4-9-2010

Fields v. State Appellant's Brief Dckt. 36508

IN THE SUPREME COURT OF THE STATE OF IDAHO

ZANE JACK FIELDS,	)	
	)	
Appellant	)	**DOCKET NO. 36508-2009**
	)	
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

APPELLANT'S OPENING BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County Honorable Thomas F. Neville, District Judge presiding

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I. STATEMENT OF THE CASE

Zane Fields was convicted of the stabbing murder of Mary Catherine Vanderford during a robbery at the Wishing Well gift store on Fairview Avenue in Boise and sentenced to death. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995).[1] The crime occurred on February 11, 1988. More than a year later, Fields was arrested for the murder on April 17, 1989. *See* T. R., p. 256, Certificate of Exhibits, PSI filed under seal at sentencing (hereinafter "PSI"), Police Report by Dave Smith dated 4/25/89.

On June 27, 2002, Fields petitioned for post-conviction relief based upon advances in scientific testing. R. Vol. I, p. 7. Fields sought DNA testing of scrapings taken from the victim's fingernails and hairs found on her body. He also sought comparisons of latent prints found at the crime scene with prints stored in automated database compilations maintained by the FBI and similar regional and local police databases. *Id.* pp. 7-12. Fields sought this testing to prove his innocence. *Id.* This case is an appeal from the district court's summary dismissal of Fields' petition.

In the court below, Fields sought discovery regarding the latent prints and physical evidence that contained biological material, including fingernail scrapings. R. Vol. I, pp. 88,

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[1] Citations to prior proceedings relating to Fields' sentence of death will be designated by the proceedings abbreviation followed by the document type, e.g. Trial Transcript will be designated as T. Tr.; Trial Clerk's Record will be T. R.; Preliminary Hearing will be PH; Postconviciton Proceedings will be PCR, Second Postconviction Proceedings will be PCR2. These prior proceedings are the subject of a separate motion for judicial notice. Citations to the current appeal record will be pursuant to I.A.R. 35 as Tr. or R.

123. Fields was granted access to the evidence, R. Vol. I, p. 151, and subsequently obtained DNA testing on the fingernail scrapings and the hairs. Fields sought this testing to see if the latent prints[2] or biological material linked an unknown individual to the crime scene and helped to prove that Fields was not Mrs. Vanderford's murderer, notwithstanding his 1990 conviction.

The DNA testing of the physical evidence was favorable to Fields. Male DNA was found in Mrs. Vanderford's fingernail scrapings. Fields was excluded as a possible contributor. R. Vol. II, p. 275, Certificate of Exhibits ("hereinafter "CE"), Ex. 9 (Laboratory Report of Dr. Randell T. Libby dated Jan. 3, 2007, Exhibit C). Five hairs were collected from Mrs. Vanderford, two of which were hers (or her maternal line of relatives) and three of which were from unrelated, unknown individuals. *Id.* at, Ex. 9 (Laboratory Report of Dr. Randell T. Libby dated March 22, 2007, Exhibit F). Fields was excluded as a possible contributor of the unknown hairs obtained from Mrs. Vanderford's body. *Id.*

The State filed a motion to summarily dismiss Fields' petition on November 5, 2007. R. Vol. I, p. 176. Fields filed an opposition on April 11, 2008. R. Vol. I, p. 195. Thereafter, the

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[2] Eighteen unidentified latent fingerprints were found at the scene, including several bloody prints. T. Tr. Vol. 6, pp.1296, 1306-07, 1314. Fields' prints were not found at the scene. T. Tr. Vol. 6, p. 1306. One of the bloody prints matched the "good Samaritan," Ralph Simmons, (*Id.* p. 1307), who entered the store shortly after the stabbing, found Mrs. Vanderford on the phone to "911," and remained on the phone until the police arrived. PH Tr., pp. 60-66.

The State agreed to run the latent prints in the Automated Fingerprint Identification System database ("AFIS"). Two identifiable individuals' prints were among the latent prints collected from the Wishing Well, but those individuals either had an alibi or did not match the description of the man who was seen in the store moments before the murder.

district court found that "[n]one of the DNA testing results or evidence discovered makes it more probable than not that Petitioner is innocent of First Degree Murder, for which he was convicted." R. Vol. II, p. 260. Accordingly, the district court dismissed the petition. *Id.*

II. ISSUE PRESENTED ON APPEAL

Has Fields shown that it is more probable than not that he would be acquitted by any reasonable juror and that no reasonable juror would vote to convict when considering the new evidence together with all admissible evidence? Alternatively, Fields is entitled to an evidentiary hearing to establish his innocence.

III. ARGUMENT

A. Standard for Review

Without holding an evidentiary hearing, the district court granted the State's motion to dismiss, after considering additional factual material developed in forensic testing, new affidavits and all admissible evidence. R. Vol. II, pp. 259-60. 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. Idaho Code § 19-4906(c). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted. *State v. LePage*, 138 Idaho 803, 806-07, 69 P.3d 1064, 1067-68 (Ct. App. 2003). Any inferences that may be drawn must be liberally construed in favor of the non-moving party. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). Any doubts must be resolved in favor of

the non-moving party. *Anderson v. City of Pocatello*, 112 Idaho 176, 179, 731 P.2d 171, 174 (1986). Any factual assertions made by the petitioner which are unrebutted must be accepted as true. *Ivey v. State*, 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). However, because the trial court is also the finder of fact and free to resolve conflicting inferences, the district court "is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts." *State v. Yakovac*, 145 Idaho 437, 444, 180 P.3d 476, 483 (2008). Therefore, 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, 678 (1981).

To gain relief, Fields bears the burden of proof by a preponderance of the evidence. *Larkin v. State*, 115 Idaho 72, 764 P.2d 439 (Ct. App. 1988). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this "Court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file." *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008). This Court exercises free review of the district court's findings on questions of law. *State v. Pearce*, 146 Idaho 241, 247, 192 P.3d 1065, 1071 (2008). The district court's factual findings are entitled to deference unless those findings are clearly erroneous, and this Court

exercises free review on whether constitutional requirements have been satisfied in light of the facts found by the district court. *Id.*

The Uniform Post-Conviction Procedure Act allows relief to those convicted individuals who claim they are "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). Fields must demonstrate he is innocent by a preponderance of the evidence, i.e., "that it is more probable than not that the petitioner is innocent." I.C. § 19-4902(d)(1). *See Schlup v. Delo*, 513 U.S. 298, 327 (1995) ("more likely than not that no reasonable juror would have convicted him in the light of the new evidence"), *cited in, Rhoades v. State*, 148 Idaho 247, 220 P.3d 1066 (2009). "[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. *Schlup*, 513 U.S. at 329. Fields must therefore establish his innocence claim by a "more probable than not" preponderance standard, i.e., that in light of all the available, admissible evidence in this case including new DNA evidence, a new trial "will probably produce an acquittal." *See State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976). *See also House v. Bell*, 547 U.S. 518, 538 (2006) (in an innocence case, although *Schlup* standard is "demanding" it does "not require absolute certainty" about innocence; court is to "assess how reasonable jurors would react to the overall, newly supplemented record"). With these standards and the Idaho statute in mind, this

Court must evaluate Fields' claim of innocence against a weak state case, unreliable snitch testimony and the exculpatory nature of the new forensic evidence and affidavits.

B. The Weakness of the State's Case

In determining the likelihood of Fields' innocence based on the totality of the evidence, including the new DNA evidence obtained in this case, it is important to recognize that the State's evidence at trial was very weak. No physical evidence of any kind linked Fields to the murder. No eyewitnesses to the murder are known or testified. All of the evidence connecting Fields to the murder in any way came from convicted felons who were in prison or jail with Fields.[3] In contrast, witnesses at the scene testified regarding the customers in the shop immediately before the murder and an exact time line of events.

At trial, two witnesses, Betty Hornecker-Heaton and Mari Munk, testified to the scene inside the store up until a minute before the murder occurred. They both described a suspicious man present in the store who attempted to avoid being observed. T. Tr. Vol. V, pp. 924-65 and

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[3] Several people who were not felons identified Fields as behaving suspiciously in stores within about a mile of the Wishing Well on the day of Mrs. Vanderford's murder. T. Tr. Vol. I, pp. 175-184 and pp. 188-206. Given Fields' subsequent conviction for an assault that occurred two weeks later in the course of escaping from a detention for shoplifting at a nearby Shopko, *State v. Fields*, 115 Idaho 1101, 772 P.2d 739 (Ct. App. 1989), Fields' suspicious behavior in a store unconnected to the Wishing Well is not a sufficient basis for convicting him of the murder of Mrs. Vanderford and is a denial of due process under the Idaho and federal constitution. *Jackson v. Virginia.* 443 U.S. 307 (1979). The letters from Detective Smith corroborate that the police did not have probable cause until the four inmates came forward asserting that Fields had confessed to them. R. Vol. II, p. 275, CE, Ex. 9 (Dave Smith letter, Exhibit A).

pp. 966-88. In this post-conviction proceeding, Hornecker-Heaton and Munk provided affidavits confirming that Fields does not look like the suspicious man they observed in the store. R. Vol. 2, at 221-226.

Without any physical evidence, the State's evidence of guilt was mainly the testimony of ex-convicts and jail inmates relating Fields' alleged "confession" months after the murder. *See* R. Vol. II, p. 275, CE, Ex. 9, (Dave Smith Letter dated May 30, 1990, Exhibit A). Acknowledging that "no physical evidence was obtained" from the scene, the chief detective on the case, Dave Smith, wrote a letter of thanks on behalf of the testifying inmates noting the importance of their testimony and crediting them with Fields conviction. *Id.*

Evidence independent of the snitch testimony established how implausible it was that Fields entered the store and committed the murder. As set forth below, Fields established an accurate chronology of events up to the minute Mrs. Vanderford called for help. Two credible women, unmotivated by jailhouse pressures and rewards, were continuously in Mrs. Vanderford's presence for 15 to 20 minutes before the attack. The women both noticed the same large, hulking, balding, evasive and suspicious-looking man that was not Fields. When the last of the two women left the store, about a minute before Mrs. Vanderford called for help after the attack, the suspicious-looking man was the only other person in the store.

Working backwards in time, 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 male attacker had already left the store. T. Tr. Vol V, pp. 994, 997. Ralph Simmons walked into the store while Mrs. Vanderford was on the telephone with the dispatcher. She was using the telephone at the counter where the cash register was located. *Id.* p. 1010.

Betty Hornecker-Heaton testified that she was in the Wishing Well at 11:00 a.m. 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. Vol V, p. 927-929. According to Hornecker-Heaton, 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. *Id.* p. 929-30. After another customer left, Mrs. Vanderford, Hornecker-Heaton and the suspicious man were the only individuals in the store. *Id.* p. 928. The suspicious man was still in the store at 11:08 -11:10 a.m. when Hornecker-Heaton left. *Id.* pp. 931-32.

The suspicous-looking man that Hornecker-Heaton saw in the store could not have been Zane Fields, because the man she saw was wearing a navy-blue, hooded, zip-front sweatshirt, and not the orange camouflage jacket that the State claims Fields wore during the killing. T. Tr. Vol. V, pp. 954, 965. Further, Hornecker-Heaton estimated the man to be six feet four, between 230-240 pounds, *id.* p. 932, and in his forties. *Id.* p. 957. Her description does not fit Fields. According to a February 22, 1988, Boise Police Report, 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* R. Vol. II, p. 230 (Arrest Report of Zane Fields dated Feb. 22, 1988).

Moreover, Fields' hair was long, reddish and bushy, T. R., p. 258 (State's Trial Exhibit 8 (lineup)), while according to Hornecker-Heaton, 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. Vol. V, pp. 932-33.

When Hornecker-Heaton left the store, Mrs. Vanderford was on the phone and the large man was still in the store. As Hornecker-Heaton left the store, she passed another woman who was entering the store. T. Tr. Vol. V, p. 935. That woman was witness Mari Munk.

Ms. Munk entered the Wishing Well between 11:05 and 11:10 a.m. T. Tr. Vol. V, p. 967. Due to the timing of Hornecker-Heaton's departure, Munk must have been the woman Hornecker-Heaton saw entering the store as Hornecker-Heaton was leaving. Munk also saw the man described by Hornecker-Heaton. Munk, Mrs. Vanderford and the unknown large man were the only people in the store. *Id.* p. 976. 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. *Id.* pp. 971, 986. Munk was certain that this man was not wearing orange or red clothing. *Id.* p. 987. Again, this could not have been Fields. Mrs. Munk testified that she left the store no more than 10 minutes later, i.e., no later than between 11:15 and 11:20 a.m. The man was still in the store when she left. *Id.* p. 970.

A few minutes after Hornecker-Heaton left the store at 11:08 to 11:10 a.m., she noticed an ambulance on an emergency call traveling east on Fairview toward the area of the Wishing Well. She estimated the time she saw this as 11:15-11:18. T. Tr. Vol. 5, pp. 935-36. This ambulance could have been responding to Mrs. Vanderford's 911 call or, according to the testimony of Michael Ervin, a paramedic at Ada County Emergency Medical Services, was more likely a different emergency vehicle which passed the Wishing Well in response to an unrelated call made at 11:15 a.m. *Id.* pp. t 1049-50.

Ervin testified that an emergency call came in that day to the Liberty and Fairview field station at 11:15 a.m., T. Tr. Vol. V, pp. 1039, 1049, and that it takes a minute or less to get a vehicle out the door after a call. He estimated that the ambulance would have been sent out and passing the Wishing Well about a minute after the call was received. *Id.* pp. 1049-50.

However, as Munk left the store – before Mrs. Vanderford was attacked – Munk noticed an ambulance traveling past the Wishing Well on Fairview. *Id.* p. 972. This ambulance necessarily must have been the one dispatched at 11:15 a.m.

In light of the above, Mrs. Munk must have left the store at about 11:16 to 11:17 a.m., depending upon when the ambulance passed the Wishing Well. Mrs. Vanderford and the unknown man were the only ones in the store when Munk left. By the time of Mrs. Vanderford's 911 call at 11:18 a.m., she had already been attacked and the assailant had escaped. Thus, it

seems very probable, certain, really, that the man these two witnesses saw in the store was the true killer.

Since the trial, an investigator for Fields has contacted both these women. They confirmed with more specificity than their original testimony that Fields was not the person they saw at the Wishing Well just before the murder. *See* R. Vol. II, pp. 223,226 (Affidavits of Betty Hornecker-Heaton and Mari Munk).

Hornecker-Heaton states that the man she saw in the store was about 48 years old, 230-240 pounds and approximately 6 feet four inches tall. R. Vol. II, p. 222 (Hornecker-Heaton Affidavit ¶¶ 8-9). 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." *Id.* p. 223 (Hornecker-Heaton Affidavit ¶ 22). Mari Munk, agrees with Ms. Heaton's physical description of the man in the store, *i.e.*, "over six feet tall, about 230 pounds and 48 years old." *Id.* p. 225 (Munk Affidavit ¶ 3). 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." *Id.* p. 226 (Munk Affidavit ¶ 12, Exhibit 2).

Thus, two State witnesses testified that they saw a suspicious-looking man in the Wishing Well moments before the murder. They both agree that the man in the store did not look like Zane Fields or even come close to matching Fields' description.

C. The New DNA Evidence and Witness Affidavits Establish Fields' Innocence

Given the DNA and fingerprint evidence now available, the district court should not have dismissed the petition and should have granted an evidentiary hearing on Fields' innocence claim. When the district court considered Fields' petition, it failed to consider all of the admissible evidence in conjunction with the newly developed DNA evidence. Instead, the district court dismissed the significance of the DNA evidence by drawing unreasonable inferences against Fields.

Mrs. Vanderford had male DNA under her fingernails. Based upon the forensic testing results, that DNA did not come from Fields. Several unknown hairs were found on her body, and those hairs did not come from Fields. *See* R. Vol. II, p. 275, CE, Ex. 9 (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).

To counter the exclusions of Fields as a contributor of any of the biological evidence found on Mrs. Vanderford, the State argued that there was "no evidence that the victim scratched the petitioner," and therefore the absence of Fields' DNA "proves nothing." R.Vol. II, p. 236-37. That argument is a "red herring." The district court simply accepted this circular argument, rather than analyze it and the evidence.

Mrs. Vanderford had a cut on her left ring finger which the pathologist, Dr. Frank Roberts, described "as a defense wound." Roberts explained that "[s]ometimes when people are being attacked they put their hands up to defend themselves, and this appeared to be consistent with a defense wound." T. Tr. Vol. V, pp. 1062-63. Given Mrs. Vanderford's defensive cut and the presence of male DNA in her fingernail scrapings, it is a reasonable inference that she scratched her attacker. It was unreasonable for the district court to conclude instead that the male DNA was present as a result of an innocent transfer prior to the murder.

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

D. The State's Evidence Against Fields Was Unreliable

Seventeen days after the Wishing Well murder, Fields was arrested and placed in the Ada County jail on an unrelated assault charge, arising from Fields' resistance when caught shoplifting at a Boise store. *See State v. Fields*, 115 Idaho 1101, 772 P.2d 739 (Ct. App. 1989). By that time, Fields had become a suspect in the Wishing Well case because he resembled a man seen in the neighborhood of the Wishing Well on the afternoon of the murder. *See supra* note 3. After seeing news of Fields' arrest for fleeing the shoplifting incident, Keith Edson, a convicted felon who knew Fields from their prior incarceration, told the police that Edson had seen Fields

leaving the Wishing Well around the time of the murder and looking "nervous." *State v. Fields*, 127 Idaho at 907-08, 908 P.2d at 1214-15. Armed with this information, police interrogated Fields about the Wishing Well murder. PSI, attached Police Report by Detective Anderson, dated 2/29/88. Fields denied any knowledge of or participation in the Wishing Well murder. *Id.*

For the next year, no other evidence connected Fields to the crime. Then, the detectives on the Wishing Well case visited the prison where Fields was serving his sentence for the unrelated assault conviction. The detectives interrogated various inmates from Fields' cellblock and inquired whether Fields had made any admissions about the Wishing Well murder. PSI, attached Police Report by Ayotte dated 4/24/89. Uniformly, the detectives were told by the inmates that Fields had made no admissions about the crime. Remarkably, after over a year of silence by Fields, and within a few weeks of the detectives' initial cellblock interviews, Fields allegedly confessed to a number of his fellow inmates. Each eagerly came forward with inculpatory statements with which the police built a case against Fields. T. Tr. Vol. VII, pp. 1473-1482; PH Tr., pp. 119-172; and PSI, attached Police Reports by Detective Smith dated 4/24/89 and 5/16/89.

From the snitches that came forward, the prosecution ultimately relied at trial upon just three, Joe Heistand, Scott Bianchi and Jeff Acheson. Heistand and Bianchi stated that Fields admitted killing Vanderford. T. Tr. Vol. VII, pp. 1478-1482 and pp.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." *Id.* pp.1430-31. *See State v. Fields*, 127 Idaho at 908, 908 P.2d at 1215.

Heistand, Bianchi and Acheson all denied receiving any substantial benefits for their testimony and denied the existence of a deal with the State. T. Tr. Vol. VII, pp. 1489-90, 1584, 1604, 1614-15; T. Tr. Vol. VIII, p. 1870; PH Tr. pp. 129, 133; PCR Tr., pp. 2062-65. However, they in fact 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. R., p. 275, CE, Ex. 9 (Affidavit of Jeff Acheson, Exhibit D, and Det. Dave Smith letter, Exhibit A); PCR2 R, pp.78-79, 83-84.

Much more concerning, these snitch witnesses received information about the crime from the State. Jeff Acheson admitted that the police gave him information. R. 275, CE, Ex. 9 (Affidavit of Jeff Acheson, Exhibit D). In his Affidavit, Acheson recounted that when he stated to the State's investigator that Fields said he threw a gun into the construction site to get rid of the evidence, Acheson "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." *Id.* Acheson also admitted that the inmates were held together, and that they constantly talked about the case and how they testified or were going to testify. *Id.* Further, Acheson confirmed the testimony of Salvador Martinez and acknowledged that the testifying inmates who were held

together pre-trial, Bianchi and Heistand, "told me of how they had made up most of what they were saying, in order to get out of Orofino." *Id.*

Inmate Heistand was housed in the same tier as Fields in Orofino in 1988 and 1989. T. Tr. Vol. VII, pp.1465-67. Heistand claimed Fields made admissions between May 2-10 in their conversations through the vents, *id.* p. 1471, and before talking to Detective Smith on May 15, 1989. *Id.* p. 1489. However, Heistand's credibility is suspect. Heistand inconsistently addressed the issue of when he learned information from Fields, before or after talking to Officer Hamilton on May 10. *See Id.* pp. 1487-88 (claimed to talk to Hamilton after learning from Fields); *cf. Id.* p. 1495 (stated he went back and talked with Fields after talking to Officer Hamilton); *Id.* p. 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").

The witnesses' collusion was done openly and known by other inmates at the time. Salvador Martinez, another inmate, testified that Heistand and Bianchi talked about the case with him extensively. *See* T. Tr. Vol VIII, pp. 1732-33 (testimony of Salvador Martinez that Heistand learned about the case from the police and other inmates). Martinez testified that Bianchi admitted his testimony was lies, and that he didn't know anything about the murder from Fields. *Id.* pp.1720, 1727. Heistand admitted to Martinez that he learned about the case from other inmates. *Id.* p. 1733.

The district court acknowledged Bianchi's recantations but noted that Bianchi's original testimony was corroborated by inmates who have not recanted. R. Vol. II, p. 259. However, the district court failed to note that Acheson provided an affidavit stating that the police fed him the information about the crime, and that Heistand had admitted he learned about the case from other inmates.

Finally, the only other witness against Fields, 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 extensively at trial that his testimony is not believable. It was plain that Edson was making up nearly every fact in his story. For example, he could not have purchased the drink he said he bought at Taco Bell, because the Taco Bell store was in the final stages of construction and was not yet open to the public at the time of the offense. *See* T. Tr. Vol. VI, pp. 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.* T. Tr. Vol. VIII, pp. 1633-35 (the Taco Bell on Fairview near the Wishing Well was not open for business until February 23, 1988, twelve days after the Wishing Well murder). Additionally, Edson testified that he arrived at the BMC parking lot next door to the Wishing Well at 11:00 a.m., T. Tr. Vol. VI, pp. 1196-98, 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. *Id.* p. 1255. And yet, Edson did not see anyone working in front of the store. *Id.* pp. 1267, 1270. Nor did he see any cars in the Wishing Well parking lot other than one cargo van (the kind without a lot of

windows). *Id.* pp. 1265-66. Edson did not see the brown Honda Accord driven by Betty Honecker-Heaton[4] arrive and leave the Wishing Well parking lot. *Id.* p. 1267. Nor did he see Honecker-Heaton enter and leave the store. *Id.* pp. 1267-68. Edson did not see an Aerostar passenger van driven by Mari Munk and "loaded with windows"[5] arrive and leave the Wishing Well parking lot. *Id.* p. 1268. Nor did he see Munk enter and leave the store. *Id.* p. 1270. Likewise, Edson did not see any cars or activity in the BMC parking lot (where he was allegedly standing) next door to the Wishing Well store, because, he stated, the BMC store was closed. *Id.* pp. 1264-65. Compare these "observations" to the affidavits and testimony of Munk and Hornecker-Heaton. 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 about five minutes before or after 11 a.m. on the day of the murder. T. Tr. Vol. V, pp. 917-18. Mr. Vanderford testified that the BMC store next door was open, and that there were many cars in the BMC parking lot. *Id.* p. 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.

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[4] *See* T. Tr. Vol. V, p. 945.

[5] *See* T. Tr. Vol. V, pp. 981-82.

Given the collusion among the inmate witnesses, information about the crime fed to them by the State, the significant questions about their credibility and Edson's, and the thinness of the remainder of the case against Fields, the inmate snitch witnesses' testimony would be unlikely to convince a reasonable juror to convict if this case were re-tried. The inmates' testimony would not be credited, given the other more credible witnesses, the total absence of forensic evidence linking Fields to the crime scene, and the new evidence that the male DNA in Mrs. Vanderford's fingernail scrapings did not come from Fields.

IV. CONCLUSION

In conclusion, this Court should reverse the dismissal of the post-conviction petition, grant Fields post-conviction relief, reverse his conviction and sentence and order a new trial. The evidence from witnesses Munk and Hornecker-Heaton, that Fields was not the lone man lurking in the store until a minute before the murder, together with the DNA evidence excluding Fields from the forensic evidence collected from the victim, would more probably than not lead any reasonable juror to vote to acquit.

In the alternative, this Court should reverse the district court and order an evidentiary hearing. At a minimum, the district court should hold a hearing and evaluate the credibility of the snitch witnesses against that of witnesses Munk and Hornecker-Heaton, while also considering the defensive cut on Mrs. Vanderford's hand, the male DNA in Mrs. Vanderford's fingernail scrapings and mitochondrial DNA in foreign hairs found on Mrs. Vanderford, none of

which came from Fields. 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 the last 20 years.

Respectfully submitted this 8th day of April, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2010, I caused to be served two true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

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