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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

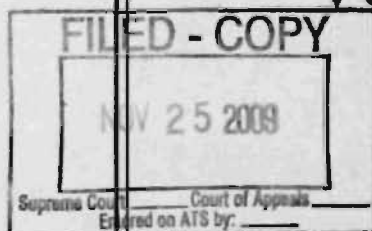
DENNIS BENJAMIN

Attorney for Appellant

LAWRENCE G. WUSDEN
Attorney General

Attorney for Respondent

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COPY

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found on the victim's body. Similarly, all of the unidentified latent fingerprints and palm prints, that were of sufficient quality to be submitted to computerized databases such as "AFIS" (automated fingerprint identification system), have been submitted to several local and national databases by the State. The State reports that only two individuals were identified by the automated program as the source of previously unknown latent fingerprints. One of the identified individuals, Daniel States, has a criminal record, but to this point Fields has been unsuccessful in linking him to the Wishing Well murder.

STANDARDS FOR SUMMARY JUDGMENT OR DISMISSAL

Petitioner is responding to the State's motion to dismiss with additional factual material contained in admissible evidence, which technically converts this case from a posture of summary dismissal to summary judgment. The standards are similar. At the summary judgment stage, the issue is only whether there is a genuine dispute of a material fact. To survive summary judgment, there must only be a "genuine issue of material fact" disputed by the parties. *See* IRCP 56(c); I.C. § 19-4906(c). Summary dismissal is permissible only when the petitioner's evidence raises no genuine issue of material fact, which, if resolved in the petitioner's favor, would entitle the petitioner to the requested relief. If such a genuine issue of material fact is presented, an evidentiary hearing must be conducted. *See State v. LePage*, 138 Idaho 803, 806-807, 69 P.3d 1064 (Ct. App. 2003). Any inferences that may be drawn must be liberally construed in favor of the petitioner. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, (2004). Any doubts must be resolved in favor of the petitioner. *Anderson v. City of Pocatello*,

112 Idaho 176, 190, 731 P.2d 171 (1987). Any factual assertions made by the petitioner which are un rebutted must be accepted as true. *Ivey v. State*, 123 Idaho 77, 80, 844 P.2d 706 (1992).

Even if the facts alleged by the petitioner are “vigorously” disputed by the respondent, summary judgment is inappropriate. *Anderson*, 112 Idaho at 190. Opposing presentations of the facts must, after all, be resolved in favor of the petitioner for the purposes of summary judgment; resolution can not be made in favor of the respondent because granting summary judgment is a ruling “that there exists no material issue of fact requiring resolution.” *State v. Christensen*, 102 Idaho 487, 489, 632 P.2d 676 (1981).

The preponderance of the evidence burden of proof applies to the merits of claim itself, after the disputed facts have been decided. *Larkin v. State*, 115 Idaho 72, 764 P.2d 439 (Ct. App. 1983).

THE STANDARD TO ESTABLISH INNOCENCE: MORE PROBABLE THAN NOT

The Uniform Post-Conviction Procedure Act allows relief to those convicted individuals who claim “that the petitioner is innocent of the offense” and where “fingerprint or forensic DNA test results demonstrate, in light of all admissible evidence, that the petitioner is not the person who committed the offense . . .” I.C. §§ 19-4901(a)(6), 19-4902(e). The determination of whether Fields is innocent is made by a preponderance standard, i.e., “that it is more probable than not that the petitioner is innocent.” I.C. § 19-4902(d)(1). Fields must therefore show that, in light of all the available evidence in this case including new DNA evidence, the evidence “will probably produce an acquittal.” Fields must establish by a “more probable than not” preponderance standard that he is innocent of the offense, i.e., that the new evidence together

with all available evidence “will probably produce an acquittal.” Under the statute, Fields must be found innocent if a jury would likely acquit him today, if he were tried with the DNA evidence and all available prior evidence. *See* I.C. § 19-4902. Idaho law thus requires a claim of actual innocence, based on newly-discovered DNA evidence, to meet the standard that the evidence “will probably produce an acquittal” before compelling a court to order a new trial.

This standard is in accord with both the statutory language referenced above, I.C. § 4902(d)(1), and the Supreme Court of the United States’ actual innocence exception to excuse procedural default, as announced in *Schlup v. Delo*, 513 U.S. 298 (1995) and *House v. Bell*, 547 U.S. 518, 126 S.Ct. 2064 (2006). As this is a case of first impression and the Idaho Supreme Court has not elaborated on the DNA statute’s “more probable than not standard” for establishing innocence, we turn to the Supreme Court of the United States which has discussed an identical “more probable than not” innocence standard.

In *Schlup*, the Supreme Court of the United States addressed the issue of newly discovered evidence, recognized that procedural bars to the judicial review of claims for relief in federal habeas corpus cases are not absolute, and that an exception exists for claims of actual innocence, also sometimes known as the “fundamental miscarriage of justice” exception. *Schlup v. Delo*, 513 U.S. at 314-15. In order to satisfy the *Schlup* standard, a petitioner must convince the court “that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt” in the absence of a constitutional violation and if all the evidence had been before the jury. *Schlup*, 513 U.S. at 327. However, the use of *all* evidence is available to the petitioner to satisfy this standard, since “[t]he habeas court must make its

determination concerning the petitioner's innocence in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.” *Id.* at 328 (internal quotations omitted). “[T]he standard requires the district court to make a probabilistic determination about what reasonable, properly instructed jurors would do” if *all* the evidence had been presented at trial. *Id.* at 329.

The opinion in *House v. Bell*, 547 U.S. 518, 126 S.Ct. 2064 (2006) merely affirms the standards described in *Schlup*. *House* further emphasized that an innocence claim arising from new reliable evidence “requires a holistic judgment about ‘all the evidence.’” *Id.*, 126 S.Ct. at 2078 (quoting *Schlup*, 513 U.S. at 328). The *House* Court also emphasized that although the standard is “demanding” the “standard does not require absolute certainty about the petitioner’s guilt or innocence.” *Id.*, 126 S.Ct. at 2077. Lastly, *House* emphasized that the standard requires judges to make assessments about how the new evidence would affect a reasonable juror. “Because a *Schlup* claim involves evidence the trial jury did not have before it, the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record.” *Id.*, 126 S.Ct. at 2078.

With these standards and the Idaho statute in mind, this court must evaluate Fields’ claim of innocence.

STATEMENT OF FACTS

Mrs. Vanderford was stabbed to death at the Wishing Well store on February 11, 1988. T CR at 6. On February 28, 1988, Mr. Fields was stopped for shoplifting at a nearby Shopko. Subsequently, he was arrested and convicted of aggravated assault for pulling a *gun* on the store employee that tried to detain him. *State v. Fields*, 115 Idaho 1101, 772 P.2d 739 (Idaho Ct. App. 1989).

While in the Ada County jail awaiting trial on the Shopko assault charge, Mr. Fields was interrogated by the police about the Wishing Well murder. Police Report by Detective Anderson dated 2/29/88 attached to PSI Report. Fields denied any knowledge or participation in it. *Id.* Mr. Fields had become a suspect because he resembled a man seen in the neighborhood of the Wishing Well on the afternoon of the murder, and because Keith Edson, a convicted felon that knew Fields from their prior incarceration at the state penitentiary, told the police following Fields' Shopko arrest that Edson had seen Fields leaving the Wishing Well while looking "nervous" around the time of the murder. *State v. Fields*, 127 Idaho 904, 907-908, 908 P.2d 1211, 1214-1215.

No other evidence connected Fields to the crime for the next year, until the detectives on the Wishing Well case visited the prison where Fields was serving his sentence on the Shopko assault conviction. The detectives interrogated various inmates from Mr. Fields' cellblock and inquired whether Fields had made any admissions about the Wishing Well murder. Police Report by Ayotte dated 4/24/89 attached to PSI. Uniformly, the detectives were told by the inmates that Fields had made no admissions about the crime. Remarkably, after almost two years

of silence by Fields, within a few weeks of the detectives' interview with Fields' inmate neighbors, Fields allegedly inculpated himself to a number of his fellow inmates, all of whom eagerly came forward with the inculpatory statements with which the police built a case against Mr. Fields. T TR at 1473-1482; PH TR at 119-172; and Police Reports by Detective Smith dated 4/24/89 and 5/16/89 attached to PSI.

Several inmate "snitch" witnesses came forward that were so "dirty" or unsavory, that the prosecution decided not to use their testimony at trial. *See* PH TR at 119-172; Statement by Kerry Troutner dated 6/5/88, Statement by Rick Stieger dated 8/15/89, and Information Report dated 6/14/89 attached to PSI. The prosecution ultimately relied at trial upon a trio of inmate witnesses, Joe Heistand, Scott Bianchi and Jeff Acheson. Heistand and Bianchi stated that Fields admitted killing Vanderford. T TR 1478-1482 and 1569-1570. Acheson stated that Fields turned-off the television when a "Crime Stoppers" public service announcement aired several times about the Wishing Well murder, and that Fields said he "got rid of the evidence." T TR 1430-31. Heistand and Bianchi were equally, if not more damaging, laying the blame on Mr. Fields based on admissions that they claim to have heard him make, as referenced in the state court opinion. *State v. Fields*, 127 Idaho at 908, 908 P.2d at 1215.

Heistand, Bianchi and Acheson all denied getting any substantial benefits for their testimony and denied the existence of a deal with the State. T TR at 1489-90, 1584, 1604, 1614-15; T TR at 1870; PH TR at 129, 133; PCR TR at 2062-65. They received a variety of benefits, in the way of contact visits with family, cigarettes, food, and most importantly, letters of thanks and support from the State. PCR2 CR at 78-79, 83-84. Much more concerning, they received

information about the crime from the State. T TR at 1732-33 (testimony of Salvador Martinez that Heistand and Gilchrist learned about the case from the police and other inmates); PCR2 CR at 80 (Affidavit of J. C. Bryant reporting that Acheson acknowledged that the “witnesses that were held together constantly discussed the case and the information from the Prosecuting Attorney as to the questions they would be asked and how they should answer the questions.”); Affidavit of Jeff Acheson dated July 16, 2004, attached as Exhibit D to Affidavit of Counsel With Material in Opposition To Respondent’s Motion for Summary Dismissal, filed Dec. 31, 2007 (when Acheson stated to the State’s investigator that Zane had said he threw a gun into the construction site to get rid of the evidence, he “was corrected by the investigator as to the fact that it was not a gun but a knife that was used to do the murder. I never had this information until the police told me.”).

GIVEN THE WEAKNESS OF THE STATE’S CASE, THE NEW DNA EVIDENCE AND WITNESS STATEMENTS, FIELDS HAS ESTABLISHED HIS INNOCENCE.

In determining the likelihood of Fields’ innocence based on the totality of the evidence, including the DNA evidence obtained in this case, it is important to recognize that the State’s evidence at trial was very weak. There was not an iota of physical evidence linking Mr. Fields to the crime.⁵ The State’s evidence of guilt was mainly provided by the testimony of ex-convicts

⁵ In its Motion to Dismiss the State has admitted that “the blood spots on [Fields’] orange coat could not be identified as human blood.” Motion to Dismiss at 3. Indeed, State expert witness Ann Bradley’s “preliminary screening test for the presence of blood gave [her] a positive test for the presence of blood” in two spots on Trial Ex. 22, the defendant’s coat. T TR at 1410. However the two locations that gave a preliminary positive result for blood tested *negative* for human blood. *Id.* (“my test for human origin failed to produce any positive result”). On cross examination, Bradley was asked if “the blood was probably present but the test for human origin was negative?” She responded “that’s correct.” T TR at 1412. Asked “So it could have been animal blood?”, Bradley responded “it certainly could have been.” T TR at 1413.

and jail inmates. The chief detective on the case, Dave Smith, wrote a letter admitting that two reporters independently talked to some of the jurors, and that “the reporters stated that the jurors told them that their guilty verdict was based on the ‘inmates testimony’ presented by the State.” Dave Smith Letter dated May 30, 1990, attached as Exhibit A to Affidavit of Counsel With Material in Opposition To Respondent’s Motion for Summary Dismissal, filed Dec. 31, 2007. More significantly, as set forth below, Mari Munk and Betty (Hornecker, at the time of trial) Heaton, the last two people to see Mrs. Vanderford and her likely attacker, do not believe that Mr. Fields was the person they left in the store with Mrs. Vanderford moments before the attack occurred.

The timing of known events is critical, so we turn to detailed facts from the record. The timing shows how implausible it is that Mr. Fields entered the store and committed the killing. He could not have done so without someone seeing him. First, 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. T TR at 994, 997. Ralph Simmons walked into the store while Mrs. Vanderford was on the telephone. She was calling from the telephone at the counter where the cash register was located. T TR at 1010.

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. T TR at 927. According to Mrs. Hornecker, this man did not look like he fit in the store, was acting suspiciously by trying to avoid her and hiding from her gaze in a suspicious

manner. T TR at 929-30. After another customer left, Mrs. Vanderford, Mrs. Hornecker and the suspicious man were the only customers in the store. T TR at 928. This man was still in the Wishing Well at 11:08 -11:10 a.m. when Mrs. Hornecker left the store. T TR at 931-32.

However, the man Mrs. Hornecker (now Heaton) saw 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 camouflage jacket which the State claims Mr. Fields was wearing during the killing. T TR at 954, 965. Further, Hornecker estimated the man to be six feet four, between 230-240 pounds, T TR at 932, and in his forties. T TR at 957. 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 who was in the Wishing Well just before the killing (200 instead of 230–240 pounds). *See* Arrest Report of Zane Fields dated Feb. 22, 1988, attached hereto as Exhibit 4.

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." T TR at 932-33.

When Mrs. Hornecker left the store, Mrs. Vanderford was on the phone and the large man was still in the store. As Mrs. Hornecker walked out of the store, another woman entered. T TR at 935. A few minutes later, Mrs. Hornecker 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. T TR at 935-36. 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. T TR at 1049-50.

Mr. Ervin testified that an emergency call came in that day to the Liberty and Fairview field station at 11:15 a.m. T TR at 1039, 1049, 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. T TR at 1049-50.

The second witness, Mari Munk came into the Wishing Well between 11:05 and 11:10. T TR at 967. Due to the timing of Mrs. Hornecker's departure, Mrs. Munk 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. Mrs. Vanderford, the unknown large man, and Mrs. Munk were the only people in the store. T TR at 976. 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. T TR at 971, 986. Mrs. Munk was certain that this man could not have been wearing orange or red clothing. T TR at 987. 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. T TR at 970.

As Mrs. Munk left the store, she noticed an ambulance traveling past the Wishing Well on Fairview. T TR at 972. This ambulance must have been the one which was dispatched at 11:15 a.m.

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 a.m., the time of the 911 call, Mrs. Vanderford had already been attacked and the assailant had escaped. Thus, it seems very probable, certain, really, that the man in the store, who the two witnesses said at trial did not resemble Mr. Fields was the true killer. *See also* Affidavit of Betty Heaton, attached hereto as Exhibit 1 (“The defendant, Zane Fields, did not look like the third man that I saw in the Wishing Well shortly before the murder.”). And remember that Mrs. Vanderford herself stated in her “911 call” that it was a lone male attacker. Mr. Fields cannot be hypothesized to have joined the large balding suspect.

It should also be remembered that no physical evidence links Mr. Fields to the murder.

Thus, two State witnesses testified that they saw a suspicious looking man, who did not match the description of the petitioner, in the Wishing Well in the minutes just before the murder. Since the trial, an investigator for Mr. Fields has contacted both those women and they have confirmed more specifically than they testified that Mr. Fields was not the person they saw leaving the Wishing Well just before the murder. The victim’s family identified Mike Weaver as both the only person with whom the family had had a dispute, and as looking like the composite drawing of the suspect that was put together based on Mrs. Munk’s description of the man she saw in the store. The two witnesses, Mrs. Munk and Mrs Hornecker identify the picture on Mike Weaver’s driver’s license, as looking much more like the man they saw in the store just before

the murder than Mr. Fields does. *See* Heaton Affidavit ¶¶ 16-23, attached hereto as Exhibit 1; Munk Affidavit ¶¶ 12-14, attached hereto as Exhibit 2.

Betty Heaton, whose former name was Hornecker, says that the man she saw in the store was about 48 years old, 230-240 pounds and approximately 6 feet four inches tall. Heaton Affidavit ¶¶ 8-9, Exhibit 1, attached hereto. She also says that “[t]he man that was the defendant at trial, Zane Fields, did not look like any of the men that I saw at the Wishing Well on February 11, 1988.” Heaton Affidavit ¶ 22, Exhibit 1, attached hereto. Mari Munk, the other eyewitness at the trial, agrees with Ms. Heaton’s physical description of the man in the store, *i.e.*, 48 years old, over six feet tall and about 230 pounds. Munk Affidavit ¶ 3, Exhibit 2, attached hereto. She also agrees that “[t]he defendant, Zane Fields, did not look like the man that I saw in the Wishing Well shortly before the murder.” Munk Affidavit ¶ 12, Exhibit 2, attached hereto.

Additionally, both witnesses looked at a picture of Michael Weaver and said that he looked like the man they saw in the Wishing Well on that day. *See* Heaton Affidavit ¶¶ 17, 22, attached hereto as Exhibit 1; Munk Affidavit ¶ 12-14, Exhibit 2, attached hereto. Mr. Weaver was a customer of the Wishing Well. T TR at 903. Karen Vanderford testified at trial that the store had a dispute with Mr. Weaver over a lay-away item with Mr. Weaver believing he had paid more towards the purchase price than the store records showed. T TR at 905-07. Mr. Weaver’s sister testified that Mike is six foot-four, weighs about 200 pounds. T TR at 1543.

The evidence from Ms. Heaton and Mrs. Munk, that Mike Weaver looked much more like the man in the store than did Zane Fields, ought to be sufficient by itself to grant an

evidentiary hearing on Fields' actual innocence.⁶ But in combination with the DNA evidence that has now surfaced, an evidentiary hearing on Mr. Fields' innocence must be held. Mrs. Vanderford had defensive cuts on her hands, indicating she struggled with her attacker. She had male DNA under her fingernails, and that DNA has been established not to have come from Mr. Fields. Several unknown hairs were found on her body, and those hairs did not come from Mr. Fields. *See* Reports of Dr. Randell T. Libby, dated Jan. 3, 2007 and Mar. 22, 2007, attached as Exhibits C and F to Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007.

The State argues that Fields could have been scratched in the murder, but then healed before his arrest 11 days after the murder. State's Motion to Dismiss at 3. That argument is a red herring, because if Mr. Fields had been scratched by Mrs. Vanderford his DNA would have been present in her fingernail scrapings. Mr. Fields' DNA was not in Mrs. Vanderford's fingernail scrapings. While it is very, very likely that Mrs. Vanderford scratched her attacker, given the defensive cuts she suffered and the presence of male DNA in her fingernail scrapings, Mr. Fields DNA was not present in those fingernail scrapings. Some other unknown males' DNA was present, instead.

The combination of evidence pointing to some other lone, male killer that was not Mr. Fields is sufficient to establish that it is more probable than not that Mr. Fields is innocent of the crime and that if a jury heard this case today, the trial would probably result in an acquittal. Two

⁶ The State's evidence of guilt at trial came nearly exclusively from jailhouse informants and ex-convicts. This type of evidence is notoriously unreliable. *See*, Steven Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 Hastings L. J. 1381 (1996).

eyewitnesses to the likely killer, Witnesses Munk and Heaton (Hornecker) have stated that Mike Weaver's picture looked much more like the man they saw lurking in the store. The victim's daughter and husband identified Weaver as a person they knew who looked like the composite drawing of the suspect, and they noted that Weaver had recently been in the store and had a dispute about a lay-away item. Witnesses Munk and Heaton (Hornecker) were not asked at trial if Weaver's picture looked like the man they saw in the store; they clearly state that fact in their affidavits and explicitly aver that Weaver looked much more like the man in the store than Fields did. Taking the witnesses descriptions of the man in the store, the victim's acknowledgment that Weaver looked like the man these witnesses described, Weaver's recent appearance in the store and the fact of his dispute with the Vanderfords over a lay-away item, and the evidence of male DNA in Mrs. Vanderford's fingernails that is not from Mr. Fields, combined with the existence of defensive cuts on Mrs. Vanderford's hands or arms, no jury would likely convict Mr. Fields if this trial were held today.

Undoubtedly the State will argue that Fields' "confession" to inmate snitch witnesses would lead to his conviction again. The State is wrong. Given this new evidence that some other male's DNA is present in Mrs. Vanderford's fingernails, the unreliable inmate witnesses testimony that was the sole basis for Fields' initial conviction would not result in a conviction if this case were re-tried today.

We now know that the inmate or former inmate witnesses, Joe Heistand, Scott Bianchi, Jeff Acheson and Keith Edson were inconsistent, fed information about the crime, and not believable. As previously set forth *supra* in the factual recitation of this case, Scott Bianchi has

recanted his testimony on several occasions. Both Bianchi and Heistand learned about the case from the police and other inmates. T TR at 1732-33 (testimony of Salvador Martinez).

Inmate Heistand was housed in the same tier as Fields in Orofino in 1988 and 1989. T TR at 1465-67. Heistand's credibility is suspect. He claimed to have gotten admissions from Fields from May 2-10, 1989, by talking through the vents, T TR at 1471, before talking to Detective Smith on May 15, 1989. T TR at 1489. But Heistand inconsistently addressed the issue of when he learned information from Fields, before or after talking to Officer Hamilton on May 10. *See* T TR at 1487-88 (claimed to talk to Hamilton after learning from Fields); *cf.* T TR at 1495 (stated he went back and talked with Fields after talking to Officer Hamilton); T TR at 1496 ("I was asked by two other detectives from Ada County to talk to him and I went back and started talking to him about it").

Salvador Martinez testified that Heistand, Gilchrist and Bianchi talked about the case with him extensively. Bianchi admitted that his testimony was lies, and that he didn't know anything about the murder from Zane. T TR at 1720, 1727 (Lodging A-42). Heistand admitted that he'd learned about the case from other inmates. *Id.* at 1733. Gilchrist told Martinez that "the police helped us to talk over the case over and over." *Id.* at 1732. Heistand was in "constant contact, daily" with Gilchrist from November 1989 until trial in May 1990, and was his cellmate. T TR at 1518.

Jeff Acheson admitted that the police gave him information. Affidavit of Jeff Acheson dated July 16, 2004, attached as Exhibit D to Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007 (when Acheson stated to

the State's investigator that Zane had said he threw a gun into the construction site to get rid of the evidence, he "was corrected by the investigator as to the fact that it was not a gun but a knife that was used to do the murder. I never had this information until the police told me."). Acheson also admitted that the inmates were held together and talked about the case and how the Prosecuting Attorney wanted them to testify. PCR2 CR at 80 (Affidavit of J. C. Bryant reporting that Acheson acknowledged that the "witnesses that were held together constantly discussed the case and the information from the Prosecuting Attorney as to the questions they would be asked and how they should answer the questions."). Further, Acheson testifies in his affidavit and confirms the testimony of Salvador Martinez, i.e., Acheson acknowledges that the inmates who were held together pre-trial, Gilchrist, Bianchi and Heistand, "told me of how they had made up most of what they were saying, in order to get out of Orofino." *See* Acheson Affidavit, page 2, Exhibit D to Affidavit of Counsel With Material in Opposition To Respondent's Motion for Summary Dismissal, filed Dec. 31, 2007.

Given the collusion among the inmate witnesses, the feeding to them by the State of information about the crime, the significant questions about their credibility, and the thinness of the remainder of the case against Fields, the inmate snitch witnesses' testimony more probably than not would be unlikely to result in a conviction if this case were re-tried today. The inmate testimony would not be credited, given the evidence that the wrong man (Fields, instead of Weaver) was arrested based on much more credible eyewitnesses, and the presence of male DNA in Mrs. Vanderford's fingernail scrapings – DNA that could not have come from Mr. Fields.

Finally, Keith Edson, the former penitentiary inmate who claimed to see Fields leave the Wishing Well at about the time of the crime, was impeached so badly at trial that his testimony is also not believable.

It was plain that Edson was making up nearly every fact in his story. For example, the Taco Bell drink that he “purchased” was impossible, because the Taco Bell store’s construction had not even been completed and the store was not yet open to the public. *See* TT 1243-45, 1233 (testimony of Edson that he bought a pop at the Taco Bell that was on Fairview next to the BMC store); *cf.* TT 1633-35 (the Taco Bell on Fairview near the Wishing Well was still under construction and not even open for business until February 23, 1988, twelve days after the Wishing Well murder). Moreover, Edson testified that he arrived at the parking lot next door to the Wishing Well at 11:00 a.m and saw Fields enter the store at 11:02 a.m., and then waited for him to leave, which he did, some ten to fifteen minutes later. TT at 1255. And yet, Edson did not see anyone working in front of the store., TT at 1267, 1270. Nor did he see any cars in the Wishing Well parking lot other than one cargo van. TT at 1265-66. Edson did not see a brown Honda Accord arrive and leave the Wishing Well parking lot. TT at 1267. Nor did he see the woman driving the Accord enter and leave the store. TT at 1267-68. Edson did not see an Arrowstar van arrive and leave the Wishing Well parking lot. TT at 1268. Nor did he see the woman driving the Arrowstar her enter and leave the store. TT at 1270. Nor did Edson see any cars or activity in the BMC parking lot (where he was standing) next door to the Wishing Well store, because, he stated, the BMC store was closed. TT at 1264-65. Compare these “observations” to the affidavits and testimony of Mari Munk and Betty Hornecker/Heaton, who

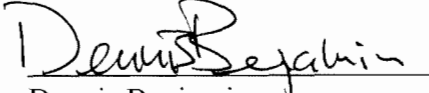
were the women who consecutively entered and left the Wishing Well during the time frame Edson claimed to have been watching the store. Further compare Edson's testimony to that of Mrs. Vanderford's husband, Herbert, who was standing on the sidewalk washing windows in the front of the store, until leaving around five minutes before or after 11 a.m. on the day of the murder. TT at 917-18. Mr. Vanderford testified that the BMC store next door was open, that there were many cars in the BMC lot. TT at 919.

In light of the fact that Edson was wrong about nearly every observation that he made about the activities at the Wishing Well in the minutes preceding the crime, his testimony would not likely lead to a conviction if this case were re-tried with the evidence pointing to Weaver (or someone who looked like him) and excluding Fields from the forensic evidence collected from the victim (hairs and fingernail scrapings).

CONCLUSION

In conclusion, this court should order an evidentiary hearing at which this court could evaluate the credibility of the snitch witnesses against the very credible women, eyewitnesses Mari Munk and Betty (Hornecker) Heaton, while considering the significance of male DNA evidence in Mrs. Vanderford's fingernail scrapings and any other evidence that may yet be discovered, for example DNA that could be obtained from the original letter that Mike Weaver wrote to the police. This court should grant relief or hold an evidentiary hearing. Dismissal of this post-conviction petition without an evidentiary hearing would result in a miscarriage of justice and the likely execution of an innocent man who has been languishing in prison for nearly 20 years.

Respectfully submitted this 11th day of April, 2008.

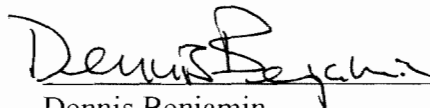

Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on the 11th 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

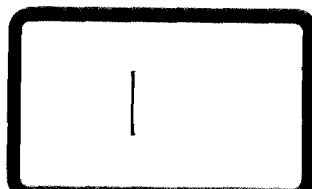

Dennis Benjamin

State of Idaho)
 SS
County of Ada)

AFFIDAVIT OF BETTY HEATON

I, Betty Heaton, being duly sworn upon oath, over the age of 18 and competent to testify, depose and state as follows:

1. I reside in Boise Idaho.
2. I was present at the Wishing Well store on the morning of February 11, 1988 for about 10 minutes, from approximately 11:00 a.m. until about 11:10 a.m. In 1988 and in 1990 at the time of Zane Fields' trial, I was known by my former name, Betty Homecker.
3. In my time at the Wishing Well store on February 11, 1988, I saw three men.
4. When I arrived at the store, I saw an older man washing windows who went around the corner as I arrived and was not seen again. That man did not look at all like the defendant at trial, Zane Fields.
5. I saw a second man in a beige tweed coat when I first went into the store. This second man left the store shortly after I arrived, probably within two to five minutes of my arrival, and I did not see him again.
6. A third man entered the store around the time that the second man left, and the third man remained there during the rest of my stay in the Wishing Well store, the last five to eight minutes of my ten minute approximate time in the store.
7. Something about this third man made me very uneasy and caused me to keep my eyes on him while I was in the store.



8. This third man was approximately six feet four inches tall, and I know that based upon his height relative to my husband at that time who was six feet two inches tall.
9. This third man appeared to be about 48 years old at the time, wore a navy blue hooded sweatshirt, weighed 230-240 pounds, appeared to have large girth and to be portly, was balding on the crown of his head, and had dark hair around the sides of his head near his ears.
10. This third man, who was the only man in the store during the latter half of my presence there, was still in the store when I left.
11. As I left, a woman came into the store.
12. There was a woman working behind the counter of the store. She talked to the third man and talked on the phone.
13. I left the store after about ten minutes at approximately 11:10 a.m.,
14. The next day, after reading the story in the newspaper about the murder at the Wishing Well, I called the police to tell them that I was in the store shortly before the murder. I made notes of my recollections about being in the Wishing Well store, immediately after talking with the police on the phone on the day after the murder.
15. On the day after the murder, following my phone conversation with the police, I went to the police station to discuss what I had seen and to assist in the making of a composite picture of the third man that I saw in the Wishing Well.
16. Attached hereto as Exhibit A is a composite sketch of the person I saw in the store that was created as a result of my visit to the police station, though I was never completely happy with the picture. The composite sketch failed in my opinion to capture the

appearance of the third man in that it didn't have enough fullness of face and width in the forehead as it was drawn.

17. In the course of looking at photographs at the police station, I did pick out one photograph of a man who I thought looked remarkably like or was the third man that I saw in the store. This picture is attached hereto as Exhibit B. The police told me that this man had an alibi. The photograph attached as Exhibit B fails to capture the look of the third man in the store, only in that the third man did not have a mustache or wear glasses.
18. The notes that I made on February 12, 1988 of my visit to the Wishing Well on the day before are attached hereto as Exhibit C. I made some additional notes on Exhibit C following the second of my visits to the police station on February 19, 1988.
19. I spoke with Clinton Bays, an investigator for the defendant in the Wishing Well case, on the telephone. I related my recollections to him about being in the Wishing Well store on the day of the murder.
20. I spoke with the prosecutors on the night before I testified at trial.
21. I testified at trial.
22. The defendant, Zane Fields, did not look like the third man that I saw in the Wishing Well shortly before the murder. The pictures that I saw in a photo line-up at trial, attached hereto as Exhibit D, look nowhere near as close to the third man whom I saw at the Wishing Well store as did the photograph that I picked out at the police station and which is attached hereto as Exhibit B.
23. The man that was the defendant at trial, Zane Fields, did not look like the any of the men that I saw at the Wishing Well on February 11, 1988.

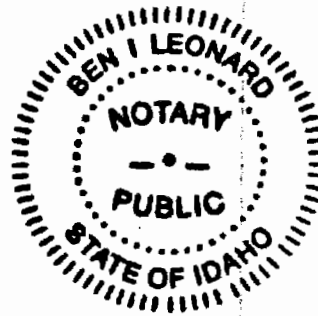
24. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 26 Day of September, 2003.

Betty Heaton
Betty Heaton

Subscribed and sworn to before me by Betty Heaton, a person known to me, on this 26 date of September, 2003.

Ben Leonard
Notary Public
My commission expires on 3/15/08.



State of Idaho)
 SS
County of Ada)

AFFIDAVIT OF MARI MUNK

I, Mari Munk, being duly sworn upon oath, over the age of 18 and competent to testify, depose and state as follows:

1. I reside in Boise, Idaho.
2. I was present at the Wishing Well store February 11, 1988. I arrived at about 11:08 a.m., after watching the end of a television show, "Concentration," at my home.
- MM3. 3. While I was inside the store, I saw a man who was over six feet tall, heavy and sloppily ^{As I entered the W.W. I passed a lady coming out. An older lady was behind the counter near the door on the phone} ~~about 230 lbs 48 years old~~ dressed. *Not well dressed.*
- MM4. 4. I got very close to this man, and we crossed paths within the store, ^{I glanced at him although I never got a} ~~although I never got a~~ very good look at his face. *did not*
- MM5. 5. There was a woman working behind the counter.
- MM6. 6. I left the store after less than ten minutes. ^{the only customer in the store,} The man was still in the store.
- MM7. 7. The next day, after reading the story in the newspaper about the murder at the Wishing Well, I called the police to tell them that I was in the store shortly before the murder. I made notes of my recollections about being in the Wishing Well store, immediately after talking with ^a ~~the~~ police ^{office} on the day after the murder.
- MM8. 8. ^{A few days later} I saw a composite sketch drawing of a man that was thought to be a suspect in the paper. That picture did not look like the man that I saw in the Wishing Well shortly before the murder.

MM
9.

^A ^{Officer} ~~Man~~
The police spoke with me on the telephone, but never came to interview me in person or to show me any photographs or pictures of possible suspects.

MM
10.

I spoke with Clinton Bays, an investigator for the defendant in the Wishing Well case, on the telephone. I related my recollections to him about being in the Wishing Well store on the day of the murder. He did not show me any photographs or pictures of the defendant

or any other suspects. ^{2 years later} I also gave him a copy of my original notes from the day after the murder

11.

I testified at trial.

12.

The defendant, Zane Fields, did not look like the man that I saw in the Wishing Well shortly before the murder.

13.

The only pictures or photographs that I recall seeing in the Wishing Well murder case are those that appeared in the newspaper.

14.

Bruce Livingston and Ben Leonard of the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho showed me a picture of a man on an identification card, identified as Michael Weaver. That picture looks much more like the man that I saw in the Wishing Well store shortly before the murder than did the defendant, Zane Fields. A copy of the picture shown to me as being Michael Weaver is attached hereto.

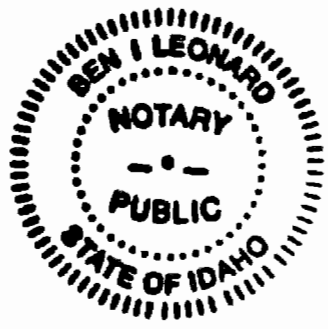
15.

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

Mari Munk
Mari Munk

Subscribed and sworn to before me by Mari Munk, a person known to me, on this 2 date of October, 2003.

Ben Leonard
Notary Public
My commission expires on 3/15/08



AFFIDAVIT OF MARI MUNK - 2



This subject was in the Wishing Well Gift Shop prior to or during the robbery/murder of Kay Vanderford on 2-11-88 around 11:20 a.m.

He is being sought by Boise Police for questioning. If you know of this subject, call Boise Police at:

377-6790

Physical Description: White male - 48 years - 6'4" - 220# - bald on top w/dark brown hair on the sides, smooth skinned - no facial hair.

Possibly wearing: Blue sweatshirt with a zippered front - revealing a white or grey shirt and navy blue pants.

Admitted in...

MAY 11 1988

DEFENDANT
EXHIBIT
5
10259

EXHIBIT A

00227

IDAHO

519-88-1275
523750



WEAVER

30 9622

AL REPORT

ADA COUNTY SHERIFF'S DEPARTMENT

BOISE POLICE DEPT.

1. R.D. 45	2. O.R. No. 808-338
---------------	------------------------

3. Offense or Charge (Include Degree) ELEVATED ASSAULT	4. Law Section No. 18-905	5. Custodial Hold Felony <input type="checkbox"/> Misdemeanor <input checked="" type="checkbox"/>
6. Date & Time Occurred 02/22/88 1330	7. Date & Time Reported 02/22/88 1330	8. Location of Occurrence 8105 FAIRVIEW, BOISE

9. Victim Name - Last, First, Middle (Firm if Business) HOBAN, CRATE	10. Residence Address ---	11. Res. Phone ---
12. Occupation SECURITY	13. Race CAU	14. Sex M
15. Age 22	16. D.O.B. 6-5-65	17. Business Address/School SHOPKO
18. Bus. Phone 323-9240	19. Victim Vehicle Year	20. Make
21. Model	22. Body Style	23. Color/Color
24. License No.	25. State	

CODES: V - VICTIM W - WITNESS RP - REPORTING PARTY PG - PARENT/GUARDIAN

OTHERS INVOLVED	26. Code V	27. Name - Last, First, Middle (Firm if Business) HELBERSON, TIM	28. Residence Address ---	29. Res. Phone ---
	30. Occupation ASST MGR	31. Race CAU	32. Sex M	33. Age 28
	34. D.O.B. 4-6-59	35. Business or Employer Address/School SHOPKO	36. Bus. Phone 323-9240	
	37. Code W	38. Name - Last, First, Middle (Firm if Business) BOAM, DONNA	39. Residence Address EAGLE	40. Res. Phone 439-208-
41. Code RP	42. Name - Last, First, Middle (Firm if Business) COWLER, DAVID	43. Residence Address ---	44. Res. Phone 316-163-	
45. Occupation OWNER	46. Race CAU	47. Sex M	48. Age 42	49. D.O.B. -
50. Business or Employer Address/School FANTASTIC SAMS	51. Residence Address ---	52. Res. Phone 323-143-		
53. Code V	54. Name - Last, First, Middle (Firm if Business) MORRIS, DAVES	55. Residence Address ---	56. Res. Phone ---	
57. Occupation ---	58. Race CAU	59. Sex M	60. Age ---	61. D.O.B. ---
62. Business or Employer Address/School	63. Residence Address	64. Res. Phone		

SUSPECTS	65. Suspect No. 1 (Last, First, Middle) FIELDS, ZADE JACK	66. Nickname/AKA MERIDIAN	67. Race W	68. Sex M	69. Age 29	70. D.O.B. 6-15-58	71. Ht. 5'11"	72. Wt. 300	73. Bld. ---	74. Hair ---	75. Eyes BLU
	76. Suspect's Address 404 W CHESSY LN # 101	77. Clothing Description BLU DENIM OVRK JACKET	78. Suspect No. 2 (Last, First, Middle)	79. Nickname/AKA	80. Race	81. Sex	82. Age	83. D.O.B.	84. Ht.	85. Wt.	86. Bld.
	87. Suspect's Address	88. Clothing Description	89. Ht.	90. Wt.	91. Bld.	92. Hair	93. Eyes				

89. HAIR LGTH/TYPER	90. HAIR STYLE	91. FACIAL HAIR	92. COMPLEXION	93. GEN. APPEARANCE	94. DEMEANOR	95. SPEECH	96. WEAPON
1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown	1. <input type="checkbox"/> Unknown
2. <input type="checkbox"/> Bald	2. <input type="checkbox"/> Afro/Nat	2. <input type="checkbox"/> Clean Shave	2. <input type="checkbox"/> Acne	2. <input type="checkbox"/> Conservative	2. <input type="checkbox"/> Angry	2. <input type="checkbox"/> Accant	2. <input type="checkbox"/> Hair Gun
3. <input type="checkbox"/> Curly	3. <input type="checkbox"/> Braided	3. <input type="checkbox"/> Full Beard	3. <input type="checkbox"/> Dark	3. <input type="checkbox"/> Dirty	3. <input type="checkbox"/> Apologetic	3. <input type="checkbox"/> Lips	3. <input type="checkbox"/> Shotgun
4. <input type="checkbox"/> Long	4. <input type="checkbox"/> Bushy	4. <input type="checkbox"/> Fu Manchu	4. <input type="checkbox"/> Freckled	4. <input type="checkbox"/> Disguise	4. <input type="checkbox"/> Calm	4. <input type="checkbox"/> Mumbles	4. <input type="checkbox"/> Rifle
5. <input type="checkbox"/> Shoulder	5. <input type="checkbox"/> Greasy	5. <input type="checkbox"/> Goutie	5. <input type="checkbox"/> Light	5. <input type="checkbox"/> Flashy	5. <input type="checkbox"/> Disorganized	5. <input type="checkbox"/> Offensive	5. <input type="checkbox"/> Slim Gun
6. <input type="checkbox"/> Short	6. <input type="checkbox"/> Military	6. <input type="checkbox"/> Lower Lip	6. <input type="checkbox"/> Medium	6. <input type="checkbox"/> Good Looking	6. <input type="checkbox"/> Irrational	6. <input type="checkbox"/> Quiet	6. <input type="checkbox"/> Toy Gun
7. <input type="checkbox"/> Coarse	7. <input type="checkbox"/> Ponytail	7. <input type="checkbox"/> Mustache	7. <input type="checkbox"/> Pale	7. <input type="checkbox"/> Military	7. <input type="checkbox"/> Nervous	7. <input type="checkbox"/> Rapid	7. <input type="checkbox"/> Knife
8. <input type="checkbox"/> Fine	8. <input type="checkbox"/> Processed	8. <input type="checkbox"/> None/Fuzz	8. <input type="checkbox"/> Pocked	8. <input type="checkbox"/> Unkempt	8. <input type="checkbox"/> Polite	8. <input type="checkbox"/> Slow	8. <input type="checkbox"/> C/POR. Cut. Ins.
9. <input type="checkbox"/> Thick	9. <input type="checkbox"/> Straight	9. <input type="checkbox"/> Sideburns	9. <input type="checkbox"/> Ruddy	9. <input type="checkbox"/> Unusual Odor	9. <input type="checkbox"/> Professional	9. <input type="checkbox"/> Slurred	9. <input type="checkbox"/> Hammer/Foot
10. <input type="checkbox"/> Thinning	10. <input type="checkbox"/> Wavy/Curly	10. <input type="checkbox"/> Unshaven	10. <input type="checkbox"/> Tanned	10. <input type="checkbox"/> Well Groomed	10. <input type="checkbox"/> Stupid	10. <input type="checkbox"/> Talkative	10. <input type="checkbox"/> Club
11. <input type="checkbox"/> Wavy	11. <input type="checkbox"/> Wig	11. <input type="checkbox"/> Van Dyke	11. <input type="checkbox"/> Other	11. <input type="checkbox"/> Casual	11. <input type="checkbox"/> Violent	11. <input type="checkbox"/> Non English Speaking	11. <input type="checkbox"/> Auto
12. <input type="checkbox"/> Trim	12. <input type="checkbox"/> Corn Rows	12. <input type="checkbox"/> Other	12. <input type="checkbox"/> Other	12. <input type="checkbox"/> Other	12. <input type="checkbox"/> Normal	12. <input type="checkbox"/> Other	12. <input type="checkbox"/> None

97. Further Suspect Description (i.e. Glasses, Tattoos, Teeth, Birthmarks, Jewelry, Scars, Mannerisms, Weapons, Etc.) 59 518-84-1393	98. Additional Suspects Listed Yes <input type="checkbox"/> No <input type="checkbox"/>
---	--

99. Suspect Vehicle Year	100. Make	101. Model	102. Body Style	103. Color/Color	104. License No.	105. State
106. Additional Vehicle Identifiers (Damage, Chrome Wheels, Vin, Etc.)						

107. Probable Cause (Two or Three) (Including What Occurred and Establishing the Elements) SUSPECT (ZADE) SHOPKO, REMOVED PROPERTY, FLED W/ MAKING FORK, WHEN CONFRONTED BY SHOPKO STAFF SUSPECT POINTED A HANDGUN AT THEM THAT HE REMOVED FROM INSIDE HIS COAT THEN FLED
--

108. Describe Property Stolen	109. Removed From	110. Property Identification Information	111. Property Value
3			
112. Property Damage	113. Total Loss		

114. Supervisor Review <input type="checkbox"/> File <input type="checkbox"/> Paid FIU <input type="checkbox"/> Crime Prevention <input type="checkbox"/> Invest. FIU	115. Sup. Approving	116. <input type="checkbox"/> Phone Rpt. <input type="checkbox"/> Courier Rpt. <input type="checkbox"/> In-Box	117. Copies To:	118. Copies For: <input type="checkbox"/> Crime <input type="checkbox"/> City Proc. <input type="checkbox"/> Anabals. <input type="checkbox"/> County Proc.
--	---------------------	--	-----------------	--

GENERAL REPORT

ADA COUNTY SHERIFF'S DEPARTMENT

BOISE POLICE DEPARTMENT

1. A.O. 45 2. O.R. No. 803-388

Offense or Charge (include Degree) BURGLARY 4. Law Section No. 18-1401 5. Custodial Hold Felony 8 Altercation Misdemeanor

9. Victim Name - Last, First, Middle (Firm if Business) SKOPKO 10. Residence Address 8105 FAIRVIEW BOISE 11. Res. Phone 525-9726

CODES: V - VICTIM W - WITNESS RP - REPORTING PARTY PG - PARENT/GUARDIAN

OTHERS INVOLVED: 26. Code RP W HELPERSON TIM 27. Name - Last, First, Middle (Firm if Business) 28. Residence Address 29. Res. Phone

SUSPECTS: 59. Suspect No. 1 (Last, First, Middle) FIELDS ZANE JACK 60. Nickname/AKA 61. Race W 62. Sex M 63. Age 39 64. D.O.B. 6-13-65

58. HAIR LOTH/TYPE 59. HAIR STYLE 60. FACIAL HAIR 61. COMPLEXION 62. GEN. APPEARANCE 63. DEMEANOR 64. SPEECH 65. WEAPON

67. Further Suspect Description (i.e. Glasses, Tattoos, Teeth, Birthmarks, Jewelry, Scars, Mannerisms, Weapons, Etc.) 59 518-84-7393

69. Suspect Vehicle Year 100. Make 101. Model 102. Body Style 103. Color/Color 104. License No. 105. State

106. Additional Vehicle Identifiers (Damage, Chrome Wheels, Vln, Etc.)

107. Probable Cause (Two or Three Sentences, Briefly Outlining What Occurred and Establishing the Elements) SUSPECTS ENTERED SHOP KO, REMOVED PROPERTY, FLED W/O PAYING (ALSO SEE D.R. 803-388)

108. Describe Property Stolen 1-CREEDENCE CASSETTE TAPE 109. Removed From STORE 110. Property Identification Information 111. Price of Property 4,999

112. Property Damage 113. Total Loss 00230

114. Supervisor Review 115. Approving 116. Phone Rec 117. Copies To 118. Copies For

DECLARATION OF BRUCE LIVINGSTON

Bruce D. Livingston, being duly sworn upon his oath declares as follows under penalty of perjury:

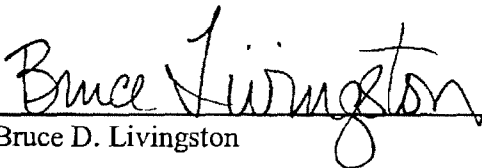
1. I am a lawyer with the Capital Habeas Unit of the Federal Defenders of Eastern Washington & Idaho, located in Moscow, Idaho.
2. I represent Zane Fields in his federal habeas corpus proceedings, along with my co-counsel Dennis Benjamin.
3. Along with our retained expert witness, Randell Libby, I viewed the physical evidence in Zane Fields' case at the state crime lab in Meridian, Idaho in December 2005.
4. In the course of Mr. Libby's examination of the physical evidence, he found at least seven hairs that he believed were of sufficient size to be testable with mitochondrial DNA testing procedures. Four of these hairs were found on Mrs. Vanderford's clothing, two from her pants, and one each from her sweater and blouse. Mr. Libby sealed these hairs in small clear vials for testing. At least three more hairs were contained in a sealed plastic bag that we understood to contain the material vacuumed off the body in the police forensics technicians' search for trace evidence.
5. We also viewed the Sex Crime Kit in the case, which had also been used to collect evidence from Mrs. Vanderford's body. The kit, a standard pre-packaged kit, contained a number of sealed envelopes with labels indicating what was contained within each separate envelope, including various samples, slides, swabs, etc..
6. One of the envelopes in the Sex Crime Kit was labeled "Step 1" and contained the toothpicks that were used for the collection of the scrapings from under Mrs. Vanderford's fingernails. These toothpicks plainly had a black material on them of an

entirely different character than the color of the toothpicks themselves. We left that envelope sealed, as the black material and the toothpicks could be plainly discerned through the sealed envelope.

7. There appeared to be more material on the toothpicks from the Vanderford Sex Crime Kit than was present in George Porter's case, and the Porter fingernail scrapings contained sufficient material to provide a DNA profile. On information and belief, I believe that the fingernail scrapings from Mrs Vanderford are sufficient using Short Tandem Repeat nuclear DNA testing procedures to provide a DNA profile, too.
8. My retained expert witness, Randy Libby, concurs in this belief that we are likely to have sufficient material to get a DNA profile from the fingernail scrapings.

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

Dated this 17th day of April, 2006


Bruce D. Livingston

11-43

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN, McKAY & BARTLETT 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 0200590
Petitioner,	)	(ISTARS CVPC-2002-21895)
)	
vs.	)	NOTICE OF HEARING
	)	ON PENDING MOTIONS
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 Release of Trial Exhibit for DNA Testing and his Request for Production of Documents will be heard on May 1, 2008 at 10:30 a.m., before the Honorable Thomas Neville, at the Ada County Courthouse, Boise, Idaho.

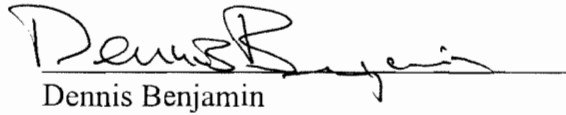
Dated this 15th day of April, 2008.


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that the foregoing was hand-delivered this 16th day of April, 2008 upon the following person:

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


Dennis Benjamin

APR 25 2008

J. DAVID NAVARRO, Clerk
By PATRICIA A. DWONCH
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar #2127
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,)	
	)	STATE'S RESPONSE TO
vs.	)	PETITIONER'S RESPONSE TO
	)	THE STATE'S MOTION FOR
STATE OF IDAHO,	)	DISMISSAL
)	
Respondent.)	
_____)	

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts before the Court and counsel the State's response to the petitioner's request for an evidentiary hearing entitled Response to State's Motion to Dismiss.

The petitioner has requested an evidentiary hearing claiming that there is a genuine issue of material fact that is disputed by the parties which would justify a hearing under Idaho Code §19-4906(c).

It appears to the State that there is no genuine issue of material fact that is disputed by the parties. The undisputed fact is that the DNA testing conducted by the petitioner does not “demonstrate in light of all admissible evidence, that the petitioner is not the person who committed the offense”. Idaho Code 19-4902(e). The testing only shows that the petitioner’s DNA was not found on the scrapings taken from the victim’s fingernails. Since there is no evidence that the victim scratched the petitioner, or touched him in such a way that his DNA would get under her fingernails, the absence of his DNA, proves nothing.

The petitioner recognizes that there is no evidence that the victim touched the defendant, so he attempts to argue that because the victim has a defensive wound on one of her fingers that this somehow makes the absence of his DNA evidence of his innocence.

The pathologist, Dr. Roberts, testified that the victim, Mrs. Vanderford, had a cut on the top of the ring finger of her left hand. Tr p. 1062. He estimated that the “linear wound” was about a half inch long. Tr p. 1064. He described the wound as consistent with a defense wound where a person being attacked would put “their hands up to defend themselves”. Tr. p. 1063. But he also said that wound may not have been a defensive wound, “it could have been a wound that occurred as somebody fell or thrashed their arms around. It was only my opinion that it was consistent with a defensive injury.” Tr. p. 1084.

There is nothing about the description of the wound on Mrs. Vanderford’s finger that is evidence proving that the killer’s DNA should be underneath her fingernails. The defendant was seen about an hour after the murder in a shopping center near the scene of the murder. He was seen to have a wooden handled knife in the pocket of the coat that he was wearing. Mrs. Vanderford was stabbed in the neck and chest with a knife. It is certainly possible that her hand was cut in the process of her being stabbed in the neck. However, Dr. Roberts testified that she may have cut her hand as she fell down. Whichever it is, at best it shows that the killer’s knife touched her hand. It does not show

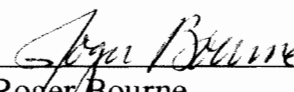
that her fingernails touched the killer's skin. There is no evidence that the killer was cut or scratched or injured in any way. Therefore, the absence of the defendant's DNA under the circumstances proves nothing.

The petitioner would have the Court re-weigh the testimony from the transcripts and overrule the jury verdict. There is no legal or factual basis for the Court to do such a thing. Idaho Code §19-4902(e) only gives the Court authority to order relief if the "DNA test results demonstrate in light of all admissible evidence, that the petitioner is not the person who committed the offence." As set out above, the DNA evidence proves nothing. It certainly does not prove that the petitioner is not the person who committed the murder of Mary Catherine Vanderford. The trial transcript shows that the trial jury heard every argument in the 1990 trial that the petitioner is now making and found against him.

This petition along with the defendant's claim for relief should be dismissed.

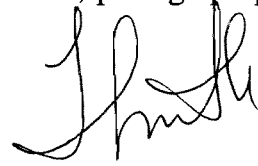
RESPECTFULLY SUBMITTED this 25TH day of April 2008.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 25 day of April, 2003, I served a true and correct copy of the foregoing STATE'S RESPONSE TO PETITIONER'S RESPONSE TO THE STATE'S MOTION FOR DISMISSAL to Dennis Benjamin, 303 W. Bannock St. P.O. Box 2772, Boise, Idaho 83701, by depositing in the U.S. Mail, postage prepaid.



NO. _____ FILED
A.M. 10:05 P.M. _____

APR 25 2008

J. DAVID NAVARRO, Clerk
By PATRICIA A. DWONCH
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)	
)	
Petitioner,	)	CASE NO. SPOT0200590D
)	
vs.)	
	)	STATE'S MOTION FOR
STATE OF IDAHO,	)	DNA TESTING
)	
Respondent.)	
_____)	

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves the Court for its order directing that Cellmark Laboratories conduct DNA testing on a sample of the petitioner's DNA and compare it to the test results that Cellmark has already done on the victim's fingernail scrapings taken from the sex crimes kit.

The petitioner sent the fingernail scrapings to Cellmark for DNA analysis. He sent a reference sample that he claims to be the petitioner's DNA to a Dr. Libby in the State of Washington. Once Cellmark had completed their analysis of the fingernail scrapings, the petitioner caused Cellmark to send those results to Dr.

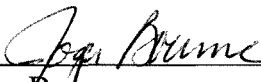
Libby who did the comparison between the Fields reference sample and the fingernail scrapings. Dr. Libby then expressed the opinion that Fields was excluded as being a contributor to the DNA found in the fingernail scraping. The State assumes that the DNA sample looked at by Dr. Libby belongs to the petitioner, but has no way to verify that nor to call anyone to the witness stand for foundation of that sample if needed.

Therefore, the State procured its own sample of the DNA from Zane Fields with proper chain of custody and preservation precautions. The State has had contact with Cellmark Laboratories and has asked them to compare the State's Zane Fields reference sample with the fingernail scrapings. However, Cellmark considers the results of their testing on the fingernail scraping to belong to the petitioner since the petitioner paid for that testing. Therefore, Cellmark will not do the comparison of the Fields reference sample to the fingernail scrapings without the consent of the petitioner or a Court order. As it stands, Dennis Benjamin, local counsel representing the petitioner, notified Cellmark that he consented to the testing. However, the name of Bruce Livingston the federal public defender, is also upon the request for services done by Cellmark so Cellmark requires consent from Mr. Livingston. So far, Mr. Livingston has refused to give his consent for further testing.

Therefore the State requests this Courts order directing that Cellmark complete the testing so that the State and the Court can be satisfied with the integrity of the sample compared by Dr. Libby. The State will pay Cellmark costs associated with the testing and will provide the results to the petitioner.

RESPECTFULLY SUBMITTED this 25th day of April, 2008.

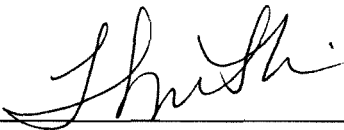
GREG H. BOWER
Ada County Prosecuting Attorney



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 25 day of April, 2008, I served a true and correct copy of the foregoing **STATE'S MOTION FOR DNA TESTING** to Dennis Benjamin, 303 W. Bannock St. P.O. Box 2772, Boise, Idaho 83701, 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. _____ FILED _____
A.M. 1:10 P.M. _____

APR 25 2008

J. DAVID NAVARRO, Clerk
By PATRICIA A. DWONCH
DEPUTY

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

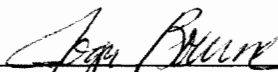
ZANE FIELDS,)
)
Petitioner,)
)
)
vs.)
)
STATE OF IDAHO)
)
Respondent.)

Case No. SPOT0200590D
NOTICE OF HEARING

TO: ZANE FIELDS, and Dennis Benjamin, his attorney of record, you will please take notice that on the 1st day of May 2008, at the hour of 10:30 of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Roger Bourne will move this Court regarding the State's Motion for DNA Testing, and the State's Response to Petitioner's Response to the State's Motion for Dismissal in the above-entitled action.

DATED this 25th day of April, 2008.

GREG H. BOWER
Ada County Prosecuting Attorney



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 25 day of April, 2008.



REC-110

APR 24 2008

Ada County Clerk

NO. _____ FILED
A.M. _____ P.M. 12:12

MAY - 1 2008

By J. David Navarro Clerk
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)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

CASE NO. SPOT0200590D

ORDER FOR DNA TESTING

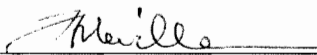
Based upon the State's Motion for DNA Testing together with the other motions and filings in the above entitled action, and the Court being fully informed, it is the order of this Court that the State submit the petitioner's DNA sample to Cellmark Laboratories for DNA analysis, and that thereafter Cellmark Laboratories compare the DNA results from the petitioner's reference sample to the DNA results that they have already made of fingernail scrapings and other items from sexual

JN

assault kit taken from Catherine Vanderford as part of the investigation into the "Wishing Well Murder". The costs of the DNA testing are to be born~~by~~ by the State through the Ada County Prosecutor's Office and the results of the testing are to be provided by the State to the petitioner. JM

IT IS SO ORDERED.

DATED this 1st day of ~~April~~^{May}, 2008. JM



Thomas F. Neville
District Judge

Session: Neville050108
Session Date: 2008/05/01
Judge: Neville, Thomas F.
Reporter: Wolf, Sue

Division: DC
Session Time: 08:22

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

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:

2008/05/01

11:04:37 - Operator
Recording:

11:04:37 - New case
, STATE OF IDAHO

11:05:06 - Judge: Neville, Thomas F.

The Court and counsel spoke in chambers off the record. The
State has motion

11:05:22 - Judge: Neville, Thomas F.

for DNA testing, State asking Court to order Cellmark to com
pare a recent DNA

11:05:48 - Judge: Neville, Thomas F.

sample with fingernail scrapings. Petitioner agrees to this

11:06:31 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin concurred.

- 11:06:39 - Judge: Neville, Thomas F.
Court will enter proposed order, previously filed. Court goes to Pet's Mot
- 11:07:24 - Judge: Neville, Thomas F.
to release States trial exhibit a letter from Mr. Weaver to BCPD, State does
- 11:07:46 - Judge: Neville, Thomas F.
not object to that motion. Understand there was an envelope that may have
- 11:08:26 - Judge: Neville, Thomas F.
been attached and not located. Mr. Bourne stated he had letter from Mr.
- 11:08:52 - Judge: Neville, Thomas F.
Weaver from 2 years earlier
- 11:09:04 - State Attorney: BOURNE, ROGER
Mr. Bourne stated letter sent to Wishing Well regarding his layaway item.
- 11:09:46 - Judge: Neville, Thomas F.
Understand there was a place on envelope licked by Mr. Weaver and would like
- 11:10:02 - Judge: Neville, Thomas F.
that provided for testing as well. Court will enter proposed order from Mr.
- 11:10:34 - Judge: Neville, Thomas F.
Benjamin as soon as received.
- 11:10:43 - State Attorney: BOURNE, ROGER
Mr. Bourne stated would like to see proposed order before Court signs.
- 11:11:02 - Judge: Neville, Thomas F.
Court will wait to hear from counsel re: order granting Motion to release
- 11:11:30 - Judge: Neville, Thomas F.
State's exhibit as well as provide DNA sample on envelope from Mr. Weaver's
- 11:12:05 - Judge: Neville, Thomas F.
letter.
- 11:12:11 - Judge: Neville, Thomas F.
Court RE: hearing set for June 6, 2008, counsel working on a body of evidence
- 11:12:31 - Judge: Neville, Thomas F.
to be before the Court, may not be a need for that hearing.
- 11:12:57 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated have a final brief due, would like to stay that brief
- 11:13:17 - Plaintiff Attorney: BENJAMIN, DENNIS
until agreement on body of evidence, Think can leave dates as set, on second
- 11:13:50 - Plaintiff Attorney: BENJAMIN, DENNIS

thought

11:13:53 - Judge: Neville, Thomas F.

Court inquired if possible results from cellmark be back prior to hearing.

11:14:42 - State Attorney: BOURNE, ROGER

Normally about 30 days

11:14:48 - Judge: Neville, Thomas F.

Court stated can meet here on June 6th to see where we are and what body of

11:15:08 - Judge: Neville, Thomas F.

evidence is.

11:16:12 - Operator

Stop recording:

NO. _____ FILED 3:28
A.M. _____ P.M.

MAY 2, 2008

J. DAVID NAVARRO, Clerk
By _____ 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.)	
	)	ORDER RELEASING TRIAL
	)	EXHIBIT FOR DNA TESTING
STATE OF IDAHO,	)	AND DIRECTING STATE TO
	)	SUBMIT DOCUMENTS FOR
Respondent.	)	DNA TESTING
_____)	

A. The Court, having considered Petitioner Zane Fields's motion to release an exhibit in the criminal case trial court file for DNA testing and having considered the State's non-objection to the motions and finding good cause therefore, hereby orders as follows:

1. The Clerk of the Court is directed to make Exhibit 34 in *State v. Zane Fields*, Ada County Case No. 16259, available so it can be sent to Cellmark Laboratories in Dallas, Texas for the purpose of examination and testing. Ada County is to make arrangements for the shipping of the exhibit to Cellmark. Cellmark is to compare any DNA profile developed from Exhibit 34 to the DNA profile that Cellmark previously developed from the fingernail scrapings taken from Catherine Vanderford. However, testing of Exhibit 34 will not occur until the testing and comparison of the envelope indentified in Part B(1) below is completed.

2. The Petitioner will arrange for and pay for the costs of shipping Exhibit #34.

3. The Petitioner is responsible for the costs of testing the Exhibit and comparing the results.

ORDER RELEASING TRIAL EXHIBIT FOR DNA TESTING AND DIRECTING STATE TO
SUBMIT DOCUMENTS FOR DNA TESTING - 1

00010

4. A photocopy of Exhibit #34 will be made by the Clerk's Office and substituted for Exhibit #34 during the testing process.

5. Upon completion of testing, Exhibit #34 shall be returned to the Clerk of the Court.

6. Cellmark shall disclose the results of the testing to the Petitioner and the Respondent.

B. Further, the Court has considered the Petitioner's Motion for Production of

Documents for DNA Testing and, pursuant to the agreement of the parties, hereby orders as follows:

1. That the Ada County Prosecutor is directed to send the original letter addressed to Karen and bearing the signature of Mike Weaver and the original envelope addressed to the Wishing Well which is postmarked July 7, 1986, to Cellmark Laboratories in Dallas, Texas for the purpose of examination and testing. If usable DNA is found on the envelope or letter, Cellmark will compare that DNA to the DNA profile that Cellmark previously developed from the fingernail scrapings taken from Catherine Vanderford.

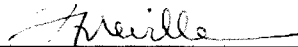
2. The Petitioner will arrange for and pay for the costs of shipping the letter and envelope.

3. The Petitioner is responsible for the costs of testing the letter and/or envelope and for any comparison to the DNA profile from the fingernail scrapings.

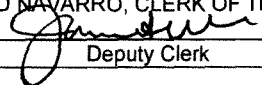
4. Upon completion of testing, the letter and envelope shall be returned to Judge Thomas F. Neville's chambers at the Ada County Courthouse, 200 W. Front Street, Boise, ID 83702, and filed under seal as an exhibit in this case and kept there until otherwise ordered by the Court.

5. Cellmark shall disclose the results of the testing to the Petitioner and the Respondent.

Dated this 2nd day of May, 2008.



Thomas F. Neville
District Judge

FILED
Wednesday, June 04, 2008 at 10:27 AM
J. DAVID NAVARRO, CLERK OF THE COURT
BY: 
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,

Vs.

STATE OF IDAHO, DEFENDANT
Defendant.

)
) Case No: SP-OT-02-00590*D
)
) **NOTICE OF HEARING**
)
)
)
)

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

Hearing Scheduled Hearing Wednesday, August 06, 2008
01:30 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 4th day of June, 2008.

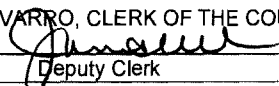
DENNIS BENJAMIN
VIA EMAIL

ROGER BOURNE
VIA EMAIL

Dated: Wednesday, June 04, 2008

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy Clerk

FILED
Tuesday, August 05, 2008 at 02:58 PM
J. DAVID NAVARRO, CLERK OF THE COURT
BY: 
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.)
STATE OF IDAHO, DEFENDANT) **NOTICE OF STATUS CONFERENCE**
Defendant.) **RESETTING**

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

Hearing Scheduled Hearing Friday, September 12, 2008
11:30 AM
Judge: Thomas F. Neville

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

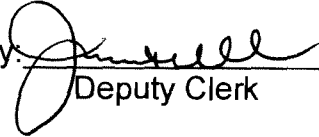
I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on the 5th August, 2008.

**DENNIS BENJAMIN
VIA EMAIL**

**ROGER BOURNE
VIA EMAIL**

Dated: Tuesday, August 05, 2008

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy Clerk

Date: 10/17/2008

Fourth Judicial District Court - Ada County

User: DCELLISJ

Time: 12:09 PM

Minutes Report

Page 1 of 1

Case: CV-PC-2002-21895

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

All Items

Hearing type:	Hearing Scheduled	Minutes date:	10/17/2008
Assigned judge:	Thomas F. Neville	Start time:	11:30 AM
Court reporter:	In chambers	End time:	11:30 AM
Minutes clerk:	Janet Ellis	Audio tape number:	

Parties: DENNIS BENJAMIN for the Petitioner
ROGER BOURNE for State of Idaho

Dennis Benjamin agreed to respond to the State's Mot. To Dismiss by October 29th. Hearing on the State's Motion to Dismiss set for November 12, 2008 @ 1:30 p.m.

00253

Session: Neville111208
Session Date: 2008/11/12
Judge: Neville, Thomas F.
Reporter: Wolf, Sue

Division: DC
Session Time: 08:25

Courtroom: CR502

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0008

Case Number: CVPC0221895
Plaintiff: FIELDS, ZANE JACK
Plaintiff Attorney: BENJAMIN, DENNIS
Defendant: STATE OF IDAHO
Co-Defendant(s):
Pers. Attorney:
State Attorney: BOURNE, ROGER
Public Defender:

2008/11/12

13:46:15 - Operator
Recording:
13:46:15 - New case
, STATE OF IDAHO
13:46:42 - Judge: Neville, Thomas F.
Time set for State's Summary Dismissal
13:47:09 - State Attorney: BOURNE, ROGER
Mr. Bourne requested the Court dismiss the action. Have gone as far as we
13:47:24 - State Attorney: BOURNE, ROGER
can on it. Everything has been tested, no results have been reached to cast
13:47:37 - State Attorney: BOURNE, ROGER
down the conviction. Move the Court to dismiss
13:47:53 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated standard met to survive summary dismissal. Testing done
13:48:13 - Plaintiff Attorney: BENJAMIN, DENNIS
for fingernail scraping excludes Mr. Fields and hair samples also from victim
13:48:54 - Plaintiff Attorney: BENJAMIN, DENNIS
exclude Mr. Fields.
13:49:32 - Plaintiff Attorney: BENJAMIN, DENNIS
Fingerprints run on AFES and did not match Mr. Fields.
13:59:52 - Plaintiff Attorney: BENJAMIN, DENNIS

Argues several jail house witnesses have re-canted their testimony

14:00:10 - State Attorney: BOURNE, ROGER
Mr. Bourne stated petitioner had competent counsel who argued these same

14:01:03 - State Attorney: BOURNE, ROGER
points. Testing came from three areas, finger nails, hair samples and

14:02:01 - State Attorney: BOURNE, ROGER
fingerprints. All of evidence recovered had been sent to lab of petitioner's

14:02:20 - State Attorney: BOURNE, ROGER
choice, as well as dna testing. There is nothing in the new evidence that

14:02:59 - State Attorney: BOURNE, ROGER
would cast doubt and bring forth a Judgment of Acquittal. If State's case

14:03:17 - State Attorney: BOURNE, ROGER
had shown that the defendant's face was scratched up, would have cast some

14:03:42 - State Attorney: BOURNE, ROGER
doubt, Took months if not couple of years to arrest Mr. Fields. His DNA not

14:03:59 - State Attorney: BOURNE, ROGER
being under victim's nail's should not cast doubt. The hair sample picked

14:04:37 - State Attorney: BOURNE, ROGER
up, victim works in public place. Fingerprints, wishing well was gift shop

14:05:40 - State Attorney: BOURNE, ROGER
full of figurines and knick knacks. There are glass counter tops and metal.

14:05:58 - State Attorney: BOURNE, ROGER
Open to public. Police were very careful. At the time linked to two people,

14:06:30 - State Attorney: BOURNE, ROGER
Fingerprints sent to AFIS, belonged to Daniel States, other belonged to an

14:07:50 - State Attorney: BOURNE, ROGER
attorney. Both these people went to wishing well on numerous occasions to

14:08:22 - State Attorney: BOURNE, ROGER
buy gifts. Jury knew that they didn't have defendant's fingerprints, they

14:10:13 - State Attorney: BOURNE, ROGER
knew nothing about fingernail scrapings or DNA. This litigation should be

14:11:07 - State Attorney: BOURNE, ROGER
dismissed, there is nothing to cast shadow of doubt.

14:11:29 - Judge: Neville, Thomas F.
The Court will take under advisement. This matter has been going on some

14:11:51 - Judge: Neville, Thomas F.
time, here on number of occasions. The Court will look at whole case and

14:12:20 - Judge: Neville, Thomas F.
advise counsel whether a decision would be done or if Court needs more.

14:12:42 - State Attorney: BOURNE, ROGER
Mr. Bourne supplemented record by stating that everything Pe
titioner has

14:13:03 - State Attorney: BOURNE, ROGER
asked for has been given to them. Mr. Bourne stated State i
s doing some

14:13:38 - State Attorney: BOURNE, ROGER
further testing based on sample provided by defendant. Stat
e got their own

14:14:08 - State Attorney: BOURNE, ROGER
sample based on fact that petitioner's counsel did not see p
etitioner

14:14:39 - State Attorney: BOURNE, ROGER
actually give that sample.

14:14:48 - Plaintiff Attorney: BENJAMIN, DENNIS
Mr. Benjamin concurred except for exception of an envelope,
but another

14:15:06 - Plaintiff Attorney: BENJAMIN, DENNIS
envelope was found that had Mr. Weaver's DNA on it. But for
the record,

14:15:24 - Plaintiff Attorney: BENJAMIN, DENNIS
advise that he personally took Mr. Fields DNA.

14:15:38 - Judge: Neville, Thomas F.
The Court not technically taking under advisement until look
through the

14:16:09 - Judge: Neville, Thomas F.
whole record. The Court inquired if Federal Court waiting f
or this decision.

14:16:29 - Plaintiff Attorney: BENJAMIN, DENNIS
Stated Judge Lodge has entered a Stay order on their proceed
ings

14:16:43 - Judge: Neville, Thomas F.
The Court remembers that Judge Schroeder had the initial tri
al.

14:17:55 - Operator
Stop recording:

APR - 3 2009

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,

vs.

STATE OF IDAHO,

Respondent.

Case No. SP-OT-02-00590*D,
CV-PC-02-21895

MEMORANDUM DECISION
AND ORDER OF DISMISSAL OF
PETITION FOR POST-CONVICTION
SCIENTIFIC TESTING

Appearances:

Dennis Benjamin, for the Petitioner
Roger Bourne, for the Respondent

INTRODUCTION

This action under the Uniform Post Conviction Procedure Act, Idaho Code Sections 19-4901 through 19-4911, is presently before the Court on Zane Fields's Petition for Post-Conviction Scientific Testing filed June 27, 2002, and the State's Motion to Dismiss filed November 5, 2007. On November 12, 2008, this Court heard Respondent's Motion to Dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is currently incarcerated on death row at the Idaho Maximum Security Institution near Boise, Idaho for the offense of First Degree Murder in Ada County Case No. HCR16259. Petitioner was convicted of First Degree Murder by a jury and sentenced to death by District Judge Gerald F. Schroeder on March 7, 1991. The murder occurred when Petitioner entered the Wishing Well shop with the intent to commit robbery. The jury found the Petitioner guilty after a trial during which the State offered the testimony of several witnesses, including two eye witnesses, who saw

1 the victim with a man before the murder, and of several inmate informants. After the trial, one of
2 the inmate informants indicated that they had lied during their testimony at trial and that the other
3 informants had claimed to lie as well. Petitioner's appeal, application for post-conviction relief and
4 petition for writ of certiorari were denied. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995),
5 *cert. denied*, *Fields v. Idaho*, 516 U.S. 922, 116 S.Ct. 319 (1995), *dismissal aff'd*, *Fields v. State*,
6 135 Idaho 286, 17 P.3d 230 (2000).¹

7 On June 27, 2002, Petitioner filed a Petition for Post Conviction Scientific Testing. The
8 Respondent filed a Response to the Petition for Post-Conviction Scientific Testing and a Partial
9 Motion to Dismiss on August 30, 2002. On October 10, 2003, Petitioner filed a Motion for
10 Permission to Conduct Limited Discovery. On July 22, 2004, Respondent filed a Response to
11 Petitioner's Amended Motion for Permission to Conduct Limited Discovery and State's Motion to
12 Dismiss. On November 5, 2007, the Respondent filed another Motion to Dismiss the Petition for
13 Post Conviction Scientific Testing asserting that no exculpatory evidence had been produced by the
14 scientific testing. Petitioner filed a Response to State's Motion to Dismiss Petitioner for Post-
15 conviction Scientific Testing on April 11, 2008. The Petitioner filed a Motion for DNA testing on
16 April 25, 2008, which motion was granted on May 1, 2008.

18 DISCUSSION

19 The Uniform Post Conviction Relief Act provides that relief is appropriate when "fingerprint
20 or forensic DNA test results demonstrate, in light of all admissible evidence, that the petitioner is
21 not the person who committed the offense..." I.C. § 19-4902(e). The question for this type of
22

23
24 ¹ The Idaho Supreme Court held that (1) Public Defender's representation was not
25 adversely affected by conflict of interest; (2) claims of ineffective assistance
26 of appellate counsel, raised two and one-half years after date of first
appellate brief, were not raised within a reasonable time and had been waived;
and (3) Petitioner was not entitled to court-appointed counsel on a successive
application for post-conviction relief.

1 petition is whether there is a genuine issue of material fact. I.C. §19-4906(c). In order to have a
2 conviction overturned based on DNA evidence, it must be “more probable than not that the
3 petitioner is innocent.” I.C. §19-4902(d)(1).

4 In this case, the evidence is to be considered in its totality. I.C. §19-4902(e). When an
5 innocence claim arises from new, reliable evidence, “holistic judgment about ‘all the evidence’” is
6 required. *House v. Bell*, 547 U.S. 518, 530, 126 S.Ct. 2064, 2078 (2006). The United States
7 Supreme Court has ruled that when considering a claim of innocence based on newly discovered
8 evidence, the court should examine whether “it is more likely than not that no reasonable juror
9 would have found petitioner guilty beyond a reasonable doubt.” *Shulp v. Delo*, 513 U.S. 298, 327
10 115 S.Ct. 851, 880 (1995).

12 After examining all the admissible evidence in this case, this Court concludes that it is not
13 “more probable than not” that Petitioner is not guilty of the crime for which he has been convicted.
14 In the jury trial, the State presented evidence from several eye witnesses which placed the Petitioner
15 at the scene of the crime. Further, while two eye witnesses were unable to positively identify the
16 Petitioner as the individual they saw immediately preceding the murder, they also were not able to
17 exclude him. This issue and argument were presented to and considered by the jury. The State in
18 this case relied heavily upon the testimony of three inmate informants, Joe Heistand, Scott Bianchi
19 and Jeff Acheson, of whom Bianchi has since recanted his testimony; however, the original
20 testimony was corroborated by several inmates who have not recanted. The State also relied on the
21 fact that Petitioner was seen acting suspiciously in the area prior to the murder and on the
22 knowledge which the inmate witnesses had regarding the amount of money taken from the Wishing
23 Well.
24
25
26

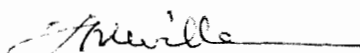
1 Petitioner claims that DNA evidence excludes him from being the murderer; however, the
2 DNA evidence found under the fingernails of the victim and the hair found on the victim does not
3 necessarily belong to the murderer. With respect to the DNA evidence recovered from the victim's
4 fingernail scrapings, there was no evidence that the Petitioner had been scratched. With respect to
5 the DNA testing of hair found on the victim, the victim worked in a small retail establishment open
6 to the public. The fact that the Petitioner has been excluded as the producer of the DNA from these
7 sources does not exclude him from committing the crimes alleged.

8 Petitioner has tested all material available to be tested. None of the DNA testing results or
9 evidence discovered makes it more probable than not that Petitioner is innocent of First Degree
10 Murder, for which he was convicted. Therefore, the Motion to Dismiss the Petition for Post
11 Conviction Scientific Testing is GRANTED. Pursuant to I.C. §19-4906(b), this Court finds it
12 appropriate based on all the evidence to use its discretion in this action to dismiss Petitioner's
13 Petition for Post-Conviction Scientific Testing.
14

15 CONCLUSION

16 On the basis of the Petition for Post-Conviction Scientific Testing and the present record,
17 this Court is satisfied that Petitioner is not entitled to post-conviction relief and that no purpose
18 would be served by any further proceedings. The Court finds there is no genuine issue of material
19 fact and that the Respondent is entitled to dismissal as a matter of law. The Petition for Post-
20 Conviction Scientific Testing is DISMISSED with prejudice. AND IT IS SO ORDERED.
21

22 Dated this 3rd day of April, 2009.

23
24 
25 _____
26 Thomas F. Neville
District Judge

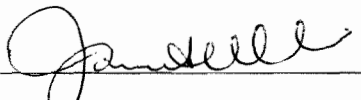
CERTIFICATE OF MAILING

1 I hereby certify that on this 3 day of April, 2009, I mailed (served) a true and correct
2 copy of the within instrument to:
3

4 DENNIS BENJAMIN
5 NEVIN BENJAMIN & McKAY
6 303 W BANNOCK ST
7 PO BOX 2772
8 BOISE ID 83701

9 GREG BOWER/ROGER BOURNE
10 ADA COUNTY PROSECUTING ATTORNEY
11 INTERDEPARTMENTAL MAIL

12
13 J. DAVID NAVARRO
14 Clerk of the District Court
15 Ada County, Idaho

16
17 
18 Deputy Clerk

Dennis Benjamin
ID Bar No. 4199
NEVIN, BENJAMIN, MCKAY & BARTLETT LLP
PO Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274
E-Mail: db@nbmlaw.com

Attorney for Zane Jack Fields

FILED 12.27

MAY 15 2009

J. DAVID NAVARRO, Clerk
By: A. LYKE
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,)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)

**CASE NO. CV-PC-2002-21895
NOTICE OF APPEAL**

TO: PROSECUTING ATTORNEY FOR THE COUNTY OF ADA, STATE OF IDAHO,
AND THE ATTORNEY GENERAL FOR THE STATE OF IDAHO, AND THE CLERK
OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO.

Pursuant to the Idaho Constitution, Article V, Section 9 and Article II, Section 1, and
Idaho Appellate Rules 11(a)(1), 11(a)(7), 11(c)(6), 11(c)(9) and 17; NOTICE IS HEREBY
GIVEN THAT:

1. Zane Jack Fields, the above-named appellant, appeals against the above-named
respondent, to the Idaho Supreme Court from the Memorandum Decision and Order of Dismissal
of Petition for Post-Conviction Scientific Testing granting the State's Motion to Dismiss, entered
and filed in the above entitled action on April 3, 2009, Honorable Thomas F. Neville presiding.

2. Mr. Fields is entitled to appeal to the Idaho Supreme Court, and the order described in paragraph one is an appealable order pursuant to Idaho Appellate Rules 11(a)(1), 11(a)(7), 11(c)(6) and 11(c)(9).

3. Mr. Fields intends to raise various issues in his appeal, including but not limited to:

a. Whether the court erred in concluding that Mr. Fields did not establish that it is more probable than not that he is innocent of First Degree Murder.

4. No order has been entered sealing all or any portion of the record.

5. Mr. Fields requests that *each and every* document or pleading filed or lodged in this matter be included in the Clerk's Record in addition to those automatically included pursuant to Idaho Appellate Rule 28.

6. Mr. Fields requests that a Reporter's Transcript of the following hearings be prepared in both hard copy and electronic format:

- a. August 19, 2004 (Court Reporter unknown);
- b. July 25, 2005 (Court Reporter unknown);
- c. September 27, 2005 (Court Reporter unknown);
- d. May 1, 2008 (Court Reporter Sue Wolf);
- e. November 12, 2008 (Court Reporter Sue Wolf).

7. The undersigned certifies:


a. That a copy of this Notice of Appeal has been served on the court reporter for the Honorable Thomas F. Neville by placing the copy in a properly addressed envelope, first class postage affixed, and mailing that envelope via the United States Postal Service; (*See Idaho Appellate Rule 20.*)

b. That Mr. Fields is exempt from paying the estimated clerk's record and reporter's transcript fees because he is incarcerated on death row and is indigent;

c. That Mr. Fields is exempt from paying the appellate filing fee because he is incarcerated on death row and is indigent, and

d. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20, viz., the Ada County Prosecuting Attorney and the Attorney General for the State of Idaho.

Dated this 15th day of May, 2009.


Dennis Benjamin

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

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

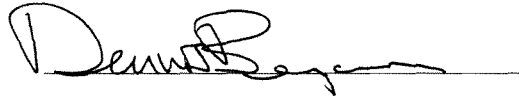
- U.S. Mail
- Hand Delivery
- Facsimile
- Federal Express

L. LaMont Anderson
Deputy Attorney General
Criminal Law Division
Capital Litigation Unit
700 W. State St., 4th Floor
Boise ID 83720-0010

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

Sue Wolf
Court Reporter
Ada County District Court
200 W. Front Street
Boise ID 83702

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



NO _____
A.M. _____ P.M. 12:27

MAY 15 2009

J. DAVID NAVARRO, Clerk
B/A. LYKE
DEPUTY

Dennis Benjamin
ID Bar No. 4199
NEVIN, BENJAMIN, McKAY & BARTLETT LLP
P.O. Box 2772
Boise ID 83701
Telephone: 208-343-1000
Facsimile: 208-345-8274
E-Mail: db@nbmlaw.com

Attorney for Zane Jack Fields

**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. CV-PC-2002-21895
Petitioner,)	
	)	MOTION THAT COSTS OF APPEAL
v	)	BE AT COUNTY EXPENSE
)	
STATE OF IDAHO,)	
)	
Respondent.)	

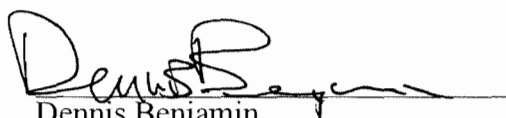
Zane Jack Fields ("Petitioner"), pursuant to Idaho Appellate Rule 17 and Idaho Code Section 19-4904, moves that the Court order all costs of appeal, including the costs of the Clerk's Record and Reporter's Transcripts, be at county expense. In support of this motion, Mr. Fields states as follows:

1. Since 1989, Idaho courts have determined that Mr. Fields is indigent and unable to pay litigation costs in the prosecution, appeals, and postconviction petitions relating to his prosecution in the Fourth Judicial District, County of Ada, District Court Case No. 16259. Mr. Fields has been incarcerated since 1988.
2. Undersigned counsel has represented Mr. Fields since 2002, and states that, to the best of his knowledge, Mr. Fields remains and shall continue to remain throughout the appellate proceedings an indigent person with no means of support or ability to pay the costs of these proceedings.

3. The federal and state constitutional rights to counsel, to due process, to equal protection, and against cruel and unusual punishment guarantee Mr. Fields the right to appeal the denial of his petition for postconviction relief in this capital case. U.S. Const. Amend. VI, VII, XIV; Idaho Const. art. I, §§ 2, 6, 13, art. V, § 9.

WHEREFORE, Petitioner respectfully requests that the Court enter an Order directing that all costs of appeal, including the costs of the Clerk's Record, shall be at county expense.

Dated this 5th day of May, 2009.


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

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

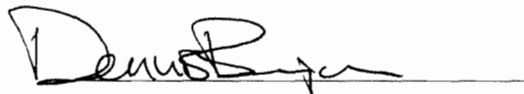
U.S. Mail
 Hand Delivery
 Facsimile
 Federal Express

L. LaMont Anderson
Deputy Attorney General
Criminal Law Division
Capital Litigation Unit
700 W. State St., 4th Floor
Boise, ID 83720-0010

U.S. Mail
 Hand Delivery
 Facsimile
 Federal Express

Sue Wolf
Court Reporter
Ada County District Court
200 W. Front Street
Boise ID 83702

U.S. Mail
 Hand Delivery
 Facsimile
 Federal Express



NO. _____ FILED _____
A.M. 11:08 P.M. _____

MAY 22 2009

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,)
)
 v)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

CASE NO. CV-PC-2002-21895
**ORDER ON MOTION THAT COSTS
OF APPEAL BE AT COUNTY EXPENSE**

Before the Court is Petitioner-Appellant's Motion That Costs of Appeal be at County Expense. This Court having considered Defendant's motion, it is hereby ordered that the costs of appeal, including the cost of the Clerk's Record and the Reporter's Transcripts, shall be at County Expense.

Dated this 22nd day of May, 2009.

Thomas F. Neville
Thomas F. Neville
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following person either by U.S. Mail, first class postage prepaid; hand delivery; courthouse basket; or facsimile copy:

Dennis Benjamin
Nevin, Benjamin, McKay & Bartlett LLP
PO Box 2772
Boise ID 83701

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


L. LaMont Anderson
Deputy Attorney General
Criminal Law Division
Capital Litigation Unit
700 W. State St., 4th Floor
Boise ID 83720-0010

Sue Wolf
Court Reporter
Ada County District Court
200 W. Front Street
Boise ID 83702

Dated this 22 day of May, 2009.

J. David Navarro
Clerk of the Court

by



Deputy Clerk

Session: Neville052209
Session Date: 2009/05/22
Judge: Neville, Thomas F.
Reporter: Wolf, Sue

Division: DC
Session Time: 09:24

Courtroom: CR501

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: SPOT0200590
Plaintiff: FIELDS, ZANE
Plaintiff Attorney:
Defendant: STATE OF IDAHO
Additional audio and annotations can be found in case: 0002.
Co-Defendant(s):
Pers. Attorney: BENJAMIN, DENNIS
State Attorney: BOURNE, ROGER
Public Defender:

2009/05/22
09:27:49 - Operator
Recording:
09:27:49 - New case
, STATE OF IDAHO
09:28:16 - Operator
Stop recording:

Case ID: 0002

Case Number: SPOT0200590
Plaintiff: FIELDS, ZANE
Plaintiff Attorney:
Defendant: STATE OF IDAHO
Previous audio and annotations can be found in case: 0001.
Co-Defendant(s):
Pers. Attorney: BENJAMIN, DENNIS
State Attorney: BOURNE, ROGER
Public Defender:

10:32:52 - Operator
Recording:

10:32:52 - Recall
, STATE OF IDAHO

10:32:58 - Judge: Neville, Thomas F.
Time set for status conference. Court just wanted to bring
counsel in to

10:33:30 - Judge: Neville, Thomas F.
discuss costs of appeal being at county expense, and Court d
id not have

10:33:56 - Judge: Neville, Thomas F.
memory how Mr. Benjamin was appointed.

10:34:17 - Pers. Attorney: BENJAMIN, DENNIS
Mr. Benjamin stated he has been pro bono on this case, and w
as Federally

10:34:46 - Pers. Attorney: BENJAMIN, DENNIS
appointed on the habeas case. Would like to have clerk's re
cord and three

10:35:16 - Pers. Attorney: BENJAMIN, DENNIS
transcripts

10:35:33 - State Attorney: BOURNE, ROGER
Mr. Bourne stated know that Mr. Fields is indigent, but did
not know if it

10:36:04 - State Attorney: BOURNE, ROGER
would be county expense or State expense. Don't oppose publ
ic expense, but

10:36:23 - State Attorney: BOURNE, ROGER
method of payment is not known

10:37:11 - Judge: Neville, Thomas F.
Court response. Normally county until appeal and SAPD appoi
nted then at

10:38:21 - Judge: Neville, Thomas F.
State expense

10:38:29 - Pers. Attorney: BENJAMIN, DENNIS
Don't believe SAPD pays, normally the county would pay.

10:39:32 - Operator
Stop recording:

10:39:57 - Operator
Recording:

10:39:57 - Record
, STATE OF IDAHO

10:40:09 - Judge: Neville, Thomas F.
Court asked off the record of court reporter who she receive
s payment from

10:40:26 - Judge: Neville, Thomas F.
and is informed the county pays for it

10:42:14 - State Attorney: BOURNE, ROGER
Mr. Bourne stated will check with Mr. Trimming's office and
verify and call

10:42:33 - State Attorney: BOURNE, ROGER
the Court.

10:42:39 - Judge: Neville, Thomas F.
The Court would like to get this order out today. If there
is an objection,

10:43:06 - Judge: Neville, Thomas F.
will set out to week of June 1st

10:43:20 - Operator
Stop recording:

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
vs.)
)
ZANE JACK FIELDS,)
)
Defendant-Appellant.)
_____)

Docket No. 36508

NO. _____
AM. 8:00 ^{FILED} PM _____

JUL 18 2009

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

CERTIFICATE OF LODGING

July 7, 2009

I, Susan M. Wolf, RPR and Certified Shorthand Reporter, hereby certify that on this date, I filed, or caused to be filed, with the Ada County Clerk of the Court, three transcripts for the above-entitled case, totaling 59 pages, dated August 19, 2004, May 1, 2008, and November 12, 2008.



Susan M. Wolf RPR, CSR
Official Court Reporter

00273

Clerk of the Court
Idaho Supreme Court
Boise, Idaho 83720

NO. _____ FILED _____
AM. _____ PM. _____

JUL 18 2009

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
Deputy

SPOT0200580D
Docket No. 35408

Zane Jack Fields
vs.
State of Idaho

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on June 22, 2009,
I lodged a transcript of 52 pages in length for the
above-referenced appeal with the District Court Clerk
of the County of Ada, in the Fourth Judicial District.

JEANNE M. HIRMER
Notary Public
State of Idaho

Jeanne M. Hirmer
Jeanne M. Hirmer

Idaho CSR No. 318, RPR and
Notary Public in and for
the State of Idaho
My Commission Expires 11/18/08.