to the evidence collected by the police to determine whether additional evidence is amenable to either advanced DNA or fingerprint testing;

- 3) access to the 19 original latent fingerprints collected by the police for comparison by an expert of defendant's choosing to known fingerprints, and access to the original surfaces from which the latent prints were lifted for examination of whether the prints may be enhanced by the use of new technologies unavailable at the time of trial;
- 4) an order submitting the latent prints to the AFIS national database to compare for potential matches;
- 5) an order granting exhumation of the body of Mrs. Vanderford in the event that fingernail scrapings were not taken and preserved at the autopsy;
- 6) an order requiring preservation of all physical evidence collected in this case that is in the possession and control of any state and local law enforcement or court authorities, including the Boise Police Dept., Ada County Sheriff's office, state forensic crime lab, state bureau of investigation, Ada County prosecuting attorney's office, attorney general's office, and Ada County Clerk's office and Idaho Supreme Court Clerk's office;
- 7) an order granting petitioner discovery and an evidentiary hearing; and
- 8) an order declaring that he is innocent of the crime for which he was convicted and sentenced to death and that he be released from prison.

VERIFICATION

Zane Jack Fields, deposes, declares and affirms under penalty of perjury that he has read the foregoing petition and that the facts alleged therein, are based upon his personal knowledge and belief that the facts stated are true and correct to the best of his knowledge, and all documents or exhibits included or attached are authentic and true and correct copies.

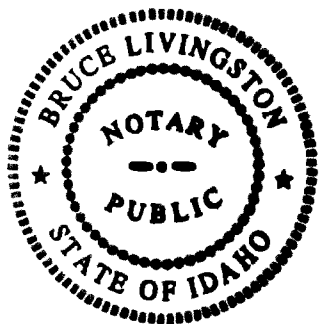
Zane Fields
Zane Jack Fields

Zane Jack Fields, a person known to me, appeared before me, a notary public of the State of Idaho, and verified the foregoing petition, declaring the statements of fact therein are based upon his personal knowledge and belief that the facts stated are true and correct to the best of his knowledge, this 27 day of June, 2002.

Bruce D. Livingston
Notary Public

My Commission expires: 7/17/04.

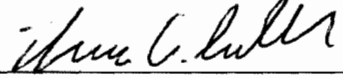
Seal:



Executed this 27th day of June, 2002.

Respectfully submitted,

WIEBE AND FOUSER, P.A.



Attorneys for Petitioner

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ANN R. BRADLEY,
a witness called on behalf of the Plaintiff, having been
first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. HORTON:

Q. Would you state your full name and spell your
last name for the record, please?

A. Ann R. Bradley, B-r-a-d-l-e-y.

Q. And, Ms. Bradley, are you presently employed?

A. Yes, I am.

Q. And by whom are you employed?

A. The State of Idaho for the Department of Law
Enforcement.

Q. And in what capacity are you employed by the
Department of Law Enforcement?

A. I'm one of the analysts in the State Forensic
Services Bureau, commonly called "The Crime Lab".

Q. And what are your responsibilities in the crime
lab?

A. As one of the scientists employed there to
analyze the evidence. I receive and analyze both
serological type evidence, that's blood and semen stains,
hairs and fibers, controlled substances, and other

1 miscellaneous types of physical evidence. I analyze these
2 in the laboratory, make written reports of my findings, go
3 to court and testify about them. And also I train police
4 officers in how to properly collect and package these items.

5 Q. You indicated that you're a scientist. What's
6 your educational background, briefly?

7 A. I have my bachelor's degree in biochemistry from
8 the University of California at Berkley. I have a few
9 graduate level credits which I received after taking the
10 course at the FBI Academy.

11 Q. And how long have you been employed as a
12 scientist with the State?

13 A. I started working in the laboratory in March of
14 1972. That's about 18 years now.

15 Q. And in connection with the homicide of Mary
16 Catherine Vanderford, have you had occasion to analyze
17 certain evidence seized in that case?

18 A. Yes, I have.

19 Q. Did you ever have occasion to look at an article
20 taken from the body of Mrs. Vanderford?

21 A. Yes.

22 Q. And did you -- what purpose did you examine that
23 particular item?

24 A. That was presented in a container labeled
25 "particle from wound No. 2." So assuming that it was some

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1 foreign material found in the body. I examined it to see if
2 I could possibly recognize it as something I had seen
3 before; either through case work or training.

4 Q. And were you able to find any evidentiary
5 significance whatsoever from that particular item?

6 A. No, I couldn't recognize that particle.

7 Q. Have you had occasion to examine knives in
8 connection with this particular case?

9 A. Yes.

10 Q. There's been testimony heretofore as to a Utah
11 knife. Are you familiar with that particular item?

12 A. Yes, I am.

13 Q. Can you tell the members of the Jury how you're
14 familiar with that item?

15 A. I received a phone call from a worker in a Utah
16 crime laboratory who informed me that she had a knife and
17 would be willing to send it to our laboratory for
18 examination to see if there was any connection between that
19 knife and the recent death of Mrs. Vanderford.

20 Q. Did you subsequently receive a knife from the
21 Utah lab?

22 A. Yes, I did.

23 Q. And did you perform any examinations on that
24 knife?

25 A. Yes.

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1 Q. Can you tell the Jury, briefly, what type of
2 examinations you performed on that knife?

3 A. I examined the knife visually to see if there was
4 anything that looked like possible blood stains or fibers on
5 it, and then I subjected it to a couple of our routine tests
6 that we use for looking at possible dried blood.

7 The first test is a screening test to determine
8 the possibility that something that is red might be blood.
9 The second test is one to determine if something has a human
10 origin as opposed to coming from an animal species. And
11 thirdly, there are tests to determine various blood factors,
12 such as the ABO blood group factors and other enzyme factors
13 that can more conclusively establish the type or types of
14 blood, if human blood is found.

15 Q. And was human blood found on that knife?

16 A. Yes, my test, screening tests and tests for human
17 origin were positive on that knife.

18 Q. Were you able to make any further determination
19 as to the blood groups or that sort of thing as to that
20 particular knife?

21 A. Although I performed those tests I could not come
22 to any conclusion regarding the ABO type or any of the other
23 genetic factors that I tested for.

24 Q. So, I take it you couldn't link it, or,
25 conversely, disprove any association with the Vanderford

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1 homicide as to that knife?

2 A. That's correct.

3 Q. What did you do with that knife then after
4 testing it?

5 A. I resealed it, and I believe I forwarded it for
6 possible fingerprinting tests. Let me consult my notes
7 here. (Brief delay.)

8 I see that our laboratory file indicates it was
9 returned to a detective in the Boise Police Department and
10 that's the last knowledge I have of what happened to it.

11 Q. Okay. Thank you.

12 Did you have occasion to examine a couple of
13 other knives in connection with this case?

14 A. Yes, I did.

15 Q. Okay.

16 MR. HORTON: Through the courtesy of the Bailiff I'd
17 like to have you handed what's been marked as Defense 36 and
18 37.

19 (Brief delay.)

20 Q. BY MR. HORTON: Miss Bradley, have you had
21 occasion to see those particular packages before in
22 connection with this case?

23 A. I'm sorry I could not hear the last part of your
24 question.

25 Q. Have you had occasion to see those particular

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1 packages before in connection with this case?

2 A. Yes, I have.

3 Q. And are you familiar with the contents of those
4 two representative packages?

5 A. Yes.

6 Q. And there's no particular reason to open those
7 up. Do you recall what are contained in those two packages?

8 A. Yes, I have a description in my notes that
9 correspond to the laboratory number on the front of the
10 envelopes indicating they contained, each one of them, a
11 knife.

12 Q. And one of the packages, I believe, also
13 contained a hair of some sort?

14 A. That's correct.

15 Q. Did you have occasion then to examine those two
16 knives for the presence of blood?

17 A. Yes, I did.

18 Q. Did you find any indication that blood was on
19 either of those knives?

20 A. No, I did not.

21 Q. As to that hair. Did you conduct an examination
22 to see if that was related to the victim, Mary Catherine
23 Vanderford in this case?

24 A. Yes, I did.

25 Q. And was there any connection with Mrs.

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1 Vanderford?

2 A. No, I could not find a similarity between the
3 hair in the envelope and the known hairs from her that were
4 provided to me.

5 Q. Thank you. Did you ever have occasion to look at
6 a pair of boots that were taken from the Defendant in this
7 particular case?

8 A. I examined a pair of boots.

9 Q. And what were you looking for when you examined
10 those boots?

11 A. I was looking to see if I could find any blood
12 stains on them.

13 Q. And what were the results of that examination?

14 A. I found no stains that were blood.

15 Q. And -- fine.

16 MR. HORTON: If the Bailiff would just show you what's
17 been introduced into evidence as State's Exhibit 22.

18 (Brief delay.)

19 Q. BY MR. HORTON: Ms. Bradley --

20 A. Correction, excuse me that was Defendant's
21 Exhibit 22.

22 Q. Thank you for the correction?

23 A. I see this exhibit, yes.

24 Q. And have you seen that item before?

25 A. Yes, I have.

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1 Q. It's my understanding that there are reasons you
2 don't wish to handle that particular item?

3 A. That's correct.

4 Q. Can you tell the Jury briefly what the nature of
5 those concerns are?

6 A. We are recommending that, in general, any item
7 that has any physiological fluid on it not be handled in a
8 court of law without the appropriate hygienic kind of
9 precautions that we would take in a laboratory.

10 Q. Just to be fair, that is not out of any
11 particular concern as to this Defendant or any other
12 particular individual?

13 A. No. This is a routine precaution that we are
14 advising.

15 Q. Would you prefer to refer to photographs of that
16 particular exhibit for your testimony in this regard?

17 A. Yes, if I'm asked any further questions.

18 MR. HORTON: Through the courtesy -- I'd like to have
19 you handed State's 38 for identification.

20 (State's Exhibit No. 38 marked for
21 identification.)

22 Q. BY MR. HORTON: Ms. Bradley, do you recognize
23 what's depicted in State's Exhibit 38?

24 A. Yes, I do.

25 Q. Can you tell the Jury what's depicted?

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1 A. This is a photograph --

2 MR. LYNN: Your Honor, I'd ask the witness not to show
3 it to the Jury.

4 THE WITNESS: Excuse me. State's 38 is a photograph
5 which was prepared from negatives which I took of the
6 previous exhibit that I was shown in the bag.

7 Q. Does that fairly and accurately represent the
8 coat which is contained in Defendant's Exhibit 22?

9 A. Yes.

10 MR. HORTON: Your Honor, State would move for the
11 admission of State's Exhibit 38.

12 MR. LYNN: No objection.

13 THE COURT: 38 is admitted.

14 (State's Exhibit No. 38 admitted.)

15 Q. BY MR. HORTON: Ms. Bradley, if you'd show that
16 to the Jury. There are a number of items which don't appear
17 to be originally connected with that coat depicted in
18 State's Exhibit 38. If you could show the members of the
19 Jury that photograph and indicate to them what those foreign
20 matters are?

21 A. This photograph, taken by me, was an attempt to
22 record the back surface of Exhibit 22 and to show the
23 location of areas which I tested. In order to make those
24 labels visible I placed them on white tape, and I also
25 placed a ruler and a case identifier mark in the photograph

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1 so there are pieces of white tape with various numbers and
2 arrows on them, and a ruler in gray and white, plus a number
3 and my initials indicating the particular case number for
4 this item.

5 Q. You indicated that you were looking for something
6 on that particular item. What were you looking for on that
7 coat when you conducted this examination?

8 A. I was looking for any discolorations which I
9 thought might mostly be blood.

10 Q. And did you find any such discolorations?

11 A. Yes, I did.

12 Q. And approximately how many discolorations of that
13 sort did you find?

14 A. I tested at least nine areas. I found two of
15 them that merited looking at.

16 Q. Okay. And were there any sorts of particular
17 markings relating to those two areas of particular concern?

18 A. Yes. They were identified by me as D-7 and D-8
19 locations.

20 MR. HORTON: And if I could have the Bailiff hand you
21 what's been marked as State's -- what should be marked
22 State's Exhibits 40 and 41 respectively -- 39 and 40, I'm
23 sorry.

24 (State's Exhibits 39 and 40 marked for
25 identification.)

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1 Q. BY MR. HORTON: Ms. Bradley, I'd ask you what's
2 depicted in State's Exhibit 39?

3 A. State's Exhibit 39 is a blow-up, that is to say a
4 close-up photograph taken of area D-7.

5 Q. Did you take that photograph?

6 A. Yes, I did.

7 Q. Does that fairly and accurately depict the area
8 which you had marked as D-7 on Defendant's Exhibit 22?

9 A. It shows that area. There is a ruler in the
10 photograph to indicate the degree of enlargement, so it is
11 larger than life size.

12 Q. And that ruler allows a person looking at that to
13 determine the scale?

14 A. That's correct.

15 MR. LYNN: Your Honor, I'm going to object at this
16 point. I don't see any relevance here in this testimony.

17 THE COURT: I'll permit you to establish foundation if
18 you wish to proceed.

19 MR. HORTON: Okay. I will do that.

20 Q. BY MR. HORTON: Ultimately did you conduct
21 examinations of the spots, the marked D-7 and D-8 on
22 Defendant's Exhibit 22?

23 A. Yes, I did.

24 Q. And the nature of those examinations was for
25 testing for the presence of blood?

1 A. It was.

2 Q. And you've indicated that is sort of a three step
3 process. First of all, did you find blood of any sort on
4 that coat at those locations?

5 A. At locations D-7 and D-8 my preliminary screening
6 test for the possible presence of blood gave me a positive
7 result.

8 Q. The next step then, as I understood your
9 testimony, was to test for the presence of human blood?

10 A. That's correct. That's the second step.

11 Q. Okay. And what was the result as to State's
12 Exhibit D-7 and -- or D-7 and D-8?

13 A. At locations D-7 and D-8 my tests for human
14 origin failed to produce any positive result.

15 Q. By failing to produce a positive result, does
16 that mean that it was not human blood on that coat?

17 A. That's possible, but not necessarily the correct
18 interpretation.

19 Q. What alternative interpretations are there?

20 A. A failure to get a positive finding, first of
21 all, obviously may come if the blood is not human. It may
22 also be produced if the amount of blood is too small and
23 therefore falls below the threshold of detectability. A
24 third result that is negative may be obtained even with
25 human blood if it has been rendered inactive by such agent

1 as heat or some sort of chemical action that causes it to
2 fail to react any more in this test.

3 Q. And in this case the quantities of blood that you
4 located on that coat, were they large quantities or small
5 quantities?

6 A. They were extremely small.

7 Q. So that's the purpose for the enlargement in
8 State's Exhibits 39 and 40?

9 A. I was attempting to document exactly how much
10 there was, and it was difficult to see.

11 Q. Thank you. And State's Exhibit 39 and 40 are
12 those fair and accurate representations, taking into account
13 the enlargement that you've previously described?

14 A. Yes.

15 MR. HORTON: Your Honor, at this point the State would
16 move for the admission of State's Exhibit 39 and 40.

17 (Brief delay.)

18 MR. HACKNEY: No objections, Your Honor.

19 THE COURT: 39 and 40 are admitted.

20 (State's Exhibits 39 and 40 admitted.)

21 Q. BY MR. HORTON: When did you conduct these
22 particular tests as to the coat, which is Defendant's
23 Exhibit 22?

24 A. On or shortly after the 14th of September of
25 1989.

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1 Q. So that would be approximately 19 months after
2 Mrs. Vanderford's death?

3 A. I know that her death was sometime previous to
4 that. I didn't count the months.

5 MR. HORTON: Thank you. I have no other questions.

6

7

CROSS-EXAMINATION

8

BY MR. LYNN:

9 Q. Just a couple of questions, Mrs. Bradley. Did
10 you send the coat off to any other laboratories for
11 evaluation?

12 A. Yes, sir.

13 Q. Where did you send it?

14 A. To the Forensic Science Associates, I believe is
15 the name of the firm.

16 Q. And did you receive any result?

17 A. I asked them to evaluate it to see if they could
18 find an amount sufficient for the kind of tests that they
19 run, and they implied that it was not sufficient. So I
20 received not only no result, but they did not even attempt
21 to test.

22 Q. And your testing, as I understand it, correct me
23 if I'm wrong, but the blood was probably present, but the
24 test for human origin was negative?

25 A. That's correct. That's the way I worded my

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1 conclusion.

2 Q. So could have been animal blood?

3 A. It certainly could have.

4 Q. Most likely would have been?

5 A. I can't say likelihood. I was dealing with a
6 very small amount. That's one interpretation.

7 Q. These are microscopic amounts, aren't they?

8 A. I saw these originally with my naked eye.

9 Q. On the back of the coat?

10 A. Yes.

11 Q. Incidentally, were you able to ascertain the
12 victim's blood type?

13 A. Yes.

14 Q. And what was the type?

15 A. In the ABO group system, her blood type was group
16 O. If you wish I can list the other factors, the other
17 genetic factors that I tested for and the results.

18 Q. I'm more interested in whether it was relatively
19 rare or common?

20 A. Most of the other types were relatively common
21 within their groups. The ABO groupings is a common group in
22 the ABO system.

23 Q. And there are several factors, several other
24 aspects of blood typing that you're able to determine?

25 A. Yes. And I went through the procedure to try to

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1 determine those should ever I need to compare any sample
2 with them.

3 Q. All right. So you've got her blood type down
4 fairly precise?

5 A. Reasonably.

6 Q. The Utah knife. You found human blood?

7 A. Yes.

8 Q. Did you send that knife to a -- I'll just say a
9 more sophisticated laboratory?

10 A. No, sir.

11 Q. Why not?

12 A. As I say, I returned it to the detective. I'm
13 not sure whether he had any plans to pursue the case further
14 depending on all the information he had.

15 Q. Did you take any efforts to lift prints off of
16 that knife.

17 A. No, sir. We don't do that in our laboratory.

18 Q. Did you suggest that be done?

19 A. I didn't make the suggestion because I knew the
20 detective was well aware of that possible avenue of
21 approach.

22 Q. Now, this particle that was found in the -- on
23 the body. I believe it was found near the breast wound.

24 A. It was labeled that it had come from the wound
25 No. 2, paren that says "breast".

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1 Q. And you're not able to identify that particle?

2 A. That's correct.

3 Q. Well, can you give the Jury any idea? Are you
4 talking metal, plastic, wood?

5 A. My notes indicate it was dark in color, that it
6 was amorphous, meaning it didn't have a definite shape to
7 it, that it was not homogenous in the sense that I could see
8 areas of variable structure. But other than that, I
9 couldn't make any determination. It simply didn't look like
10 anything I recognized.

11 Q. Did you send that to any more sophisticated
12 laboratories?

13 A. No.

14 Q. All right. Were you asked to, at any time,
15 analyze a fiber that had been taken from the -- or had been
16 found on the hand of the victim in the case?

17 A. No.

18 Q. Do you know anything about a fiber?

19 A. None of my notes relates to that ever being
20 submitted to the laboratory.

21 Q. Is your laboratory capable of conducting some
22 analysis on fibers?

23 A. Yes.

24 Q. And, in fact, you can magnify those fibers, can
25 you not?

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1 A. That's a routine way that we look at them.

2 Q. And you can do that in order so you can determine
3 whether it's a natural fiber or synthetic fiber?

4 A. That's one of the determinations we make under
5 the microscope.

6 Q. And you can also determine the color of the
7 fiber?

8 A. Yes.

9 Q. What else can you determine?

10 A. Fiber analysis is usually a comparative test. If
11 we are provided with a known sample as well as a questioned
12 fiber we can then try to make such observations as may let
13 us conclude that they may have had a common origin or they
14 arose from different sources. So that depends on a known
15 sample being submitted as well, and then we can make a
16 comparison of color and synthetic type cross section.

17 Q. In other words, you can take fibers like you can
18 fingerprints and try to match them to a particular source,
19 can you not?

20 A. We can compare, usually you cannot associate a
21 fiber with a source to the exclusion of all others the way
22 that a fingerprint can eventually be tied to one specific
23 individual.

24 Q. But you can tell that a fiber may have come from
25 a known source?

1 A. That's one of the conclusions we can reach.

2 Q. And the State laboratory is quite capable of
3 doing that?

4 A. Yes.

5 MR. LYNN: Thank you. That's all.

6 MR. HORTON: No redirect, Your Honor.

7 THE COURT: You may step down.

8 MR. BOURNE: Judge have those knives been entered into
9 evidence yet? If they haven't I'd move their admission.

10 THE COURT: 36 and 37 have not been admitted at this
11 time.

12 MR. HACKNEY: No objection.

13 THE COURT: 36 and 37 are admitted.

14 (State's Exhibits 36 and 37 admitted.)

15 MR. BOURNE: May the witness be excused?

16 MR. LYNN: No objection.

17 THE COURT: You're free to go.

18 MR. BOURNE: Judge, we need to take a short recess to
19 get our next witness available.

20 THE COURT: We'll recess at this time and then proceed
21 in just a bit.

22 (Recess taken. Jury present.)

23 THE COURT: Counsel, will you waive roll call of the
24 Jury?

25 MR. BOURNE: Yes, Judge.

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U.S. Department of Justice
Office of Justice Programs
National Institute of Justice



The Future of

**Predictions of the
Research and
Development
Working Group**

A Report From

Exhibit B

NIIJ



Julie E. Samuels
Acting Director
National Institute of Justice

Christopher Asplen
Executive Director
National Commission on the Future of DNA Evidence

Opinions or points of view expressed are those of the authors and do not necessarily reflect the official position of the U.S. Department of Justice.

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The Future of Forensic DNA Testing:

Predictions of the Research and Development Working Group

November 2000

NCJ 183697

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In DNA, the chemical bonds that hold the two parts of a stairstep—AT, TA, CG, or GC—are weaker than those that hold the steps to the coiled upright. Therefore, the DNA ladder tends to fall apart into two single uprights with half steps protruding. Such single-stranded DNA is said to be **denatured**. Denaturing can be produced by a simple temperature rise, or it can be induced by chemicals. A single strand of DNA has a tendency to pair up with a complementary single strand, that is with one that has an A every time the original strand has a T, and so on. It is this process of highly specific pairing of single-stranded, complementary DNAs that is the basis for forensic use of DNA. A DNA **probe** is a short segment of single-stranded DNA, usually labeled by being attached to a radioactive atom or a chemical dye, which is complementary to a designated chromosomal region. Finally, there are enzymes (**restriction enzymes**) that seek out a specific region of the DNA and cut it. For example, the enzyme HaeIII finds the sequence GGCC, or CCGG on the other strand, and cuts both DNA strands between G and C. (More properly, the other strand is written in reverse order, because of the opposite polarity of the two DNA strands.) Among the 3 billion base pairs in the genome, there are millions of GGCC sequences. So treatment with HaeIII cuts the DNA into millions of pieces, the size of each piece depending on how far apart the adjacent GGCC sequences happen to be.

The loci that have been most extensively used for forensics are regions in which a short segment of DNA is repeated tandemly many times. For example, a length of 20 bases may be repeated dozens or even hundreds of times. Such long sequences are much more mutable than genes usually are, the mutations being an increase or decrease in length. If the DNA is cut by a restriction enzyme on both sides of such a region, the region may be isolated and its size measured. Thus, different numbers of repeats are identified by their size. A polymorphism that is recognized by different sizes of such fragments is called a restriction fragment length polymorphism, or **RFLP**.

The way in which these properties are put to use in DNA identification will be discussed later.

3. History, Before 1985

The first genetic markers that were useful for human identification were the ABO blood groups discovered in the same year (1900) that Mendel's rules of inheritance were rediscovered. Nineteenth century scientists, investigating the causes of blood-transfusion reactions, mixed the bloods from different individuals in the laboratory. They soon discovered that when the bloods were incompatible, a clumping or precipitation of the red blood cells occurred. This allowed the scientists to identify the cell surface elements (called **antigens**) responsible for the reaction. They noted that human blood cells fell in four antigenic groups which Landsteiner (1900) designated A, B, AB, and O. It was quickly realized that the blood groups were inherited, but despite the seeming simplicity of the system, the genetic basis remained unclear. It was not until 1925 that the mode of inheritance was inferred from the population frequencies of the four groups (using gene-frequency methods that will be employed later in this report).

Different human populations were found to differ in the frequencies of the four types. For example, about 10 percent of Caucasian Americans are group B. If one of two blood samples was group A and the other group B, they must have come from different persons (in the absence of laboratory or other errors). On the other hand, if both were group

B they could have come from the same person, but they could also have come from two different persons, each of whom happened to be group B. Over the years, several more independently inherited red blood cell systems were discovered. By 1960 there were some 17 systems, but not all were useful for identification. The most useful was the so-called HLA system because it was highly polymorphic (i.e., with many alleles). Along with this battery of serological tests some laboratories included a few serum proteins and enzymes. Although it was quite probable that two blood samples from different persons would agree for one blood group or enzyme, it was less and less probable that two unrelated persons would agree for all loci as more tests were added.

The frequencies of a combination of such markers were typically one in a few hundred or less, although in some instances, when samples contained rare types, the probability of matching of samples could be much smaller. By the mid-1970s, analysis of evidence samples and calculations of random matches could be calculated. A combination of blood groups and serum proteins were sometimes used for identification in criminal investigations. Much more often, such probabilities were used in paternity testing and accepted as evidence of parentage, where the civil criterion "preponderance of evidence," rather than the criminal criterion "beyond reasonable doubt," prevailed.

For parentage analysis, a **paternity index** is calculated. This is the probability of the mother-child-man combination if the man is the father divided by the probability if the father were randomly chosen from the population. There are differences from State to State as to the value of the paternity index that is regarded as sufficient evidence. A value of 100 is common, but smaller values prevail in some States. For a full discussion, see Walker (1983).⁵

Criminal cases require a higher standard of proof. Although a combination of blood groups and serum proteins often gave very small probabilities for a match between two unrelated individuals, and were sometimes used in criminal investigations, more powerful methods were desirable. These came with the discovery of a different kind of polymorphism, to which we now turn.

4. The VNTR (RFLP) Period, 1985–1995

The nature of forensic identification changed abruptly in 1985. That year Alec Jeffreys and colleagues in England first demonstrated the use of DNA in a criminal investigation (Jeffreys et al. 1985a,b). He made use of DNA regions in which short segments are repeated a number of times. This number of repeats varies greatly from person to person (Wyman and White 1980). Jeffreys used such variable-length segments of DNA, first to exonerate one suspect in two rape homicides of young girls and later to show that another man had a DNA profile matching that of the sperm in the evidence samples from

5. A paternity index of 100 is sometimes called the "odds of paternity." But this is not the true odds of paternity; rather, it is the ratio of the probability of the mother-child-man combination if the man is the father to the probability if a random man is the father. The human psyche seems to have an overwhelming proclivity to misinterpret this. For a typical example, a recent newspaper story said: "Judge ___ released the results of DNA tests that showed that there is a 99.9 percent probability that ___ is the father of ___."

both girls. Soon after, some commercial laboratories made use of this "fingerprinting" procedure,⁶ and in 1988 the FBI implemented the techniques, after improving their robustness and sensitivity and collecting extensive data on the frequency of different repeat lengths in different populations.

The DNA methods offered a number of advantages compared to the earlier systems. One advantage is that these tests are based directly on the genetic makeup of the individual, the DNA itself. In contrast, serological and protein tests identify a gene product and therefore may be only an indirect reflection of the DNA composition. DNA methods avoid any complication from dominance and recessiveness. For example, with dominance, genotypes AA and Aa are indistinguishable phenotypically, but can be distinguished by DNA methods. Furthermore, DNA markers offer greater stability against temporal and thermal changes than proteins. In fact, DNA is remarkably stable, as is evidenced by its being identified long after death, for example, in Egyptian mummies or even extinct mammoths. Since DNA is found in cells throughout the body, the material to be tested can come from any source of cells. A blood or semen stain, even one that is several years old, can often be analyzed. Most important, from a forensic standpoint, individual variability in the DNA is much greater than can be revealed by serological and enzymatic markers, so that the probability of two unrelated individuals having the same DNA profile is very small. The large number of alleles per locus and the number of loci that can be used as genetic markers permitted forensic scientists to have access to a large panel of stable genetic markers for the first time. Thus, DNA held the potential, when a sufficient number of sufficiently variable markers were identified, to supply strong support for identity between, for example, a crime scene sample and DNA from a suspect.

After a first flush of immediate acceptance by the courts, the molecular methodology and the results of evidence analysis were challenged as unreliable. Although the majority of courts admitted the DNA evidence, a few highly publicized cases were overturned by higher courts, citing failure of sufficient DNA testing to meet the Frye or other standards for admissibility of scientific evidence as the reason. During this period, partly because of these challenges, the technical standards for forensic DNA testing improved greatly and the databases used to generate statistical frequencies became more extensive and more representative. As the forensic DNA community imposed stringent quality control and quality assurance protocols on their laboratories and published numerous validation studies, the DNA profiling techniques became widely accepted by the courts and relied upon by juries. By 1996, a study by the National Research Council (NRC 1996) concluded that: "The state of profiling technology and the methods for estimating frequencies and related statistics have progressed to the point where the admissibility of properly collected and analyzed data should not be in doubt."

VNTRs (variable number of tandem repeats), a type of RFLP, are based on the methods Jeffreys used. These are DNA sequences of a length from 8 to 80 base pairs (usually 15 to 35) that are repeated in tandem different numbers of times in different alleles. At a particular locus, the number of repeats can be several hundred and the total size of the sequence can be 10,000 base pairs or more. The VNTR procedure is described and discussed more fully in appendix A1.a. In practice the size differences among repeated

6. In this report, we shall not use the words fingerprint or fingerprinting in order not to confuse DNA testing with dermal fingerprints. We shall ordinarily use "profiling" for the process of determining the relevant DNA genotype.

sequences are so small that adjacent sizes cannot be reliably distinguished, so they are grouped into 20 or 30 "bins." With this many alternatives (alleles), the probability of two random DNA samples having the same pattern at a single locus is small, and when data are combined over four to six independently inherited loci the probabilities become very small. With 6 loci the probability of 2 random Caucasian Americans sharing the same profile is less than 1 in 100 billion (appendix A1.a, p. 38). This calculation, using the "product rule" assumes that the genotypes are in random proportions within and between loci. (For a discussion of the accuracy of this assumption, see NRC 1996, pp. 89–112).⁷

Although there is more variability within groups than between the means of different groups, allele frequencies between groups differ enough that separate databases have been developed for Caucasian Americans, African Americans, Hispanic Americans, and Asian Americans. Increasingly, there are data on smaller subpopulations, such as American Indian tribes.⁸

VNTRs have both advantages and limitations. The main advantages are: (1) The large number of alleles per locus and combining several loci provide a very high discriminating power; (2) the large number of alleles make this approach particularly effective in resolving mixtures of DNA from different persons; and (3) large databases from several population groups are available as a basis for calculations.

Yet there are several limitations to VNTRs: (1) The small differences between adjacent alleles necessitates grouping them into bins, which complicates the statistical analysis; (2) the number of validated loci is limited; (3) relatively large amounts of high-quality DNA are required; (4) a single band is sometimes ambiguous, for it may be from a homozygote or it may be from a heterozygote in which (for a variety of reasons) only one band appears; and (5) the process is time consuming, particularly if radioactive probes are used. An analysis of multiple loci can require several weeks. However, radioactive probes have largely been replaced by chemiluminescent probes and the process now takes only days rather than weeks.

VNTRs are being rapidly replaced by repeats of shorter sequences, to which we now turn.

7. In forensic cases, investigators usually know the profile of the evidence sample and ask for the probability that DNA from a random person matches this profile. This is called the match probability, or more precisely the conditional match probability. For evaluating the power of different systems used in forensic analyses it is customary to use the probability of a random pair of persons sharing a profile. That is the sum of the match probabilities for all possible pairs. We shall refer to this as the population match probability.

8. There is a great deal of confusion, controversy, and political sensitivity about the use of words like "race," "ethnic group," "geographical group," and "biological ancestry." Such classifications are often ambiguous; in fact, the classification is sometimes linguistic or geographical rather than biological, as with Hispanic Americans. We have chosen to use **population group** for larger groups such as Caucasian Americans and African Americans and **subgroup** for smaller groups such as northern and southern Europeans. Throughout this report, we emphasize that with the increasing power of DNA profiling we can move away from emphasis on group properties to emphasis on individual properties.

5. Current Techniques

During the decade 1985–1995, a revolutionary technical innovation became more and more widely used in molecular biology, so that by now it is almost universal. This is the polymerase chain reaction (PCR), a technique for amplifying a tiny quantity of DNA into almost any desired amount (Saiki et al. 1985, 1988; Mullis and Faloona 1987). It uses essentially the same principle as that by which DNA is normally copied in the cell, except that instead of a whole chromosome being copied only a short chosen segment of the DNA in a chromosome is amplified. This has made it possible to process the very tiny amounts of DNA often left behind as evidence of a crime and has greatly increased the sensitivity of the forensic systems available to the criminal justice system. Thanks to PCR, minute amounts of DNA extracted from hairs, postage stamps, cigarette butts, coffee cups, and similar evidence sources can often be successfully analyzed.

The first use of PCR-based typing for forensic application was in 1986 and employed the HLA-DQA1 locus (originally called DQ- α). Currently, this system distinguishes seven allelic classes, recognized by sequence-specific probes using a technique called reverse dot blot (appendix A2.b, p. 44). In this method, amplified DNA is captured from solution by probes that are fixed to a membrane. The hybridized DNAs are detected with a nonradioactive blue stain. With this system, the general probability of matching profiles, for example between a forensic sample from the crime scene and a random suspect, is about 0.05. Thus, 95 percent of wrongly accused persons can expect to be cleared. This makes the system particularly useful for early testing in criminal investigation with a large probability of quickly clearing wrongly identified suspects.

In addition to the HLA-DQA1 locus, five additional genetic markers became available to the forensic community in 1993, adding increased discriminatory power to the reverse dot blots for forensic case work (see appendix A2.c, p. 44). The six-locus system (the poly-marker system + DQA) has been in wide use in public and private forensic laboratories and the results are widely accepted in U. S. courts. The five additional markers are 2- and 3-allele loci, so, while they increase the discriminatory power of HLA-DQA1 alone, the set still falls short of VNTRs in this respect. The probability of a match for two randomly chosen persons is about 1/4,000 (see table A3, p. 45).

The D1S80 locus is a 16 base-pair repeat VNTR that is small enough to be amplified by PCR. It is amplified as a "singleplex," run on vertical acrylamide gels and detected by silver staining, or as a duplex with the sex-determining amelogenin (see below). Allele designations are accomplished by comparison with allelic ladders that are run on adjacent lanes in the gel. This bridges the gap between VNTR and STRs in the development of systems based on length polymorphism. D1S80 is fully validated and accepted by the courts. It is commonly used in combination with the reverse dot blot tests to extend their statistical power. It is used in casework, but is not for databases.

STRs (short tandem repeats) (see appendix A1.b, p. 39) are similar to VNTRs in that they are based on repeated sequences dispersed throughout the chromosomes. While methods of interpretation for STRs and VNTRs are similar, STRs have smaller repeat units (usually 3 to 5 base pairs) and fewer of them (usually 7 to 15 alleles per locus). The small size makes them amenable to PCR amplification so that much smaller quantities of DNA

are needed for analysis.⁹ The small size also allows improved visualization of each allele so discrete and unambiguous allele determinations are possible and grouping multiple adjacent alleles into bins is not needed. Although VNTRs include more alleles per locus, STR loci are much more numerous, providing the same discriminating power by using more loci. In addition, multiple STR loci can be analyzed simultaneously (**multiplexed**), a practice uncommon in VNTR analysis. Multiplexing of STR systems has become standard, increasing the efficiency, speed, and power of analysis. With 13 STR loci the general match probability is about one in 6×10^{14} (A1.b, table A2, p. 41).

Having more loci, once there are several alleles per locus, is particularly important if siblings are involved. The match probability between two siblings always involves a factor of 1/4 per locus, plus an additional, usually smaller quantity that depends on allele frequencies. Thus, adding more alleles per existing locus when the heterozygosity is already large is of only marginal help in increasing the ability to discriminate between siblings; adding additional loci is much more effective, but these should be highly polymorphic.

It is often important, especially in rape cases, to determine the sex of the person from which the DNA came. If the source is vaginal, it is important to distinguish between female cells and sperm. For this, a marker that is on the X and Y chromosomes is used. Amelogenin is a PCR-amplified system that can be combined with STRs. The allele on the X has a different size than the one on the Y, so the difference between XY males and XX females is easily seen.

Techniques for using mitochondrial DNA (mtDNA) (see appendix A3.a, p. 46) have been available for some years, but application to problems of forensic identification began in 1990. Several laboratories now have the necessary equipment and techniques to use this system. Mitochondria are intracellular particles (organelles) outside the nucleus in the cytoplasm of the cell. They contain their own small DNA genomes; circular molecules of 16,569 base pairs and the variants are identified by sequence determination. Each cell contains hundreds to thousands of mitochondria. For this reason, a single hair shaft, old bones, or charred remains, which are generally unsuitable for chromosomal DNA, sometimes provide enough intact material for mtDNA analysis. Mitochondria are transmitted by the egg but not by the sperm, so mtDNA is uniquely suited for tracing ancestry through the female line. It was used recently to identify some of the bodies of the Russian royal family, the Romanovs. Limitations of mtDNA include its relatively low discriminatory power and the dependence for that power on the creation of large databases of mtDNA sequences.

Sperm cells contain mitochondria, although in much smaller numbers than in body cells (about 50 compared to 1,000 or more). This part of the sperm does not enter the egg, so only the maternal mitochondria are normally transmitted to the children. It is possible by existing techniques to analyze mtDNA from sperm. This has been done in laboratory experiments, but has not been developed for routine use in forensics. This might be useful in cases where a tiny amount of semen is available and no other source of DNA.

9. The PCR process can be used only on relatively short DNA segments. Almost all VNTRs are too large, and this is one of the reasons why VNTRs are being replaced by STRs. Recently, a technique for amplifying longer fragments has been reported (Richie et al. 1999). Since STRs are rapidly becoming the standard, this new technique will probably be used only for cases where there is a need for additional, highly polymorphic loci.

This will become especially useful when it is possible to amplify and analyze mtDNA from a single sperm. Some research laboratories have already done this. For nuclear DNA, a single sperm provides only a 50-percent sample of the individual's DNA, so that several sperm cells are required for complete information. Each mitochondrion, in contrast, has the entire mitochondrial genome.

The Y chromosome (see appendix A3.b, p. 49) contains hundreds of recognized sites that can be used for identification. These consist of both STRs and single nucleotide polymorphisms (SNPs). The Y chromosome provides a counterpart to mtDNA. Since the Y chromosome is transmitted only from father to son, it provides a way of tracing male descent much as mtDNA does for the female lineage. They differ, however, in that mtDNA is a cytoplasmic marker transmitted in multiple copies from the mother to *all* her children, whereas Y chromosome DNA is a nuclear marker transmitted as a single copy from the father to sons only. Y chromosome markers can be useful in special cases resolving sexual assault mixtures from multiple male contributors, when the male component of the DNA is very small in proportion to the female component, or to distinguish mixtures of different male sources of saliva or blood. Such sex-specific markers are finding a major use outside the criminal field, as exemplified by the recent study of Thomas Jefferson's male descendants. As with mtDNA, the loci on the relevant part of the Y chromosome almost never recombine, so the Y chromosome markers are equivalent to one locus with many alleles. Therefore, the discriminating power is limited by the size of the database. Y chromosome markers reveal more diversity than other markers with respect to ancestral geographic origin, and for this reason they find special application in studies of human evolution.

6. CODIS (Combined DNA Index System)

The FBI has selected 13 STR loci to serve as a standard battery of **core** loci, and increasingly laboratories are developing the capability to process these loci. As laboratories throughout the Nation employ the same loci, comparisons and cooperation between laboratories are facilitated. The 13 loci and some of their properties are given in appendix A1.b, p. 41. Collectively, the 13 loci provide great discriminatory power. The probability of a match between profiles of two unrelated persons in a randomly mating population of Caucasian Americans is 1.74×10^{-15} , or one in 575 trillion. The FBI and others are actively involved in getting frequency data from a number of populations of different population groups and subgroups. These populations are being continuously subdivided. For example, there are data from Japanese, Chinese, Korean, and Vietnamese. In the Western Hemisphere, there are data for Bahamians, Jamaicans, and Trinidadians. With the 13 core loci the most common profile has an estimated frequency less than 1 in 10 billion (Budowle et al. 1999). Of the 10 STR loci that the British system now uses, 8 are included in the 13 core loci, so international comparisons are feasible.

The FBI provides software to facilitate the use of the CODIS system, together with installation, training, and user support free of charge to any State and local law enforcement laboratories providing DNA analysis. CODIS uses two indices to generate investigative leads in crimes where there is DNA evidence. The Convicted Offender Index contains profiles of individuals convicted of violent crimes. The Forensic Index contains DNA profiles from crime scene evidence, such as semen and blood. These indices are searched by computer.


State of Idaho)
SS
County of Latah)

AFFIDAVIT OF BEN LEONARD

I, Ben Leonard, being duly sworn upon oath, depose and state as follows:

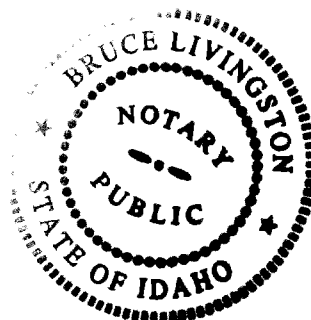
1. I am an investigator, employed by the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho.
2. The Capital Habeas Unit represents Zane Fields, who is currently incarcerated in the Idaho Maximum Security Institution under sentence of death, in a federal habeas corpus proceeding denominated as *Fields v. Klauser*, in the United States District Court for the District of Idaho, case number 95-CV-422-S-EJL.
3. During the course of our investigation, I attempted to review the evidence gathered by the Boise Police Department in the Wishing Well murder case for which Zane Fields was tried and convicted.
4. I visited the Boise Police Station located on 7200 Barrister Boise, ID, where I was informed by the information desk that Lieutenant Tony Wallace was the person I needed to contact regarding of review the evidence in the Fields case.
5. I spoke with Lieutenant Wallace on the telephone from the information desk at the Boise Police Station and was informed by him that I could review the evidence, which was located in two places, the Station located at 7200 Barrister and the Boise City Detective Division located at 6081 Clinton Street, so long as I gave sufficient advance notice of when I wanted to review the evidence, so that the evidence would be ready for me to review.

6. I subsequently contacted Lieutenant Wallace and made an appointment for May 17, 2002, a time acceptable to Lieutenant Wallace, to review the evidence at both locations. I called Lieutenant Wallace on May 17, 2002 to confirm that I was in Boise and planned to review the evidence that afternoon.
7. Lieutenant Wallace told me that I could not review the evidence without the permission of Prosecutor Roger Bourne, that Lieutenant Wallace would find out whether Mr. Bourne would permit me to review the evidence, and that Lieutenant Wallace would then let me know whether I can review the evidence, and if so, when. Lieutenant Wallace stated that he was therefore going to deny me access to the evidence.
8. I have attempted to contact Lieutenant Wallace by telephone, but have been unsuccessful. I have left voice messages but have not received any returned telephone calls regarding this matter. I have also left a message with Roger Bourne, which has not been returned.
9. I have been denied the opportunity to review the evidence in the Wishing Well murder case, for which our client, Zane Fields, has been convicted..
10. I declare under penalty of perjury that the foregoing is true and correct.


Ben Leonard

Subscribed and sworn to before me by Ben Leonard, a person known to me, on this 26th date of June, 2002.


Notary Public
My commission expires on 7/17/04.



JUL 19 2002

J. DAVID NAVARRO, Clerk
By: *Jenny Cherry*
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

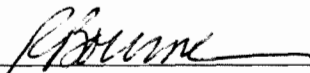
ZANE JACK FIELDS)	
)	
	)	CASE NO. SPOT0200590D
Petitioner,)	
	)	MOTION TO EXTEND TIME FOR
vs.	)	FILING RESPONSE TO PETITION
	)	FOR POST-CONVICTION
	)	SCIENTIFIC TESTING
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and hereby moves this Court for additional time to make the State's Response to ZANE JACK FIELDS' petition for post-conviction scientific testing. Due to the passage of time, the State will need to read transcripts and other documents to prepare a response. The State needs additional time to accomplish those tasks. The State requests an additional 30 days past the July 27th deadline to make its response.

MOTION TO EXTEND TIME FOR FILING RESPONSE TO PETITION FOR POST-CONVICTION SCIENTIFIC TESTING (FIELDS/SPOT0200590D), Page 1

RESPECTFULLY SUBMITTED this 18 day of July, 2002.

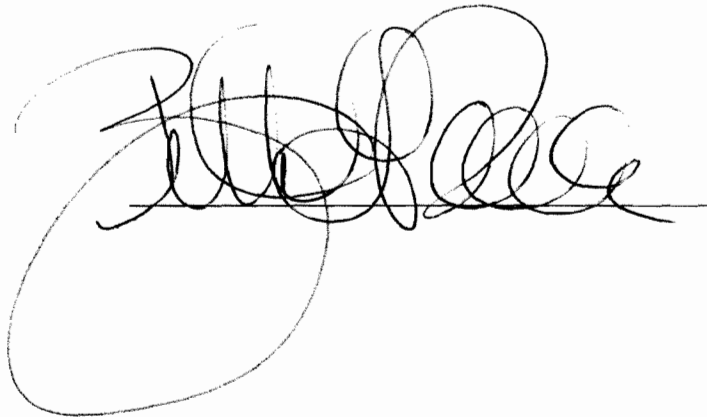
GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of July, 2002, I served a true and correct copy of the foregoing MOTION TO EXTEND TIME FOR FILING RESPONSE TO PETITION FOR POST-CONVICTION SCIENTIFIC TESTING to Scott Fouser, Attorney at Law, P O Box 606, Caldwell ID 83606, by depositing in the U.S. Mail, postage prepaid.



GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

NO. _____
A.M. FILED P.M. 3:48

JUL 23 2002

J. DAVID NAVARRO, Clerk
By J. David Navarro
DEPUTY

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

ZANE JACK FIELDS)	
)	
Petitioner,	)	CASE NO. SPOT0200590D
)	
vs.	)	ORDER TO EXTEND TIME
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

THIS MATTER having come before the Court, and good case appearing;
IT IS HEREBY ORDERED that the time for filing of the State's Response to
Petition for Post-Conviction Scientific Testing be extended to the 30th day of
August, 2002.

DATED this 23rd day of July, 2002.

J. David Navarro
District Judge

AUG 30 2002

J. DAVID NAVARRO, Clerk
By *[Signature]*
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Idaho 83702
(208) 287-7700

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

ZANE JACK FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. SPOT0200590D
STATE'S RESPONSE TO
THE PETITION FOR
POST-CONVICTION
SCIENTIFIC TESTING AND
STATE'S PARTIAL MOTION
TO DISMISS

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes the State's Response to ZANE JACK FIELDS' petition for post-conviction scientific testing pursuant to Idaho Code §19-4902. The Petitioner seeks new scientific testing of bloodstains on an orange camouflage jacket that was admitted at trial. He also seeks additional comparison of latent fingerprints lifted at the crime scene. He also moves the Court to order DNA testing on fingernail scrapings from the victim, Mrs. Vanderford, if they exist. In the event that no fingernail scrapings were taken from Mrs. Vanderford, he moves the Court for its order exhuming Mrs. Vanderford's body to attempt to obtain fingernail scrapings.

As it relates to the Petitioner's request for DNA testing on the orange camouflage jacket, the State responds as follows. Idaho Code §19-4902(b) allows for fingerprint or DNA testing on evidence:

[T]hat was secured in relation to the trial which resulted in his or her conviction but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of trial.

Before the Court can order new testing, the Petitioner must present a "prima facie" case that identity was an issue at trial and that the evidence sought to be tested has been subject to a chain of custody to establish that the evidence has not been altered.

The Court may allow testing where the Court makes a determination that:

(d)(1) The result of the testing has the scientific potential to produce new, noncumulative evidence that would show that it is more probable than not that the Petitioner is innocent; and

(d)(2) The testing method requested would likely produce admissible results under the Idaho Rules of Evidence.

The Petitioner has attached to his Petition the Transcript of the testimony of Ann R. Bradley, who was a criminalist for the Idaho State Forensic Laboratory at the time of the trial. Ms. Bradley looked at the orange camouflage jacket and performed screening tests on possible bloodstains on it. She testified before the jury at Tr. p. 1410 that her preliminary screening tests were positive for the "possible presence of blood" at two locations on the back of the coat. The two locations were designated D-7 and D-8. She testified as follows, beginning at L. 13:

A. At locations D-7 and D-8 my tests for human origin failed to produce any positive result.

Q. By failing to produce a positive result, does that mean that it was not human blood on that coat?

A. That's possible, but not necessarily the correct interpretation.

Q. What alternative interpretations are there?

A. A failure to get a positive finding, first of all, obviously may come if the blood is not human. It may also be produced if the amount of blood is too small and therefore falls below the threshold of detectability. A third result that is negative may be obtained even with human blood if it has been rendered inactive by such agent as heat or some sort of chemical action that causes it to fail to react any more in this test.

Q. And in this case the quantities of blood that you located on that coat, were they large quantities or small quantities?

A. They were extremely small.

The subject was again covered on cross-examination beginning at Tr. p. 1412, L. 22, as follows:

Q. And your testing, as I understand it, correct me if I'm wrong, but the blood was probably present, but the test for human origin was negative?

A. That's correct. That's the way I worded my conclusion.

Q. So could have been animal blood?

A. It certainly could have.

Q. Most likely would have been?

A. I can't say likelihood. I was dealing with a very small amount. That's one interpretation.

Since the jury was told in unmistakable terms that the State Laboratory could not say that the blood stains were human, additional scientific testing does not have the "potential to produce new, noncumulative evidence that would show that it is more probable than not that the Petitioner is innocent." The scientific testing, over fourteen (14) years later, could produce one of three possible results. Result number one could be inconclusive due to the amount of the substance and the age of the stain. Result number two could confirm what Ann Bradley testified to, that the blood was not human. Number three, the results could show that the blood was human. None of those

results would show that it is more probable than not that the Petitioner is innocent. The best that the Petitioner could hope for is that the test confirmed Ms. Bradley's testimony that the blood was not human. The jury already heard that testimony and so these results would only be cumulative of what the jury heard.

Nonetheless, the State will agree to submit the orange camouflage coat to the Idaho State Police Forensic Laboratory for DNA testing on the D-7 and D-8 location. A proposed Order accompanies this Response which will facilitate a transfer of the coat from the Ada County Court Clerk's possession to the Idaho State Police Forensic Laboratory under conditions that will protect the integrity of the chain of custody. Any results obtained will be immediately released to the Petitioner and the Court.

The Petitioner next requests that the latent fingerprints lifted at the crime scene be submitted to the Automated Fingerprint Identification System (AFIS) for comparison with fingerprints of persons contained in the database for a possible match. The Petitioner also asks to establish definitively that the latent fingerprints from the crime scene do not match the Petitioner. A review of the transcript from the trial on the fingerprint issue makes it clear why further testing on the fingerprints will not produce new noncumulative evidence that would show that it is more probable than not that the Petitioner is innocent.

At trial, Cindy Hill testified about her expertise as a fingerprint examiner then employed by the Boise City Police Department. Her testimony covers pages 1289 through 1316. A copy of Cindy Hill's Transcript is attached to this Response for the Court's review.

A review of that Transcript shows that Cindy Hill found approximately nineteen (19) latent fingerprints in the Wishing Well business, which was the crime scene. She compared those fingerprints to the police officers, paramedics, and other people who had come there to assist

Mrs. Vanderford. She also compared the latent fingerprints to the Vanderford family and other persons who worked in the store. She also compared the fingerprints to a Hewlett-Packard employee, Ralph Simmons, who was the customer who came into the store and found Mrs. Vanderford after she had been stabbed. Mr. Simmons' fingerprint was the only one identified by Cindy Hill. She testified specifically on direct examination that she did not find the Defendant's fingerprints in the Wishing Well store. She testified as follows:

Q. By Mr. Horton: One other question. You've indicated that you weren't able to find the victim's or other people's fingerprints in there. Did you look for the Defendant's fingerprints in that place of business?

A. Yes, I did.

Q. And did you find any prints?

A. No, I did not.

Tr., p. 1305.

Cindy Hill again testified on cross-examination that she did not find the Defendant's fingerprints in the Wishing Well store. She testified as follows in the Tr. p. 1306:

Q. And have--well, who have you compared those latents to, besides the Defendant, and I gather that you are not able to make any match between the Defendant's fingerprints and any of the 19 latents, is that right?

A. That is correct.

Cindy Hill testified yet again that she did not find the Defendant's fingerprints at the crime scene. At Tr. p. 1313, she testified on cross-examination as follows:

Q. All right. And if I understand your testimony, as far as your involvement in this case, you were not able to make any connection whatsoever between this crime scene--oh, this crime scene and the Defendant charged here, Mr. Fields?

A. I was unable to make any fingerprint analysis, no.

Q. Any connection whatsoever, whether it was fingerprints or fiber, whatever?

A. Again, I just do fingerprint analysis.

Q. And of the 19 latents that were lifted, how many of those are still unidentified?

A. Eighteen.

The testimony at trial definitively established that the latent fingerprints from the crime scene do not match the Petitioner. No fingerprint evidence contributed to the Defendant's conviction. Retesting the fingerprints to confirm that they are not the Defendant's will not "produce new, noncumulative evidence that would show that it is more probable than not that the Petitioner is innocent." The test results would be cumulative and they would only show what the jury already knew.

Submitting the latent fingerprints to the AFIS system will not establish that the Defendant is innocent. That system may identify the ownership of some of the fingerprints, but will not establish that the Defendant did not kill Mrs. Vanderford. Since the evidence will not establish the Petitioner's innocence, it does not fit within the requirements of Idaho Code § 19-4902, and should not be ordered by the Court.

Additionally, the State has conducted an extensive review of the files and evidence from the original investigation in an attempt to find the latent fingerprint cards. They have not been located.

Finally, the Defendant requests the Court's Order requiring that any fingernail scrapings taken from Mrs. Vanderford be examined for DNA evidence. His theory is that maybe she scratched her assailant and maybe she got the assailant's skin tissue under her fingernail, and maybe there was enough skin tissue to have DNA sufficient for testing. Even if there were DNA found under her fingernails, and even if it turned out not to be the Defendant's, how could the Defendant point to that as evidence of his innocence? There was no evidence produced at the trial tending to

establish that Mrs. Vanderford did scratch her assailant. There was no evidence that the Defendant had scratch marks on him. Evidence of that type did not contribute to the Defendant's conviction, and so does not fit the statute.

Additionally, there would be no way to prove that any DNA found under Mrs. Vanderford's fingernails did not come from some other activity, such as her accidentally scratching someone unconnected to the crime. Such a speculative procedure should not serve as the basis for traumatizing the family by exhuming the body of Mrs. Vanderford, even if it was believed that DNA evidence may exist under her fingernails. However, the Affidavit of Doctor Carla J. Finis, Supervisor of the DNA section of the Idaho State Police Forensic Lab, shows that there is little or no likelihood of finding DNA of that type fourteen (14) years after Mrs. Vanderford was buried.

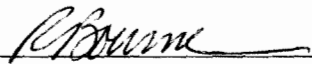
After diligent search, the State has been unable to find any evidence that Mrs. Vanderford's fingernails were scraped as part of the investigation. If they were, the evidence no longer exists.

For the reasons cited above, the State moves this Court to deny the Petitioner's request for further DNA testing on any fingernail scrapings, and to deny further testing on latent fingerprints.

Attached is the proposed Order relating to the camouflage coat, which was Defendant's Exhibit 22.

DATED this 29 day of AUGUST, 2002.

GREG H. BOWER
Ada County Prosecuting Attorney



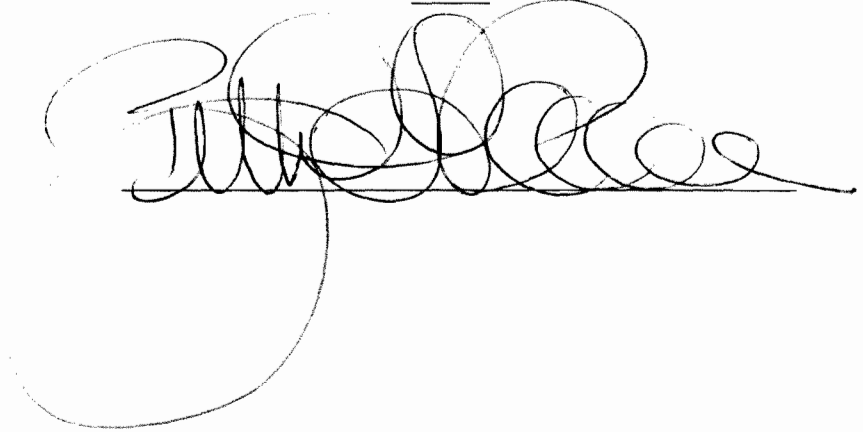
Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 29 day of August, 2002, I served a true and correct copy of the foregoing STATE'S RESPONSE TO THE PETITION FOR POST-CONVICTION SCIENTIFIC TESTING to the following person(s) by the following method:

Scott E. Fouser, Attorney at Law
Wiebe & Fouser, P.A.
P.O. Box 606
Caldwell, ID 83606

- Hand Delivery
- U.S. Mail
- Certified Mail
- Facsimile



GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room S191
Boise Idaho 83702
Telephone: (208) 287-7700

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

ZANE JACK FIELDS)	
)	
Petitioner,	)	Case No. SPOT0200590D
vs.)	
	)	AFFIDAVIT OF
STATE OF IDAHO,	)	CARLA J. FINIS
)	
Respondent,)	
)	
)	


COMES NOW, Carla J. Finis, being duly sworn, states the following:

- 1. Your affiant, Carla J. Finis, is the supervisor of the Forensic Biology/DNA Section of the Idaho State Police Forensic Services Laboratory located in Meridian, Idaho. Your affiant has been so employed for approximately three (3) years. Prior to that, your affiant was employed in the Biology (DNA) Section of the Minnesota Bureau of Criminal Apprehension for approximately ten (10) years;**

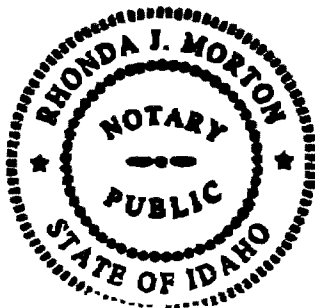
- 2. Your affiant holds the degree of Ph.D. in genetics. Your affiant has testified as an expert witness in forensic genetic analysis numerous times in Idaho and Minnesota;
- 3. Your affiant has been told by a member of the Ada County Prosecuting Attorney's Office that a defendant proposes to exhume the body of a woman killed in a murder in 1988 for the purpose of scraping her fingernails to locate any DNA evidence that may still be there.

It is your affiant's opinion that it would be extremely unlikely for skin cells and DNA in the amounts typically found under fingernails to have survived the decomposition process over the past 14 years. Additionally, the cleaning of the body by the mortician would likely have destroyed or removed any cellular material containing DNA that may have been there in the first place.

DATED this th 26 day of August, 2002.


Carla J. Finis, Ph.D.

SUBSCRIBED AND SWORN to before me this 26 day of August, 2002.



Rhonda J. Morton
Notary Public for the State of Idaho
Residing in Elmore Co, Idaho.
Commission expires 8/27/06

NOV 25 2002

J. DAVID NAVARRO, Clerk
by *Mag...*
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Idaho State Bar No. 2127
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Facsimile: (208) 287-7709

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

ZANE FIELDS,)	
)	
Petitioner,	)	Case No. SPOT0200590D
vs.)	
	)	STATE'S AMENDED
THE STATE OF IDAHO,	)	RESPONSE TO PETITION
	)	FOR POST CONVICTION
Respondent,	)	SCIENTIFIC TESTING
	)	AND STATE'S PARTIAL
_____	)	MOTION TO DISMISS


COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes an amended response to ZANE FIELDS' petition for post-conviction testing pursuant to I.C. §19-4902. The State has earlier responded to the Petitioner's Petition for Post-Conviction Scientific Testing on August 29, 2002.

AM

In that response, the State notified Court and Counsel that the State had been unable to find the 19 latent fingerprints that were partially the subject of the petition for testing. Since the time of the State's response, the undersigned has been notified by the Boise City Crime Lab that the 19 latent fingerprint cards have been located and are available for testing if the Court so orders. However, the State stands by its original response that no further fingerprint comparison should be done for the reasons set out in that response.

RESPECTFULLY SUBMITTED, this 22 day of November, 2002.

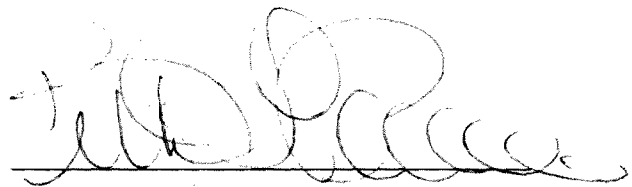
GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of November, 2002, I served a true and correct copy of the foregoing State's Amended Response to Petition for Post-Conviction Scientific Testing to Scott E. Fouser, Attorney at Law, Wiebe & Fouser, P.A., P.O. Box 606, Caldwell, ID 83606, by depositing same in the U. S. Mail, postage prepaid.



NO. _____ FILED _____
A.M. 9:11 P.M. _____

DEC 03 2002

[Signature]
J. DAVID NAVARRO, CLERK
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Idaho 83702
(208) 287-7700

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

ZANE JACK FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

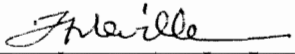
Case No. SPOT0200590D
ORDER FOR RELEASE
OF DEFENSE EXHIBIT 22
FOR FURTHER TESTING

BASED UPON the Petitioner's Motion, together with the concurrence of the State, and the Court being otherwise fully informed, the Court directs that an orange camouflage coat admitted as Defense Exhibit 22 in the trial of ZANE JACK FIELDS, Ada County Case HCR16259, be released by the Ada County Court Clerk's Office to a representative of law enforcement for transport to the Idaho State Police Forensic Lab for DNA testing. The coat is to be returned to the Ada County Court Clerk's Office at the completion of the DNA testing.

The coat is to be transported and contained in such a manner as to protect the integrity of the evidence and the chain of custody.

IT IS SO ORDERED.

DATED this 2nd day of December, 2002.

By: 
The Honorable Thomas F. Neville
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2002, I served a true and correct copy of the foregoing ORDER FOR RELEASE OF DEFENSE EXHIBIT 22 FOR FURTHER TESTING to the following person(s) by the following method:

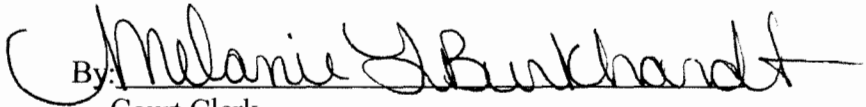
Scott E. Fouser, Attorney at Law
Wiebe & Fouser, P.A.
P.O. Box 606
Caldwell, ID 83606

Hand Delivery
 U.S. Mail
 Certified Mail
 Facsimile

Roger Bourne
Deputy Prosecuting Attorney
Ada County Prosecuting Attorney's Office
200 W. Front Street, Room 3191
Boise, ID 83702

Hand Delivery
 U.S. Mail
 Certified Mail
 Facsimile

J. DAVID NAVARRO
Clerk of the Court

By: 
Court Clerk

Dennis Benjamin
NEVIN HERZFELD, BENJAMIN & MCKAY LLP
ID Bar #4199
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

NO. D
A.M. 9:20 FILED P.M.
DEC 03 2002
By J. DAVID NAVARRO Clerk
DEPUTY

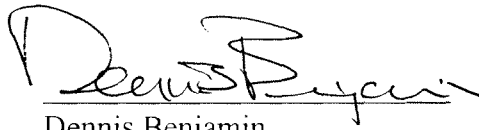
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)
Petitioner,) Case No. Spot0200590D
vs.) NOTICE OF APPEARANCE
STATE OF IDAHO,)
Respondent.)

TO: THE CLERK OF THE COURT
AND: THE STATE OF IDAHO

PLEASE TAKE NOTE THAT Dennis Benjamin enters his appearance on behalf of
Petitioner Zane Fields in the above-entitled matter.

Dated this 2nd day of December, 2002,


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

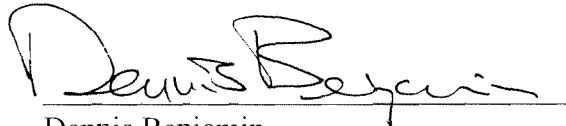
I certify that the foregoing was served this 31st date of December, 2002 upon the following person(s):

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 3191
Boise, Idaho 83720

- Hand Delivery
- U.S. Mail
- Certified Mail
- Facsimile
- Federal Express

Scott Fouser
WIEBE AND FOUSER
P.O. Box 606
Caldwell, ID 83606-0606

Zane Fields
P.O. Box 51
Boise, ID 83707


Dennis Benjamin

Dennis Benjamin
NEVIN HERZFELD, BENJAMIN & MCKAY LLP
ID Bar #4199
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

NO. _____
A.M. 9:30 FILED P.M. _____

DEC 03 2002

By J. DAVID NAVARRO, Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. Spot0200590D
)	
vs.	)	RESPONSE TO STATE'S
	)	PARTIAL MOTION TO DISMISS
	)	PETITION FOR POST-CONVICTION
STATE OF IDAHO,	)	SCIENTIFIC TESTING
Respondent.)	
_____)	

The State has responded to Zane Jack Fields' petition by agreeing to do DNA testing of the coat, refusing to exhume the body of the victim to do DNA testing on it, and refusing to allow any testing of the unknown fingerprints that were found at the crime scene, and refusing to grant access to the evidence in the case. Fields responds as follows:

The State agrees to do DNA testing on the Defense Exhibit 22, an orange camouflage coat, but its offer requires submission of the coat to the Idaho State Police Forensic Laboratory ("ISPFL"). State's Response at 4. The statute clearly allows DNA testing to be done at petitioner's expense, and although petitioner is an *in forma pauperis* death row inmate, his federal habeas counsel have the resources to pay for the DNA testing. Petitioner prefers to submit the coat for DNA testing to a lab other than the Idaho State Police Forensic Laboratory.

Petitioner's Reply to State's Response to the State's Motion for Scientific Testing - 1

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Petitioner requests that this court order the testing to be performed at an accredited lab, other than the ISPFL, that is acceptable to both petitioner and respondent. Petitioner also objects to the court order allowing transport of the coat from the Ada County Courthouse to the ISPFL by anyone in law enforcement. Once the parties agree upon an acceptable lab, the coat should be packaged by the clerk's office with opportunity for observation by either party and transported to whatever lab the parties select, directly, by an approved common carrier such as Federal Express.

The federal constitutional right to a defense expert which is not a part of the state's law enforcement bureaucracy is well-established. *Ake v. Oklahoma*, 470 U.S. 68 (1985).

The State argues that submitting the 18 unknown latent fingerprints to the AFIS system for identification should not be done. The state argues that the identification of other persons who were present at the store cannot establish petitioner's innocence. State's Response at 6. The burden, however, is not so high under section 19-4902(d)(1) as the State seems to suggest. The statute only requires a showing that it is more probable than not that the petitioner is innocent. In this case, which is a remarkably thin case built entirely on inmate testimony without any physical evidence connecting petitioner to the crime, evidence that may be obtainable from fingerprint analysis of the 18 latent fingerprints could go a long way to prove petitioner's innocence depending on the identity and record of the person who may be identified through the latent prints. The latent prints may establish that someone who was a suspect, or who looked like petitioner and could be identified by witnesses as the person they saw in the vicinity of the Wishing Well, left his or her prints at the store. The people identified may have a history of violent crime and store robberies, and lead to witnesses who can place the newly identified person at the store in the pertinent time frame. Testing of the fingerprints should be done.

Petitioner has consulted with expert witnesses who agree that exhumation of Mrs. Vanderford's body is not something that will lead to admissible evidence, because the body will be too decomposed for DNA testing of any fingernail scrapings. Petitioner no longer presses for that form of relief.

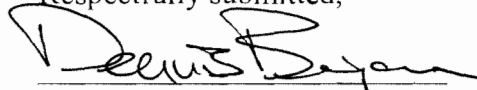
However, petitioner renews his request for access to the evidence that was collected in this case by the various investigating agencies. Petitioner has no way of knowing what other evidence exists that may be susceptible of proving Mr. Fields' innocence, given the refusal by the Boise Police Department to allow access to the collected evidence in this case.

The State contends that it has lost the latent fingerprint cards, and that it cannot establish if fingernail scrapings were taken from Mrs. Vanderford's body. Petitioner has requested discovery, and should be granted that discovery to assist in determining whether the scrapings were taken, and if so where they and the latent fingerprint cards have been misplaced.

The fingernail scrapings could definitely establish petitioner's innocence, as Mrs. Vanderford had defensive cuts on her. The absence of scratches on Mr. Fields, State's Response at 7, only serves to establish the likelihood of his innocence if the fingernail scrapings reveal DNA from another person.

Petitioner renews his requests in the petition for an order requiring preservation of all of the evidence collected in this case, particularly in light of the spoliation/loss/misplacement of evidence by the State and to which the State admits in its response.

Respectfully submitted,



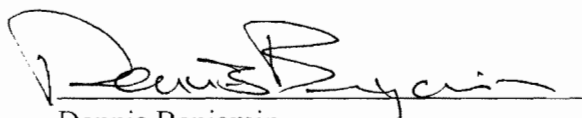
Dennis Benjamin
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 3rd date of December, 2002 upon the following person(s):

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 3191
Boise, Idaho 83720

- Hand Delivery
- U.S. Mail
- Certified Mail
- Facsimile
- Federal Express


Dennis Benjamin

Dennis Benjamin
NEVIN, BENJAMIN & MCKAY LLP
ID Bar #4199
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

3:15
OCT 18 2003
H. W. [Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. Spot0200590D
)	
vs.	)	MOTION FOR PERMISSION TO
	)	CONDUCT LIMITED DISCOVERY
STATE OF IDAHO,)	
Respondent.)	
_____)	

Petitioner, Zane Fields, asks this Court for its Order granting permission for him to conduct limited discovery in this case. As explained below, limited discovery is appropriate in this case because it is necessary to protect the "substantive rights" of petitioner. *Griffith v. State*, 121 Idaho 371, 375, 825 P.2d 94, 98 (Ct. App. 1992). While discovery during post-conviction relief proceedings is a matter put to the sound discretion of the district court, it would be an abuse of discretion to deny discovery where the petitioner has identified the type of information that he or she may obtain through discovery and explained how that information could affect the disposition of his or her application for post-conviction relief. *Fairchild v. State*, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App.1996).

4

Here, Petitioner has requested in his petition that the fingerprints found at the crime scene be submitted to the AFIS system to see if a match occurs. Further, there is new technology, not available at the time of petitioner's trial, which permits the enhancement of latent fingerprints.

The Respondent, however, claims that such testing is impossible because it "has conducted an extensive review of the files and evidence from the original investigation in an attempt to find the latent fingerprint cards. They have not been located." State's Response to the Petition for Post-Conviction Scientific Testing, pg. 6. However, the Respondent's statement quoted above is not made under oath, was not subject to cross-examination, does not identify what files and evidence was searched or who searched them, does not set forth how diligently the search conducted and does not say whether there are other unsearched locations where the latent fingerprints could still be stored. Furthermore, the statement only addresses the issue of the fingerprint cards and does not address the question of whether the Respondent is in possession of the surfaces from which the latent prints were obtained.

Therefore, it is critical for the Petitioner to determine, by deposition under oath: 1) who is currently responsible for maintaining the evidence in the case, 2) the location where that evidence is kept; 3) whether the latent fingerprints cards are present at that location; and 4) whether there is any other evidence in possession of the Respondent from which fingerprints were recovered. If the fingerprints are not in the possession of the records custodian, Petitioner would need to identify 1) all previous evidence custodians; 2) all locations where the evidence has ever been stored; 3) the identities and locations of all people who have had access to the evidence; 4) whether there are any record indicating that the evidence was shipped to a third-party, such as the FBI Laboratory, and whether the

evidence was received back from that third-party; and 5) whether there are any records of the fingerprints or other evidence being destroyed.

The examination of the fingerprints and surfaces could very well prove Petitioner's innocence because it could lead to the identity of the true murderer. At trial, two witnesses testified they saw a man, who could not have been Zane Fields, in the Wishing Well just minutes before the murder.

The first witness, Betty Hornecker, testified that she was in the Wishing Well at 11:00 a.m. and saw a man enter the store. The man was acting furtively, as he entered the store and walked quickly to the rear of the store without looking at any of the merchandise. Ms. Hornecker thought that the man "didn't look like he fit[] in the store." Tr. Transcript, pg. 929, ln. 23-24. His presence in the store make Ms. Hornecker feel "very uneasy "and that "he was trying to avoid" her, Tr. Transcript, pg. 930, ln. 12-13, as if he had just stepped into the store in order to "escape from something." *Id.*, ln. 22. She also felt that he was trying to avoid her gaze when she walked by.

Ms. Hornecker described the man as being 6 foot four inches tall and between 230-240 pounds. He had dark hair, was balding on the crown of his head and had a receding hairline. Further, he was wearing a navy blue, hooded, zip-front sweatshirt. This description does not fit Mr. Fields. She left the store between 11:08 and 11:10.

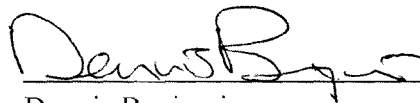
Murie Munk arrived at the Wishing Well at about 11:10 and also saw the man. She described him as "big and sloppy, about 230 pounds, over six feet, and about 48 years old." Tr. Transcript, pg. 971, ln. 15-16. The man was wearing "[g]rubby, sloppy, dark" clothing, not the bright orange camo jacket which was already been examined by state experts in this case. She left the store about 8-10 minutes later or at about 11:18-11:20. The man was still in the store when she left. Therefore, we

know that the unknown male and Ms. Vanderford were together alone in the store just moments before the murder because we know that Ms. Vanderford made her 911 emergency call, telling the dispatcher that she'd just been stabbed, at 11:18.

Neither Ms. Munk nor Ms. Hornecker identified Mr. Fields as the man in the store.

All of the above shows that there is a good likelihood that further examination of the latent fingerprints from the Wishing Well could lead to the discovery of the man who was seen in the store just before Ms. Vanderford was stabbed. This person is likely the true murderer of Ms Vanderford. Therefore, the Court should grant the motion to permit Mr. Field to conduct the requested limited discovery to determine whether the fingerprints can be located.

Respectfully submitted this 10th day of October, 2003,




Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 10th date of October 2003 upon the following person(s):

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 366
Boise, Idaho 83702

Hand Delivery
 U.S. Mail
 Certified Mail
 Facsimile
 Federal Express


Dennis Benjamin

Dennis Benjamin
NEVIN, BENJAMIN & MCKAY LLP
ID Bar #4199
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

3:15
FEB 10 2003
[Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. Spot0200590D
)	
vs.	)	MOTION FOR INDEPENDENT
	)	SCIENTIFIC TESTING
STATE OF IDAHO,)	
Respondent.)	
_____)	

Petitioner, Zane Fields, asks this Court for its Order permitting independent scientific testing of Defense Exhibit 22, *i.e.*, the orange camouflage coat. The Respondent has already, pursuant to the Order of this Court, turned the coat over to the Idaho State Police Forensic Laboratory for examination. As the Court may recall, the ISPFL determined that there was not an adequate sample of genetic material to do additional testing. Letter of Roger Bourne dated February 3, 2003 (copy in court file). While the report of Carla J. Finis, Ph.D., attached to Mr. Bourne's letter, indicates that "it is likely that the sample was consumed in the species identification process," the Petitioner, nevertheless, asks that his own experts be permitted to conduct an examination.

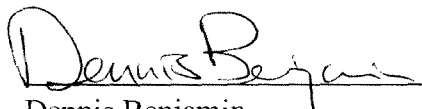
The statute clearly allows DNA testing to be done at petitioner's expense and, although petitioner is an *in forma pauperis* death row inmate, his federal habeas counsel have the resources to

h

pay for the DNA testing. The statute by shifting the cost to the Petitioner, except in cases of indigence, implicitly creates the right for the Petitioner to select his own expert. Put simply: Since Petitioner is paying the freight, he gets to pick the shipping company. Moreover, in addition to the implied statutory right to independent testing, the federal constitution provides a right to a defense expert who is not a part of the state's law enforcement bureaucracy. *Ake v. Oklahoma*, 470 U.S. 68 (1985).

Petitioner therefore asks this Court for an Order releasing the Exhibit for DNA testing at an accredited laboratory. Once the laboratory is selected, the coat should be packaged by the clerk's office with opportunity for observation by either party and shipped by an approved common carrier such as Federal Express.

Respectfully submitted this ^{17th} day of October, 2003,



Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 10th date of October 2003 upon the following person(s):

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 366
Boise, Idaho 83702

- Hand Delivery
- U.S. Mail
- Certified Mail
- Facsimile
- Federal Express


Dennis Benjamin

9:14

Beck

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Idaho State Bar #2127
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

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

ZANE JACK FIELDS,)	
	)	Case No. SPOT0200590D
Petitioner,)	
	)	RESPONSE TO MOTION FOR
vs.	)	INDEPENDENT SCIENTIFIC
	)	TESTING
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes the State's response to the petitioner's motion for independent scientific testing. The petitioner has previously requested that certain spots on an orange camouflage coat, which were believed to be blood, be tested for the presence of blood and DNA. The State responded to the original petition for scientific testing back in August, 2002.

JP

In that 2002 response, the State pointed out that:

Before the court can order new testing, the petitioner must present a “prima facie” case that identity was an issue at trial and that the evidence sought to be tested has been subject to a chain of custody to establish that the evidence has not been altered. *See I.C. §19-4902(c)(1) and (2)*

The court may allow testing where the court makes a determination that:

(d)(1) The result of the testing has a scientific potential to produce new, non-cumulative evidence that would show that it is more probable than not that the petitioner is innocent; and

(d)(2) The testing method requested would likely produce admissible results under the Idaho Rules of Evidence.

The State pointed out that Ann Bradley, a Criminalist for the Idaho State Forensic Laboratory at the time of trial, had performed screening tests on possible blood on the orange camouflage jacket. The State quoted the trial testimony of Ms. Bradley, which was to the effect that she had found “possible presence of blood” at two locations on the back of the coat. However, it appeared to her that the possible bloodstains were not human blood because they did not respond to certain tests. Ms. Bradley stated the following:

A failure to get a positive finding, first of all, obviously may come if the blood is not human. It may also be produced if the amount of blood is too small and therefore falls below the threshold of detectability. A third result that is negative may be obtained even with human blood if it has been rendered inactive by such agent as heat or some sort of chemical action that causes it to fail to react anymore in this test.

Ms. Bradley also testified that the quantity of blood located on the coat was extremely small. The State pointed out in its response that further testing could produce only one of three possible results: 1) That any testing would be inconclusive due to the amount of substance and the age of the stain; 2) New testing could confirm that the blood was not human as Ms. Bradley had testified; and 3) The results could show that the blood was human. The State pointed out that none of those results would show that it was more probable than not that the petitioner was innocent. Since Idaho Code §19-4902(d)(1) only

allows the court to order additional testing if the results will produce new, non-cumulative evidence that would show that it is more probable than not that the petitioner is innocent, the State took the position that the court should not order new testing because none of those three options would show that the petitioner was probably innocent. They would say nothing about his guilt or innocence.

Nonetheless, the State agreed to send the coat to the Idaho State Forensic Laboratory for further testing. Thereafter, the State notified the Court and counsel that the State Forensic Laboratory had examined the orange camouflage coat and found that there was no bloodstain sample left on it. The laboratory director opined that the original sample had been entirely consumed in the original testing process. Which, of course, said nothing about the petitioner's guilt or innocence.


The petitioner has now moved the Court for its order allowing the petitioner to send the coat to some other laboratory of the petitioner's choice. The State opposes that motion. There is no reason for further testing because it is not possible that testing will produce "new, non-cumulative evidence that would show that it is more probable than not that the petitioner is innocent." New independent laboratory tests could only produce one of three possible options: 1) That the Idaho State Forensic Laboratory is correct and there is simply not any sample left; 2) That if there is any substance left to test, Ann Bradley's original findings are confirmed and the sample is non-human; or 3) It is human blood. None of those options show that the petitioner is more likely innocent of the murder. The jury was never given reason to believe that the sample was the victim's blood to begin with. The petitioner makes no suggestion as to what result will show the defendant's innocence – because there is none.

Since no further testing will produce evidence that will probably show that the petitioner is innocent, it is the State's position that this court has no authority to order further testing and so opposes the petitioner's motion.

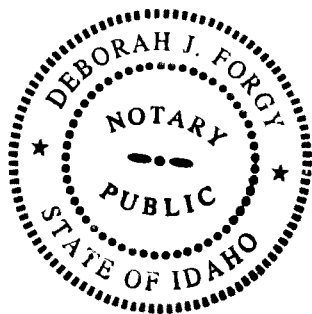
Additionally, it appears to the State that the petitioner's motion for further testing is untimely. Idaho Code §19-4902 requires that a petition requesting further testing of the type requested here must be filed by July 1, 2002, or within one (1) year after the filing of the judgment of conviction, whichever is later. In this case, the July date is the later date and this motion was made well beyond that. The State notified the petitioner on February 3, 2003, that the sample was gone. No explanation is given for delaying nearly nine (9) months to move for further testing.

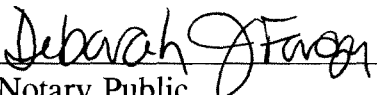
RESPECTFULLY SUBMITTED This 28th day of October, 2003.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Roger Bourne
Deputy Prosecuting Attorney

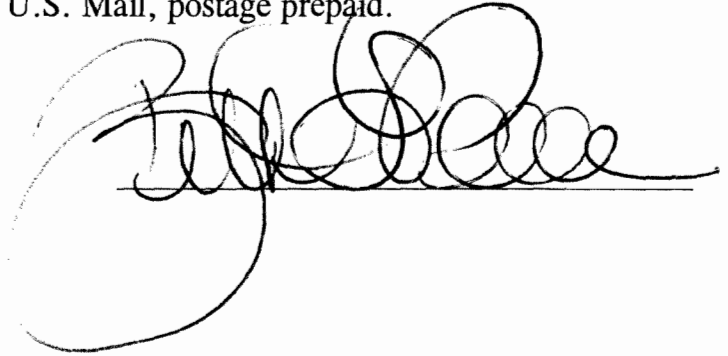
SUBSCRIBED AND SWORN to be me this 28 day of October, 2003.




Notary Public
Resides at: Meridian, ID 83642
Commission Expires 12-3-05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of October, 2003, I served a true and correct copy of the foregoing ANSWER TO PETITION FOR POST-CONVICTION RELIEF to Dennis Benjamin, Attorney at Law, P O Box 2772, Boise ID 83701, the following person(s) by depositing in the U.S. Mail, postage prepaid.

A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive, appearing to read "Dennis Benjamin".

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Idaho State Bar #2127
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

NO. _____
FILED _____
A.M. _____ P.M. 4:30

NOV 24 2003

By J. DAVID NAVARRO, Clerk
DEPUTY

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

ZANE JACK FIELDS)	
)	
Petitioner,	)	CASE NO. SPOT0200590D
vs.)	
	)	STATE'S RESPONSE TO
STATE OF IDAHO,	)	PETITIONER'S MOTION TO
	)	CONDUCT LIMITED
Respondent.	)	DISCOVERY
)	
_____)	


COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes the State's response to petitioner's motion to conduct limited discovery. The petitioner's motion, dated October 10, 2003, is to conduct depositions to determine the location of 19 fingerprint cards that were lifted from the murder scene.

In August 2002, the State notified the petitioner that the fingerprint cards could not be located. However, on November 22, 2002, the State notified the petitioner's attorney, Scott Fouser, by an amended response, that the fingerprints cards had been located and were available for testing if the Court so ordered. New counsel, Dennis Benjamin, apparently did not received that amended response. Therefore, on October 28, 2003, the State notified Mr. Benjamin that the fingerprints cards had been located and told him of the November 22, 2002, amended response. A copy of the letter to Mr. Benjamin is attached.

Discovery in a post-conviction petition is only allowed if the Court permits it after a showing of need. No need has been shown for depositions to locate the fingerprint cards. Therefore, the State objects to any order requiring depositions relating to the fingerprint cards.

RESPECTFULLY SUBMITTED this 24th day of November 2003.

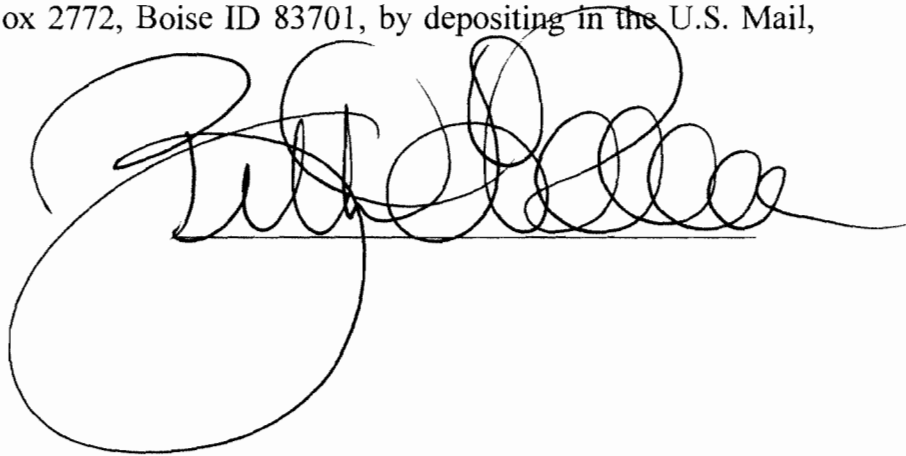
GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of November, 2003, I served a true and correct copy of the foregoing Response to Petitioner's Motion for Limited Discovery to Dennis Benjamin, Attorney at Law, P O Box 2772, Boise ID 83701, by depositing in the U.S. Mail, postage prepaid.



COP



**ADA COUNTY
PROSECUTING ATTORNEY**

GREG H. BOWER

200 W. Front Street, Rm 3191
Boise, Idaho 83702

**CRIMINAL
DIVISION**

Phone (208) 287-7700
Fax (208) 287-7709

**CIVIL
DIVISION**

Phone (208) 287-7700
Fax (208) 287-7719

October 28, 2003

Dennis Benjamin
Attorney at Law
P O Box 2772
Boise ID 83701

**RE: ZANE JACK FIELDS
SPOT0200590D**

Dennis:

I have received your motion for permission to conduct limited discovery relative to missing fingerprint cards. I am attaching to this letter the State's Amended Response to Petition for Post Conviction Scientific Testing dated November 22, 2002. In that response, I informed the Court and counsel that the latent fingerprint cards have been located. You apparently have not seen that amended response.

Sincerely,

GREG H. BOWER
Ada County Prosecuting Attorney

A handwritten signature in cursive script, appearing to read "Roger Bourne".

Roger Bourne
Deputy Prosecuting Attorney

GHB:RAB:blp

Attachment(s)

00087

NO. _____ FILED _____ 3:11
 A.M. _____ P.M. _____
 JUN 28 2004
 J. DAVID HANSEN, Clerk
 By _____

Dennis Benjamin
 ISBA# 4199
 NEVIN, BENJAMIN & McKAY LLP
 P.O. Box 2772
 Boise, ID 83701
 (208) 343-1000
 (208) 345-8274 (f)

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

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
Petitioner,)	
)	
vs.	)	PETITIONER'S AMENDED
	)	MOTION FOR PERMISSION
	)	TO CONDUCT LIMITED
STATE OF IDAHO,	)	DISCOVERY
)	
)	
Respondent.)	
_____)	

In light of the State's acknowledgment of the existence of crime scene fingerprints and its possession thereof, Petitioner amends his previous motion for permission to conduct limited discovery as follows.

Petitioner now seeks discovery of the following:

1. Who lifted the prints?
2. Were these prints examined and who did the examination?
3. Whether any reports were generated regarding the prints?
4. If any reports were generated, Petitioner also seeks copies of those reports.
5. Additionally, the Court should order that the prints be run through AFIS. This

procedure should be conducted with Petitioner's expert present, so he/she is able to observe the

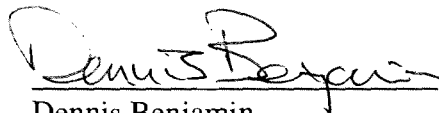
AFIS operator pull the cards and compare them to each of the names that are identified as "hits" (i.e., the most likely matches).

6. If there are any "hits," Petitioner should receive the names and print cards of each person so identified so that Petitioner's expert may conduct an independent comparison.

As previously argued, limited discovery is appropriate in this case because it is necessary to protect the "substantive rights" of petitioner. *Griffith v. State*, 121 Idaho 371, 375, 825 P.2d 94, 98 (Ct. App. 1992). Fingerprints are clearly discoverable material under the statute and Petitioner has previously explained how the fingerprint information could affect the disposition of his application for post-conviction relief. *See*, Motion for Independent Scientific Testing, pg. 3-4.

Therefore, the motion should be granted.

Respectfully submitted this ^{28th} 28 day of June 2004.

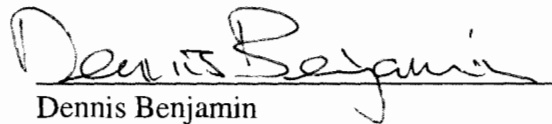


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 28TH date of June 2004 upon the following person(s):

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm 366
Boise, ID 83702


Dennis Benjamin

NO. _____
A.M. _____ FILED P.M. 3:07

JUL 22 2004

By J. David Navarro Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Idaho 83702
(208) 287-7700

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

ZANE JACK FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. SPOT0200590D

**STATE'S RESPONSE TO THE
PETITIONER'S AMENDED
MOTION FOR PERMISSION
TO CONDUCT LIMITED
DISCOVERY AND STATE'S
MOTION TO DISMISS**

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes the State's response to the petitioner's amended motion for permission to conduct limited discovery as follows.

The original petition for post-conviction scientific testing was filed June 27, 2002. The petition requested that three types of scientific testing be conducted. First, that DNA testing be conducted on blood spots found on an orange coat. Second, that additional comparisons to be done on 19 latent fingerprints that were found at the crime scene which did not match the defendant's fingerprints. The third request was that the victim's body be exhumed to obtain fingernail scrapings for possible DNA testing.

The State responded in August 2002 and objected to further testing. However, the State had the coat examined by the Idaho State Police Forensic Laboratory who found that no blood samples remained on the coat. The laboratory assumed that whatever blood had been there in the first place had been entirely used up at the original testing. The Court and the petitioner were notified of the State Laboratory's results by letter, February 3, 2003.

In December 2002, the petitioner withdrew his request that the victim's body be exhumed.

Nothing further was heard from the petitioner for approximately seven (7) months until October 10, 2003, when the petitioner filed a motion for independent scientific testing which was a request that additional DNA testing be done on the coat by a laboratory of the petitioner's choosing. However, as far as the undersigned can tell, the petitioner took no further action besides making the motion. No hearing was noticed up.

On October 14, 2003, the petitioner filed a motion for permission to conduct limited discovery which was an effort to locate the fingerprint cards. In its original response, the State notified the petitioner that the whereabouts of the fingerprint cards were unknown. On

November 22, 2002, the State amended its response to notify the petitioner that the fingerprints cards had been located. The amended response was sent to the attorneys who were then representing the petitioner, Weibe and Fouser in Caldwell. When the State received the petitioner's request for discovery concerning the fingerprint cards, the State notified Dennis Benjamin by letter dated October 28, 2003, that the fingerprint cards had been located. The State attached a copy of its amended response to the letter for Mr. Benjamin's information. In addition to notifying Mr. Benjamin of the amended response, the State responded to the petitioner's motion to conduct limited discovery, on November 24, 2003.


The petitioner took no further steps to set up a hearing or to seek the Court's order after the October 14, 2003, motion. Approximately seven (7) months later, the petitioner filed a motion for limited discovery again dealing with the fingerprints. That motion was filed June 30, 2004. No mention was made of the DNA testing on the orange coat.

The State moves to dismiss the petition for post-conviction scientific testing. It appears to the State that the petitioner is not serious about the petition and has failed to timely prosecute the petition itself. More than two years have passed without a request for a hearing. No showing has been made that further testing of the type sought by the petitioner "has the scientific potential to produce new, non-cumulative evidence that would show that it is more probable than not that the petitioner is innocent." Idaho Code §19-4902(d)(1). The fingerprints in question are not the defendant's fingerprints and the original jury was so advised. The defendant's petition appears to be nothing more than an effort to delay

proceedings in federal court. No genuine issue has been put before the Court. Therefore, the State moves for its dismissal.

DATED this 21 day of July, 2004.

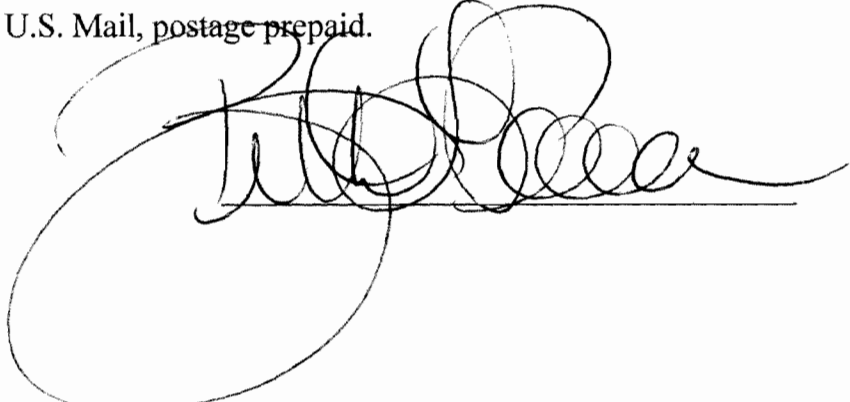
GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21 day of July, 2004, I mailed a true and correct copy of the foregoing to Dennis Benjamin, Attorney at Law, P O Box 2772, Boise ID 83701, by depositing same in the U.S. Mail, postage prepaid.



GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise Idaho 83702
Telephone: (208) 287-7700

NO. _____
FILED
A.M. _____ P.M. 3:07

JUL 22 2004

J. DAVID NAVARRO, Clerk
By J. Navarro
DEPUTY

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

ZANE FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO)
)
Respondent.)

Case No. SPOT0200590D
NOTICE OF HEARING

TO: ZANE FIELDS, and Dennis Benjamin, his attorney of record, you will please take notice that on the 19 day of August, 2004, at the hour of 1:30p of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Roger Bourne will move this Court for its Order denying petitioner's amended motion for permission to conduct limited discovery in the above-entitled action.

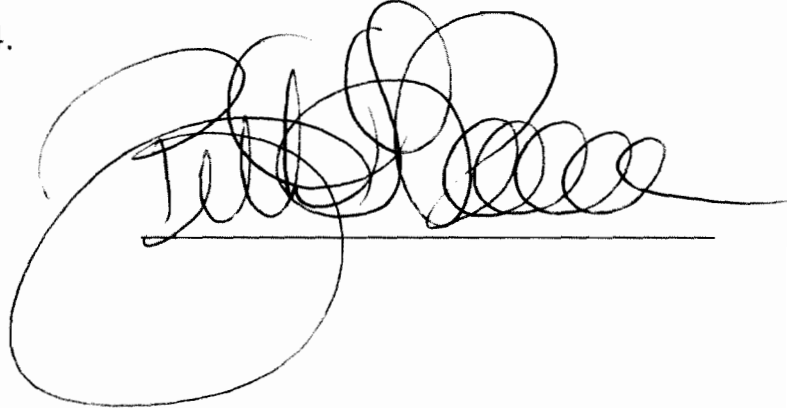
DATED this 21 day of July, 2004.

GREG H. BOWER
Ada County Prosecuting Attorney

R. Bourne
Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I **HEREBY CERTIFY** that I mailed a true and correct copy of the foregoing *Notice of Hearing* to Dennis Benjamin, Attorney of Law, P O Box 2772, Boise ID 83701, by depositing the same in the United States Mail, postage prepaid, this 21 day of July, 2004.

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher, but appears to be a name with a prominent initial.

JUL 22 2004

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

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

THE STATE OF IDAHO,

Plaintiff,

vs.

ZANE JACK FIELDS IDOC #17483,
DOB: [REDACTED]
SSN: [REDACTED]

Defendant.

Case No. SPOT0200590D

ORDER TO TRANSPORT

It appearing that the above-named defendant is in the custody of the Idaho State Board of Correction, and that it is necessary that ZANE JACK FIELDS be brought before this Court on AUGUST 19, 2004 @ 1:30 p.m. for hearing on State's Motion.

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Defendant from the Penitentiary to the Court at said time and on said date;

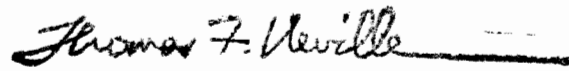
IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Defendant to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho State Board of Correction release the said Defendant to the Ada County Sheriff for the purpose of the aforementioned appearance and retake him into custody from the Sheriff upon his return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a

copy hereof upon the Idaho State Board of Correction forthwith
and certify to the same.

Dated this 2nd day of July, 2004.



THOMAS F. NEVILLE
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of July, 2004, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

ADA COUNTY JAIL
VIA FAX

Dennis Benjamin
~~ADA COUNTY PUBLIC DEFENDER~~
INTERDEPARTMENTAL EMAIL

DEPARTMENT OF CORRECTION
RECORDS ADMINISTRATION
1299 N ORCHARD STE 110
BOISE ID 83706

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By *[Signature]*
Deputy

Dennis Benjamin
 ISBA# 4199
 NEVIN, BENJAMIN & McKAY LLP
 P.O. Box 2772
 Boise, ID 83701
 (208) 343-1000
 (208) 345-8274 (f)

NO. _____ FILED 3:05
 AM. _____
 AUG 12 2004
 By: J. DAVID N. THOMAS
 DEPT.

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

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
Petitioner,)	
)	
vs.	)	PETITIONER'S RESPONSE
	)	TO STATE'S MOTION TO DISMISS
STATE OF IDAHO,	)	AND REPLY IN SUPPORT OF
	)	AMENDED MOTION TO CONDUCT
Respondent.	)	LIMITED DISCOVERY
)	

Petitioner, Zane Fields, submits the following in response to the State's Motion for Dismiss, filed on July 22, 20004, and in support of his Amended Motion to Conduct Limited Discovery filed on June 28, 2004.

The first stated basis for the Motion to Dismiss is that "[i]t appears to the State that the petitioner is not serious about the petition and has failed to timely prosecute the petition." State's Response . . . and Motion to Dismiss, pg. 3. However, that argument is without merit, as explained below.

A. Petitioner Is Serious about this Case.

First, Petitioner is serious about the Petition. It is literally a matter of life or death to him. As explained in his Response to State's Partial Motion to Dismiss Petitioner for Post-Conviction

PETITIONER'S RESPONSE TO STATE'S MOTION TO DISMISS AND REPLY BRIEF IN SUPPORT OF AMENDED MOTION FOR PERMISSION TO CONDUCT LIMITED DISCOVERY - 1

CONFIDENTIAL

Scientific Testing, examination of the fingerprint cards with the AFIS system may lead to the identity of the true killer in this case. At trial, two witnesses testified that they saw a suspicious looking man, who was not the petitioner, in the Wishing Well just minutes before the murder.

In evaluating this testimony it is important to know that Jackie Pyle, the Ada County Dispatch supervisor, testified that Mrs. Vanderford made a 911 emergency call at 11:18 a.m. on February 11, 1988. Mrs. Vanderford told the dispatcher that she had been stabbed and that the attacker had already left the store. Trial Transcript, pg. 994 ln. 18-22; pg. 997, ln. 23-25. (Mrs. Pyle's testimony is attached to Counsel's Affidavit in Opposition to Motion to Dismiss as Exhibit A.)

Witness Betty Hornecker testified that she was in the Wishing Well at 11:00 a.m. when she saw a man enter the store and walk quickly to the rear of the store without looking at any of the merchandise. Trial Transcript, pg. 927, ln. 11-16. (Mrs. Hornecker's testimony is attached to Counsel's Affidavit in Opposition to Motion to Dismiss as Exhibit B.) According to Mrs. Hornecker, this man did not look like he fit in the store, was acting suspiciously by trying to avoid her and averted his gaze in a suspicious manner. Exhibit B, pg. 929, ln. 29-30, ln. 24. This man was still in the Wishing Well at 11:08 -11:10 a.m. when Mrs. Hornecker left the store. Exhibit B, pg. 931, ln. 15 -932, ln. 8. However, he could not have been Zane Fields because he was described as wearing navy-blue clothing, in particular a navy-blue hooded, zip-front sweat shirt, and not the orange camo jacket which the State claims Mr. Fields was wearing during the killing. Exhibit B, pg. 954, ln. 15-16; pg. 965, ln. 9-10. Further, she estimated the man to be six feet four, between 230-240 pounds, Exhibit B pg. 932, ln. 18-20, and in his 40s. Exhibit B, pg.

957, ln. 12-15. Her description is not of Mr. Fields. According to a February 22, 1988, Boise Police Report, Mr. Fields was much younger (29 years old), much shorter (5 feet-11 inches tall) and weighed much less than the man in the Wishing Well just before the killing (200 instead of 230–240 pounds). Exhibit I to Affidavit of Counsel in Opposition to Motion to Dismiss.

Further, Mr. Fields' hair was long, reddish and bushy, *see* State's Trial Exhibit D (lineup), while the man in the Wishing Well was "balding on the crown of his head" had a "receding type hairline" and what hair he had was "brownish" and "above the ears." Exhibit B, pg. 932, ln. 22 - pg. 933, ln. 7.

As Mrs. Hornecker was leaving the store, another woman entered. Exhibit B, pg. 935, ln. 2-3. A few minutes after Mrs. Hornecker left the store, she noticed an ambulance on an emergency call traveling east on Fairview toward the area of the Wishing Well. She estimated the time she saw this as 11:15-11:18. Exhibit B, pg. 935, ln. 8 pg. 936, ln. 7. This ambulance could have been in response to Mrs. Vanderford's call or it could have been, according to the testimony of Michael Ervin, a paramedic at Ada County Emergency Medical Services, a different emergency vehicle which was passing the Wishing Well in response to an unrelated call made at 11:15 a.m. Trial transcript, pg. 1049, ln. 7, pg. 1050, ln. 5. (Mr. Ervin's testimony is attached to the Affidavit of Counsel in Opposition to Motion to Dismiss as Exhibit C.) Mr. Ervin testified that an emergency call came in that day to the Liberty and Fairview field station at 11:15 a.m. Exhibit C, pg. 1039, ln. 6-7; pg. 1049, ln. 7-9, and that it takes a minute or less to get a vehicle out the door after a call comes in. He estimated that the ambulance would have been sent out and

passing the Wishing Well about a minute after the call was received. Exhibit C, pg. 1049, ln. 7 - pg. 1050, ln. 5.

The second witness, Murie Munk came into the Wishing Well between 11:05 and 11:10. Trial Transcript, pg. 967, ln. 18-20. (Mrs. Munk's testimony is attached to the Affidavit of Counsel in Opposition to Motion to Dismiss as Exhibit D.) She must have been the woman Mrs. Hornecker saw entering the store as Mrs. Hornecker was leaving. Mrs. Munk also saw the man described by Mrs. Hornecker. She, Mrs. Vanderford and the man were the only people in the store. Exhibit D, pg. 976, ln. 12-14. Mrs. Munk testified that the man was more than six feet tall (but under six- three), weighed about 230 pounds, was about 48 years old and wore dark grubby clothes. Exhibit D, pg. 971, ln. 12-20; pg. 986, ln. 10-12. Mrs. Munk was certain that this man could not have been wearing orange or red clothing. Exhibit D, ln. 987, ln. 4-9. Again, this could not have been Mr. Fields. Mrs. Munk testified that she left the store no more than 10 minutes later, *i.e.*, no later than between 11:15-11:20 a.m. The man was still in the store when she left. Exhibit D, pg. 970, ln. 5-23.

As she left the store, she noticed an ambulance traveling past the Wishing Well on Fairview. Exhibit D, pg. 972, ln. 6-20.

In light of the above, Mrs. Munk must have left the store at about 11:16-11:17, depending upon when the ambulance passed the Wishing Well. Mrs. Vanderford and the unknown man were the only ones in the store when she left. And by 11:18, Mrs. Vanderford had already been attacked and the assailant had escaped. Thus, it seems very probable that the man in the store, who did not resemble Mr. Fields and was not wearing the distinctive orange coat, was the killer.

If that person left one of the 18 latent fingerprints from the crime scene it could lead to his identity. Assuming a driver's license or booking photograph could be obtained of that person, the two witnesses may be able to identify him as the man inside the Wishing Well just before the murder took place. Thus, further examination of that evidence has the "potential to produce new, noncumulative evidence that would show that it is more probable than not that the petitioner is innocent." This, in turn, would entitle him to relief under I.C. § 19-4902(d)(2).

B. There Has Not Been Undue Delay in this Case.

As to the allegation of undue delay, it will be no surprise to the Court, Petitioner is sure, to hear that further proceedings in many of the Idaho capital cases have been suspended or held in abeyance pending the final decision on the retroactivity of *Ring v. Arizona*, 536 U.S. 584 (2002). In this regard, it is worth noting that it only took petitioner four days to file additional pleadings in this case after the decision in *Schriro v. Summerlin*, ___ U.S. ___, 124 S.Ct. 2519 (2004), was announced on June 24, 2004.¹ Thus, it cannot be persuasively argued that Petitioner did not act promptly once the United States Supreme Court issued its decision in *Schriro*. It was reasonable to wait for the *Schriro* decision because a ruling that *Ring* was retroactive under

¹ Mr. Fields does not concede that *Schriro* mandates a finding of non-retroactivity of *Ring* in his case. Among the reasons that *Ring* should be held to be retroactive in Idaho state courts are: 1) the portions of Arizona's death penalty statute which led the U.S. Supreme Court to conclude retroactivity was not required are not present in Idaho's death penalty statute and 2) Idaho state retroactivity law is different than federal retroactivity law and should lead to a different conclusion than the one reached in *Schriro*. Compare, *Teague v. Lane*, 489 U.S. 288 (1989), with *State v. Whitman*, 96 Idaho 489, 531 P.2d 579 (1975) and *Application of Gafford*, 127 Idaho 472, 903 P.2d 61 (1995). The question of whether *Ring* should be retroactively applied in Idaho is currently pending before the Idaho Supreme Court in *State v. Hoffman* and *State v. Porter*.

federal law would have required this Court to vacate Mr. Field's death sentence and then all the typical rules of discovery in criminal cases would have been available to the Petitioner for him to develop the evidence he now seeks through his motion for limited discovery.

Moreover, in addition to being factually incorrect, the State's charge that Petitioner is not taking the petition seriously enough is not a legally cognizable basis for dismissal. That is why the State cites to no rule, statute, case or other authority to support its claim. No such authority exists. Thus, that portion of the State's motion has no merit, either factual or legal.

Furthermore, AFIS offers technological advances that did not exist at the time of trial. "Every day about 50,000 submissions are added to IAFIS." Police: The Law Enforcement Magazine (www.policemag.com). The article further notes that "The success of AFIS is driven jury not by computer technology but also by digital imaging technology. Digital imaging lets technicians perform enhancements on fingerprints . . . that make what were once invalid prints usable." (A true and copy of this article is attached as Exhibit E to the Affidavit of Counsel.) A web page from the State of Connecticut Department of Public Safety (www.state.ct.us/dps) discussing the uses of AFIS technology, notes that AFIS "checks can be done with no suspects" and that "a 'cold' search of the entire AFIS database with no demographic information or search parameters would take approximately 48 minutes." (A true and correct copy of this web page is attached as Exhibit F to Counsel's Affidavit.) A news story from ComputerUser.com (www.computeruser.com) dated August 11, 1999, noted that FBI had just implemented a national AFIS system. It further notes that the "FBI reports it received about 50,000 fingerprints

a day, roughly half of which pertain to criminal matters.” (A true and correct copy of the news story is attached as Exhibit G to Counsel’s Affidavit.)

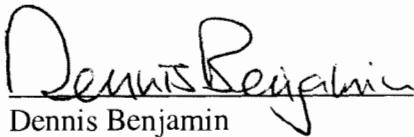
Petitioner has also attached to Counsel’s Affidavit (as Exhibit H) a news story from The Tallahassee Democrat, entitled “Database Hunt Fingers Suspect,” dated June 17, 2000, which gives further background on AFIS technology. The article quotes Jim Gettemy, a crime lab supervisor for the Florida Department of Law Enforcement, as saying AFIS is “the greatest investigative tool used today in solving unsolved crimes.”

Finally, the petition is not subject to dismissal under I.R.C.P. 40(c). Rule 40(c) governs the dismissal of inactive cases. However, the rule only applies to cases where there had been “no action taken . . . for a period of six (6) months[.]” That rule is not applicable in this case because Petitioner filed an Amended Motion to Conduct Limited Discovery on June 28, 2004.

C. Conclusion

The State’s Motion to Dismiss does not state a factual or legal basis for the relief it requests and should be denied. However, the Court should grant the Petitioner’s Amended Motion for Permission to Conduct Limited Discovery. In addition the state should give defense experts an opportunity to inspect any evidence relating to this case which is in the state’s possession. While there is no reason to believe that the state has withheld evidence in bad faith, Mr. Fields simply raises the possibility that evidence which was overlooked in 1988 may now be recognized as testable with advancing technology.

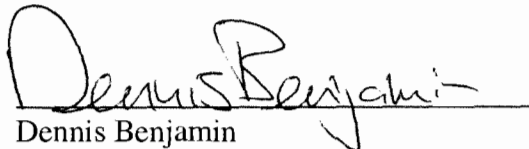
Respectfully submitted this 12th day of August, 2004.


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 12th date of August, 2004 upon the following person by hand-delivery:

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm. 366
Boise, ID 83702


Dennis Benjamin

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN & McKAY LLP
303 W. Bannock
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Boise, ID 83701
(208) 343-1000

NO. _____ FILED _____ 3:03
A.M. _____ P.M. _____

AUG 12 2004

By: David M. Valafrio Clerk
DAVID M. VALAFRIO CLERK

Attorneys for the Petitioner

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE FIELDS,)	
	)	SPOT 0200590D
Petitioner,)	
	)	PETITIONER'S REQUEST
vs.	)	THAT THE COURT TAKE
	)	JUDICIAL NOTICE
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

Zane Fields asks this Court, pursuant to IRE 201(d), to take judicial notice of the files, records and transcripts in the case of *State v. Zane Fields*, Ada Co. No. HCR 16259.

Respectfully submitted this 12th day of August, 2004.

Dennis Benjamin
Dennis Benjamin
Attorney for Petitioner

CA

CERTIFICATE OF SERVICE

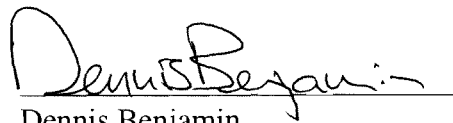
I CERTIFY that on August 12, 2004, I caused a true and correct copy of the foregoing document to be

DB mailed

hand delivered

faxed

to: Roger Bourne
Chief Criminal Deputy
Ada County Prosecuting Attorney
200 W. Front St., Rm. 366
Boise, ID 83702


Dennis Benjamin

Session: Neville081904
Session Date: 2004/08/19
Judge: Neville, Thomas F.
Reporter: Gambee, John

Division: DC
Session Time: 08:24

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0004

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2004/08/19

13:53:38 - Operator
Recording:

13:53:38 - New case
STATE OF IDAHO

13:54:04 - Judge: Neville, Thomas F.
Court inquires about what counsel thought what was on calendar today.

13:54:45 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin indicated that thought was on calendar for Motion to Conduct

13:55:09 - Plaintiff Attorney: BENJAMIN, DENNIS
Limited Discovery

13:55:13 - Judge: Neville, Thomas F.
Court notes several underlying motions in file but not noticed.

00111

- 13:56:58 - Plaintiff Attorney: BENJAMIN, DENNIS
Not prepared to hear Motion to Dismiss today, would like to supplement
- 13:57:14 - Plaintiff Attorney: BENJAMIN, DENNIS
Request Court set hearing on all motions.
- 13:57:28 - Judge: Neville, Thomas F.
Court does not not have problem with that
- 13:59:48 - State Attorney: BOURNE, ROGER
Mr. Bourne had no objection to that but did believe that Mr. Benjamin
- 14:00:12 - State Attorney: BOURNE, ROGER
responded to State's Motion to Dismiss.
- 14:00:20 - Judge: Neville, Thomas F.
Court will here what we can today and set all remaining motions to August 31,
- 14:02:58 - Judge: Neville, Thomas F.
2004 @ 1:30 p.m.
- 14:03:16 - Judge: Neville, Thomas F.
Court inquired of judicial notice of the file
- 14:03:54 - State Attorney: BOURNE, ROGER
No objection to the file and transcript but would object to newspaper article
- 14:04:08 - State Attorney: BOURNE, ROGER
in Florida
- 14:04:12 - Judge: Neville, Thomas F.
Court will grant that request. Court continues to Motion for independent
- 14:04:49 - Judge: Neville, Thomas F.
scientific testing by independent lab other than Idaho crime lab. Court had
- 14:05:22 - Judge: Neville, Thomas F.
signed an order allowing testing on exhibit 22 which did not produce any
- 14:05:59 - Judge: Neville, Thomas F.
results. Mr. Benjamin filed motion to allow independent testing.
- 14:06:27 - State Attorney: BOURNE, ROGER
Believe that would go along with the State's Motion to Dismiss
- 14:06:39 - Plaintiff Attorney: BENJAMIN, DENNIS
concur
- 14:07:51 - Judge: Neville, Thomas F.
The Court will request that Mr. Benjamin provide any further affidavits and
- 14:08:28 - Judge: Neville, Thomas F.
documents by Tuesday the 24th
- 14:09:19 - State Attorney: BOURNE, ROGER
Mr. Bourne state fingerprint examiner out of town all next w

ee. Court was
14:09:38 - State Attorney: BOURNE, ROGER
going to spend some time with her
14:10:28 - Judge: Neville, Thomas F.
Court could set hearing a little later to Sept. 2, 2004 @ 9:
00 a.m.
14:10:59 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin indicated defendant will waive any further pres
ence here.
14:11:28 - Judge: Neville, Thomas F.
Court will not have defendant transported at his request
14:11:44 - Judge: Neville, Thomas F.
The Court will hear all motions on that date
14:12:02 - Operator
Stop recording:

Session: Neville092104
Session Date: 2004/09/21
Judge: Neville, Thomas F.
Reporter: Gambée, John

Division: DC
Session Time: 08:38

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2004/09/21

09:29:42 - Operator
Recording:

09:29:42 - New case
STATE OF IDAHO

09:30:00 - Judge: Neville, Thomas F.

Court notes petitioner not present for the record. Petitioner chose not to

09:30:13 - Judge: Neville, Thomas F.

be here for future proceedings. Court has petitioner's Motion to Vacate

09:30:47 - Judge: Neville, Thomas F.

sentencing as well as State's motion to Dismiss petition. Court was also

09:31:01 - Judge: Neville, Thomas F.

requested to take judicial notice of the underlying file.

09:31:25 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated he also has Motion for independent testing

09:31:51 - Judge: Neville, Thomas F.
Court goes to Motion for limited Discovery. Court inquired about the

09:32:14 - Judge: Neville, Thomas F.
fingerprint testing

09:32:26 - State Attorney: BOURNE, ROGER
Mr. Bourne stated since last here, have asked the fingerprint analyst to

09:32:46 - State Attorney: BOURNE, ROGER
review all the fingerprints and ridged development for AFIS test.

09:33:34 - State Attorney: BOURNE, ROGER
Fingerprint located from the Wishing Well that was on an object in the store.

09:33:47 - State Attorney: BOURNE, ROGER
Have given that name to Mr. Benjamin of the individual

09:36:46 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin introduces investigator and co-counsel from Federal Habeas Case

09:37:22 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin made opening statement. State in possession of 18 fingerprint

09:39:10 - Plaintiff Attorney: BENJAMIN, DENNIS
cards and orange jacket. Prima facie case established.

09:55:14 - Plaintiff Attorney: BENJAMIN, DENNIS
Request Court deny Motion to Dismiss and grant limited discovery

09:55:55 - State Attorney: BOURNE, ROGER
Mr. Bourne stated does not contend that should be dismissed regarding

09:58:16 - State Attorney: BOURNE, ROGER
fingerprints, no objection to setting for later date to allow Mr. Benjamin to

10:01:22 - State Attorney: BOURNE, ROGER
have opportunity to have Mr. Kerchovsky look at fingerprints and to test

10:01:50 - State Attorney: BOURNE, ROGER
jacket.

10:02:17 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin advised the Court it may or may not be Mr. Kerchovsky being the

10:03:02 - Plaintiff Attorney: BENJAMIN, DENNIS
one to review.

10:04:30 - Judge: Neville, Thomas F.
Court regarding have the scientific potential to showing non

cumulative

- 10:04:47 - Judge: Neville, Thomas F.
evidence
- 10:04:51 - Plaintiff Attorney: BENJAMIN, DENNIS
Response
- 10:05:49 - Judge: Neville, Thomas F.
Court will take under advisement.
- 10:06:47 - Judge: Neville, Thomas F.
Court inquires if any further argument from counsel
- 10:07:16 - State Attorney: BOURNE, ROGER
May be more productful to wait for Mr. Benjamin to do analysis on
- 10:07:42 - State Attorney: BOURNE, ROGER
fingerprints.
- 10:07:46 - Judge: Neville, Thomas F.
Only thing Court is considering then is petitioner's request for limited
- 10:08:09 - Judge: Neville, Thomas F.
discovery.
- 10:08:13 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin understands that State may be giving us those things and
- 10:08:48 - Plaintiff Attorney: BENJAMIN, DENNIS
withdrawing objection for failure to file timely
- 10:09:05 - Judge: Neville, Thomas F.
Court in recess
- 10:09:30 - Operator
Stop recording:

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN & McKAY LLP
P.O. Box 2772
Boise, ID 83701
(208) 343-1000
(208) 345-8274 (f)

2:09

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

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
)	
Petitioner,)	
)	
vs.	)	PETITIONER'S
	)	MOTION FOR PRODUCTION
	)	OF DOCUMENTS
)	
STATE OF IDAHO,)	
)	
)	
Respondent.)	
_____)	

Comes now, Zane Fields, and asks this Court for Permission to conduct limited discovery as follows.

Petitioner now seeks production of the following documents:

1. All photographs of the crime scene so that the location of the beer mug with Daniel States's fingerprint upon it may be determined.
2. Comparison quality finger and palm prints from Daniel States so Mr. States may be identified as or excluded from being the maker of the bloody prints found on the counter.
3. Comparison quality finger prints and palm prints from Ralph Simmons and all law enforcement and medical personnel known to have been at the crime scene, including:

Stephen Haven
Gary Newbold

Ethelle Knight
Dennis Scifres
Jim Cibly
Randy Folwell
Brant Cornwall
Chief James Montgomery
Lt. Larry Jones
Gary Raney
Mark Ayotte
Robert Ruth
Jeff Phillips
Michael Irwan (Irwin?)
Ralph Simmons
Catherine Vanderford
Karen Vanderford
Herbert Vanderford

so that they may be identified as or excluded from being the maker of the bloody prints found on the counter.

4. All photographs of Daniel States in the State's possession.
5. All notes, logs, reports, or other documents regarding to the crime scene created in whole or part by Cindy Hill, Robert Kerchusky or any other officer that relate to the inspection for or collection of fingerprints and other forensic evidence
6. All photos and videotapes of the crime scene.
7. All audiotapes made at the crime scene.
8. All information regarding the fingerprints obtained from a rear view mirror of an automobile which were submitted to the petitioner.

This motion is based upon the affidavit of Lisa Allyn DeMeo filed contemporaneously herewith.

Respectfully submitted this ^{30th}30 day of March, 2005.

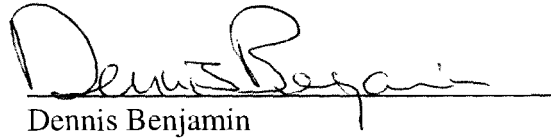


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 30th date of March, 2005 upon the following person(s):

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm 366
Boise, ID 83702


Dennis Benjamin

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN & McKAY LLP
P.O. Box 2772
Boise, ID 83701
(208) 343-1000
(208) 345-8274 (f)

NO. _____
FILED _____
A.M. _____ P.M. 3:57

APR 21 2005

J. DAVID NAVARRO, CLERK
By J. Navarro
DEPUTY

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

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
Petitioner,)	
)	
vs.	)	NOTICE OF HEARING ON
	)	MOTION FOR PRODUCTION
	)	OF DOCUMENTS
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

TO: THE CLERK OF THE COURT

AND: THE STATE OF IDAHO

Zane Fields hereby gives his notice that his Motion for Production of Documents will be heard on May 23, 2005 at 1:30 p.m., before the Honorable Thomas Neville, at the Ada County Courthouse, Boise, Idaho.

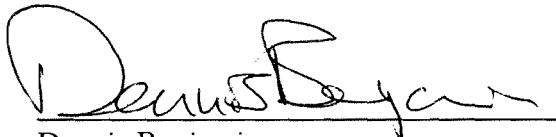
Dated this 21st day of April, 2005.

Dennis Benjamin
Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 21st day of April, 2005 upon the following person(s):

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm 366
Boise, ID 83702


Dennis Benjamin

Dennis Benjamin
 ISBA #4199
 NEVIN, BENJAMIN & McKAY LLP
 303 W. Bannock St.
 P.O. Box 2772
 Boise, Idaho 83701
 Telephone: (208) 343-1000
 Facsimile: (208) 345-8274 (f)

NO. _____
 A.M. _____ P.M. 3:34
 JUN 06 2005
 By J. DAVID NAVARRO, Clerk
 DEPUTY _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE FIELDS,)	
)	
Petitioner,	)	Case No. SPOT 0200590D
)	
vs.	)	PETITIONER'S MOTION
	)	FOR ACCESS TO EVIDENCE
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

Petitioner, Zane Fields, asks this Court for its Order granting him access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprint testing. In particular, Mr. Field requests access to the sex assault kit with samples taken from the victim in this case.

Discovery during post-conviction relief proceedings is required when "necessary to protect an applicant's substantial rights" and is traditionally a "matter put to the sound discretion of the district court." *Fairchild v. State*, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996).

However, recently enacted Idaho Code § 19-402(b) specifically addresses the scope of discovery

MC

during post-conviction proceedings when a petitioner is seeking discovery for the purposes of DNA or fingerprint testing. Idaho Code § 19-402(b) (Michie 2004). Whether discovery in this case is governed by Idaho Code § 19-402(b) or traditional state law governing discovery in post-conviction proceedings, Petitioner should be allowed access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprinting testing as requested. Petition for Post-Conviction Scientific Testing, pg. 4.

Signed into law in 2001, Idaho Code §19-402(b) was enacted with the specific purpose of “allow[ing] for post-conviction DNA testing in appropriate cases.” *Statement of Purpose*, H.R. 242, 56th Leg., 1st Reg. Sess. (Idaho 2001). Understanding the ultimate intention of the criminal justice system is the fair conviction of the guilty and the protection of the innocent, House Bill 242 was passed because “Idaho inmates have no statutory right to tests that may exonerate them.” *Id.* Noting that as of 2001, 65 individuals in the United States and Canada had been exonerated as a result of DNA testing, the Idaho legislature felt it only fair that inmates are afforded the same tools that “prosecutors have been utilizing . . . for nearly a decade in seeking convictions.” *Id.*

With this background, Idaho Code § 19-4902(b) became effective July 1, 2001, stating:

A petitioner may, at any time, file a petition before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint or forensic deoxyribonucleic acid (DNA) testing *on evidence that was secured in relation to the trial* which resulted in his or her conviction but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of trial. The petition must be filed by July 1, 2002, or within one (1) year after the filing of the judgment of conviction, whichever is later. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

Idaho Code § 19-4902(b) (Michie 2004) (emphasis added).

2 • PETITIONER’S MOTION FOR ACCESS TO EVIDENCE

Where the language of a statute is plain and unambiguous the Supreme Court of Idaho has given the effect to the statute as written. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). When the language of the statute is plain and unambiguous the statute is to be given its obvious and rational meaning. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). If the language is clear and unambiguous, there is no reason for the court to resort to legislative history or canons of statutory interpretation. *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000).

The obvious and rationale meaning of § 19-4902(b) is that the evidence collected by the police while investigating Petitioner in this case and still in their possession is evidence that was secured in relation to the trial which resulted in his conviction. It is in stark contrast to the plain meaning of the statute to suggest that pursuant to § 19-4902(b) a petitioner may only test the evidence which was actually admitted into trial or to deny petitioner access to the evidence secured in relation to the trial which resulted in his conviction.

When a court must engage in statutory interpretation, the court has the duty to ascertain the legislative intent and give proper effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. In ascertaining the intent of the legislature, the court must look at the literal words of the statute, the context of the words, the public policy behind the statute, and finally its legislative history. *Id.*

As explained previously, the literal words of the statute clearly suggest it was the intent of the legislators to allow access to *all* of the evidence gathered in relation to trial, provided the other requirements of § 19-4902 are satisfied. Had it been the legislators' intent to limit the scope of

evidence available to post-conviction DNA and fingerprint testing, the legislators would have simply stated that the only evidence available for such testing is evidence which was admitted in the trial resulting in the conviction of the petitioner.

As asserted in the “Statement of Purpose” for the Bill, the legislators felt the need to take steps beyond those previously afforded petitioners under the traditional rules of discovery for post-conviction proceedings and assure inmates are given a statutory right to reliable objective tests that may exonerate themselves. *Statement of Purpose*, H.R. 242, 56th Leg., 1st Reg. Sess. (Idaho 2001). The public policy concerns driving the legislature in passing this statute was the rising numbers of wrongful convictions in the United States and Canada in recent years. *Id.* These public policy concerns are still valid today. Currently, 159 inmates have been exonerated as a result of DNA testing. *The Innocence Project* homepage, at www.innocenceproject.org.

Similarly, the legislative history behind the statute also supports a literal interpretation of the statute, thus, allowing inmates the opportunity to test *all* the evidence gathered in relation to the trial which resulted in their conviction. The Bill, as originally proposed, stated petitioners will be able to test any evidence “secured in connection with the trial resulting in the judgement.” *Bill Text*, H.R. 242, 56th Leg., 1st Reg. Sess. (Idaho 2001). While in the Judiciary and Rules Committee, this language was amended to read as it currently does, that testing can occur on any evidence “secured in relation to the trial.” *Engrossed Bill*, H.R. 242, 56th Leg., 1st Reg. Sess. (Idaho 2001). Arguably, by broadening the language of the statute the legislature intended more evidence would be available for inmates to test and perhaps exonerate themselves. With this reasonable scope of discovery established, the Bill was passed unanimously in both the Senate

and House (albeit 3 Representatives were absent). *Daily Data Tracking History*, H.R. 242, 56th Leg., 1st Reg. Sess. (Idaho 2001).

Therefore, as discussed, the literal language of the statute, the public policy behind the statute, and the legislative history all support the plain meaning interpretation of § 19-4902(b) in allowing petitioners the opportunity to test *all* the evidence secured in relation to the trial which resulted in their conviction. To limit the petitioners' statutory right to test potentially exonerating evidence to only that which was admitted into trial is in opposition to the plain language of the statute as well as the intent of the legislature.

Despite this reasonable scope of potentially testable evidence, the statute does contain numerous restrictions which prevent a flood of requests seeking post-conviction testing. The petitioner must prove that both “[i]dentity was an issue in the trial which resulted in his or her conviction; and the evidence to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material aspect.” Idaho Code § 19-4902(c) (Michie 2004). Neither of these concerns is an issue in this case. Identity was a significant issue at trial and the evidence Petitioner requests access to has been in police custody since then.

The courts of Idaho have yet to address this specific issue of DNA and fingerprint testing in post-conviction relief proceedings since the enactment of § 19-4902. Nonetheless, numerous other states have similarly worded statutes granting inmates the statutory right to DNA testing in post-conviction proceedings. In Delaware, with the same “in relation to trial” language, the Delaware Supreme Court has stated the statute “seems unlikely to generate a dispute. Petitioner

must identify the evidence for which testing is sought, and the evidence must have been secured in relation to the trial.” *Anderson v. State*, 831 A.2d 858, 865 (Del. 2003) (commenting on Del. Code Ann. tit. 11, § 4501(a)(1)). California, meanwhile, has simply added the language that “the court in its discretion may consider any evidence whether or not it was introduced at trial” directly to the statute. Cal. Penal Code §1405(f)(5).

Accordingly, Petitioner should be allowed access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprinting testing pursuant to Idaho Code § 19-402(b). Nevertheless, should this Court find that § 19-4902(b) is not the applicable law governing discovery during post-conviction proceedings, Petitioner should be allowed access to all of the evidence collected by the police based upon traditional rules of discovery during post-conviction proceedings.

When appropriate, I.C.R. 57(b) allows the district court to permit discovery if there is a legitimate need for it. *Aeschliman v. State*, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999). Reviewing the district court’s denial of petitioner’s discovery request, the *Aeschliman* court held, “[in] order to be granted discovery, a post-conviction applicant must identify the type of information that he or she may obtain through discovery that could affect the disposition of his or her application for post-conviction relief.” *Id.* (citing *Fairchild v. State*, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996)). In that case, the district court denied petitioner’s motion for broad “civil discovery” where the petitioner failed to “specify the issues he wished to obtain discovery on and why they were pertinent to his application.” *Id.*

In *Aeschliman*, the Court of Appeals stated it was concerned that “unlimited discovery”

situations were simply “fishing expeditions.” *Aeschliman*, 132 Idaho at 401, 973 P.2d. at 753. That court commended the district court’s decision to deny the petitioner’s motion without prejudice and its directive to petitioner that he could renew his motion for discovery with the requisite specificity regarding the issues addressed and their importance to his post-conviction relief. *Aeschliman*, 132 Idaho at 402, 973 P.2d. at 754. Unexplainably, the petitioner failed to do so in that case. *Id.* The *Aeschliman* court stated that discovery would have been proper in that case had the petitioner simply “submitted specific areas in which he required discovery, and why those areas were necessary.” *Aeschliman*, 132 Idaho at 403, 973 P.2d. at 755.

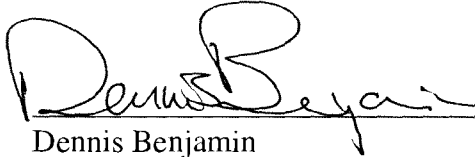
Similarly, in *LePage v. State*, the Court of Appeals again stated, “[i]n order to be granted discovery, a post-conviction applicant must identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his or her application. *LePage v. State*, 138 Idaho 803, 810, 69 P.3d 1064, 1071 (Ct. App. 2003). Petitioner in that case sought “any and all evidence to which he would have been entitled at the time of trial.” *Id.* The *LePage* court, in reviewing the district court’s denial of petitioner’s motion for discovery, held the petitioner had properly identified certain areas of discovery but “failed to show why those areas were pertinent to his application for post-conviction relief.” *Id.* at 810-11.

Unlike the petitioners in *Aeschliman* and *LePage*, Petitioner in this case is seeking discovery for post-conviction DNA and fingerprinting testing which is specifically governed by Idaho Code § 19-4902(b). Moreover, Petitioner in this case has specified the areas and issues he wishes to obtain discovery on and why they are pertinent to his post-conviction relief, thus additionally satisfying the requirements of traditional post-conviction discovery. In this case, Petitioner seeks

to obtain discovery on items that can potentially be used for DNA or fingerprint testing and these are pertinent because they are reliable objective tests which can exonerate him.

Undoubtably finality of judgments is a concern in allowing post-conviction discovery. However, the legislature in passing § 19-4902(b) and the courts of Idaho in setting forth the requirements for obtaining traditional discovery in post-conviction proceedings acknowledge the need to allow inmates the opportunity, when appropriate, to require state officials to account for evidence in their custody. If there is a way, as there is in this case, to establish the Petitioner's true innocence on the basis of a highly accurate objective scientific test, in good conscience it should be permitted. Therefore, the Court should grant the motion to permit Mr. Field access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprinting testing.

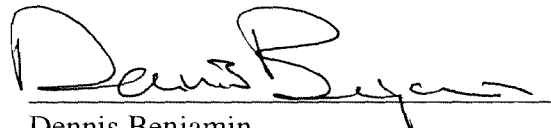
Respectfully submitted this 17th day of June, 2005.


Dennis Benjamin
Attorney for Zane Fields

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2005, I caused to be served a true and correct copy of the foregoing document by the U.S Mail postage prepaid and addressed to:

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 W. Front St., Suite 366
Boise ID 83702


Dennis Benjamin

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN & McKAY LLP
P.O. Box 2772
Boise, ID 83701
(208) 343-1000
(208) 345-8274 (f)

NO. _____ FILED _____
A.M. _____ P.M. 3:34

JUN 06 2005

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

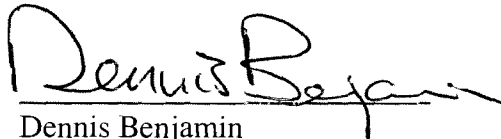
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
Petitioner,)	
)	
vs.	)	NOTICE OF RESET HEARING ON
	)	MOTION FOR PRODUCTION
	)	OF DOCUMENTS AND MOTION
STATE OF IDAHO,	)	FOR ACCESS TO EVIDENCE
)	
Respondent.)	
_____)	

TO: THE CLERK OF THE COURT
AND: THE STATE OF IDAHO

Zane Fields hereby gives his notice that his Motion for Production of Documents and his Motion for Access to Evidence will be heard on July 25, 2005 at 1:30 p.m., before the Honorable Thomas Neville, at the Ada County Courthouse, Boise, Idaho.

Dated this 6 day of June, 2005.

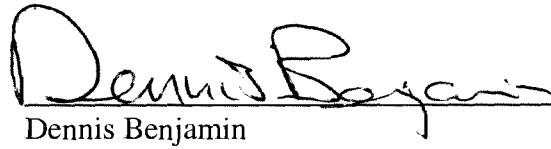

Dennis Benjamin
Attorney for Petitioner



CERTIFICATE OF SERVICE

I certify that the foregoing was served this 6 date of June, 2005 upon the following person, via U.S. Mail:

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm 366
Boise, ID 83702


Dennis Benjamin

NO. _____ FILED _____
A.M. _____ P.M. 2:13

JUN 28 2005

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

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

ZANE FIELDS,)
)
Petitioner,)
vs.)
)
THE STATE OF IDAHO,)
)
Respondent,)
)
)
_____)

Case No. SPOT0200590D
STATE'S OBJECTION TO THE
PETITIONER'S MOTION FOR
ACCESS TO EVIDENCE

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts before the Court the State's Objection to the Petitioner's Motion for Access to Evidence. The petitioner requests access to a sexual assault kit claimed to have been taken from the victim of the murder during the investigation and to "all of the evidence collected by the police to determine what additional items merit DNA or fingerprint testing." In short, he is requesting permission to examine all of the evidence in the case to see if he can find anything of interest.

R

The petitioner claims that Idaho Code §19-4902 permits this extraordinary request. His selective quoting of the statute leaves out important details.

Idaho Code §19-4902(a) allows a convicted defendant an opportunity to file a post conviction application for the testing of evidence where the evidence was not tested before his conviction because the “technology for the testing was not available at the time of the trial.” The petition has to be filed within one year from the filing of the judgment of conviction or by July 1, 2002, whichever is later.

The statute permits the trial court to allow testing only where the testing has the “scientific potential to produce new, noncumulative evidence that would show that it is more probable than not that the petitioner is innocent.” Idaho Code §19-4902 (d)(1).

Further, the evidence must be items that were “secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing that is now requested because the technology for the testing was not available at the time of the trial.” Idaho Code §19-4902(b). Nothing in the petitioner’s request fits these requirements.

A review of the history of the activity on the petitioner’s original petition for post conviction scientific testing is in order. The original petition was filed June 27, 2002. In it, the petitioner requested that testing be done on the fingerprints that were seized from the crime scene; that DNA testing be done on some suspected blood spots found on a coat the defendant was wearing; and that the victim’s body be exhumed to test for fingernail scrapings. Later, the petitioner withdrew the motion to exhume the body.

The State objected to the fingerprint testing and to the DNA testing for the reasons set out in an objection filed in August 2002. Nevertheless, the State had the coat reviewed by the Idaho

State Forensic Laboratory who determined that no blood samples remained on the coat for testing purposes.

Additionally, the State not only reviewed the fingerprint evidence itself, but released copies of all of the latent fingerprints to defense experts for review. The results of that testing will be put before the Court soon in the form of a State's motion to dismiss, because there is nothing about the fingerprint testing results showing that it is "more probable than not that the petitioner is innocent." Idaho Code §19-4902(d)(1).

Now, nearly three years later, the petitioner asks permission to review a sex crimes kit for DNA evidence and to review all of the evidence for additional fingerprints. He does this without even attempting to make a showing that there is anything about the sex crimes kit that was relevant to the conviction of the defendant in the first place, nor that it then contained DNA nor now contains DNA, nor that evidence of DNA on the sex crimes kit would show that it is "more probable than not that the petitioner is innocent." This was not a sexual assault case. It was a robbery. There is nothing about the evidence suggesting that the victim was sexually assaulted. The petitioner makes no effort to suggest how this testing would show his innocence because he cannot. Additionally, the petitioner makes no effort to explain how it is that this petition is timely given the requirements of the statute.


As to the requested fingerprint testing, the same statutory time requirements apply. Additionally the petitioner must show that technology for the testing of other items for fingerprints was not available at the time of the trial. He makes no effort to show such a thing and indeed cannot do so. He makes no attempt to show why he thinks that additional testing of all of the evidence will produce "new noncumulative evidence that would show that it is more probable than not that the petitioner is innocent." Idaho Code §19-4902(d)(1).

The petitioner says it best himself in citing *Aeschliman v. State*, 132 Idaho 397 (Ct.App. 1999). There the court denied a petitioner's motion for broad "civil discovery" as being nothing more than a "fishing expedition." That's what this is. That and an effort to delay proceedings without even a transparent effort to satisfy the requirements of the statute.

For those reasons, together with the reasons earlier asserted by the State in motions to dismiss, the State moves this Court to deny the petitioner's motion for access to evidence.

RESPECTFULLY SUBMITTED this 27th day of June 2005.


GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing document was delivered to Dennis Benjamin, PO Box 2772, Boise, Idaho 83701 through the United States Mail, this 28 day of June 2005.



Session: Neville072505
Session Date: 2005/07/25
Judge: Neville, Thomas F.
Reporter: Hirmer, Jeanne

Division: DC
Session Time: 08:22

Courtroom: CR507

Clerk(s):
Ellis, Janet

State Attorneys:
Felix, Katie
McDevitt, Kendal

Public Defender(s):
Steveley, Craig

Prob. Officer(s):

Court interpreter(s):

Case ID: 0013

Case Number: SPOT0200590D
Plaintiff:
Plaintiff Attorney:
Defendant: IDAHO, STATE OF
Co-Defendant(s):
Pers. Attorney: BENJAMIN, DENNIS
State Attorney: BOURNE, ROGER
Public Defender:

2005/07/25

14:21:13 - Operator
Recording:

14:21:13 - New case
IDAHO, STATE OF

14:21:53 - Other: BRUCE LIVINGSTON
here on behalf of the Federal litigation unit.

14:22:09 - Judge: Neville, Thomas F.
The Court here in absence of the petitioner at his request.

14:22:31 - Judge: Neville, Thomas F.
The Court and counsel spoke in chambers. The State is asking for a

14:22:47 - Judge: Neville, Thomas F.

continuance to late September, early October
14:22:56 - State Attorney: BOURNE, ROGER
Mr. Bourne stated the State intends to provide an add'l affidavit and the
14:23:20 - State Attorney: BOURNE, ROGER
affiant cannot do an affidavit to late September due to some things that are
14:23:56 - State Attorney: BOURNE, ROGER
happening in his personal life.
14:24:14 - State Attorney: BOURNE, ROGER
State cannot effectively argue Motion to Dismiss at this time.
14:24:32 - Pers. Attorney: BENJAMIN, DENNIS
Mr. Benjamin does not agree with this continuance. Believe evidence will be
14:25:05 - Pers. Attorney: BENJAMIN, DENNIS
found that will result in his release from death row. Judge Lodge has denied
14:25:35 - Pers. Attorney: BENJAMIN, DENNIS
stay in Federal case awaiting the State in this case. Maybe some things to
14:26:56 - Pers. Attorney: BENJAMIN, DENNIS
test that were not able to test before. Maybe some fingernail scrapings. No
14:27:47 - Pers. Attorney: BENJAMIN, DENNIS
scrapings during the autopsy report, believe it may have been put in with
14:28:32 - Pers. Attorney: BENJAMIN, DENNIS
rape kit. Victim's body was vacuumed. In spirit of compromise/delay,
14:29:25 - Pers. Attorney: BENJAMIN, DENNIS
request the Court order any evidence be preserved to allow testing at a later
14:29:51 - Pers. Attorney: BENJAMIN, DENNIS
time. Would like a defense expert to be able to at least see what evidence
14:30:16 - Pers. Attorney: BENJAMIN, DENNIS
there is. Add'l fingerprint evidence from Mr. State. There were three
14:31:12 - Pers. Attorney: BENJAMIN, DENNIS
bloody prints on counter top. Mr. State's could be donor of some of these
14:31:49 - Pers. Attorney: BENJAMIN, DENNIS
prints, would like photograph of beer mug. State was to provide photographs
14:33:16 - Pers. Attorney: BENJAMIN, DENNIS
of Mr. States
14:34:02 - State Attorney: BOURNE, ROGER

Mr. Bourne stated some items don't fit into the statute. All items have been

14:34:44 - State Attorney: BOURNE, ROGER
preserved. Photographs of beer mug provided if they exist
ed. Photograph

14:36:44 - State Attorney: BOURNE, ROGER
of Mr. States, when reach that point will show that he does
not fit

14:37:03 - State Attorney: BOURNE, ROGER
description.

14:37:17 - Judge: Neville, Thomas F.
The Court will order any evidence be preserved/cont'd to be
preserved. The

14:37:43 - Judge: Neville, Thomas F.
Court will order any photograph of Mr. States be provided.
The Court will

14:37:59 - Judge: Neville, Thomas F.
grant the State's Motion to Continue. The Court will reset
all these matters

14:39:22 - Judge: Neville, Thomas F.
Tuesday, September 27 @ 1:30 p.m. It is Court's hope this
matter will not

14:39:43 - Judge: Neville, Thomas F.
be delayed any further. Court will enter proposed order by
Mr. Benjamin to

14:40:17 - Judge: Neville, Thomas F.
preserve any evidence for future possible tests.

14:41:31 - Judge: Neville, Thomas F.
Court will send out Notice of Hearing on all pending motions

14:42:14 - Operator
Stop recording:

14:42:30 - Operator
Recording:

14:42:30 - Record
IDAHO, STATE OF

14:42:42 - Pers. Attorney: BENJAMIN, DENNIS
Mr. Benjamin inquired if there would be any new briefing by
the State

14:43:18 - State Attorney: BOURNE, ROGER
Formal motion with accompanying affidavits, factual basis t
o be argued, not

14:44:10 - State Attorney: BOURNE, ROGER
so much legal basis.

14:44:41 - Pers. Attorney: BENJAMIN, DENNIS
Would like a deadline to allow time to file any other affida
vits, petitioner

14:45:04 - Pers. Attorney: BENJAMIN, DENNIS
may need to respond

- 14:46:37 - State Attorney: BOURNE, ROGER
Do not want to release name of other affiant before him completing his
- 14:47:01 - State Attorney: BOURNE, ROGER
personal business
- 14:47:07 - Pers. Attorney: BENJAMIN, DENNIS
Would stipulate to not releasing name.
- 14:47:43 - Judge: Neville, Thomas F.
If Court were to have affidavit under seal.
- 14:48:33 - State Attorney: BOURNE, ROGER
Concern is some private investigator would start knocking on doors and
- 14:48:58 - State Attorney: BOURNE, ROGER
causing problems trying to avoid.
- 14:49:26 - Pers. Attorney: BENJAMIN, DENNIS
If were able to get any testable DNA would not even need to know name of this
- 14:49:44 - Pers. Attorney: BENJAMIN, DENNIS
person if it were to exonerate. Need access to the evidence
- 14:50:50 - State Attorney: BOURNE, ROGER
Mr. Bourne will give the notice the State can give.
- 14:50:57 - Judge: Neville, Thomas F.
Court would like to see the soonest possible notice that can be given by the
- 14:52:03 - Judge: Neville, Thomas F.
State.
- 14:53:05 - Operator
Stop recording:

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 West Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

NO. _____ FILED _____
A.M. 8:55 P.M. _____

AUG - 4 2005

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

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

ZANE FIELDS,)
)
Petitioner,)
vs.)
)
THE STATE OF IDAHO,)
)
Respondent,)
)
_____)

Case No. SPOT 0200590D

ORDER

THE ABOVE ENTITLED CASE came on for hearing on July 25, 2005, on the petitioner's Motion for Access to Evidence and Production of Documents and the State's Objection and Motion to Dismiss the Petition. After discussions in chambers, the State made an oral motion for a continuance with reasons stated on the record. The petitioner objected to the continuance.

After hearing argument and the Court being otherwise fully informed, the State's Motion for Continuance was granted until September 27, 2005, at 1:30 p.m. The State agreed that it shall continue to preserve all evidence relating to the case so that it will be available as needed.

IT IS SO ORDERED this 4th day of August, 2005. [Signature]

[Signature]
THOMAS F. NEVILLE
District Court Judge

NO. _____ FILED _____
A.M. 9:15 P.M. _____

AUG - 8 2005

J. DAVID NAVARRO, Clerk
By [Signature]
DEPUTY

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

ZANE JACK FIELDS,
Petitioner,
vs.
THE STATE OF IDAHO,
Defendant.

Case No. SPOT0200590D
**NOTICE OF HEARING ON ALL
PENDING MOTIONS**

DENNIS BENJAMIN
NEVIN BENJAMIN & MCKAY
PO BOX 2772
BOISE ID 83701

STATE OF IDAHO
ROGER BOURNE
INTER DEPT MAIL

PLEASE TAKE NOTICE That the Honorable Thomas F. Neville,
District Judge, has reset this matter for all pending motions on
SEPTEMBER 27, 2005 @ 1:30 p.m., at the Ada County Courthouse, 200
W FRONT STREET, Boise, Id.

J. David Navarro
Clerk of the Court
Ada County, Idaho

cc: counsel/je

By: [Signature]
Deputy

Dennis Benjamin
ISBA #4199
NEVIN, BENJAMIN & McKAY LLP
303 W. Bannock St.
P.O. Box 2772
Boise, Idaho 83701
Telephone: (208) 343-1000
Facsimile: (208) 345-8274 (f)

NO. _____ FILED 3:51
A.M. _____ P.M.

SEP 17 2005
By: David Navarro
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE FIELDS,)	
)	
Petitioner,	)	Case No. SPOT 0200590D
)	
vs.	)	CERTIFICATE OF SERVICE OF
	)	AFFIDAVIT OF RANDALL T. LIBBY
	)	IN SUPPORT OF PETITIONER'S
STATE OF IDAHO,	)	MOTION FOR ACCESS TO EVIDENCE
)	
Respondent.)	
_____)	

I hereby certify that on the 12th day of September, 2005, I caused to be served a true and correct copy of the Affidavit of Randall T. Libby in Support of Petitioner's Motion for Access to Evidence by depositing that document by the U.S. Mail postage prepaid and addressed to:
Roger Bourne, Ada County Deputy Prosecuting Attorney, 200 W. Front St., Suite 366, Boise ID 83702

Respectfully submitted this 12 day of September 2005.

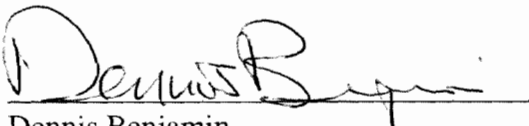
Dennis Benjamin
Dennis Benjamin
Attorney for Zane Fields

- 1 • CERTIFICATE OF SERVICE OF AFFIDAVIT OF RANDALL T. LIBBY IN SUPPORT OF PETITIONER'S MOTION FOR ACCESS TO EVIDENCE

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2005, I caused to be served a true and correct copy of the foregoing document by the U.S. Mail postage prepaid and addressed to:

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 W. Front St., Suite 366
Boise ID 83702


Dennis Benjamin

- 2 • CERTIFICATE OF SERVICE OF AFFIDAVIT OF RANDALL T. LIBBY IN SUPPORT OF PETITIONER'S MOTION FOR ACCESS TO EVIDENCE

Session: Neville092705
Session Date: 2005/09/27
Judge: Neville, Thomas F.
Reporter: Hirmer, Jeanne

Division: DC
Session Time: 08:37

Courtroom: CR504

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0004

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2005/09/27

13:53:44 - Operator
Recording:

13:53:44 - New case
STATE OF IDAHO

13:54:10 - Plaintiff Attorney: BENJAMIN, DENNIS

Mr. Benjamin advised the Court that he has spoken with Mr. Bourne that they

13:54:45 - Plaintiff Attorney: BENJAMIN, DENNIS

have found a sex crimes kit that had tooth picks in the kit that would show

13:55:11 - Plaintiff Attorney: BENJAMIN, DENNIS

nail scrapings and there may be some DNA on those toothpicks. Mr. Bourne has

13:55:26 - Plaintiff Attorney: BENJAMIN, DENNIS

also located an inventory list and some physical evidence as

- well as clothing
- 13:55:46 - Plaintiff Attorney: BENJAMIN, DENNIS
from the victim as well as some fibers removed from the victim as well as the
- 13:56:05 - Plaintiff Attorney: BENJAMIN, DENNIS
vacuum filter and Mr. Bourne is agreeing to allow them to have their expert
- 13:56:31 - Plaintiff Attorney: BENJAMIN, DENNIS
review. Have received a photograph of Daniel States. But have not seen the
- 13:57:40 - Plaintiff Attorney: BENJAMIN, DENNIS
name of the undisclosed identity of another potential witness. Have agreed
- 13:58:19 - Plaintiff Attorney: BENJAMIN, DENNIS
to split evidence for testing in the event there is enough to split, if not
- 13:58:43 - Plaintiff Attorney: BENJAMIN, DENNIS
will agree on a mutual examiner.
- 13:59:02 - State Attorney: BOURNE, ROGER
Mr. Bourne stated will cooperate as far as he can if arguably they are
- 14:00:17 - State Attorney: BOURNE, ROGER
relevant. Have tried to speak with analyst but she is not available.
- 14:01:07 - State Attorney: BOURNE, ROGER
Testing statute is for tests that were unavailable then but are available
- 14:01:22 - State Attorney: BOURNE, ROGER
now.
- 14:01:43 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated the Motion for production for access to evidence. Would
- 14:02:01 - Plaintiff Attorney: BENJAMIN, DENNIS
like that in order form. Have received two new fingerprints that were not
- 14:03:00 - Plaintiff Attorney: BENJAMIN, DENNIS
available before. Wanted crime scene photographs and video and audio tapes.
- 14:03:27 - Plaintiff Attorney: BENJAMIN, DENNIS
Daniel States fingerprints were on the beer mug in the back room. Prior to
- 14:04:15 - Plaintiff Attorney: BENJAMIN, DENNIS
the murder he was seen in the background trying to hide from customers.
- 14:04:47 - Plaintiff Attorney: BENJAMIN, DENNIS
Believe that Mr. States may have tried to pretend to purchase the mug to get
- 14:05:05 - Plaintiff Attorney: BENJAMIN, DENNIS

till open.

- 14:06:08 - State Attorney: BOURNE, ROGER
no objection to sex crimes , or photographs of crime scene.
- 14:08:09 - Plaintiff Attorney: BENJAMIN, DENNIS
Don't know if they received all the photographs from Mr. Hach
kney and Mr. Lynn
- 14:08:27 - Plaintiff Attorney: BENJAMIN, DENNIS
need to see the state's photographs.
- 14:08:37 - State Attorney: BOURNE, ROGER
Not willing to re-produce everything again.
- 14:09:12 - Plaintiff Attorney: BENJAMIN, DENNIS
Will bring theres over and compare.
- 14:09:26 - Judge: Neville, Thomas F.
Court will order a mutual comparison. Cont'd to finger & pal
m prints of
- 14:09:59 - Judge: Neville, Thomas F.
DanielStates
- 14:10:02 - State Attorney: BOURNE, ROGER
Believe have given the finger print card they have. Mr. Ben
jamin believes
- 14:10:18 - State Attorney: BOURNE, ROGER
there is two, but have not been able to confirm
- 14:10:29 - Judge: Neville, Thomas F.
Will provide if it exhists, going to Ralph Simmons
- 14:10:47 - Plaintiff Attorney: BENJAMIN, DENNIS
Copies of what State has, there are about 12
- 14:11:21 - Judge: Neville, Thomas F.
Court notes 17 on the list.
- 14:11:51 - State Attorney: BOURNE, ROGER
View of the statute is purpose of new tests. Recomparing wa
s available
- 14:13:04 - State Attorney: BOURNE, ROGER
during 1988, that is not new technology. Has to satisfy the
prong of new
- 14:13:26 - State Attorney: BOURNE, ROGER
technology and there is nothing to that.
- 14:18:27 - Operator
Stop recording:
- 14:19:32 - Operator
Recording:
- 14:19:32 - Record
STATE OF IDAHO
- 14:19:39 - State Attorney: BOURNE, ROGER
Mr. Bourne spoke with Mr. Benjamin off the record, comparing
Mr. Simmons
- 14:19:58 - State Attorney: BOURNE, ROGER
fingerprint with bloody fingerprint, will allow it, even tho
ugh it doesn't go

- 14:20:20 - State Attorney: BOURNE, ROGER
along with the statute. Has not stated a reason to release
law enforcement
- 14:20:39 - State Attorney: BOURNE, ROGER
fingerprint. If Mr. Simmons is not the one in the bloody pr
int, will have to
- 14:21:09 - State Attorney: BOURNE, ROGER
consider further.
- 14:21:37 - Judge: Neville, Thomas F.
Court will grant in part deny in part production of document
s via finger
- 14:21:55 - Judge: Neville, Thomas F.
prints of Mr. Simmons, going to Daniel States photo
- 14:22:08 - State Attorney: BOURNE, ROGER
Provided the booking photo
- 14:23:36 - Judge: Neville, Thomas F.
Court will grant to extent it is already provided. All phot
os and video
- 14:23:57 - Judge: Neville, Thomas F.
tapes of crime scene itself, will review each others. Inqui
res about audio
- 14:24:24 - Judge: Neville, Thomas F.
tapes
- 14:24:28 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated officer's would often dictate as they in
vestigated crime
- 14:24:49 - Plaintiff Attorney: BENJAMIN, DENNIS
scene.
- 14:24:58 - Judge: Neville, Thomas F.
Court will grant that, going to information on fingerprints
of rear view
- 14:25:17 - Judge: Neville, Thomas F.
mirror.
- 14:25:20 - Plaintiff Attorney: BENJAMIN, DENNIS
During original of turning over fingerprints, there was vehi
cle and could be
- 14:26:06 - Plaintiff Attorney: BENJAMIN, DENNIS
a mistake but wanted to check it out
- 14:26:16 - State Attorney: BOURNE, ROGER
Do not know what this is
- 14:26:22 - Judge: Neville, Thomas F.
Court will deny that but have Mr. Bourne review
- 14:27:41 - Plaintiff Attorney: BENJAMIN, DENNIS
Would like experts to look at inventory list. Dr. Libby is
very expensive,
- 14:28:09 - Plaintiff Attorney: BENJAMIN, DENNIS
and want order to state access to items listed on the invent
ory list.

14:28:35 - State Attorney: BOURNE, ROGER
Believe that was already provided, no objection
14:28:50 - Judge: Neville, Thomas F.
Court inquired any other issues to take up today
14:29:51 - Judge: Neville, Thomas F.
Court requested Mr. Benjamin provided orders to the Court and allowing Mr.
14:30:06 - Judge: Neville, Thomas F.
Bourne to view for form.
14:30:13 - Operator
Stop recording:

NO. _____ FILED P.M. 2:50
A.M. _____

MAY - 5 2006

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

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

ZANE FIELDS,)
Petitioner,)
vs.)
STATE OF IDAHO,)
Respondent.)

Case No. SPOT 0200590D
ORDER GRANTING IN PART
PETITIONER'S
MOTION FOR PRODUCTION
OF DOCUMENTS AND FOR
ACCESS TO EVIDENCE
NUNC PRO TUNC

JM

The Court, having considered Petitioner Zane Fields's Motion for Production of Documents and Motion for Access to Evidence, heard September 27, 2005 hereby grants the motions in part, as more particularly follows.

JM

Petitioner seeks production of the following documents. Each request is listed below. The Court's Order regarding that request follows in **bold type**.

- 1. All photographs of the crime scene so that the location of the beer mug with Daniel States's fingerprint upon it may be determined.

This motion is granted to the extent that Petitioner's counsel and Respondent's counsel will meet to compare the documents they already possess. To the extent, if any, the Respondent possesses any additional photographs, it will produce a copy of each.

ORDER GRANTING IN PART PETITIONER'S MOTION FOR PRODUCTION OF DOCUMENTS AND FOR ACCESS TO EVIDENCE - 1

2. Comparison quality finger and palm prints from Daniel States so Mr. States may be identified as or excluded from being the maker of the bloody prints found on the counter.

This motion is granted to the extent that Petitioner's counsel and Respondent's counsel have agreed that one set of comparison prints has already been provided by the Respondent. The Respondent is directed to determine whether any other comparison prints of Mr. States are in its possession and to produce said photographs upon discovery.

3. Comparison quality finger prints and palm prints from Ralph Simmons and all law enforcement and medical personnel known to have been at the crime scene, including:

Stephen Haven
Gary Newbold
Ethelle Knight
Dennis Scifres
Jim Cobly
Randy Folwell
Brant Cornwall
Chief James Montgomery
Lt. Larry Jones
Gary Raney
Mark Ayotte
Robert Ruth
Jeff Phillips
Michael Irwan (Irwin?)
Ralph Simmons
Catherine Vanderford
Karen Vanderford
Herbert Vanderford

so that they may be identified as or excluded from being the maker of the bloody prints found on the counter.

This motion is granted to the extent that Respondent will provide comparison quality finger prints and palm prints from Ralph Simmons if it has such prints in its

possession. The Court defers ruling on the remainder of this request pending a renewed motion by the Petitioner.

4. All photographs of Daniel States in the State's possession.

This motion is granted to the extent that Petitioner's counsel and Respondent's counsel have agreed that a booking photograph of Mr. States has already been provided by the Respondent. The Respondent is directed to determine whether any other photographs exist and to produce said photographs upon discovery.

5. All notes, logs, reports, or other documents regarding to the crime scene created in whole or part by Cindy Hill, Robert Kerchusky or any other officer that relate to the inspection for or collection of fingerprints and other forensic evidence

6. All photos and videotapes of the crime scene.

7. All audiotapes made at the crime scene.

Requests 5-7 are granted to the extent that Petitioner's counsel and Respondent's counsel will meet to compare the documents they have in their respective possession. To the extent, if any, the Respondent possesses any additional documents, it will produce a copy of each.

8. All information regarding the fingerprints obtained from a rear view mirror of an automobile which were submitted to the petitioner.

This motion is granted to the extent that Respondent's counsel is directed to determine what information, if any, the Respondent has in its possession about these fingerprints and to report the same to counsel for the Petitioner.

Petitioner also seeks access to the following documents for the purposes of examination and testing. Each request is listed below. Again, the Court's order regarding that request follows in **bold type**.

1. Access to all of the evidence collected by the police to determine what additional items merit DNA or fingerprint testing.

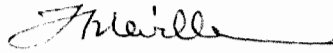
This request is granted to the extent that access is currently limited to those items of evidence listed on the Respondent's Evidence Inventory list. The Respondent is directed to provide Petitioner's counsel with a copy of that list within seven days of the filing of this order.

2. Access to the sex assault kit with samples taken from the victim in this case.

This request is granted.

IT IS SO ORDERED. *effective September 27, 2005, nunc pro tunc.* *JM*

Dated this 5th day of May, 2006. *JM*



Thomas F. Neville
District Judge

Session: Neville050506
Session Date: 2006/05/05
Judge: Neville, Thomas F.
Reporter: French, Janet

Division: DC
Session Time: 08:28

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0005

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney:
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney: BENJAMIN, DENNIS
State Attorney: BOURNE, ROGER
Public Defender:

2006/05/05

13:37:03 - Operator

Recording:

13:37:03 - New case
, STATE OF IDAHO

13:37:23 - Judge: Neville, Thomas F.

Time set for status conference. The Court has a proposed order memorializing

13:38:39 - Judge: Neville, Thomas F.
the hearing from September.

13:39:03 - Pers. Attorney: BENJAMIN, DENNIS

Mr. Benjamin stated Bruce Livingston here from the Capital Litigation Unit.

13:39:21 - Pers. Attorney: BENJAMIN, DENNIS

Has had the funding for testing done. Have gone through the evidence and

- 13:40:02 - Pers. Attorney: BENJAMIN, DENNIS
have found some items that will doing testing on. State and
Petitioner agree
- 13:40:23 - Pers. Attorney: BENJAMIN, DENNIS
to use Cellmark Lab in Dallas. Ready to package items and s
end off and would
- 13:41:04 - Pers. Attorney: BENJAMIN, DENNIS
State would like results of that testing directly. Petition
er entitled to
- 13:41:19 - Pers. Attorney: BENJAMIN, DENNIS
keep the results confidential. If testing was on state's mo
ney they would
- 13:41:55 - Pers. Attorney: BENJAMIN, DENNIS
have legitimate claim. Petitioner paying the freight for th
e testing and
- 13:42:23 - Pers. Attorney: BENJAMIN, DENNIS
believe it is attorney work product. Petitioner bears the b
urden of proof
- 13:42:49 - Pers. Attorney: BENJAMIN, DENNIS
and if Petitioner decides not to use no prejudice to the Sta
te. Discovery is
- 13:43:09 - Pers. Attorney: BENJAMIN, DENNIS
post conviction has to be obtained by through leave of the C
ourt and has not
- 13:43:27 - Pers. Attorney: BENJAMIN, DENNIS
done this. ST v WOODS, Judge ordered in advance of eval. be
ing done, Supreme
- 13:44:15 - Pers. Attorney: BENJAMIN, DENNIS
Court ordered that was deficient performance under Stricklan
d. Believe it
- 13:44:58 - Pers. Attorney: BENJAMIN, DENNIS
would be Malpractice if were to turn this over to Respondent
. If decide to
- 13:45:25 - Pers. Attorney: BENJAMIN, DENNIS
use them in later hearing, then could turn over in later cou
rse of discovery.
- 13:45:38 - Pers. Attorney: BENJAMIN, DENNIS
- 13:45:42 - State Attorney: BOURNE, ROGER
Mr. Bourne stated original motion filed some four years ago.
In October
- 13:46:35 - State Attorney: BOURNE, ROGER
2003, motion for independant scientific testing. At some po
int filed a
- 13:47:35 - State Attorney: BOURNE, ROGER
Motion to Dismiss. Still believe Petitioner is guilty but a
greed to allow
- 13:48:09 - State Attorney: BOURNE, ROGER
Petitioner to go through with testing. Had thought in March

testing had been

13:49:32 - State Attorney: BOURNE, ROGER
sent to Cellmark and was surprised to learn that was not done. Want this

13:50:45 - State Attorney: BOURNE, ROGER
case to be done, believe the State and Court being used to delay. Testing is

13:52:19 - State Attorney: BOURNE, ROGER
not work product. Have read St vs Wood, that was psychological testing to be

13:53:35 - State Attorney: BOURNE, ROGER
used for sentencing argument.

13:53:51 - Judge: Neville, Thomas F.
Wood was also death penalty case. Do not know if that testing was during

13:54:29 - Judge: Neville, Thomas F.
trial or before guilt phase or if in post conviction phase. Was there a

13:54:50 - Judge: Neville, Thomas F.
difference in underlying trial and presumption of innocence and a civil case

13:55:19 - Judge: Neville, Thomas F.
following post conviction. Presumption of Innocence does not attach

13:56:20 - State Attorney: BOURNE, ROGER
Mr. Bourne responded

13:58:00 - Judge: Neville, Thomas F.
Court inquired when this was done

13:58:10 - Pers. Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated it was done prior to sentencing. Believe by Court

13:59:09 - Pers. Attorney: BENJAMIN, DENNIS
ordering would put him in Malpractice. Can tell Mr. Bourne when testing is

13:59:29 - Pers. Attorney: BENJAMIN, DENNIS
done but believe should not have to give the results.

14:01:28 - Pers. Attorney: BENJAMIN, DENNIS
Judge Lodge has lifted Stay. Have to show innocence to keep issues open in

14:02:14 - Pers. Attorney: BENJAMIN, DENNIS
Federal Court, can ship off in next 48 hours if Court can give ruling today.

14:02:35 - Judge: Neville, Thomas F.
Court does not see this as atty/work product. Petitioner has no sixth

14:03:11 - Judge: Neville, Thomas F.
amendment rights. No issues of Mr. Field waiving 4th or 5th amendment

- 14:03:31 - Judge: Neville, Thomas F.
rights Court would like to put time limit on this process.
Court had ruled
- 14:04:59 - Judge: Neville, Thomas F.
at September hearing and an order only memorializes. Inquire
s of Mr.
- 14:05:27 - Judge: Neville, Thomas F.
Livingston how long he believes Cellmark would take
- 14:05:45 - Other: Livingston, Bruce
responds. Hair samples take time and cost so much for each
test, and took
- 14:07:26 - Other: Livingston, Bruce
several months to get money together and have letter back fr
om Cellmark
- 14:08:01 - Other: Livingston, Bruce
stating they will not go over the \$28,000 budget. Believe i
t is taking about
- 14:08:24 - Other: Livingston, Bruce
three months.
- 14:08:33 - Judge: Neville, Thomas F.
If sent on Monday, May 8th and gave until September 1st. W
ould like to have
- 14:11:41 - Judge: Neville, Thomas F.
Mr. Benjamin inform the Court and the State that the results
are back.
- 14:12:19 - Judge: Neville, Thomas F.
Will preserve the issue of attorney work product. Come back
on September 5,
- 14:13:17 - Judge: Neville, Thomas F.
2006 @ 4:00 p.m.
- 14:13:23 - Judge: Neville, Thomas F.
Request order from Mr. Benjamin.
- 14:14:39 - Operator
Stop recording:

NO. _____ FILED _____
A.M. 11:31 P.M. _____

MAY 10 2006

J. DAVID NAVARRO, Clerk
By [Signature] DEPUTY

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

ZANE FIELDS,)
Petitioner,)
vs.)
STATE OF IDAHO,)
Respondent.)
_____)

Case No. SPOT 0200590D
ORDER RE: STATUS CONFERENCE

The Court, having held a status conference on May 5, 2006, and after considering the arguments of the parties, hereby issues the following Orders:

1. The evidence previously identified by the parties shall be shipped to Cellmark Laboratories, via Federal Express, for DNA testing within two days of this order.
2. The results of that testing are due no later than September 1, 2006.
3. Counsel for Petitioner is directed to notify the Court when the testing results have been obtained from Cellmark. *and counsel for Respondent* *Jru*

The question of whether the test results must be disclosed to the Respondent is deferred until the test results are received. A status conference will be held on September 5, 2006, at 4:00 p.m.

Dated this 10th day of May, 2006.

[Signature]
Thomas F. Neville
District Judge

J

FILED 9:55
 AUG 28 2006
 J. DAVID P. ...
 CLERK

Dennis Benjamin
 ISBA# 4199
 NEVIN, BENJAMIN & McKAY LLP
 303 W. Bannock St.
 P.O. Box 2772
 Boise, ID 83701
 (208) 343-1000
 (208) 345-8274 (f)

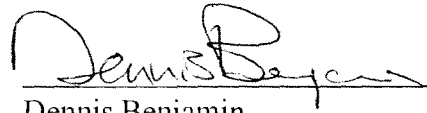
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ZANE FIELDS,)	
	)	Case No. SPOT 0200590D
Petitioner,)	
	)	PETITIONER'S MOTION
vs.	)	FOR JOINT ACCESS TO
	)	FINGERPRINTS AND
STATE OF IDAHO,	)	AFIS TESTING THEREOF
)	
Respondent.)	
_____)	

Zane Fields moves this Court for an Order granting him, through his counsel and retained fingerprint expert, access, under the supervision of the State's attorney and experts, to the original fingerprints taken in this case and to the State's AFIS (Advanced Fingerprint Identification System) terminal, software and databases. The purpose of such access is to run all unidentified AFIS quality fingerprints from the crime scene in this case to determine whether there are any possible matches.

This motion is brought pursuant to I.C. § 19-4902(b) and is supported by the Affidavits of Lisa DeMeo and Robert J. Kerchusky previously filed.

Respectfully submitted this 2nd day of August, 2006.

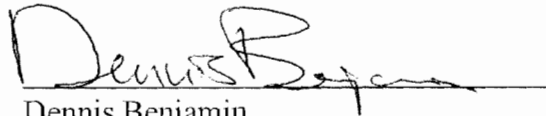


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was served this 28th date of August, 2006 upon the following person(s) by mailing a copy of the foregoing document via U.S. Mail:

Roger Bourne
Chief Criminal Deputy
Ada Co. Prosecuting Attorney
200 W. Front St., Rm 366
Boise, ID 83702


Dennis Benjamin

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

Thomas F. Neville
DISTRICT JUDGE

SEPTEMBER 5, 2006

CIVIL MINUTES

ZANE FIELDS,
Plaintiff,
vs.
STATE OF IDAHO,
Defendant.

Case No. SPOT0200590D

Appearances:

OFF RECORD IN CHAMBERS

DENNIS BENJAMIN
ATTORNEY AT LAW

Counsel for Plaintiff

ROGER BOURNE
PROSECUTING ATTORNEY

Counsel for Defendant
STATE OF IDAHO


TIME SET FOR: 4:00 PM

STATUS CONFERENCE

The Court and counsel met in chambers off the record. The Court set the matter over for further status conference on November 20, 2006 @ 1:30 p.m.

FINISH

CLERK: Janet Ellis
DATE: September 5, 2006



JANET L. ELLIS
Deputy Clerk

Session: Neville112006
Session Date: 2006/11/20
Judge: Neville, Thomas F.
Reporter: Vliet, Audra Van

Division: DC
Session Time: 08:26

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:
Haws, Joshua
Owen, Patrick

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0011

Case Number: SPOT000590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2006/11/20

13:49:40 - Operator
Recording:
13:49:40 - New case
, STATE OF IDAHO
13:50:06 - Judge: Neville, Thomas F.
Court and counsel met in chambers off the record. The Court
set another
13:50:26 - Judge: Neville, Thomas F.
review date for January 12, 2007 @ 1:30 p.m.
13:50:42 - Operator
Stop recording:

Session: Neville011207
Session Date: 2007/01/12
Judge: Neville, Thomas F.
Reporter: Dawnell, Robertson

Division: DC
Session Time: 08:56

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0004

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/01/12

14:45:08 - Operator
Recording:

14:45:08 - New case
, STATE OF IDAHO

14:45:23 - Judge: Neville, Thomas F.

The Court and counsel met in chambers discussed the letter that Mr. Benjamin

14:45:36 - Judge: Neville, Thomas F.

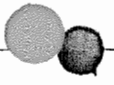
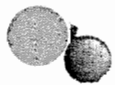
had sent over today regarding some of the results of DNA. The Court and

14:45:49 - Judge: Neville, Thomas F.

counsel set over to February 16, 2007 @ 10:00 a.m.

14:46:16 - Operator

Stop recording:



FILED
 Tuesday, March 27, 2007 at 12:53 PM
 J. DAVID NAVARRO, CLERK OF THE COURT
 BY: [Signature]
 Deputy Clerk

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

ZANE JACK FIELDS, PLAINTIFF)	
Plaintiff,	)	Case No: SP-OT-02-00590*D
)	
Vs.	)	NOTICE OF STATUS CONFERENCE
)	
STATE OF IDAHO, DEFENDANT)	
Defendant.)	

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status Hearing	Friday, May 11, 2007
	01:15 PM
Judge:	Thomas F Neville

ADA COUNTY COURTHOUSE 200 W. Front Street, Boise, Idaho

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on the 27th Day of March, 2007.

DENNIS BENJAMIN
 NEVIN BENJAMIN & MCKAY
 PO BOX 2772
 BOISE ID 83701

ROGER BOURNE
 ADA COUNTY PROSECUTING ATTORNEY
 INTER DEPT MAIL

Mailed X Hand Delivered Faxed

Dated: Tuesday, March 27, 2007

J. DAVID NAVARRO
 Clerk of the District Court
 By: [Signature]
 Deputy Clerk

Session: Neville051107
Session Date: 2007/05/11
Judge: Neville, Thomas F.
Reporter: Gorczyca, Melanie

Division: DC
Session Time: 09:14

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case Number: SPOT0500590D
Plaintiff: FIELDS, ZANE
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2007/05/11

13:18:54 - Operator
Recording:

13:18:54 - New case
, STATE OF IDAHO

13:19:18 - Judge: Neville, Thomas F.
Time set for further proceedings. Court states have had several conferences

13:19:38 - Judge: Neville, Thomas F.
in chambers off the record. Court was here recently on March 27th

13:19:59 - Judge: Neville, Thomas F.
Court stated no formal record of the prior status reports

13:20:36 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated U.S. District Court proceeding and interested in this

- 13:21:00 - Plaintiff Attorney: BENJAMIN, DENNIS
record. Believe at this point that Mr. Fields DNA analysis
of hair samples
- 13:21:19 - Plaintiff Attorney: BENJAMIN, DENNIS
found at crime scene and the finger nail scrapings. All of
that analysis
- 13:21:38 - Plaintiff Attorney: BENJAMIN, DENNIS
forwarded to prosecutor and DNA profile sent to the lab. St
ate has
- 13:21:59 - Plaintiff Attorney: BENJAMIN, DENNIS
everything it needs to send to COTUS lab. Recent advance in
palm print
- 13:22:42 - Plaintiff Attorney: BENJAMIN, DENNIS
analysis has been made and is requested by Jennifer Delaney
to have the AFIX
- 13:23:27 - Plaintiff Attorney: BENJAMIN, DENNIS
run by the State lab as she is Boise City. Only law enforce
ment can request
- 13:24:40 - Plaintiff Attorney: BENJAMIN, DENNIS
COTUS. The State has requested that they be able to take or
al swab from Mr.
- 13:25:16 - Plaintiff Attorney: BENJAMIN, DENNIS
Fields and don't believe that is necessary for COTUS. None
the less will
- 13:25:45 - Plaintiff Attorney: BENJAMIN, DENNIS
accomodate that.
- 13:25:49 - State Attorney: BOURNE, ROGER
Mr. Bourne state spoke with Bruce Livingston. The lab analy
ist has asked for
- 13:26:24 - State Attorney: BOURNE, ROGER
a few more things and just received in the last week. Lab A
nalysist, Cindy
- 13:26:48 - State Attorney: BOURNE, ROGER
Hall has been gone the last two weeks. Will speak with her
on Monday to see
- 13:27:03 - State Attorney: BOURNE, ROGER
if she has everything she needs. Should be able to report s
oon what the
- 13:27:16 - State Attorney: BOURNE, ROGER
results are and what State will do next. Inquire if should
set further
- 13:27:30 - State Attorney: BOURNE, ROGER
status conference or consult with Mr. Benjamin first to see
how long is
- 13:27:47 - State Attorney: BOURNE, ROGER
needed and then ask Court for status conference. Believe th
at Cotus will
- 13:28:06 - State Attorney: BOURNE, ROGER

take some time.

13:28:57 - Judge: Neville, Thomas F.

The Court will set over to Friday, June 15, 2007 @ 2:15 p.m.

13:30:32 - Operator

Stop recording:

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

THOMAS F. NEVILLE
DISTRICT JUDGE

June 15, 2007

MINUTE ENTRY

ZANE JACK FIELDS,)
)
 Plaintiff,)
)
 v.) Case No. SPOT0200590D
)
 STATE OF IDAHO,)
)
 Defendant.)

DENNIS BENJAMIN
ROGER BOURNE

COUNSEL FOR PETITIONER
COUNSEL FOR STATE OF IDAHO

The Court and counsel held an in chambers conference . The Court set this matter over for further review to July 6 2007 @ 3:00 p.m.

J. DAVID NAVARRO
Clerk of the District Court

DATE: JUNE 15, 2007

BY 
Deputy Clerk

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

THOMAS F. NEVILLE
DISTRICT JUDGE

JULY 6, 2007

MINUTE ENTRY

ZANE JACK FIELDS)
)
) Petitioner,)
)
 v.) Case No. SPOT0200590D
)
 STATE OF IDAHO,)
)
) Respondent.)
)

DENNIS BENJAMIN

COUNSEL FOR PETITIONER

ROGER BOURNE

COUNSEL FOR STATE OF IDAHO

The Court and counsel met in chambers. The Court set a further review date on Wednesday, September 5 @ 3:00 p.m.

J. DAVID NAVARRO
Clerk of the District Court

DATE: July 6, 2007

BY 
Deputy Clerk

Session: Neville090507
Session Date: 2007/09/05
Judge: Neville, Thomas F.
Reporter: Hirmer, Jeanne

Division: DC
Session Time: 08:48

Courtroom: CR507

Clerk(s):
Ellis, Janet

State Attorneys:
Bourne, Roger
Fisher, Jean
Haws, Joshua
Lorello, David

Public Defender(s):
DeAngelo, Michael
Steveley, Craig

Prob. Officer(s):

Court interpreter(s):

Case ID: 0036

Case Number: SPOT0200590D
Plaintiff:
Plaintiff Attorney:
Defendant: FIELDS, ZANE JACK
Co-Defendant(s):
Pers. Attorney: Benjamin, Dennis
State Attorney: Bourne, Roger
Public Defender:

2007/09/05

15:07:03 - Operator

Recording:

15:07:03 - New case

FIELDS, ZANE JACK

15:09:41 - Judge: Neville, Thomas F.

Counsel advise Court more time needed for fingerprint analysis. Court sets

15:09:56 - Judge: Neville, Thomas F.

over to October 29, 2007 @ 4:30 p.m.

15:10:12 - Operator
Stop recording:

Session: Neville102907
Session Date: 2007/10/29
Judge: Neville, Thomas F.
Reporter: Whiting, Laura

Division: DC
Session Time: 07:56

Courtroom: CR507

Clerk(s):
Ellis, Janet

State Attorneys:
Haws, Joshua
Lorello, David

Public Defender(s):
DeAngelo, Michael
STEVLEY, CRAIG

Prob. Officer(s):

Court interpreter(s):

Case ID: 0033

Case Number: SPOT0200590D
Plaintiff: STATE OF IDAHO
Plaintiff Attorney:
Defendant: FIELDS, ZANE
Co-Defendant(s):
Pers. Attorney: Benjamin, Dennis
State Attorney: BOURNE, ROGER
Public Defender:

2007/10/29

16:59:11 - Operator

Recording:

16:59:11 - New case

FIELDS, ZANE

16:59:34 - State Attorney: BOURNE, ROGER

Mr. Bourne stated this was set over to view some new palm prints under AFIX

16:59:51 - State Attorney: BOURNE, ROGER

tracker, at request of petitioner sent those prints and there was no match

17:00:14 - State Attorney: BOURNE, ROGER

found, came to attention that there were other jurisdictions in country that

17:00:29 - State Attorney: BOURNE, ROGER
also purchased this system, some 53, Jennifer Delaney sent request to all

17:01:23 - State Attorney: BOURNE, ROGER
agencies that had this system and asked them to look at the palm prints, and

17:01:36 - State Attorney: BOURNE, ROGER
of those 19 of the 53 agreed to look at them, advised that palm prints were sent

17:02:07 - State Attorney: BOURNE, ROGER
to the 19, 9 sent a response and 10 said they couldn't do it.
. Electronic

17:02:42 - State Attorney: BOURNE, ROGER
photograph sent for comparison. Hired someone to do the comparison, he

17:03:32 - State Attorney: BOURNE, ROGER
advised there is no match. Have come to a dead end on this.
Mr. Bourne

17:04:13 - State Attorney: BOURNE, ROGER
stated may need another hearing to decide where to go next

17:04:31 - Pers. Attorney: Benjamin, Dennis
Mr. Benjamin concurred with Mr. Bourne's assessment, would like to have

17:05:05 - Pers. Attorney: Benjamin, Dennis
someone look at this independently of what was given today.

17:05:54 - Pers. Attorney: Benjamin, Dennis
Do believe should set a briefing schedule and set dispositive motion hearing.

17:06:11 - Pers. Attorney: Benjamin, Dennis
State has pending Motion to dismiss.

17:06:27 - State Attorney: BOURNE, ROGER
Mr. Bourne filed motion well before the AFIX

17:07:51 - Judge: Neville, Thomas F.
The Court will set November 13, 2007 @ 4:00 p.m.

17:08:31 - Operator
Stop recording:

NOV 05 2007

J. DAVID NAVARRO, Clerk
By J. EARLE
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Idaho 83702
(208) 287-7700

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

ZANE JACK FIELDS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. SPOT0200590D
STATE'S MOTION TO
DISMISS THE PETITION
FOR POST CONVICTION
SCIENTIFIC TESTING

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves the Court to dismiss the petition for post conviction scientific testing for the following reasons.

The petitioner has requested that certain DNA testing be conducted on two locations on the back of the petitioner's coat. The State informed the Court and Counsel in the

State's response filed July 22, 2004, that the State had submitted the coat in question to the Idaho State Police Forensic Laboratory who found that no blood samples remained on the coat. Apparently, whatever blood had been there in the first place had been entirely used up in the original testing.

Since that time, the petitioner has reviewed the contents of the sex crimes kit and has submitted certain fingernail scrapings from that kit for additional testing. The State believes that testing did not produce any results favorable to the petitioner.


The petitioner initially requested that the victim's body be exhumed for further DNA testing. That request has been withdrawn by the petitioner.

The petitioner has also requested that certain latent fingerprints and palm prints taken from the scene of the crime be subjected to AFIS and AFIX comparison. The State has earlier informed the Court and Counsel that those comparisons have not yielded results favorable to the petitioner.

The State believes that the scientific testing requested by the petitioner has been exhausted. None of the testing has produced new evidence that make it more probable than not that the petitioner is innocent as required by Idaho Code §19-4902. Therefore, the State moves that the petition be dismissed.

RESPECTFULLY SUBMITTED this 2ND day of November 2007.

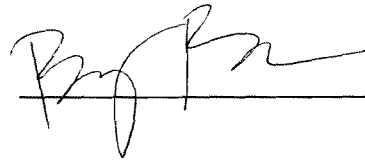
GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21 day of November 2007, I mailed a true and correct copy of the foregoing to Dennis Benjamin, Attorney at Law, P O Box 2772, Boise ID 83701, by depositing same in the U.S. Mail, postage prepaid.



A handwritten signature in black ink, appearing to be "Dennis Benjamin", is written above a horizontal line.

Session: Neville111307
Session Date: 2007/11/13
Judge: Neville, Thomas F.
Reporter: Gorczyca, Melanie

Division: DC
Session Time: 08:42

Courtroom: CR503

Clerk(s):
Ellis, Janet

State Attorneys:
Lorello, David

Public Defender(s):
DeAngelo, Michael

Prob. Officer(s):

Court interpreter(s):

Case ID: 0017

Case Number: SPOT0200590D
Plaintiff: FIELDS, ZANE JACK
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2007/11/13

16:23:16 - Operator
Recording:

16:23:16 - New case
, STATE OF IDAHO

16:24:07 - Judge: Neville, Thomas F.
Court understands through Mr. Benjamin Mr. Bourne would not
be here

16:24:22 - Plaintiff Attorney: BENJAMIN, DENNIS
Stated he had a scheduling conflict with teaching a class at
POST. Mr.

16:24:43 - Plaintiff Attorney: BENJAMIN, DENNIS
Benjamin stated his expert was to be able to view the palm p
rints as they

16:25:11 - Plaintiff Attorney: BENJAMIN, DENNIS
have not been received yet. Mr. Bourne had no objection to
setting over

16:25:23 - Plaintiff Attorney: BENJAMIN, DENNIS
about 6 weeks.

16:25:29 - Judge: Neville, Thomas F.
Court sets over to January 3, 2008 @ 9:00 a.m.

16:27:25 - Operator
Stop recording:

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

THOMAS F. NEVILLE
DISTRICT JUDGE

JANUARY 4, 2008

MINUTE ENTRY

ZANE JACK FIELDS,)
)
 Petitioner,)
)
 v.) Case No. SPOT0200590D
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

DENNIS BENHAMIN
JOSHUA HAWS

COUNSEL FOR PETITIONER
COUNSEL FOR STATE OF IDAHO

The Court and counsel held an in chambers conference in chambers. The Court set a status conference on February 8, 2008 @ 11:30 p.m. for review of AFIX palm prints.

J. DAVID NAVARRO
Clerk of the District Court

DATE: January 4, 2008

BY 
Deputy Clerk

Session: Neville020808
Session Date: 2008/02/08
Judge: Neville, Thomas F.
Reporter: Wolf, Sue

Division: DC
Session Time: 08:40

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case Number: SPOT0200590D
Plaintiff: ZANE FIELDS
Plaintiff Attorney:
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney: BENJAMIN, DENNIS
State Attorney: BOURNE, ROGER
Public Defender:

2008/02/08

11:45:17 - Operator
Recording:
11:45:17 - New case
, STATE OF IDAHO
11:45:38 - Pers. Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated his expert did exam on palm prints and t
here was no
11:45:56 - Pers. Attorney: BENJAMIN, DENNIS
match, no report generated from that. Trying to find some s
amples from Mr.
11:46:08 - Pers. Attorney: BENJAMIN, DENNIS
Weaver who understands that he is now deceased, states an au
topsy done on his
11:46:29 - Pers. Attorney: BENJAMIN, DENNIS
body in L.A.. Would like to set over 6 weeks to see if can

find those

- 11:46:55 - Pers. Attorney: BENJAMIN, DENNIS
samples if not, then set hearing on State's motion.
- 11:48:09 - State Attorney: BOURNE, ROGER
Mr. Bourne stated coming up on 6 years since this was filed.
Would like to
- 11:49:52 - State Attorney: BOURNE, ROGER
set briefing schedule on this now.
- 11:51:18 - Judge: Neville, Thomas F.
Court stated would have privacy issues and if family not cooperating would
- 11:51:33 - Judge: Neville, Thomas F.
have to seek order of the Court for coroner to turn over those results.
- 11:51:46 - Pers. Attorney: BENJAMIN, DENNIS
- 11:54:06 - Judge: Neville, Thomas F.
Court will set March 14th as due date for Respondent's brief, pet's brief in
- 11:54:32 - Judge: Neville, Thomas F.
response due April 11th. Any response to pet's response, April 25th. If
- 11:55:18 - Judge: Neville, Thomas F.
any new issues to respond to, pet's final response by May 9th.
- 11:57:55 - Judge: Neville, Thomas F.
The Court will set June 6, 2008 @ 9:00 a.m. for hearing on Summary Judgment.
- 13:46:47 - Operator
Stop recording:

FILED 9 38
P.M.

Dennis Benjamin, ID Bar #4199
NEVIN, BENJAMIN, MCKAY & BARTLETT, LLP
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

APR 07 2008

J. DAVID NAVAHRO, Clerk
By L. AMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. SPOT 0200590D
)	
vs.)	
	)	MOTION FOR RELEASE OF TRIAL
	)	EXHIBIT FOR DNA TESTING
STATE OF IDAHO,)	
Respondent.)	
_____)	

Petitioner Zane Fields moves the court for an order releasing an exhibit in the trial court file for DNA testing. The exhibit is a letter from Mike Weaver to Detective Wallace of the Boise police department dated February 12, 1988, during the Wishing Well murder investigation explaining Weaver's whereabouts during the time of the murder. The exhibit was marked and admitted as Exhibit 34 in the underlying criminal proceeding and is in the court files at the Ada County Courthouse. See *State v. Fields*, Ada County Case No. 16259, Idaho Supreme Court Case No. 19809.

As grounds for this request, Fields states as follows:

1. Identity of the murderer was the main issue in this case, and petitioner Fields has continually asserted his innocence of the crime for which he has been convicted.

2. Mike Weaver was a suspect in the case. Information about Weaver was entered into the trial record in this matter, including his driver's license which contained a picture of him, and the letter from Weaver to the Boise Police Department, Exhibit 34, which explained his whereabouts at the time of the murder and in the days immediately before and afterwards.
3. Two witnesses, Mari Munk and Betty Hornecker, saw a large man who was in the Wishing Well store immediately before the crime. Munk and Hornecker's trial testimony described a large man in the Wishing Well store in the minutes leading up to within one or two minutes of the murder. The defense hypothesized at trial that Weaver, rather than Fields, was the actual killer.
4. Shortly after the crime in the early stages of the police investigation, the victim's husband and daughter, Herb and Karen Vanderford, told the police that the composite sketch of the man seen in the store, drawn based on the description of Betty Hornecker, looked like Mike Weaver. Mr. Vanderford also indicated that Weaver had recently been in the store and had a dispute with the store regarding a lay-away item. *See Exhibit B to Affidavit of Counsel with Materials in Opposition to Respondent's Motion for Summary Disposition, filed December 31, 2007 (police report dated Feb. 12, 1988 at 14:30 hours).*
5. There is a reasonable possibility that Weaver was in fact the murderer, based on the description of him and the fact that someone who looked like him was in the store immediately before the crime, and that he had been in a dispute with the victim's family at the store days before the murder.

6. Fingernail scrapings were taken from the victim, Mary Catherine Vanderford, and those scrapings have undergone Y-STR DNA testing. The results of that testing found the presence of male DNA, and those results also exclude Zane Fields as a contributor to the male DNA found in those fingernail scrapings. See Exhibit C to Affidavit of Counsel with Materials in Opposition to Respondent's Motion for Summary Disposition, filed December 31, 2007 (report of Dr. Randell T. Libby)
7. Testing for Weaver's DNA is a reasonable step to see if his DNA is consistent with the DNA that was found in Mrs. Vanderford's fingernail scrapings.

A similar request was recently granted by a Federal District Court and affirmed by the Ninth Circuit in *Osborne v. District Attorney's Office for Third Judicial Dist.*, --- F.3d ----, 2008 WL 861890 (9th Cir. April 2, 2008). In that case, a state prisoner brought a 42 U.S.C. § 1983 civil rights action to compel the district attorney's office to allow him post-conviction access to biological evidence that was used to convict him in 1994 of kidnapping and sexual assault. The United States District Court dismissed and the prisoner appealed. The Court of Appeals reversed the dismissal. On remand, the parties cross-moved for summary judgment and the District Court this time granted summary judgment in favor of the prisoner. The District Attorney's office appealed.

On appeal the Ninth Circuit Court of Appeals held as follows:

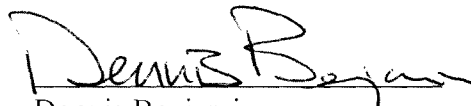
1. The prisoner had a due process right to post-conviction access to biological evidence used to convict him for purpose of conducting DNA testing;
2. The standard of materiality applicable to prisoner's § 1983 claim was no higher than a reasonable probability that, if exculpatory DNA evidence were disclosed, prisoner could prevail in an action for post-conviction relief;

3. The determination by a state court in a state post-conviction proceeding that additional DNA testing would not conclusively establish prisoner's innocence did not have preclusive effect;
4. That further DNA testing would be material;
5. That the prisoner's confessions during parole proceedings did not foreclose claim; and
6. That further DNA testing could easily be performed without cost or prejudice to the state.

Accordingly, the Circuit affirmed the grant of summary judgment in favor of the prisoner. Under the reasoning in the *Osborne* case, this motion should also be granted as Mr. Fields also has a Fourteenth Amendment due process right to the evidence requested.

WHEREFORE, Petitioner requests that this court issue an order releasing Exhibit 34, which has been in the custody of the Idaho courts since trial, for DNA testing by a laboratory that is mutually acceptable to the State and Petitioner.

Respectfully submitted this 21st day of April, 2008.

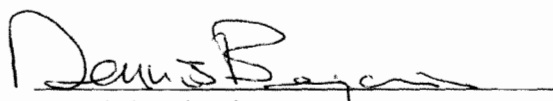

Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on the 7th day of April, 2008, I caused to be served a true and correct copy of the foregoing document by the US Mail postage prepaid and addressed to:

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 3191
Boise, Idaho 83720

Hand Delivery
 U.S. Mail
 Facsimile
 Federal Express


Dennis Benjamin

FILED 2:38 PM

APR 07 2008

C. DAVID NAVARRO, Clerk
By L. AMES
DEPUTY

Dennis Benjamin, ID Bar #4199
NEVIN, BENJAMIN, MCKAY & BARTLETT, LLP
303 W. Bannock St.
P.O. Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA**

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. SPOT 0200590D
)	
vs.)	
	)	MOTION FOR REQUEST FOR
	)	PRODUCTION OF DOCUMENTS
STATE OF IDAHO,)	
Respondent.)	
_____)	

Petitioner Zane Fields moves the court for an order that the state produce the original envelope that enclosed a letter that was an exhibit in the trial court file for DNA testing, or any other evidence in the State's possession that likely contains the DNA of suspect Mike Weaver.

The exhibit is a letter from Mike Weaver to detective Wallace of the Boise police department dated February 12, 1988, during the Wishing Well murder investigation explaining Weaver's whereabouts during the time of the murder. The exhibit was marked and admitted as Exhibit 34 in the underlying criminal proceeding and is in the court files at the Ada County Courthouse. *See State v. Fields*, Ada County Case No. 16259, Idaho Supreme Court Case No. 19809.

As grounds for this request, Fields states as follows:

1. Identity of the murderer was the main issue in this case, and petitioner Fields has continually asserted his innocence of the crime for which he has been convicted.
2. Mike Weaver was a suspect in the case. Information about Weaver was entered into the trial record in this matter, including his driver's license which contained a picture of him, and the letter from Weaver to the Boise Police Department, Exhibit 34, which explained his whereabouts at the time of the murder and in the days immediately before and afterwards.
3. Two witnesses, Mari Munk and Betty Hornecker, saw a large man who was in the Wishing Well store immediately before the crime. Munk and Hornecker's trial testimony described a large man in the Wishing Well store in the minutes leading up to within one or two minutes of the murder. The defense hypothesized at trial that Weaver, rather than Fields, was the actual killer.
4. Shortly after the crime in the early stages of the police investigation, the victim's husband and daughter, Herb and Karen Vanderford, told the police that the composite sketch of the man seen in the store, drawn based on the description of Betty Hornecker, looked like Mike Weaver. Mr. Vanderford also indicated that Weaver had recently been in the store and had a dispute with the store regarding a lay-away item. *See* Exhibit B to Affidavit of Counsel with Materials in Opposition to Respondent's Motion for Summary Disposition, filed December 31, 2007 (police report dated Feb. 12, 1988 at 14:30 hours).
5. There is a reasonable possibility that Weaver was in fact the murderer, based on the description of him and the fact that someone who looked like him was in the store

immediately before the crime, and that he had been in a dispute with the victim's family at the store days before the murder.

6. Fingernail scrapings were taken from the victim, Mary Catherine Vanderford, and those scrapings have undergone Y-STR DNA testing. The results of that testing found the presence of male DNA, and those results also exclude Zane Fields as a contributor to the male DNA found in those fingernail scrapings. *See* Exhibit C to Affidavit of Counsel with Materials in Opposition to Respondent's Motion for Summary Disposition, filed December 31, 2007 (report of Dr. Randell T. Libby)
7. Testing for Weaver's DNA is a reasonable step to see if his DNA is consistent with the DNA that was found in Mrs. Vanderford's fingernail scrapings.
8. If the original envelope for Exhibit 34 is found, it will offer compelling physical evidence of Mr. Weaver's DNA that is very relevant to this proceeding.
9. Exhibit 34 contains staple holes in the upper left-hand corner that quite likely attached the original envelope to the letter to Detective Wallace from Mike Weaver. *See* Affidavit of Kelly Nolan, attached hereto.

A similar request was recently granted by a Federal District Court and affirmed by the Ninth Circuit in *Osborne v. District Attorney's Office for Third Judicial Dist.*, --- F.3d ----, 2008 WL 861890 (9th Cir. April 2, 2008). In that case, a state prisoner brought a 42 U.S.C. § 1983 civil rights action to compel the district attorney's office to allow him post-conviction access to biological evidence that was used to convict him in 1994 of kidnapping and sexual assault. The United States District Court dismissed and the prisoner appealed. The Court of Appeals reversed the dismissal. On remand, the parties cross-moved for summary judgment and the District Court

this time granted summary judgment in favor of the prisoner. The District Attorney's office appealed.


On appeal the Ninth Circuit Court of Appeals held as follows:

1. The prisoner had a due process right to post-conviction access to biological evidence used to convict him for purpose of conducting DNA testing;
2. The standard of materiality applicable to prisoner's § 1983 claim was no higher than a reasonable probability that, if exculpatory DNA evidence were disclosed, prisoner could prevail in an action for post-conviction relief;
3. The determination by a state court in a state post-conviction proceeding that additional DNA testing would not conclusively establish prisoner's innocence did not have preclusive effect;
4. That further DNA testing would be material;
5. That the prisoner's confessions during parole proceedings did not foreclose claim; and
6. That further DNA testing could easily be performed without cost or prejudice to the state.

Accordingly, the Circuit affirmed the grant of summary judgment in favor of the prisoner. Under the reasoning in the *Osborne* case, this motion should also be granted as Mr. Fields also has a Fourteenth Amendment due process right to the evidence requested.

WHEREFORE, Petitioner requests that this court issue an order that the State produce the original envelope for the letter sent by Mike Weaver to Detective Wallace, Exhibit 34, which has been in the custody of the prosecuting attorney or the Boise police since it was mailed in 1988. That envelope is relevant to DNA testing that could establish Mr. Fields' innocence and ought to be produced.

Respectfully submitted this 7th day of April, 2008.

A handwritten signature in black ink, appearing to read "Dennis Benjamin". The signature is written in a cursive style with a long horizontal stroke at the end.

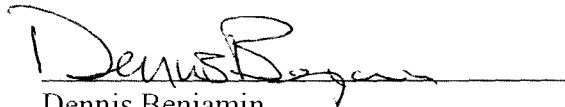
Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on the 7th day of April, 2008, I caused to be served a true and correct copy of the foregoing document by the US Mail postage prepaid and addressed to:

Roger Bourne
Deputy Prosecuting Attorney
Ada County Courthouse
200 West Front Street, Room 3191
Boise, Idaho 83720

Hand Delivery
 U.S. Mail
 Facsimile
 Federal Express


Dennis Benjamin

APR 11 2008

J. DAVID NAVARRO, Clerk
By A. CONE
DEPUTY

Dennis Benjamin
ID Bar #4199
NEVIN, BENJAMIN, MCKAY & BARTLETT, LLP
303 W. Bannock St.
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL CIRCUIT
OF THE STATE OF IDAHO, COUNTY OF ADA**

ZANE JACK FIELDS,)	
Petitioner,	)	Case No. SPOT 0200590D
)	
vs.	)	RESPONSE TO STATE'S MOTION
	)	TO DISMISS PETITION FOR POST-
STATE OF IDAHO,	)	CONVICTION SCIENTIFIC
Respondent.	)	TESTING
_____	)	ORIGINAL

Petitioner Zane Fields files this brief opposing summary dismissal of his petition for post-conviction scientific testing.

The entire basis for the State's motion to dismiss is that the DNA testing completed in this case "have not produced any 'admissible evidence demonstrating that the petitioner is not the person who committed the offense...' as required by Idaho Code §19-4902(e)." Motion to Dismiss at 3. (Quoting I.C. § 19-4902(e)). The State does not contend that Dr. Libby's conclusions excluding Mr. Fields are inadmissible, or indeed that any of the documents filed by Fields are inadmissible, though they were served and filed well before the filing of the State's Motion to Dismiss. See Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007. Accordingly, Petitioner addresses in this

**RESPONSE TO STATE'S MOTION TO DISMISS
PETITION FOR POST-CONVICTION SCIENTIFIC TESTING - 1**

brief the only point advanced by the State, that under the DNA statute at issue, I.C. § 19-4902, Fields' evidence taken with all the available evidence does not establish Fields' innocence of the murder for which he was convicted.¹ As set forth below, taking all of the available factual inferences in favor of Fields, the non-moving party, the evidence establishes "that it is more probable than not that the petitioner is innocent." *See* I.C. § 19-4902(d)(1). This court should therefore deny Respondent's Motion to Dismiss, and either order an evidentiary hearing or grant post-conviction relief and vacate Fields' conviction and sentence, declaring him innocent of the offense or ordering that the case be set for re-trial.

INTRODUCTION

This case involves the murder of Mary Catherine Vanderford at the Wishing Well gift store on Fairview Avenue in Boise, Idaho on February 11, 1988.² Mrs. Vanderford was the proprietor of the Wishing Well store on that day and was stabbed to death in the course of a robbery. Mrs. Vanderford was 69-years-old at the time of the murder. In the course of the robbery and murder, she suffered defensive cuts on her hands. PH TR³ at 20-21.

¹ The State does not contest the fact that identity of Mrs. Vanderford's killer was the main issue at trial, nor that the chain of custody of the fingerprints and fingernail scrapings (which has been in the possession of the Boise police, prosecutors and/or crime lab since it was collected) is broken or unreliable. Likewise, the State does not contend that newly available evidence found through automated fingerprint systems or mitochondrial or Y-STR DNA testing is inadmissible. Accordingly, Fields does not address those issues herein.

² Mr. Fields requests that this court take judicial notice of the prior trial and post-conviction proceedings in this court.

³ Citations to prior proceedings relating to Mr. Fields' sentence of death include: Clerk's Record - CR; Transcript - TR; Preliminary Hearing - PH; Trial - T; Postconviction Proceedings - PCR, Second Postconviction Proceedings - PCR2.

No physical evidence of any kind links Mr. Fields to the murder. No eyewitnesses to the murder are known or testified. All of the evidence connecting Mr. Fields to the murder in any way is from convicted felons who were in prison or jail with Mr. Fields.⁴

Eighteen unidentified latent fingerprints were found at the scene, including several bloody prints. T TR at 1296, 1306-07, 1314. Mr. Fields' prints were not found at the scene. T TR at 1306. One of the bloody prints matched the "good Samaritan," Ralph Simmons, (T TR at 1307), who entered the store shortly after the stabbing, found Mrs. Vanderford on the phone to "911," and remained on the phone until the police arrived. PH TR at 60-66.

Two eyewitnesses, Betty Hornecker (Eaton) and Mari Munk, testified to the scene inside the store up until a minute before the murder occurred. They both describe a suspicious man who was present in the store and attempting to avoid being observed. T TR at 924-965 and 966-988. Hornecker and Munk have provided affidavits confirming that Mr. Fields does not look like the suspicious man they observed in the store. Exhibits 1 and 2, attached hereto. When shown a composite drawing of the suspect, based on Mrs. Hornecker's description of him, Mrs. Vanderford's husband and daughter both responded that the suspect drawing "resembled an ex-

⁴ Several people who were not felons identified Mr. Fields as behaving suspiciously in stores in the neighborhood of the Wishing Well on the day of Mrs. Vanderford's murder. T TR at 175-184 and 188-206. Given Mr. Fields' subsequent conviction for an assault that occurred two weeks later in the course of escaping from a detention for shoplifting at a nearby Shopko, *State v. Fields*, 115 Idaho 1101, 772 P.2d 739 (Idaho Ct. App. 1989), Mr. Fields' suspicious appearance in a store unconnected to the Wishing Well is not a sufficient basis for convicting him of the murder of Mrs. Vanderford and is a denial of due process under the Idaho and federal constitution. *Jackson v. Virginia*, 443 U.S. 307 (1979). The letters from Detective Smith which state that the police did not have probable cause until the four inmates came forward asserting that Fields had confessed to them corroborates this. Exhibit A to Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007.

customer Mike Weaver,” who had returned to Boise and the Wishing Well store earlier that week and discussed an item that he had on lay-away. See Ada County Police Report attached as Exhibit B to Affidavit of Counsel With Material in Opposition To Respondent’s Motion for Summary Dismissal, filed Dec. 31, 2007, and T TR at 903.

The DNA testing that has been done on the physical evidence found on the victim in this case is important and favorable to Mr. Fields. The tested items were hairs found on Mrs. Vanderford’s clothing and scrapings taken from under Mrs. Vanderford’s fingernails during the investigation of the crime.

Y-STR DNA testing for male DNA has been done on fingernail scrapings taken from Mrs. Vanderford’s body. Mr. Fields is *excluded* from being a contributor to the *male DNA that was found* in the evidence sample. These fingernail scrapings were found in the sex crime kit that was utilized as part of the standard evidence collection procedure by the Boise Police Department in this case. See Exhibit 3, Declaration of Bruce Livingston dated April 17, 2006, attached hereto. Orchid Cellmark of Dallas, Texas completed Y-STR testing on the fingernail scrapings contained in the sex crime kit and obtained a profile of several males’ DNA from the fingernail scrapings. Serological Research (“SERI”) of Richmond, California completed Y-STR and mitochondrial DNA testing on Mr. Fields reference sample. Dr. Randell Libby of the University of Washington Medical School compared the samples and *excluded Mr. Fields as a contributor to the male DNA found under Mrs. Vanderford’s fingernails*. See Laboratory Report of Dr. Randell Libby, dated January 3, 2007, attached as Exhibit C to Affidavit of Counsel With Material in Opposition To Respondent’s Motion for Summary Dismissal, filed Dec. 31, 2007.

Orchid Cellmark Laboratories in Dallas, Texas also tested and obtained a mitochondrial DNA profile on five hairs found on the clothing of victim Mrs. Vanderford. Two hairs matched the victim's mitochondrial DNA profile, but the remaining three hairs could not have come from her. *See* Declaration of Dr. Randell Libby dated March 22, 2007, attached as Exhibit F to Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007. Significantly, petitioner Zane Fields was *excluded* as the source of all of the hairs, including the three unknown hairs found on the victim's body. *Id.*

PROCEDURAL HISTORY

Mrs. Vanderford was murdered on February 11, 1988. Mr. Fields was arrested for the murder on April 17, 1989. *See* Police Report by Dave Smith dated 4/25/89 attached to PSI Report. Fields was appointed the Ada County Public Defender, Amil Myshin, but Myshin withdrew due to a conflict of interest. T CR at 41-42. Gar Hackney and John Lynn were appointed as substitute counsel and tried the case. T CR at 43. Mr. Fields was convicted of first degree murder in May, 1990, and sentenced to death in March 1991. T CR at 104 and 178-179.

Mr. Fields filed a post-conviction petition and a timely appeal. T CR at 194-203. Lynn and Hackney sought to withdraw due to the conflict of interest inherent in evaluating their own conduct for ineffectiveness at trial. T CR at 183-184. The court re-appointed Amil Myshin, despite his prior withdrawal due to his own conflict of interest. T CR at 208. Myshin went forward with the post-conviction proceeding and filed a motion for new trial. Supp. T CR at 7. The appeal was stayed under Idaho's consolidated, unitary appeal system, until after post-conviction relief was denied on January 30, 1992. T CR at 226-235. The Idaho Supreme Court

affirmed the conviction, sentence and denial of post-conviction relief. *Fields v. State*, 127 Idaho 904, 908 P.2d 1211 (1995).

Mr. Fields was appointed new counsel for federal habeas corpus proceedings. In 1995, he filed a Statement of Issues in federal court and then sought to hold proceedings in abeyance and proceed in state court to exhaust new issues discovered by his federal habeas counsel. On April 23, 1997, Fields filed a petition for writ of habeas corpus in federal court. *Fields v. Klauser*, No. 95-422-S-EJL, Dkt. # 65.

Fields filed a new post-conviction petition in state court on September 11, 1996. PCR2 CR at 4-60. This court denied discovery, an evidentiary hearing and post-conviction relief on July 23, 1997. PCR2 CR 130-135. The Idaho Supreme Court affirmed. *Fields v. State*, 135 Idaho 286, 17 P.3d 230 (2000).

Fields filed an amended petition for writ of habeas corpus in federal court on October 1, 2001. *Fields v. Klauser*, No. 95-422-S-EJL, Dkt. # 89. That case has been briefed on the merits and is pending before the federal court.

On June 27, 2002, Fields filed this action seeking scientific testing of physical evidence that could establish his innocence. After sparring with the State over access to evidence, ultimately Fields discovered a number of hairs on the victim's clothing and fingernail scrapings of the victim that were contained in the sex crime kit taken by the police. Those items have been tested for DNA, the results of which are now before this court.

As noted already, Fields' DNA was not present in any of the tested material, but the DNA of some other males was found in the victim's fingernail scrapings, and unknown hairs were