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Fields v. State Clerk's Record Dckt. 40586

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ZANE JACK FIELDS,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 40586

CLERK'S RECORD ON APPEAL

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

HONORABLE THOMAS F. NEVILLE

TERESA A. HAMPTON, FEDERAL PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
7/28/2011	NPCP	CCAMESLC	New Case Filed - Post Conviction Relief	Thomas F. Neville
	PETN	CCAMESLC	Petition for Post Conviction Relief	Thomas F. Neville
	CERT	CCAMESLC	Certificate Of Mailing	Thomas Neville
	AFFD	CCAMESLC	Affidavit of Teresa A Hampton in Support of Petition for Post Conviction	Thomas F. Neville
8/25/2011	MOTN	CCNELSRF	State's Motion to Allow Additional Time of State's response to the 7/28/11 Petition for Post Conviction Relief	Thomas F. Neville
	STIP	CCNELSRF	Stipulation to Extend time for State's Response to the 7/28/11 Petition	Thomas F. Neville
9/1/2011	ORDR	DCELLISJ	Order to Allow Add'l time for State's Response to the 7/28/11 PCR	Thomas F. Neville
9/6/2011	ORMR	CCMANLHR	Order For Delivery of Medical Records	Theresa Gardunia
9/19/2011	PROS	PRCURTAH	Prosecutor assigned Roger Bourne	Thomas F. Neville
9/28/2011	RSPN	CCWRIGRM	States Response to July 28 2011 Successive Petition for Post Conviction Relief and States Motion to Dismiss	Thomas F. Neville
9/29/2011	MISC	DCELLISJ	Addendum To State's Response to July 28, 2011 Succ. Petition For PCR and State's Motion to Dismiss	Thomas F. Neville
10/21/2011	HRSC	CCAMESLC	Notice of Hearing (Motion 11/16/2011 03:00 PM) Motion to Dismiss	Thomas F. Neville
10/25/2011	STIP	MCBIEHKJ	Stipulation for Additional Time to File Response to States Motion to Dismiss	Thomas F. Neville
10/26/2011	ORDR	DCELLISJ	Order Granting Stip for Add'l Time to File Response to State's Motion to Dismiss	Thomas F. Neville
10/27/2011	HRVC	DCELLISJ	Hearing result for Motion scheduled on 11/16/2011 03:00 PM: Hearing Vacated Motion to Dismiss	Thomas F. Neville
12/21/2011	RSPS	CCRANDJD	Response in Support of Petition for Post Conviction Relief and in Opposition to States Motion to Dismiss	Thomas F. Neville
1/4/2012	MOTN	MCBIEHKJ	Motion to Take Judicial Notice	Thomas F. Neville
1/20/2012	REPL	CCMASTLW	State's Reply to Petitioner's Response in Support of 7/28/11 Successive Petition for Post-Conviction Relief and in Opposition to State's Motion to Dismiss	Thomas F. Neville
1/25/2012	NOTH	CCRANDJD	Notice Of Hearing Re An Order to Dismiss Successive Petitions (03/08/2012 at 1:30pm)	Thomas F. Neville
	HRSC	CCRANDJD	Hearing Scheduled (Hearing Scheduled 03/08/2012 01:30 PM) Order to Dismiss Successive Petitions	Thomas F. Neville
2/8/2012	CONT	DCELLISJ	Continued (Hearing Scheduled 04/13/2012 01:30 PM) Order to Dismiss Successive Petitions	Thomas F. Neville

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
2/8/2012	AMEN	CCWRIGRM	Amended Notice of Hearing (04/13/12 @ 1:30pm) Respondents Motion to Dismiss and Petitioners Motion to Take Judicial Notice Thomas F. Neville
4/4/2012	MISC	CCKHAMSA	Capital Case Notice Of Filing Thomas F. Neville
4/10/2012	HRVC	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 04/13/2012 01:30 PM: Hearing Vacated Order to Dismiss Successive Petitions Thomas F. Neville
6/28/2012	STIP	CCHEATJL	Stipulation To Waive Oral Argument And To Allow Court To decide Case Based Upon The Plaedings Thomas F. Neville
11/27/2012	DEOP	DCELLISJ	Memorandum Decison and Order of Dismissal Of Petition for PCR Thomas F. Neville
11/29/2012	CDIS	DCELLISJ	Civil Disposition entered for: State Of Idaho, Other Party; Fields, Zane Jack, Subject. Filing date: 11/29/2012 ORDER DISMISSING PETITION FOR POST CONVICTION RELEIF Thomas F. Neville
	STAT	DCELLISJ	STATUS CHANGED: Closed Thomas F. Neville
12/18/2012	NOTC	TCWEGEKE	Notice of Appeal Thomas F. Neville
	APSC	TCWEGEKE	Appealed To The Supreme Court Thomas F. Neville
	MOTN	TCWEGEKE	Motion that Costs of Appeal be at County Expense Thomas F. Neville
12/21/2012	ORDR	DCELLISJ	Order on Motion that Costs of Appeal be at County Expense Thomas F. Neville

JUL 28 2011

CHRISTOPHER D. RICH, Clerk
By LARA AMES
DEPUTY

CAPITAL HABEAS UNIT
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Teresa A. Hampton, ID Bar No. 4364
702 W. Idaho, Suite 900
Boise ID 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

THOMAS F. NEVILLE

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

CV PC 1114403

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

CASE NO. _____
CAPITAL CASE
PETITION FOR
POST-CONVICTION RELIEF

Petitioner ZANE JACK FIELDS petitions for post-conviction relief, pursuant to Idaho Code §§ 19-2719, 19-4901, and 19-4902, challenging his conviction for first degree murder and sentence of death on the ground that newly discovered evidence supports his prior claim of innocence in a post-conviction petition seeking scientific testing of DNA evidence.

Factual Background of this Petition

In 2002, Fields petitioned this court in case number SP-OT-02-00590 for post-conviction relief pursuant to Idaho Code §§ 19-2719, 19-4901 and 19-4902. Fields sought scientific testing of deoxyribonucleic acid ("DNA") collected by the State in the investigation of the murder of Mary Katherine Vanderford, for which petitioner was convicted and sentenced to death.

In 2010, Fields petitioned for post-conviction relief pursuant to the same authorities based on newly discovered evidence that lead-Detective Dave Smith had ordered the destruction of material exculpatory evidence, a coat that was an exhibit entered into evidence by the defense at trial, notwithstanding a court order to return the coat to the Ada County Clerk's office.

Fields returns to this court with additional newly discovered evidence in support of his claim of innocence.

Procedural History of Fields's Cases

1. Fields was convicted by a jury of first degree murder on May 16, 1990. The court entered a sentence of death and judgment on March 7, 1991. *State v. Fields*, No. 16259 (Fourth Judicial District, Ada County).
2. Petitioner appealed and sought post-conviction relief alleging ineffective assistance of counsel and other claims. The Idaho Supreme Court affirmed petitioner's conviction and sentence and the denial of post-conviction relief. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (Idaho 1995).
3. Fields filed a successive petition for post-conviction relief, No. SP-OT-96-00369D, alleging ineffective assistance of counsel, conflict of interest and other issues. The District Court denied the petition. The Idaho Supreme Court affirmed that dismissal. *Fields v. State*, 135 Idaho 286, 17 P.3d 230 (Idaho 2000).
4. In 2002, Fields filed another post-conviction petition seeking scientific testing of DNA evidence (the "DNA Proceeding"). This Court dismissed that petition on April 3, 2009. *Fields v. State*, No. SP-OT-02-00590*D. The Idaho Supreme Court affirmed that dismissal on May 25, 2011. *Fields v. State*, ___ Idaho ___, 253 P.3d 692 (Idaho 2011).

5. Fields filed another post-conviction petition alleging that he was denied his right to a jury at sentencing under *Ring v. Arizona*, 536 U.S. 584 (2002). This court denied the petition and the Idaho Supreme Court affirmed. *Fields v. State*, 149 Idaho 399, 234 P.3d 723 (Idaho 2010).
6. Fields filed a fifth post-conviction petition based on newly discovered evidence, again seeking to prove his innocence. Fields based that innocence claim on a combination of Detective Smith's destruction of the coat and the further reasons supporting his innocence as alleged in the DNA Proceeding. Fields also alleged a federal due process violation in connection with Detective Smith's destruction of the defense evidence and court exhibit, contrary to explicit court order. This Court dismissed that petition on February 18, 2011. *Fields v. State*, No. CV-PC-2010-20085. Appeal of that dismissal is pending in the Idaho Supreme Court.

Facts Verified by Petitioner

Pursuant to Idaho Code § 19-4903, Fields states the following facts to be within his personal knowledge:

1. He is innocent of the crime for which he is convicted.
2. He has consistently denied any participation in the crime for which he was convicted.
3. He has never confessed to any participation in this crime to any person.

These verified facts are incorporated into each claim for relief.

Claims for Relief

In support of his claims, Fields alleges the following facts:

Claim 1: New Evidence Establishes Fields's Innocence

7. Fields is innocent of the crime for which he was convicted. Fields has consistently denied participating in the murder for which he has been convicted.
8. Identity was an issue in his trial. "At trial, the only element of the State's case challenged by Fields was the identification of Fields as the perpetrator." *State v. Fields*, 127 Idaho 904, 907, 908 P.2d 1211, 1214 (Idaho 1995).
9. The State proffered evidence through inmate witnesses that Fields confessed to the crime. At the preliminary hearing, the State relied on Harold Gilcrist. At trial, the State relied on Joseph Heistand and Scott Bianchi.
10. Inmate Scott Bianchi recanted his trial testimony accusations to one of Fields's previous attorneys. He then subsequently withdrew that statement in testimony presented in support of a new trial. *See* Exhibit 1 attached hereto.
11. Fields's lawyers and investigators have attempted to find and contact Harold Gilcrist, Scott Bianchi and Joseph Heistand repeatedly over the intervening years since Fields was convicted. *See* Affidavit of Greg Worthen, attached hereto as Exhibit 2.
12. Both Heistand and Bianchi have admitted to third parties that they made up their testimony against Fields. *See* Exhibit 1; and Affidavit of Jeffrey Acheson, attached hereto as Exhibit 3 (inmates Heistand, Bianchi and Gilcrist admitted they made up their testimony against Fields). *See also* Declaration of Harold Gilcrist ¶ 10, attached hereto as Exhibit 4. (Admission that Gilcrist helped Bianchi and Heistand testify as they did

through provision to them of information about the crime provided by Detective Smith).

Despite repeated efforts, Fields has been unable to procure a sworn statement from either Bianchi or Heistand. *See* Exhibit 2.

13. After repeated, unsuccessful attempts to find Harold Gilcrist, an investigator for Fields was finally successful in the summer of 2011. *See* Exhibit 2. On July 8, 2011, Harold Gilcrist executed the attached declaration. *See* Exhibit 4.
14. In his affidavit, Gilcrist admits that despite his previous testimony to the contrary, “Zane Fields never told me he killed anybody. Fields never implicated himself to me as the murderer or a participant in the murder of Mary Vanderford at the Wishing Well, the murder for which he was convicted and sentenced to death.” Exhibit 4 ¶ 2.
15. He acknowledged that Detective Dave Smith interviewed him at the Orofino prison in 1989, where Gilcrist was an inmate on the same tier as Fields. Exhibit 4 ¶ 4.
16. Gilcrist admitted he carried a grudge against Fields, that he “wanted to get” Fields, and that his “motivation was to simply do whatever I could to burn Fields.” Exhibit 4 ¶ 5. Encouraged by Detective Smith – who urged Gilcrist: “[l]et’s burn him” – Gilcrist took this “perfect opportunity.” *Id.*
17. Within a month of Gilcrist’s first meeting with Detective Smith, Gilcrist informed Smith “that Fields had confessed to me and that Fields had admitted killing an elderly woman in a Boise gift shop.” Exhibit 4 ¶ 6. However, this information was a lie, and Gilcrist now admits that Fields never confessed to him. Exhibit 4 ¶ 2.
18. Further, Gilcrist admits that he was fed information by Detective Smith.

[T]he information I said I got from Fields was actually information provided directly to me by Detective Smith. Smith gave me information about the crime he

believed Fields committed at the Wishing Well gift shop. Smith told me details about the murder of the woman at the gift shop. For example, I asked Smith how much money had been stolen. Smith answered, "He killed an old lady for fifty bucks."

Exhibit 4 ¶ 7.

19. In addition, Gilcrist explicitly recalls at one meeting, Detective Smith leaving case files on the table and then leaving the room, giving Gilcrist the opportunity to look at the files, which he did. Exhibit 4 ¶ 8.
20. Gilcrist admits that he discussed testifying against Fields with Joseph Heistand and Scott Bianchi. Gilcrist acknowledged that "I shared my desire to burn Fields with them," but more significantly, Gilcrist admits that "I also shared the information I obtained from Detective Smith about the crime." Exhibit 4 ¶ 9.
21. Finally, Gilcrist admits that "I would not have been able to testify as I did, and I would not have been able to help Bianchi and Heistand testify as they did, without the information provided to me by Detective Dave Smith." Exhibit 4 ¶ 10.
22. Fields also obtained DNA evidence and presented other new evidence in the prior DNA post-conviction proceeding, No. SP-OT-02-00590*D, in which he contended that he established his innocence. That evidence included male DNA obtained from the victim's fingernails. It also included several hairs not belonging to the victim but recovered from her body. Fields was excluded as a contributor of the DNA and was excluded from being the source of the hairs found on Mrs. Vanderford. *See* Report and Declaration of Dr. Randell Libby, attached hereto as Exhibit 5.
23. Fields proffered affidavits from two women, Mari Munk and Betty Heaton, who were at the scene of the crime, the Wishing Well store on Fairview Avenue, for approximately

fifteen minutes preceding the attack until about a minute before the attack occurred.

Munk and Heaton clarified and added to their trial testimony, stating that Fields did not look like the person they saw in the store. Munk and Heaton identified a large, bald man nearly 50 years old, over six feet tall to six feet four inches tall who was wearing a navy blue zip-front sweatshirt. The affidavits of Munk and Heaton are attached as Exhibit 6.

At the time of the crime, Fields was 29 years old, under six feet tall and had long bushy hair.

24. The State also relied at trial upon another inmate, Jeff Acheson. Acheson testified at trial that Fields had admitted that he got rid of the “weapon.” In the prior DNA proceeding Acheson provided an affidavit stating:

When I told the investigators about how I thought that Zane said that he had tossed the “Gun” into the construction site, I was corrected by the investigators 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.

Affidavit of Jeff Acheson, Exhibit 3.

25. Acheson identified Detective Dave Smith as the only police officer present for this conversation. Exhibit 3 ¶ 1.
26. The State called Keith Edson to testify at trial. Edson’s initial pretrial statement obtained by the State was that he was near the Wishing Well “on the day or day after the stabbing.” State’s Trial Exhibit 23. At trial, he testified that he was definitely present at the Wishing Well on the date of the murder. T. Tr. Vol. 6, p. 1194, 1247-49. Edson attributed this change in testimony as a result of “[g]oing over what I saw that day with the detectives.” T. Tr. Vol. 6, p. 1249.

27. Edson stated he saw Fields enter and leave the Wishing Well store wearing an orange camouflage coat at the time of the crime. This coat was admitted at trial as Defense Exhibit 22.
28. Four shopkeepers testified at trial that a man entered stores in the Linda Vista Plaza, a little over an hour after the attack at the Wishing Well. Three witnesses said the man was Fields. All four witnesses testified that the man they saw was wearing a solid colored, orange to red coat, and they all denied that he was wearing the camouflage jacket, Defense Exhibit 22.
29. The State Forensics witness, Ann Bradley, testified at trial that Idaho State Police Laboratory personnel ran a presumptive test for blood on Defense Exhibit 22. The presumptive test was positive, but a confirmatory test for human blood was negative.
30. In 2002, the State obtained an order to remove Defense Exhibit 22 from evidence and to transport it to the Idaho State Police Forensic Lab for further testing. The State was ordered to preserve the coat “in such a manner as to protect the integrity of the evidence and the chain of custody” and to return it to the Ada County Court Clerk’s Office after the testing.
31. The State removed Defense Exhibit 22 from evidence and transported it to the Idaho State Police Forensic Lab. *See* Order and note dated 12/09/02 attached hereto as Exhibit 7. Prosecutor Roger Bourne reported to this Court that the State Police Forensic Lab did not find any remaining sample to test. A copy of the Bourne letter to Judge Neville and opposing counsel, transmitting the State Police Forensic Lab’s Forensic Biology Report, is attached as Exhibit 8.

32. The Forensic Biology Report, dated January 15, 2003, identifies the Boise Police Department as the “Submitting Agency” and Dave Smith as the “Investigating Officer.”
33. Fields filed a Motion for Independent Scientific Testing of Defense Exhibit 22 on October 10, 2003. A copy of that motion is attached as Exhibit 9.
34. While Fields’s motion for testing was pending, Detective Smith instructed Bridget Kinney of the Boise Police Department to “destroy the coat.” See Letter of Roger Bourne to Margaret Lundquist, dated August 17, 2010 with attached enclosures, including email message from Dave Smith dated February 17, 2004, attached hereto as Exhibit 10.
35. Given the State’s concessions that there was not any credible evidence of blood from Mary Vanderford on Fields’s coat, and the illegal destruction of that coat by Detective Smith in violation of a court order, the State is estopped from arguing the possible existence of any putative evidence of blood on Fields’s coat, Defense Exhibit 22, that connects him to the murder of Mary Vanderford.
36. Fields only found out about the destruction of this evidence on August 31, 2010, after asking the Exhibit Clerk of the Ada County Clerk’s Office for access to trial exhibits, including Defense Exhibit 22. See Affidavit of Heidi Thomas, attached hereto as Exhibit 11.
37. Based upon the newly discovered evidence and previously proffered evidence, Fields is actually innocent of the murder of Mary Vanderford under *Herrera v. Collins*, 506 U.S. 390 (1993) and the Eighth and Fourteenth Amendments.

The new evidence obtained is not merely impeaching or cumulative, but casts doubt upon the reliability of the conviction and sentence. Petitioner requests that this Court: grant him a full and fair evidentiary hearing, discovery to obtain important, additional corroborating evidence, and compulsory process for full and complete cross examination of critical adverse witnesses. Ultimately, Fields requests that this Court grant his petition, declare him innocent, and release him from prison or order a new trial.

Claim 2: Police and Prosecutorial Misconduct Violated State and Federal Due Process Protections

38. Petitioner re-alleges paragraphs 7-37 and incorporates them herein.
39. In sharing information about the crime with inmate witnesses, Detective Smith compromised the integrity of the investigation and infused false evidence into the case against Fields. *See Exhibits 3 and 4.*
40. Detective Smith is an experienced police officer who knew or should have known that providing material information about the crime to any inmate witness was improper, a denial of due process under the Fourteenth Amendment, and likely to result in false evidence being presented against Fields.
41. Detective Smith violated Fields's right to a fair trial under the state and federal constitutions by providing information to Acheson and Gilcrist.
42. Given the evidence and admissions of false testimony, clarifications, recantations and use of information about the crime provided directly or indirectly by Detective Smith, the State's use of testimony at trial by inmates Acheson, Bianchi and Heistand violated Fields's right to a fair trial.

43. Regardless of whether the prosecution knew of Detective Smith's improper conduct, its non-disclosure constitutes the suppression of material exculpatory evidence in violation of *Brady v. Maryland* and Fields's right to a fair trial.
44. In light of Detective Smith's improper conduct and the inmates' admissions of fabricated and false testimony, the use of the testimony at trial by inmates Acheson, Bianchi and Heistand violated Fields's rights to a fair trial and due process under the Fourteenth Amendment and the state constitution.
45. The trial testimony of inmates Acheson, Bianchi and Heistand was materially false and misleading.
46. Detective Smith and the State's prosecutors knew or should have known that the testimony of Acheson, Bianchi and Heistand was materially false and misleading.
47. The State's use of knowingly false and materially misleading testimony by Acheson, Bianchi and Heistand without correction violated *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959); and *Pyle v. Kansas*, 317 U.S. 213 (1942).
48. Detective Smith's order to "destroy the coat," Defense Exhibit 22, is evidence of purposeful destruction of material, exculpatory evidence, regardless of Detective Smith's subjective intent in ordering the destruction of the evidence.
49. Such destruction of material, exculpatory evidence contrary to a court order violates the Due Process Clause of the Fourteenth Amendment.
50. Detective Smith's order to "destroy the coat" constitutes bad faith as a matter of law.
51. On information and belief, Detective Smith's order to "destroy the coat" was made in bad faith.

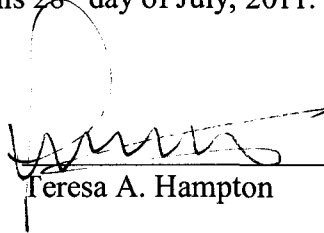
The new evidence obtained is not merely impeaching or cumulative, but casts doubt upon the reliability of the conviction and sentence. Wherefore, Petitioner requests that this Court: grant him a full and fair evidentiary hearing, discovery to obtain important, additional corroborating evidence, and compulsory process for full and complete cross examination of critical adverse witnesses. Ultimately, Fields requests that this Court grant his petition, declare him innocent, and release him from prison or order a new trial.

Claim 3: The State Actions Violated Due Process and The Right to a Fair Trial

52. Fields reincorporates herein the allegations of paragraphs 7-51 of this petition.
53. Inmate Gilcrist deliberately sought to elicit incriminating evidence from Fields.
54. In doing so, inmate Gilcrist was working together and in concert with Detective Smith.
55. While the information that Gilcrist obtained was from Detective Smith and not Fields, Gilcrist obtained that information as an agent of the Government and Detective Smith.
56. Gilcrist, as a state agent, conveyed materially false and damaging information to inmates Bianchi, Heistand and Acheson before trial to assist them with their trial testimony.
57. Inmates Bianchi, Heistand and Acheson offered materially false or misleading testimony based on information obtained from either Gilcrist or Smith.
58. The use of the information allegedly obtained from Fields, but which was conveyed by Gilcrist or Detective Smith to inmates Bianchi, Heistand and Acheson violated Fields's Sixth Amendment right to counsel, and his rights to a fair trial and due process under the Fourteenth Amendment.

The new evidence obtained is not merely impeaching or cumulative, but casts doubt upon the reliability of the conviction and sentence. Wherefore, Petitioner requests that this Court grant him a full and fair evidentiary hearing, discovery to obtain important, additional corroborating evidence, and compulsory process for full and complete cross examination of critical adverse witnesses. Ultimately, Fields requests that this Court grant his petition, declare him innocent, and release him from prison or order a new trial.

RESPECTFULLY SUBMITTED this 28th day of July, 2011.



Teresa A. Hampton

Counsel for Petitioner Zane Jack Fields

VERIFICATION

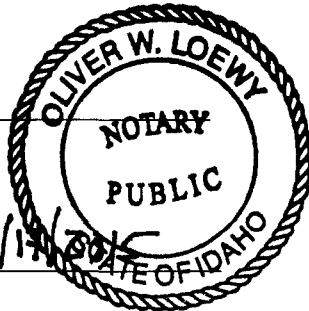
State of Idaho)
 :SS
County of Ada)

Petitioner Zane Jack Fields being first duly sworn under oath, deposes and states that he is the petitioner in this action, that he has read the foregoing Petition for Post-Conviction Relief, that he knows the contents thereof and that the facts stated herein are true and correct to the best of his knowledge and belief and verifies these facts contained in Facts Verified by Petitioner.

Zane Fields
Zane Jack Fields

Zane Fields, a person known to me, appeared before me, declared under oath that the foregoing petition is true and correct and signed his name on this 28th day of July, 2011.

[Signature]
Notary Public



My Commission expires: 2/17/2015

EXHIBIT 1

**(Excerpt of Testimony of Scott Bianchi from
Hearing on Motion for New Trial,
Idaho v. Fields, Ada County Case No. 16259A)**

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

THE STATE OF IDAHO	)	Case No. 16259A
)	
Plaintiff,)	
)	
vs.)	
)	
ZANE JACK FIELDS)	
)	
Defendant.)	
)	
)	

BEFORE
HONORABLE GERALD F. SCHROEDER
DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came
on for hearing before the Honorable Gerald F. Schroeder,
District Judge, Ada County, Idaho, without a jury, on the
3rd day of August, 1992.

1 MR. MYSHIN: I would Judge. I'd like to call Scott
2 Bianchi because I think he's already downstairs -- I'll
3 just call Kevin Amerson first then.

4 (Brief delay.)

5
6 SCOTT BIANCHI,
7 a witness called on behalf of the Petitioner, having been
8 first duly sworn, took the stand and testified as follows:

9
10 DIRECT EXAMINATION

11 BY MR. MYSHIN:

12 Q. Would you please state your name and spell your
13 last name for the record?

14 A. Scott Bianchi, B-i-a-n-c-h-i.

15 Q. Mr. Bianchi, are you an inmate?

16 A. Yes.

17 Q. Where are you located?

18 A. Orofino.

19 Q. Where were you located in April of 1992?

20 A. Idaho Maximum Security Institution.

21 Q. And why were you there?

22 A. Because that's where I was being housed.

23 Q. Were you being punished?

24 A. No.

25 Q. Were you -- where were you prior to being at

30 2346

1 the Maximum Security?

2 A. Orofino.

3 Q. And was there some reason why you were taken
4 out of Orofino?

5 A. Is my attorney here?

6 MR. HORTON: Your Honor, I can advise the Court that
7 David Manweiler is Mr. Bianchi's attorney, and I know that
8 he wanted to be present at all these proceedings. He's got
9 concerns about the scope of interrogation exceeding the
10 subject matter of Mr. Myshin's affidavit.

11 THE COURT: Well, is he present?

12 MR. HORTON: He was present just a few moments ago.
13 I believe Ms. Meehan has gone out to fetch him.

14 THE COURT: All right. Let's wait just a moment.

15 (Brief delay.)

16 MR. MANWEILER: Apology, Your Honor.

17 Q. BY MR. MYSHIN: I will repeat the question.
18 Why were you taken out of the facility at Orofino?

19 MR. HORTON: If it's appropriate for me to enter a
20 relevance objection.

21 THE COURT: Overrule the objection. He may testify.

22 THE WITNESS: Okay. I have no idea why I was
23 transferred from one institution to the other. When
24 transport orders come and your name is on it you just go.
25 I was never really given an explanation.

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2347

1 Q. BY MR. MYSHIN: You weren't caught with some
2 narcotics or drugs in your possession?
3 A. As of -- as a reason for me being sent down?
4 Q. Yes.
5 A. No.
6 Q. So you're telling me now under oath that you
7 have no idea why you were taken from Orofino to the Maximum
8 Security Institution?
9 A. Correct.
10 Q. Do you know a man by the name of Kevin Amerson?
11 A. Kevin Amerson, yeah.
12 Q. How do you know him?
13 A. He's in 8-House⁸ at the institution.
14 Q. Was he at Orofino with you?
15 A. Yes.
16 Q. Was he also transferred to the Maximum Security
17 Institution with you?
18 A. Yes.
19 Q. At the same time?
20 A. Yes.
21 Q. Do you know why he was transferred?
22 A. Nope.
23 Q. Do you know if it was for disciplinary
24 purposes?
25 A. I know he did not receive any disciplinary

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2348

1 write-ups prior to or after getting sent down.
2 Q. Okay. And was he accused of being in
3 possession of some drugs?
4 A. No.
5 Q. Some illegal drugs?
6 A. No.
7 Q. Now, during April of 1992, did you meet with me
8 at the Maximum Security Institution?
9 A. I did.
10 Q. And did we have a conversation there?
11 A. Yes.
12 Q. Was anybody else present?
13 A. No.
14 Q. And there was a screen or a --
15 A. Window.
16 Q. A wall or window between us, wasn't there?
17 A. Yes.
18 Q. So we had no physical contact as such?
19 A. Correct.
20 Q. Now, do you know why I came out to visit with
21 you?
22 A. Yes.
23 Q. Why?
24 A. Because -- to talk to me.
25 Q. Okay. Did you tell somebody that you --

30 2349

1 A. -- concerning Zane.
2 Q. Did you tell somebody that you had information
3 concerning your testimony during his trial?
4 A. Yes.
5 Q. Who did you tell?
6 A. I believe I told Zane, and pretty much whoever
7 else would listen to me. I really don't remember names.
8 Q. Okay. Did you tell Kevin Amerson?
9 A. Yeah, I believe I did.
10 Q. Now, did I use any force or intimidation or
11 threats against you?
12 A. Yes.
13 Q. Yes?
14 A. No.
15 Q. Okay. Did you tell me the truth on that day?
16 A. Nope.
17 Q. Did you tell me any truth?
18 A. I don't recall word for word what we discussed,
19 but --
20 Q. Did you -- oh, do you recall you telling me
21 that you, in effect, committed perjury during the Zane
22 Fields trial?
23 A. Yeah, I remember telling you that.
24 Q. And that the testimony you gave was false?
25 A. Yeah.

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1 Q. Were those statements true?
2 A. No.
3 Q. Do you recall telling me that Detective Dave
4 Smith met you at Orofino and talked with you there prior to
5 the Zane Fields trial?
6 A. I don't really recall, but, yeah, I suppose.
7 Q. Did Dave Smith meet with you at Orofino prior
8 to the Zane Fields trial?
9 A. Yeah.
10 Q. And did you meet with him at the warden's
11 office?
12 A. Yeah, I believe so.
13 Q. Okay. And was a Pam Sonan (sp), a deputy
14 warden present?
15 A. I don't really recall.
16 Q. You recall telling me that?
17 A. Maybe if you just get to the point, because I
18 really don't recall the exact situation of who was there
19 and whatnot.
20 Q. Okay. Well, the point is, do you remember
21 telling me that you met with Dave Smith that you were taken
22 to the warden's office, that Pam Sonan, a deputy warden,
23 would be a witness to that?
24 A. To be a witness to that?
25 Q. The fact that you met with Dave Smith?

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2351

1 A. What you're talking about is, I was brought to
2 the deputy warden's office and talked to Dave Smith over
3 the phone while Pam was there.

4 Q. Okay. Did you tell me that?

5 A. Yeah.

6 Q. Is that true?

7 A. Yeah.

8 Q. Did you tell Dave Smith that you didn't want to
9 be involved in the Zane Fields case?

10 A. Yeah. Early on, when I was first contacted, I
11 did say that I would rather not get involved.

12 Q. All right. And did you say that you would talk
13 to your mother about this?

14 A. Yeah.

15 Q. Did you tell your mother to tell Dave Smith
16 that you didn't want to testify?

17 A. Yeah.

18 Q. And that's true?

19 A. Yeah.

20 Q. Did your mother then call you back on the
21 telephone and say that you were coming down to Boise and
22 that you were going to have a contact visit with her?

23 A. She said that -- okay, when I talked to my mom
24 the second time she told me that I was going to be coming
25 down. And I told her, "Mom I told you to tell them I

30 2352

1 didn't want to be involved." And she goes, "Well, it's
2 just to talk to these guys and I'll be able to see you
3 since you're coming to Boise."

4 Q. Did she tell you you were going to have a
5 contact visit?

6 A. I don't think we were really sure at that time.

7 Q. Okay. At this time, then, is that prior to the
8 Zane Fields, did you feel that the police had the power to
9 do whatever they wanted to?

10 A. To a certain degree, sure. Yeah.

11 Q. And did you tell me that?

12 A. Yeah.

13 Q. Now, did you tell me that the police, I guess,
14 specifically Detective Smith, showed you and other inmates
15 the complete police file?

16 A. I told you that.

17 Q. Is that true?

18 A. No.

19 Q. Did you also tell me that they gave the
20 complete police file to Howie Gilcrist and that you and Mr.
21 Gilcrist shared the file?

22 A. Yeah. I told you that.

23 Q. Is that true?

24 A. No.

25 Q. Did you have an opportunity to look at the

30 2353

1 police reports --
2 A. No.
3 Q. -- prior to trial? Have you since?
4 A. No.
5 Q. Have you ever looked at the police reports in
6 the Zane Fields case?
7 A. Nope.
8 Q. Now, do you recall telling me that the police
9 told you that they put you there and that they could
10 control your placement?
11 A. No, I don't recall saying that.
12 Q. Is that true?
13 A. That I said that?
14 Q. Is it true that they said that?
15 A. I don't recall that, no.
16 Q. You don't remember that? Is it possible they
17 told you that?
18 A. I believe I'd remember it if they said it.
19 Q. Do you recall telling me that?
20 A. No.
21 Q. Do you recall telling me that Detective Smith
22 told you that if you testified you will never go back to
23 prison?
24 A. Not in those words, no.
25 Q. What words?

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2354

1 A. Words were that I would be protected if I
2 testified for the State, and that I wouldn't have to be
3 housed with Zane. I wouldn't have to worry about -- I
4 wouldn't have to worry about Zane after that.

5 Q. Is that true? Did the police tell you that?

6 A. Yeah.

7 Q. Did you tell me that Detective Smith was
8 obsessed with this case and took it very personally?

9 A. I don't believe so.

10 Q. You didn't tell me that?

11 A. No.

12 Q. Did you tell me that Detective Smith used to
13 refer to Zane Fields as a piece of shit?

14 A. No.

15 Q. You didn't tell me that?

16 A. No.

17 Q. That's a lie then?

18 A. Yeah.

19 Q. Did you ever hear Detective Smith say that?

20 A. Say that?

21 Q. Refer to Zane Fields as a piece of shit?

22 A. No.

23 Q. Now, did you tell me that Detective Smith said,
24 in your mother's presence to you, that you would never go
25 back to prison?

30 2355

1 A. He just said, like I said, it was -- what I was
2 told is that I would be protected and that I would never be
3 housed with Zane. I would never have to worry about any
4 danger from Zane because of my testimony.

5 Q. The question was though, did you tell me --

6 A. No.

7 Q. -- in your presence that Dave Smith told you
8 that you would never go back to prison?

9 A. No.

10 Q. You never told me that?

11 A. No.

12 Q. Did you tell me that you had discussed this
13 recanting, I suppose, with Howard Gilcrist? In other
14 words, the false testimony?

15 A. I don't understand.

16 Q. Okay. Did you talk to Howard Gilcrist about
17 telling me that you testified falsely?

18 A. Yes.

19 Q. Did you?

20 A. Did I?

21 Q. You told me that?

22 A. Yeah.

23 Q. Did you talk to Howard Gilcrist?

24 A. Yeah.

25 Q. You did?

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2356

1 A. Um-hum.

2 Q. Did you discuss false testimony with me?

3 A. What I discussed with Howie was the night

4 before I got sent to Maximum from Orofino was if they put

5 me -- if the administration, the prison system, put me in a

6 situation where my life was going to be in danger because

7 of my testimony that I was going to change my testimony and

8 do whatever it took to get out of this whole thing.

9 Q. So you did discuss that with Howard Gilcrist?

10 A. Yeah. Exactly like that.

11 Q. In other words, you would come forward and tell

12 the Court that you lied when you testified at the trial?

13 A. Yeah, if I felt that my life was in danger.

14 Q. Now, did you tell me that the police basically

15 rehearsed the answers and -- questions and answers with

16 you?

17 A. Yeah.

18 Q. Did they?

19 A. No.

20 Q. Were you told what would be asked of you in

21 court?

22 A. No.

23 Q. Never were?

24 A. Huh-uh.

25 Q. Did police rehearse you for your testimony?

30 2357

1 A. What do you mean "rehearse me"?

2 Q. Take you and show you what a court looks like,
3 tell you what the questions would be and how to answer --

4 A. Again, no.

5 Q. -- how to act in court? Did they ever discuss
6 that with you?

7 A. No.

8 Q. Did they discuss anything with you about your
9 testimony?

10 A. That's a pretty general question. Could you be
11 more specific?

12 Q. All right. Did they discuss with you what you
13 would say when you took the stand?

14 A. As to any answers?

15 Q. Yes.

16 A. No.

17 Q. They never discussed it with you?

18 A. No.

19 Q. Did they discuss with you what you knew or may
20 have known about what Mr. Fields was supposed to have said
21 about the case?

22 A. Yeah.

23 Q. And did you tell them?

24 A. The information that I had, yeah.

25 Q. Yes. And did they discuss that with you?

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2358

1 A. No. I discussed it with them you might say.
2 Q. Now, did you tell me that the Prosecutors
3 rehearsed you for your testimony?
4 A. No, I don't think so.
5 Q. You didn't tell me that?
6 A. No.
7 Q. So that's a lie?
8 A. If you're saying I did, then it is a lie.
9 Q. Okay. Did you tell me that Howard Gilcrist and
10 Turkey Joe Heistand were the individuals that gave your
11 name to the police?
12 A. I believe so.
13 Q. Okay. You did tell me that?
14 A. Yeah.
15 Q. Is that true?
16 A. Oh, I can't say for sure, because only they
17 would know. But I believe so, yeah.
18 Q. You believe it's true?
19 A. Yeah.
20 Q. And how would they know to give your name to
21 the police?
22 A. Because I had told Howie Gilcrist that I knew
23 certain things about the trial. So he knew.
24 Q. Did they convince you to testify?
25 A. I really can't say anyone convinced me, other

30 2359

1 than myself.

2 Q. Did they encourage you to testify?

3 A. Oh, that's a hard one to answer. I'm not
4 really sure either way.

5 Q. Now, did you tell me that you read the
6 preliminary hearing transcript in this case?

7 A. Yeah, I believe Zane showed me the preliminary
8 hearing transcript.

9 Q. Now, this would have been prior to your
10 testimony?

11 A. Yeah.

12 Q. Did you read it?

13 A. I glanced over ^{it} -- I scanned it.

14 Q. Did you specifically read Howie Gilcrist's
15 testimony?

16 A. I don't really recall. That was like years
17 ago.

18 Q. Did you tell me you read it?

19 A. No, I don't think so.

20 Q. You didn't tell me that?

21 A. No.

22 Q. That's a lie?

23 A. If you're saying it then, yeah, it's a lie from
24 you.

25 Q. Did you tell me that you would take a lie

30 2360

1 detector test to verify the truth of what you were telling
2 me?
3 A. I don't recall.
4 Q. Did you tell me that you never thought Zane
5 Fields would be convicted?
6 A. No, I don't think so.
7 Q. You didn't tell me that?
8 A. Huh-uh.
9 Q. Did you take any notes of this conversation at
10 all?
11 A. When you and I talked?
12 Q. Yeah.
13 A. No.
14 Q. You certainly didn't have a tape recorder with
15 you did you?
16 A. No.
17 Q. Did you tell me that you didn't know anything
18 about the murder?
19 A. Yeah, I think I did tell you that.
20 Q. You don't know anything about the murder, do
21 you?
22 A. Yeah, I do.
23 Q. Did you tell me that you believed that you
24 would have Edie Holm to marry when you were released?
25 A. Excuse me?

30 2361

1 Q. Did you tell me that you believed that you
2 would have Edie Holm, H-o-l-m, who was your girlfriend, to
3 marry when you were released from prison?

4 A. What's that got to do with anything?

5 Q. Did you tell me that you were led to believe
6 that you would be released soon and that you would be able
7 to marry this Edan Holm?

8 A. I was married to Edan Holm four months after
9 the trial.

10 Q. Is that something that you believed before you
11 testified? That you would be released?

12 A. That I would marry her? That was something I
13 believed before, after and came to be.

14 Q. Did you believe that -- well, did the cops tell
15 you that you would be released from custody, released from
16 incarceration so that you could accomplish this marriage?

17 A. No.

18 Q. Did you tell me that?

19 A. No.

20 Q. You never told me that?

21 A. No.

22 Q. So that's a lie too?

23 A. If that's what you're saying.

24 Q. Now, did you tell me that -- at the last
25 hearing, I guess that was in January of this year, at the

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2362

1 uniform post conviction hearing? Did you tell me that you
2 had conversations with Jeff Acheson that day?
3 A. I don't think so.
4 Q. You didn't tell me that?
5 A. I don't think so.
6 Q. Did you tell me that Jeff Acheson appeared to
7 you to be of the same frame of mind, that is to come
8 forward and tell the truth?
9 A. I don't recall that at all.
10 Q. You didn't tell me that?
11 A. No.
12 Q. Did you have conversations with Jeff Acheson?
13 A. I don't think so.
14 Q. Did you see him at the uniform post conviction?
15 A. I'm not really sure if he was here. I'm sure I
16 saw him.
17 Q. Weren't you housed upstairs before you
18 testified?
19 A. Yeah.
20 Q. Okay. And Jeff was one of the inmates that was
21 housed up there with you?
22 A. I think so.
23 Q. Okay. Do you remember having a conversation
24 with him about the case?
25 A. I do not even recall if he was there or not.

30 2363

1 Q. Okay. Did you know Jeff Acheson very well?
2 A. Just met him a couple times.
3 Q. Now, did you tell me you knew Detective Smith
4 only for about a month before the trial?
5 A. I've known Detective Smith for probably close
6 to ten years.
7 Q. Okay. How long did you work with Detective
8 Smith on the Zane Fields case?
9 A. I have no idea.
10 Q. Was it more than one?
11 A. I have no idea.
12 Q. Did you work with him for 12 months?
13 A. I have no idea how long exactly it was.
14 Q. All right. Prior to your testimony did, the
15 police lead you to believe that you would be receiving some
16 benefit out of the testimony?
17 A. No.
18 Q. That is, some early release or some
19 commutation?
20 A. No. The only thing I was really led to believe
21 was that I'd be protected because of my testimony, and that
22 I would not be in any danger of Zane because of my
23 testimony.
24 Q. Now, when were you transferred back to Orofino?
25 A. This last time?

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2364

1 Q. Yes.

2 A. June 10th, I believe.

3 Q. Okay.

4 A. '92.

5 Q. So you've been in Orofino since that time?

6 A. Yeah.

7 Q. Since June 10th? And do you recall when you

8 were first placed at the Maximum Security?

9 A. Well, I came down from Orofino to the main site

10 on the 20th of February, spent about a month or so on the

11 yard, and then went to Maximum, so.

12 Q. And you still don't know why you went to

13 Maximum?

14 A. Never given no reason one way or the other.

15 Q. Never any paperwork?

16 A. No.

17 Q. No disciplinary actions?

18 A. No.

19 Q. Now, during that time, from let's say February

20 or so to June, did you have any direct conversations with

21 Zane Fields?

22 A. Yes.

23 Q. What?

24 A. Yes.

25 Q. Do you recall when those would have been?

30 2365

1 A. During rec time.
2 Q. More than one?
3 A. Yeah.
4 Q. As --
5 A. I believe so. I'm really not sure exactly how
6 many times we saw each other.
7 Q. Okay. Now, again in that time frame of
8 February till June, do you recall when those contacts would
9 have been, approximately?
10 A. Our contacts were during rec time. Was it
11 morning, evening? I don't know.
12 Q. And when I say contact that's not direct
13 physical contact, was it?
14 A. No.
15 Q. You're just in cages that are --
16 A. Like a dog kennel, multi dog kennels. We're
17 put in those.
18 Q. Were you ever put in one of those kennels right
19 next to Mr. Fields?
20 A. Across. Like there's a walkway this way
21 (indicating), and across, yeah.
22 Q. Okay. And you had conversations with him?
23 A. Um-hum.
24 Q. Did Mr. Fields ever threaten you?
25 A. No, not directly.

30 2366

1 Q. Did he ever say anything directly to you that
2 would lead you to believe you were going to be persecuted?

3 A. No. But he did say something to lead me to
4 believe that if I did help him the threats I was receiving
5 from other people would be stopped.

6 Q. Do you know who was -- you were receiving
7 threats?

8 A. Yeah.

9 Q. What was the nature of those threats?

10 A. That -- okay, it wasn't particularly that
11 people were real fond of Zane, particularly, it was that --
12 simply the fact that I had testified against another inmate
13 and the result was that inmate being placed on death row;
14 that if other inmates could have had any contact with me at
15 all then I would have been stabbed, injured, killed,
16 whatever.

17 Q. Now, do you know where those threats came from?

18 A. Yeah.

19 Q. Where?

20 A. From other inmates.

21 Q. Do you know who the inmates were?

22 A. Yeah.

23 Q. Who were they?

24 A. I'd rather not bring up other inmates' names if
25 that can be avoided. I think just the fact of what I'm

30 2367

1 saying carries enough obvious truth that I don't have to
2 give up people's names and make my problems out at the
3 prison any worse than they already are.

4 MR. MYSHIN: Could the Court direct the witness to
5 answer?

6 THE COURT: Did you wish to be heard on that?

7 MR. HORTON: Well, Your Honor, that's a real
8 troublesome area, because the witness is concerned -- I
9 don't have an objection on relevance grounds, I guess.
10 Although the relevance, I would suspect, is minimal. The
11 difficulty is what this witness is trying to indicate is
12 that he's concerned about future repercussions for
13 testifying, even indirectly, to other inmates that could
14 rise to disciplinary action. As other inmates are,
15 concerned about repercussions, I believe, are legitimate
16 concerns, may make housing in -- anywhere in the
17 correctional systems difficult under the circumstances, and
18 any probative value by identification of those inmates
19 probably is outweighed by the danger and problems that he
20 would receive out there.

21 THE COURT: I understand the problem, and I'm
22 curious as to whether there is a solution; whether there's
23 any form of in camera showing or the like that would
24 protect him from further harassment if there is
25 harassment.

30 2368

1 It may be relevant to have that information in
2 the future, but I'm not sure where it leads is the
3 problem. Did you wish to be heard further?

4 MR. MYSHIN: I just want to get to the bottom of
5 this, Judge, that's why I'm inquiring. You know, if
6 there's anything to be believed from this witness, his name
7 and reputation certainly couldn't be all that great at the
8 penitentiary anyway.

9 THE WITNESS: I just don't need any problems made
10 worse than they already are. If there's a specific reason,
11 you know, something you think will come out of giving their
12 names, I just can't see where it would do anything but
13 cause me more problems than I've already got.

14 THE COURT: Counsel for the witness is present at
15 this time, I'll allow Mr. Manweiler --

16 MR. MANWEILER: Judge, I don't have any substantive
17 objections to the Court's suggestion that there may be
18 another way to submit these names without having the formal
19 record kept of it. I would maybe suggest that they be
20 written down and submitted to Counsel, as opposed to stated
21 on the record. And then if there's further questions on
22 that maybe we can go off the record and I could discuss the
23 case with my client. I don't have any substantive
24 objection because he has never divulged that information to
25 our office in the course of our representation. So I don't

30 2369

1 know who these people are, and I don't know what kind of
2 players they are with regard to the ability to carry out
3 repercussions against him.

4 THE WITNESS: These are people that were threatening
5 me just because of my testimony to another person. Now, to
6 testify and bring up their names directly would -- I mean.

7 MR. MANWEILER: I think Mr. Myshin has the right to
8 inquire whether they were indirectly -- threats were
9 indirectly related to Mr. Fields' case. Otherwise, if they
10 were not, then I would object on relevancy grounds with
11 regard to this proceeding. If, in fact, the threats
12 against him were first -- in another testimony unrelated to
13 this, then I don't think it has any bearing on Mr. Fields'
14 conviction -- or petition.

15 THE COURT: As I understand it, the testimony at
16 this point, I'll allow the witness to correct me if I
17 misunderstood it. There's no allegation Mr. Fields himself
18 directed the threats, and there's no allegation that there
19 was -- these were inmates affected by his testimony; that
20 this was simply his way of -- heard multiple times,
21 something about the code of the institution of the inmates;
22 that people have threatened him because he did testify
23 against an inmate. That's as I interpret the testimony at
24 this point.

25 Well, at this stage, I'm going to sustain an

30 2370

1 objection to the testimony as to the specific names. I'm
2 going to reserve on that and allow, perhaps, further
3 argument on it later, and, perhaps, a showing that will
4 allow us to pursue it a bit farther. I am not anxious to
5 create a situation that raises more problems, absent some
6 insight that it's going to lead to something unusual in
7 this case.

8 MR. MYSHIN: Thanks, Judge.

9 Q. BY MR. MYSHIN: Mr. Bianchi, did you talk to
10 Dave Smith in July of 1992?

11 A. Yes.

12 Q. And did you talk to him about this case?

13 A. Yes.

14 Q. Did you tell him that -- at the time of your
15 contact with me, that you were advised by your lawyer to do
16 what you had to do, or say what you had to say to protect
17 yourself in that?

18 A. I was advised by my attorney, after speaking
19 with you, to stick with the truth no matter what. And at
20 that time is when I decided that I would -- if I was called
21 back here, like I am now, that I would give the testimony
22 that I'm giving now.

23 Q. So you're saying that he did not tell you quote
24 "do what you had to do or say what you had to say"
25 unquote?

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2371

1 A. I don't follow you.

2 MR. MANWEILER: Just for clarification, I believe

3 Mr. Myshin is referring to Detective Smith and not an

4 attorney from our office on that last question.

5 THE COURT: That's as I understand the question.

6 MR. MYSHIN: I'm sorry. I apologize to all.

7 Q. BY MR. MYSHIN: Did Mr. Smith say that to you

8 or --

9 A. Would you repeat it?

10 Q. Do what you had to do or say what you had to

11 say to protect yourself in the ISCI environment?

12 A. That he told me that?

13 Q. Who were you saying said that? Did you say

14 that to Smith or Butler?

15 A. That I would do what I had to do and say what I

16 had to say to survive?

17 Q. Yeah. You did say that?

18 A. Yeah.

19 Q. All right. I apologize for that. Did -- were

20 you also advised by your lawyer that if you perjure

21 yourself and perjury results in the death of another that

22 you can receive the death penalty?

23 A. Yes, I was.

24 Q. Are you aware of that statute?

25 A. Yes.

30 2372

1 Q. And you're aware of that as you testify here
2 today?

3 A. Yes.

4 Q. Are you aware then that if you do perjure
5 yourself, or if you have perjured yourself, that you can be
6 subject to the death penalty the same as Mr. Fields, be
7 executed?

8 A. I'm very aware of that.

9 Q. Do you have a meeting with the parole board
10 this month?

11 A. Sure do.

12 Q. And that at that meeting it's possible that you
13 may be placed on parole?

14 A. Very likely.

15 Q. Very likely that you will be placed on parole?
16 You expect any assistance from the police or Prosecutor in
17 this case?

18 A. Well, I went to the parole board in February
19 and I received no assistance, other than my family support
20 and the good merit that I could bring myself.

21 Q. Do you expect any help this time with the
22 parole board?

23 A. I don't expect nothing.

24 Q. Now, when you talked to the police in July of
25 1992, did the police pressure you to come here and testify

30 2373

1 as you have?

2 A. No.

3 Q. Pardon me?

4 A. No.

5 Q. Did they make any threats to you?

6 A. Threats to me? How -- what do you mean
7 "threats"?

8 Q. Well, if you don't come here and testify that
9 you lied to me, then you'll get some punishment?

10 A. As far as I know you were the one that had me
11 called here to testify.

12 Q. No. Did they threaten you as to how you were
13 to testify?

14 A. No, not at all.

15 Q. Did they make any threats to you that if you
16 did come here and say that you perjured yourself at the
17 trial they would do something to you?

18 A. When they came in July they told me that they
19 had heard that I talked to you with the contradictory story
20 to what I testified to. They basically asked me what the
21 truth was, and then when I told them, you know, they asked
22 me why I said those things to you that I did and I told
23 them, hey, you know, I was sitting in there in Max with the
24 worst of the worst and, you know, going to rec with a guy I
25 put on death row, and, you know, I guess they pretty well

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2374

1 understood. But things have to be cleared up now.

2 Q. Okay. Did they promise you any benefits?

3 A. No.

4 MR. MYSHIN: That's all I have, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MR. HORTON:

8 Q. Just very few questions for clarification, Your
9 Honor. First of all, Mr. Bianchi, with respect to the
10 process of getting ready to testify at the trial of Mr.
11 Fields. Did you meet with any representatives of the
12 Prosecutor's Office to discuss the substance of the
13 testimony that you would be giving?

14 A. Yeah.

15 Q. And do you recall who those people were?

16 A. You and Roger.

17 Q. Roger Bourne?

18 A. Yes, sir.

19 Q. So, in that sense you were advised as to what
20 kind of testimony you were going to be giving at the trial
21 of that matter?

22 A. As to what my testimony would be relative to?

23 Q. Yes.

24 A. In the Zane Fields case, yes.

25 Q. I want to clear up one other area with respect

30 2375

1 to your parole board hearing. Have you asked Detective
2 Smith to attend that parole board hearing?

3 A. I have.

4 Q. And have you received an answer one way or
5 another?

6 A. No.

7 Q. And obviously the question is, have you been
8 promised, one way or another, as to whether or not --

9 A. That's why I say I'm not expecting anything,
10 because I haven't been told one way or another. And even
11 when I requested him to I specifically requested him not to
12 come and say, "yeah, Scott is a great guy," but just to
13 come and verify the facts as he knows them and regarding
14 this case.

15 Q. Now, you've indicated basically the
16 circumstances surrounding you giving the statements to Mr.
17 Myshin back in April of this year. I would like you to
18 explain a little more clearly for the Court where you were
19 housed while you were at Maximum with respect to the
20 Defendant, Mr. Fields.

21 A. Okay. Well, when I was first transferred down
22 from Orofino they put me on the main site, the yard. And I
23 don't know, it wasn't even five minutes after I got there I
24 started getting threats from people, you know, because of
25 my testifying. And I guess administration there, right off

30 2376

1 the gate started getting -- they were informed by different
2 ways that, I don't know, that I would be injured if I put
3 -- if I was put on the yard. So they put me over in Max
4 feeling that it would be a more secure environment for me.

5 Q. And do you know what your classification was
6 when you were over in Maximum?

7 A. Administrative segregation, PC.

8 Q. Protective custody? Where at the Maximum
9 Facility are administrative segregation, protective custody
10 inmates housed?

11 A. On B Block, Unit 3 with detention and transit
12 next -- there's like three units on each pod. One unit is
13 detention and ad seg, PC. The other unit is death row.
14 And I think ad seg, just one pod with all three units.

15 Q. And is there -- you've indicated that you were
16 receiving general threats from inmates while you were at
17 the Maximum Facility. How were those threats communicated
18 to you?

19 A. Verbally, through the vents, people I saw.

20 Q. And you've indicated that you were in a
21 position to talk with Mr. Fields. Can you describe again,
22 just a little more fully, how it was that you were in a
23 position to have conversations with him?

24 A. Okay. The way they rec you for -- out there
25 for recreation, they bring certain groups of people out to

30 2377

1 the rec yard together, and death row and ad seg, PC happens
2 to share that same rec time, which is an hour a day for
3 five days a week. And the only phones that we had access
4 to were out in the rec yard. So if you wanted to make any
5 kind of phone calls, you know, you were PC, you had to go
6 out there with death row and, you know, pretty much like
7 big dog kennels, you know, like 30 or so dog kennels right
8 in a row. And they just put you in those right next to
9 each other.

10 Q. You indicate that you had one conversation with
11 Mr. Fields where he made a statement, which you interpreted
12 as meaning that he -- you could bring those threats to a
13 end. Could you describe to the Court when that
14 conversation took place?

15 A. Pretty much first conversation I had with Zane
16 I -- he had already heard from Kevin Amerson that I was
17 getting a lot of threats and people were really jazzing me
18 up about the testimony. And when I came out -- I forget
19 exactly what was said, but it was in the essence of if I
20 did get things cleared up and straightened out for him then
21 the threats would stop. He could put a stop to it; which
22 they did stop after I talked with the attorney.

23 Q. After you talked with Mr. Myshin?

24 A. Yeah.

25 Q. And just so it's clear, did you tell the truth

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1 at the time of the trial of the Defendant, Mr. Fields?

2 A. Yes.

3 Q. And at the time of the post-conviction relief
4 trial?

5 A. Yes.

6 MR. HORTON: Thank you. That's all the questions.

7

8

REDIRECT EXAMINATION

9

BY MR. MYSHIN:

10 Q. I have a couple short questions, Judge. When
11 you testified at the trial did you feel you were under
12 duress?

13 A. In what way? *

14 Q. Well, did you feel like you were being coerced
15 into testifying; that you were under pressure?

16 A. I felt like I was under pressure because to do
17 the right thing, you know. It was my -- kind of just as my
18 moral duty.

19 Q. Pressure from whom?

20 A. Pressure -- my own conscience.

21 Q. So other than your own conscience you weren't
22 receiving any kind of pressure from anybody to testify?

23 A. No.

24 Q. No?

25 A. No.

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1 Q. You told us you've been threatened and that
2 sort of thing. What precisely -- how were you threatened?
3 What was said to you?

4 A. Well, I was told that if I was ever in contact
5 with a certain individual that he was going to stick me
6 with a knife. I was told by numbers of inmates that if
7 they ever got around me they were going to beat me up, not
8 in those words exactly.

9 THE COURT: Just a moment I need to take a recess
10 and then we'll reconvene.

11 (Recess taken.)

12

13 REDIRECT EXAMINATION (Continued)

14 BY MR. MYSHIN:

15 Q. I think I was asking questions about the
16 specific threats, specifically. I think you said that you
17 were told by some inmate. Was that -- by the way was that
18 told to you in person, face to face?

19 A. A couple specifically were face to face, and a
20 lot were like through the vents, which sounds pretty crazy,
21 but that's the way they communicate.

22 Q. You said you were told that some inmate was
23 going to stab you?

24 A. Yeah.

25 Q. Were you told the specific name of that inmate?

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1 A. Well, I know the specific name of the inmate.
2 Q. Were you told inmate such and such is the one?
3 A. No, such and such told me he was going to do
4 it.
5 Q. Oh, the inmate that's supposed to do the
6 stabbing tells you this?
7 A. Yeah.
8 Q. And you know who that is?
9 A. Yeah.
10 Q. And you know who that is?
11 A. Yes.
12 Q. Were any other threats given to you face to
13 face?
14 A. There were a couple, yeah.
15 Q. And did you know the names of those individuals
16 that made those threats to you face to face?
17 A. Two of them are -- I know them by their
18 nicknames out there, their nicknames.
19 Q. How many of them were there?
20 A. I don't know.
21 Q. More than two?
22 A. Yeah.
23 Q. Did you know the full names of any of the
24 others?
25 A. I don't know -- one, yeah, I know the full name

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1 of for sure.

2 Q. Now, when I asked you why you were placed in
3 Maximum you said you didn't know.

4 A. That's correct.

5 Q. When the Prosecutor asked you why you were
6 placed in Maximum they said they wanted to protect you?

7 A. Were you talking about why I was taken from
8 Orofino down? At least that's what I thought you were
9 talking about.

10 Q. Okay. And you don't know why you were taken
11 from Orofino and placed at the penitentiary?

12 A. Nope.

13 Q. But do you know?

14 A. As far as I know there was no specific reason,
15 just an administration move.

16 Q. That's not commonly done, is it?

17 A. Very commonly done.

18 Q. Just taken out of protective, medium and
19 placed --

20 A. I wasn't in protective custody in Orofino.

21 Q. Oh, you weren't?

22 A. No.

23 Q. What is Orofino? Isn't that protective
24 custody?

25 A. They have a -- the whole institution is

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1 basically lax, if you know what I mean.

2 Q. No. Would you explain that for me?

3 A. Well, it's like the atmosphere is more
4 relaxed. You know, it isn't -- there isn't people really
5 getting stuck all the time and stuff -- well, there is
6 incidents, but it isn't near as much as it is out at the
7 main site. So just being in that institution is considered
8 being in PC. But then they have a specific unit within
9 this -- that institution in Orofino that is lock down, PC,
10 and I wasn't in that unit.

11 Q. You weren't in that unit?

12 A. No.

13 Q. Is it medium custody there at Orofino?

14 A. Medium, a few minimum. They've got close
15 custody over there next to PC.

16 Q. Were you in medium?

17 A. Yeah.

18 Q. Now, when you're put in a higher custody level,
19 say from medium to max, aren't you granted some sort of a
20 hearing?

21 A. I went to an Administrative Segregation
22 Committee. I went in front of a committee when I went from
23 the yard to Max, but not coming from Orofino to the yard.

24 Q. So you had no hearing from Orofino to the yard?

25 A. No. They just come the night before and said,

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1 "you're leaving in the morning."
2 Q. How many inmates were taken?
3 A. I didn't count.
4 Q. More than you?
5 A. More than me and the two others that came down
6 with me that I did know.
7 Q. Who came down with you? Kevin Amerson?
8 A. Gary Arm, Herman Garr, Marquez.
9 Q. And just to nail this down. Did you tell me
10 that Detective Smith told you that if you testified you
11 would never go to prison?
12 A. I believe I've answered that.
13 Q. Well, I'm asking you again.
14 A. No.
15 Q. You didn't tell me that?
16 A. No.
17 Q. And if you believed you were not -- that you
18 would not testify that you would be punished within the
19 correction system?
20 A. No.
21 Q. You didn't tell me that?
22 A. No.
23 MR. MYSHIN: That's all I have, Judge.
24 MR. HORTON: No recross, Your Honor.
25 THE COURT: You may step down.

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1 THE WITNESS: Thank you.
2 MR. MANWEILER: Your Honor, is this witness subject
3 to recall?
4 THE COURT: Really at any time during these
5 proceedings if there's a need for him to be recalled I
6 would allow it.
7 MR. MANWEILER: Would the Court request then that I
8 remain until we're done today?
9 THE COURT: Yes.
10 MR. MANWEILER: Thank you.
11 THE COURT: And further that if there's a hearing at
12 a different date, you should be notified of that hearing.
13 MR. MANWEILER: Thank you, Your Honor.
14 THE COURT: Do you have other witnesses?
15 MR. MYSHIN: Kevin Amerson, Your Honor.
16 (Brief delay.)
17
18 KEVIN AMERSON,
19 a witness called on behalf of the Petitioner, having been
20 first duly sworn, took the stand and testified as follows:
21
22 DIRECT EXAMINATION
23 BY MR. MYSHIN:
24 Q. Would you please state your name, spell your
25 last name for the record.

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EXHIBIT 2
(Affidavit of Greg Worthen)

CAPITAL HABEAS UNIT
 Federal Defender Services of Idaho
 Teresa A. Hampton, ID Bar No. 4364
 702 W. Idaho, Suite 900
 Boise ID 83702
 Telephone: 208-331-5530
 Facsimile: 208-331-5559

**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. _____
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	AFFIDAVIT OF GREG WORTHEN
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

State of Idaho)
 :ss
 County of Ada)

I, Greg Worthen, mindful of the penalties for perjury, declare as follows:

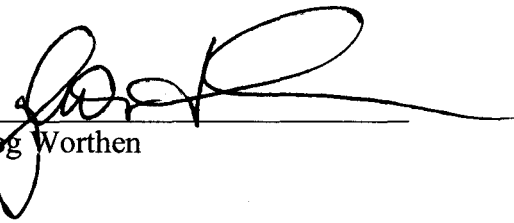
1. I am a person over eighteen (18) years of age and competent to testify.
2. I am an investigator for the Capital Habeas Unit of the Federal Defender Services of Idaho, a position I have held since June, 2007.
3. In the summer of 2010 I was assigned to learn about, identify the investigative needs of, and to investigate, the Zane Fields case for our office. The office began representing Zane in May 2001. Investigators previously assigned to the case, Ben Leonard and Kelly Nolan, had left the Federal Defender Services of Idaho's service by the summer of 2010.

4. One of my tasks was to familiarize myself with the work of the previous investigators from our office, especially as it related to any investigation of the inmates who had testified in the hearings and the trial of Fields. I spoke extensively with the case lead attorney, Bruce D. Livingston, about the prior attempts to locate and contact witnesses, particularly the inmate witnesses. The efforts taken included using commercially available databases for location searches. I learned representatives of the office were able to contact Scott Bianchi and Joseph Heistand, but were unable to obtain signed statements. Harold Gilcrist could not be located.
5. In looking through documents regarding the case, I found that then investigator Nolan had sent an email to former investigator Leonard in December, 2007. Leonard had already left our office and was working in the Capital Habeas Unit in Nashville, Tennessee. Nolan's email requested information about Leonard's previous attempts to find Harold Gilcrist, an inmate who had testified at the preliminary hearing of Fields. Leonard's email response stated that his attempts to find and interview Gilcrist included contacting Gilcrist's family members, who reported that Gilcrist was homeless and using illegal drugs. At the time of Leonard's attempts to locate Gilcrist, according to Leonard's email, Gilcrist was reported to be living on the streets of Spokane, Washington.
6. I also learned that in January, 2008 Nolan, in an attempt to find Gilcrist, contacted Sam Shimenti, Gilcrist's State of Washington probation officer in Spokane. Shimenti, according to Nolan's report of her contact with Shimenti, informed

Nolan that Shimenti had not been able to make contact with Gilcrist, Gilcrist was homeless somewhere in the Spokane area, and that Gilcrist had an outstanding warrant for his arrest for violating his probation. Shimenti offered to contact Nolan if he heard from Gilcrist or if Gilcrist was picked up on the warrant. Our office has no record of any such contact from Shimenti or any other probation officer.

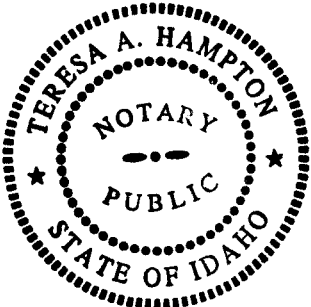
7. From the time of my assignment to the case in the summer of 2010, I regularly searched for a location for Gilcrist. However, I had been unable to locate him through our normal processes, which includes subscription-based databases and the websites of Idaho and other states' departments of correction. I had also been attempting to find a location for Gilcrist by talking to his prior associates, who stated they assumed he was still homeless and still in the Spokane area. One associate told me he had heard Gilcrist had been in a coma and died.
8. Then, in May, 2011, I expanded my search to include the VINELink website, a public-access website for locating individuals who have been arrested and are being held in county jails. As I searched VINELink for Gilcrist in Washington and the surrounding states I used various potential spellings of his name, and I found that a "Harold Gilcrest" was being held in the Kootenai County (Idaho) Jail. I was able to confirm that this was the same Harold Gilcrist I was looking for, and I interviewed Gilcrist in the jail on June 17, 2011. The day after my interview with Gilcrist he was moved to the Spokane County (Washington) Jail, and I received a signed declaration from him at the Spokane County Jail on July 8, 2011.

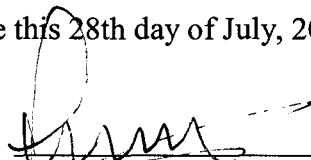
I declare under penalty of perjury that the foregoing is true and correct. Executed at Ada County, Idaho, on July 28, 2011.



Greg Worthen

SUBSCRIBED AND SWORN to before me this 28th day of July, 2011.





NOTARY PUBLIC FOR IDAHO
Commission Expires: 04.24.14

EXHIBIT 3
(Affidavit of Jeffrey L. Acheson)

STATE OF IDAHO)
County of Ada ss: }

JM

JEFFREY L. Acheson, Being Duly Sworn, upon
Oath, Deposes and STATES AS Follows:

When I First became involved in the Zane Fields
Murder investigation, I had sent I "KITE" to see the
handling detectives in THIS MATTER. I was sent to
see Det. Dave Smith and prosecutors Roger Bourne
and Joel Horton. When I First went into the
investigation room, I began to explain how Zane
had kept Freaking out concerning the "Crime-Stoppers"
T.V. commercials, concerning the "Wishing Well Murder."
When I told the investigators about how I thought
that Zane said that he had tossed the "Gun" into
the construction site, I was corrected by the investigators
as to the fact that it was not a ~~gun~~ but
but a knife that was used to do the murder.
I never had this information until the police told me.

Also, I thought it was weird that the police
would allow us, the (4) people/inmates testifying
in the trial to be housed in the same cell
together prior to the trial, and also during the
trial. During this time, we would all stay up
late and talk about the trial and what we each
testified about, or what we were going to say
when we got up on stands.

During the trial, my wife and kids
were allowed to be with me in the basement of

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(Pg. 2)

The Court house, with the other ~~WITNESSES~~ WITNESSES and their families and loved ones. We all received extremely special treatment for our testimonies. We had pizza delivered by the cops & prosecutors for us and our families at the Court house.

We were given literally grocery bags of cigarettes from the prosecutors and police. These smokes were hand delivered by the cops to us in our cell at Ada County Jail. It should be noted that the jail was a non-smoking facility at that time, but we were given all these privileges for testifying.

Also, the other state witnesses, Howie G., Joe W. and Scott Bianchi told me of how they had made up most of what they were saying, in order to get out of Orofino. They said that they had been together for months, placed in different county jail waiting for this trial and that they had rased a lot of hell in each jail they'd been to. They even had some pot with them and said they got it from their girlfriends coming to see them, while waiting for this trial.

I can tell you that I'd not have testified against Zane without the information given to me by the police, prosecutors & other witnesses.

J.A.

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(Pg. 3)

ED Declare Under Penalty of Perjury That
The Foregoing is True and Correct.

Further your Affiant Saysesh NOT.

Jeffrey L. Acheson

JEFFREY L. ACHESON

Subscribed and Sworn to before me this 16th
Day of July, 2004.



Ben J. Leonard
Notary Public For Idaho
Residing at Moscow, Idaho
Commission Expires: 3/15/08

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EXHIBIT 4
(Declaration of Harold Gilcrist)

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DECLARATION OF HAROLD RAYMOND GILCRIST

I, Harold Raymond Gilcrist, mindful of the penalties for perjury, declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify.
2. Despite my previous testimony and statements, Zane Fields never told me he killed anybody. Fields never implicated himself to me as the murderer or a participant in the murder of Mary Vanderford at the Wishing Well, the murder for which he was convicted and sentenced to death.
3. When Fields and I were in custody at a prison in Boise in the mid-1980s, Fields assaulted me on two different occasions.
4. In 1989 Detective Dave Smith came to the prison in Orofino, where I was an inmate. Smith interviewed me and a number of other inmates who were on the same tier as Fields.
5. I found myself in a position to hurt Fields and I took the opportunity to hurt him as much as possible. I told Smith that Fields was a predator and I wanted to get him. Smith told me that this was my opportunity to get back at Fields. Smith told me, "Let's burn him." My motivation was to simply do whatever I could to burn Fields, and this was the perfect opportunity.
6. I communicated with Detective Smith both by phone and through a letter I sent to my father to be forwarded to Smith. Within a month of my first meeting with Detective Smith, I told him that Fields had confessed to me and that Fields had admitted killing an elderly woman in a Boise gift shop.
7. However, the information I said I got from Fields was actually information provided directly to me by Detective Smith. Smith gave me information about the crime he believed Fields committed at the Wishing Well gift shop. Smith told me details about the murder of the woman at the gift shop. For example, I asked Smith how much money had been stolen. Smith answered, "He killed an old lady for fifty bucks."
8. One time, before trial, Smith left a file on the table at one of our meetings and he got up and left the room. When I looked in the file I saw photos of a woman who was cut and it was very graphic. It looked like she was naked.

9. I discussed testifying against Fields with Joe Heistand and Scott Bianchi. I shared my desire to burn Fields with them, and I also shared the information I obtained from Detective Smith about the crime. Bianchi expressed his reluctance about testifying, but I told him it was for me, that we needed to burn Fields.
10. I would not have been able to testify as I did, and I would not have been able to help Bianchi and Heistand testify as they did, without the information provided to me by Detective Dave Smith.
11. I have never previously disclosed this information to anyone representing Zane Fields.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Spokane, Washington on July 8, 2011.

Signed

Harald Glens

EXHIBIT 5

**(Report and Declaration of Dr. Randell Libby, dated
January 3, 2007 and March 22, 2007)**

Laboratory Report

I. Case Data

Case: Zane Jack Fields v. Idaho
Victim: Vanderford, Mary
Suspect: Fields, Jack Zane

DNA Laboratory: Orchid Cellmark (Dallas, Texas); FR06-0077
Analyst: Cassie Johnson
Type of Test: AmpFISTR Yfiler (ABI P/N 4359513)

DNA Laboratory: SERI (Richmond, California); Y159 U*7115*06
Analyst: Thomas Fedor
Type of Test: AmpFISTR Yfiler (ABI P/N 4359513)

II. Evidence Analyzed

Item	Laboratory	Description
#1 (14373)	SERI	Reference Standard-Zane Fields
FR06-0077-01.01	Orchid	Fingernail scrapings-toothpick
FR06-0077-01.01	Orchid	Fingernail scrapings-toothpick

III. Procedure

DNA was extracted from the above samples by standard laboratory methodologies by both SERI and Orchid laboratories, as indicated above, and subjected to PCR amplification using the Applied Biosystems AmpFISTR Yfiler kit. The kit is known to co-amplify 17 Y-chromosomal STRs in a single reaction at the following loci: DYS456, DYS389 I/II, DYS390, DYS458, DYS19, DYS385 I/II, Y GATA H4, DYS437, DYS438, DYS448, DYS393, DYS391, DYS439, DYS635, and DYS392.

Zane Jack Fields v. Idaho
03 January 2007

Dr. R. T. Libby
UW-School of Medicine

EXHIBIT C

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V. Conclusions

Assuming the data provided thus far is complete and accurate, the following may be concluded based on an analysis of the data provided:

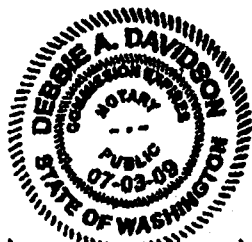
Item FR06-0077-01.01

1/ Mr. Fields may be excluded as a contributor of the biological material obtained from Item FR06-0077-01.01, as evidenced by the lack of detection of his obligatory '14' allele from the evidence sample at the DYS456 locus. Additional support for the exclusion of Mr. Fields as a contributor of the biological material, obtained from the above evidence sample, is indicated by the apparent absence of his obligatory 22, as well as 13/14 alleles at the DYS390 and DYS385 a/b loci (See Section IV. Results, and attached reports and data from Orchid and SERI respectively). Although some similarity may be observed between the profile obtained from Item FR06-0077-01.01, and Mr. Fields reference sample: the absence of a match at any loci within a profile is deemed an exclusion.

Item FR06-0077-01.02

2/ Mr. Fields may similarly be excluded as a contributor to the biological material obtained from Item FR06-0077-01.02 as evidenced by the lack of his obligatory 22, 15, 10, and 20 alleles at the DYS390, DYS437, DYS438 and DYS448 loci respectively in the evidence sample. Further suggestion that Mr. Fields may be excluded as a contributor of the biological material, obtained from Item FR06-0077-01.02, is indicated by the apparent absence of his obligatory 14 allele at the DYS456 locus (see IV. Results [above], and attached reports and data from Orchid and SERI respectively). It should be noted, that the absence of a match at any loci within a profile is deemed an exclusion. Although some similarity may be observed between the profile obtained from Item FR06-0077-01.02, and Mr. Fields reference sample: the absence of a match at any loci within a profile is deemed an exclusion.

Further confirmation as to the exclusion of Mr. Fields as a contributor of the biological materials detected on Items FR06-0077-01.01 and FR06-0077-01.02, at the above, as well as additional, loci is dependent on the analysis of the raw data which has yet to be provided.



Debbie A. Davidson
Notary

Randell T. Libby
Dr. Randell T. Libby

03 January 2007

Zane Jack Fields v. Idaho
03 January 2007

Dr. R. T. Libby
UW-School of Medicine

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IV. Results

The following genetic data was obtained from each of the above samples:

DYS Loci

Item	456	389 I	390	389 II	458	19	385 a/b	393	391	439	635	392	H4	437	438	448
Fields	14	12	22	27	15	14	13,14	13	10	11	21	11	11	15	10	20
....01	15,16	12,13	24*	NR*	15,16 (17)	NR	17,18*	13,14	10,(11)	NR	20,21 (23)	NR	11	14,(15) 16	10	20,(21)
....02	16*	12,(13)	24	NR*	15,(16)	NR*	NR*	13,(14)	10,(11)	11,12	21	NR	11	16	12	21

Zane Jack Fields v. Idaho
03 January 2007

Dr. R. T. Libby
UW-School of Medicine

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**Declaration
of
Randell T. Libby**

I, Randell T. Libby, Ph.D. declare as follows:

Background

1/ I hold a doctoral degree in the area of Molecular Genetics, and am currently a *Member* in the School of Medicine at the University of Washington Medical Center (Division of Medical Genetics). I have extensive experience in the areas of human DNA analysis, including di-deoxy sequencing methodologies, and genotyping procedures involving short tandem repeats (STRs) associated with human diseases. I have been trained both in the United States and Europe, as outlined in my previous declaration dated 7 September 2005 and filed 12 September 2005.

Y-fler STR Testing

2/ I have examined the reports and data in relation to the STR testing from the following sources and laboratories:

Item	Laboratory	Description
No. 1 (14373)	SERI	Reference-Zane Fields
FR06-0077-01.01	Orchid	Fingernail scrapings - Mary Vanderford
FR06-0077-01.02	Orchid	Fingernail scrapings - Mary Vanderford

Based on the above findings, I have previously concluded that Mr. Fields may be excluded as a contributor of the biological material obtained from Items FR06-0077-01.01 and FR06-0077-01.02, as specified in the Laboratory Report dated 03 January 2007 (attached).

mtDNA Testing

3/ I have examined the reports and data in relation to the mitochondrial DNA (mtDNA) testing at the HVI and HVII sites from the following sources and laboratories:

Item	Laboratory	Description
No. 1 (14373)	SERI	Reference-Zane Fields
FR06-0077-04.01	Orchid	Hair-7A (sweater 7)
FR06-0077-04.02	Orchid	Hair-7A (sweater 7)
FR06-0077-08.01	Orchid	Hair (vacuum filter 13)
FR06-0077-08.02	Orchid	Hair (vacuum filter 13)
FR06-0077-08.03	Orchid	Hair (vacuum filter 13)
FR06-0077-10.01	Orchid	Hair (pulled pubic-Mary Vanderford)

Zane Jack Fields

Dr. R. T. Libby
UW School of Medicine

EXHIBITS

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4./ An examination of the mtDNA sequencing data at the hypervariable regions I (HVI) and II (HVII) has revealed the following polymorphisms relative to the Cambridge Reference Sequence (rCRS):

HVI (16024-16365)

Item	16092	16223	16224	16256	16261	16270	16292	16295	16311	16362
rCRS	T	C	T	C	C	C	C	C	T	T
10.01	T	T	T	C	C	C	T	C	T	T
Fields	T	C	T	C	C	C	C	C	T	C
04-01	T	T	T	C	C	C	T	C	T	T
04-02	T	T	T	C	C	C	T	C	T	T
08-01	T	C	C	C	T	C	C	C	C	T
08-02	T	C	T	C	C	C	C	T	T	T
08-03	C	C	T	T	C	T	C	C	T	T

HVII (73-340)

Item	73	94	119	150	152	189	195	204	207	239	263	309.1	309.2	315.1
rCRS	A	G	T	C	T	A	T	T	G	T	A	-	-	-
10.01	G	G	C	C	T	G	C	C	A	T	G	C	-	C
Fields	A	G	T	C	C	A	T	T	G	C	G	C	-	C
04-01	G	G	C	C	T	G	C	C	A	T	G	-	-	C
04-02	G	G	C	C	T	G	C	C	A	T	G	-	-	C
08-01	NS	NS	NS	NS	NS	A	T	T	G	T	G	C*	C*	C*
08-02	A	G	T	C	C	A	T	T	G	T	G	-	-	C
08-03	G	G	T	H	T	A	T	T	G	T	G	C	-	C

Red (Bold) = difference relative to rCRS

* = present as the major mtDNA type

NS = not sequenced

- = no base present

H = possible heteroplasmy

Zane Jack Fields

Dr. R. T. Libby
IIV-School of Medicine

30 27669
000026

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Conclusion mtDNA Analysis

5/ Mary Vanderford (FR06-0077-10.01), and her related maternal relatives, may be excluded as a contributor of the mtDNA profile obtained from items FR06-0077-08.01, FR06-0077-08.02 and FR06-0077-08.03, as summarized below:

HVI (16024-16365)

Item	16092	16223	16224	16256	16261	16270	16292	16295	16311	16362
10.01	T	T	T	C	C	C	T	C	T	T
08-01	T	C	C	C	T	C	C	C	C	T
08-02	T	C	T	C	C	C	C	T	T	T
08-03	C	C	T	T	C	T	C	C	T	T

HVII (73-340)

Item	73	94	119	150	152	189	195	204	207	239	263	309.1	309.2	315.1
10.01	G	G	C	C	T	G	C	C	A	T	G	C	-	C
08-01	NS	NS	NS	NS	NS	A	T	T	G	T	G	C*	C*	C*
08-02	A	G	T	C	C	A	T	T	G	T	G	-	-	C
08-03	G	G	T	H	T	A	T	T	G	T	G	C	-	C

6/ Mary Vanderford, and her maternal relatives, cannot be excluded as a contributor of the mtDNA profile obtained from items FR06-0077-04.01 and FR06-0077-04.02, as summarized below:

HVI (16024-16365)

Item	16092	16223	16224	16256	16261	16270	16292	16295	16311	16362
10.01	T	T	T	C	C	C	T	C	T	T
04-01	T	T	T	C	C	C	T	C	T	T
04-02	T	T	T	C	C	C	T	C	T	T

HVII (73-340)

Item	73	94	119	150	152	189	195	204	207	239	263	309.1	309.2	315.1
10.01	G	G	C	C	T	G	C	C	A	T	G	C	-	C
04-01	G	G	C	C	T	G	C	C	A	T	G	-	-	C
04-02	G	G	C	C	T	G	C	C	A	T	G	-	-	C

Zane Jack Fields

Dr. R. T. Libby
IIV-School of Medicine

30 27670
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7/ Zane Fields, and his maternal relatives, may be excluded as a contributor of the mtDNA obtained from items FR06-0077-04.01, FR06-0077-04.02, FR06-0077-08.01, FR06-0077-08.02, and FR06-0077-08.03 as summarized below:

HVI (16024-16365)

Item	16092	16223	16224	16256	16261	16270	16292	16295	16311	16362
Fields	T	C	T	C	C	C	C	C	T	C
04-01	T	T	T	C	C	C	T	C	T	T
04-02	T	T	T	C	C	C	T	C	T	T
08-01	T	C	C	C	T	C	C	C	C	T
08-02	T	C	T	C	C	C	C	T	T	T
08-03	C	C	T	T	C	T	C	C	T	T

HVII (73-340)

Item	73	94	119	150	152	189	195	204	207	239	263	309. 1	309 2	315. 1
Fields	A	G	T	C	C	A	T	T	G	C	G	C	-	C
04-01	G	G	C	C	T	G	C	C	A	T	G	-	-	C
04-02	G	G	C	C	T	G	C	C	A	T	G	-	-	C
08-01	NS	NS	NS	NS	NS	A	T	T	G	T	G	C*	C*	C*
08-02	A	G	T	C	C	A	T	T	G	T	G	-	-	C
08-03	G	G	T	H	T	A	T	T	G	T	G	C	-	C

Zane Jack Fields

Dr. R. T. Libby
UTW School of Medicine

30 27671

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I swear under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, beliefs, and material provided thus far for review, on this 22nd March in Seattle, Washington.

Randell T. Libby
Dr. Randell T. Libby

Subscribed and sworn to before me, a notary public, this 22nd day of March, 2007.

[Signature]
Notary Public

(SEAL)

My Commission expires: *Oct. 31, 2009*



Zane Jack Fields

Dr. R. T. Libby
IITW School of Medicine

30 27672
000029

EXHIBIT 6

(Affidavits of Mari Munk and Betty Heaton)

MJM
9.

^{officer}
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.

MJM
10.

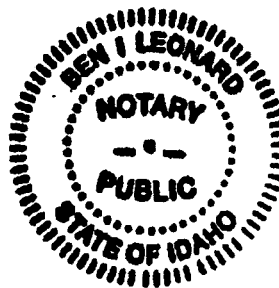
I spoke with Clinton Bays, ^{2 years later} an investigator for the defendant in the Wishing Well case, on the telephone. I related my recollections to him about being in the Wishing Well store on the day of the murder. He did not show me any photographs or pictures of the defendant or any other suspects. *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 J 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

000032

000084

DAHO

NO 519-68-1276
823750



WEAVER

LEA
RLE

30 9622

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000085

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.

AFFIDAVIT OF BETTY HEATON - 1

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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.

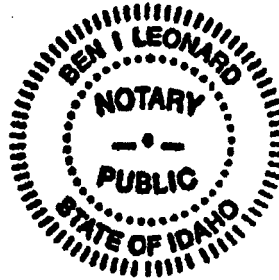
24. I declare under penalty of perjury that the foregoing is true and correct.

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





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 600

MAY 11 1988

EXHIBIT A

DEFENDANT
EXHIBIT
5
16259

000038

000090

DAHO

NO 519-68-1276
NO R23750

WEAVER, M

1244 ...
BLACKFOOT

30 9622

EXHIBIT B

000039

000091

2-11-88
10:45 ~~man~~ ~~book~~ ~~W. Wall~~
11:14 AM W. Wall
11:18 called W. Wall at BHT.

7:00
man
del. - ~~del~~
2-12-88

after I arrived at man ~~store~~

(another man was there when I arrived
& left - big crew cut - full head of hair - ? glasses - 5'6")

message came over to him - back
X far corner of store & replaced item not
at 15% off. man - white building
6'4" - wore a navy blue hooded
zip front s/p. - shirt = a white or
gray T shirt under it. No glasses -
I barely looked at his face. ^{Wanted}
to avoid him.

30
9630
30

5 full left
fuller
lower
lip
stand over

Phone rang just before I left store
& message answered it -
she ~~was~~ said please good-bye

? Did a woman enter as I left.

man ~~spoke~~ ~~finished~~ ~~up~~ ~~with~~ ~~me~~ ~~when~~ ~~I~~ ~~left~~ ~~store~~
(assume it was her husband)
Barely felt I wanted to avoid him now.

EXH00040

After I left store. Looked at camera display from my car. I thought they all looked sad except for me.

2-19-88 I do not believe Kay knew this man. see "X" on other side. She explained sale like she did to me. If a person had been in store that week & she knew him, I don't feel she would have explained sale in same way or repeated it.

Identified photograph

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000093

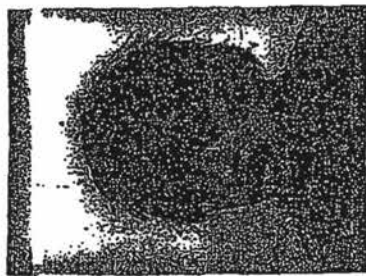
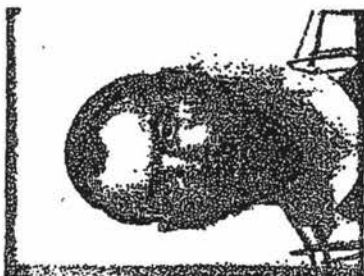
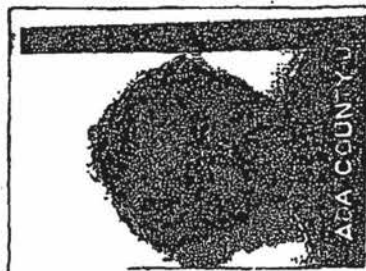
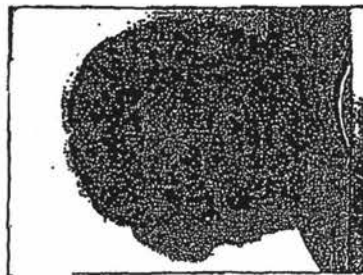
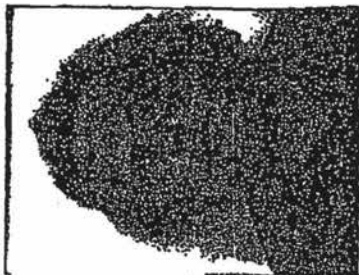


EXHIBIT000042

EXHIBIT 7

(Certified Copy of Order for Release of Defense Exhibit 22 for Further Testing containing note regarding pick up of exhibit by Gary Starkey)

COPY

DEC 03 2002

[Signature]
DAVID NAKAFRO, Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

RECEIVED
DEC 03 2002

Prosecuting Attorney's Office
Ada County

12/09/02

*Please prong this
copy in the
HCR16259 case*

*Gary Starkey picked
up the orange jacket
and signed/dated this
2nd page.*

RESPONDENT.

COURT OF THE FOURTH JUDICIAL DISTRICT

BOISE, IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. SPOT0200590D

**ORDER FOR RELEASE
OF DEFENSE EXHIBIT 22
FOR FURTHER TESTING**

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

12/09/02

Please prong this
copy in the

HCR16259 case

Gary Starkey picked
up the orange jacket
and signed & dated this
2nd page.

COPY

DEC 03 2002

David Navarro
DAVID NAVARRO, Clerk
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

RECEIVED
DEC 03 2002

Prosecuting Attorney's Office
Ada County

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

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

Case No. SPOT0200590D

**ORDER FOR RELEASE
OF DEFENSE EXHIBIT 22
FOR FURTHER TESTING**

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

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

IT IS SO ORDERED.

DATED this 2nd day of December, 2002.

STATE OF IDAHO }
COUNTY OF ADA } ss
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original on file in this office. In witness whereof, I have hereunto set my hand and affixed my official seal this 28th day of July, 2011
CHRISTOPHER D. RICH, CLERK
By: [Signature] Deputy

By: [Signature]
The Honorable Thomas F. Neville
District Judge

CERTIFICATE OF SERVICE

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

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

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

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

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

[Signature]
12-29-02

J. DAVID NAVARRO
Clerk of the Court

By: [Signature]
Court Clerk

EXHIBIT 8

**(Certified copy of letter from Roger Bourne to Judge
Neville, dated February 3, 2003, and attached
Forensic Biology Report,
dated January 15, 2003)**



**ADA COUNTY
PROSECUTING ATTORNEY**

GREG H. BOWER

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

**CRIMINAL
DIVISION**

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

**CIVIL
DIVISION**

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

February 3, 2003

Judge Neville
Ada County District Court
Interdepartmental Mail

RE: ZANE FIELDS

Judge Neville:

Pursuant to the Court's Order, the Defendant's camouflage jacket was resubmitted to the Idaho State Police Forensic laboratory for DNA testing. The attached report has been received. It indicates that the sample no longer exists, having been apparently consumed in the earlier tests.

Sincerely,

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney

GHB:RAB:blp

Attachment(s)

cc: Dennis Benjamin, Counsel for FIELDS

STATE OF IDAHO }
COUNTY OF ADA } ss

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original on file in this office. In witness whereof, I have hereunto set my hand and affixed my official seal this 28th day of July, 2011

CHRISTOPHER D. RICH, CLERK
By Bradley, Deputy

000101



**ADA COUNTY
PROSECUTING ATTORNEY**

GREG H. BOWER

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

**CRIMINAL
DIVISION**

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

**CIVIL
DIVISION**

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

February 3, 2003

Judge Neville
Ada County District Court
Interdepartmental Mail

RE: LACEY SIVAK

Judge Neville:

Pursuant to the Court's Order, the Defendant's camouflage jacket was resubmitted to the Idaho State Police Forensic laboratory for DNA testing. The attached report has been received. It indicates that the sample no longer exists, having been apparently consumed in the earlier tests.

Sincerely,

GREG H. BOWER
Ada County Prosecuting Attorney

A handwritten signature in cursive script, appearing to read "R Bourne", with a horizontal line extending to the right.

Roger Bourne
Deputy Prosecuting Attorney

GHB:RAB:blp

Attachment(s)

cc: Dennis Benjamin, Counsel for SIVAK

IDAHO STATE POLICE
FORENSIC SERVICES
Headquarters Laboratory
P.O. Box 700
Meridian, Idaho 83680-0700
Telephone: (208) 884-7170
Fax: (208) 884-7197



FORENSIC BIOLOGY REPORT

Submitting Agency: Boise PD	Agency Case No.: 802602	Laboratory Case No.: M20023380; x-ref 20098
Suspect(s): Zane Fields	Date of Offense: February 11, 1988	Report Date: January 15, 2003
Victim(s): Mary Vanderford	Investigating Officer: Dave Smith	Analyst: Carla J. Finis

Results of Examination

The camouflage jacket (Item 1; previously Lab #20098-D) was originally submitted to the laboratory August 4, 1989. Presumptive chemical testing at that time indicated two minute areas (D-7 and D-8) of possible blood.

On August 24, 1989, prior to consuming sample for species identification testing, this item was forwarded to the *Forensic Science Associates'* laboratory for an assessment of the potential for successful PCR (Polymerase Chain Reaction) DNA typing of these putative bloodstains. The determination of this laboratory was that there was "an insufficient amount of blood present on the jacket to have a reasonable expectation of a result" (see report dated 9/8/89).

This item was returned to the laboratory on September 11, 1989 and on September 14, 1989, species identification testing was performed with a negative result.

On January 9, 2003, following re-submission of this item, these areas were examined under normal lighting conditions, with enhanced lighting and magnification as well as examination under different light wavelengths without indication of previous putative bloodstains. Based upon the size of the initial staining, examination of the case notes and knowledge of the testing performed, it is likely that the sample was consumed in the species identification process.

Disposition of Evidence

No items have been retained in the Laboratory. All items, from the main laboratory evidence vault, have been released for return to the submitting agency.

Evidence Description

Item 1 A tape-sealed brown paper bag said to contain a camouflage jacket.

I certify that all of the above are true and accurate.

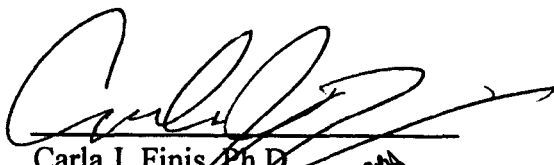

Carla J. Finis, Ph.D.
Biology/DNA Program Supervisor

EXHIBIT 9

**(Motion for Independent Scientific Testing,
filed October 10, 2003)**

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

FILED 3:15
OCT 10 2003
BY [Signature]

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

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

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

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

MOTION FOR INDEPENDENT SCIENTIFIC TESTING - 1


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000105

M

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

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

Respectfully submitted this ^{7th} day of October, 2003,


Dennis Benjamin
Attorney for Petitioner

CERTIFICATE OF SERVICE

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

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

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



Dennis Benjamin

EXHIBIT 10

**(Certified copy of letter from Roger Bourne to
Margaret Lundquist with attachments,
dated August 17, 2010)**



**ADA COUNTY
PROSECUTING ATTORNEY**

GREG H. BOWER

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

RECEIVED
AUG 19 2010
Ada County Clerk

**CRIMINAL
DIVISION**

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

**CIVIL
DIVISION**

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

August 17, 2010

Margaret Lundquist
Exhibits Clerk
200 W. Front Street
Boise, Idaho 83702
Interdepartmental Mail

RE: State v. Zane Fields HCR 16259

Dear Margaret:

You recently notified Tracie Smith at this office that you are trying to find an orange, camouflage coat that was entered as an exhibit in the original trial for Zane Fields. You advised Tracie that the coat was checked out to Ada County Prosecutor's Office investigator Gary Starkey in 2002 for additional testing. You advised that the coat had not been returned since it was checked out to Mr. Starkey. You asked us to attempt to determine what became of the coat.

In 2002, defendant Zane Fields motioned the Court to order additional testing be done on certain items of evidence that the State had from the original investigation in 1988. One of those items of evidence was the orange coat which apparently had been entered as an exhibit in his trial. At the time of the original investigation, the Idaho State Forensic laboratory found that there were possible bloodstains on the jacket. In those days, before DNA testing, the State Forensic lab was only able to say that the stains were blood, but were not able to say whether it was human or animal blood. That information was testified to by the State lab analyst at Field's trial.

Defendant Fields asked in 2002 that DNA testing be done on that coat. I recall that the coat was transported from your custody to the State Forensic Laboratory for that DNA testing pursuant to a Court order dated December 2002. The State Forensic lab examined the coat and discovered that the blood

stains were no longer present. The blood sample had apparently been completely used up back in 1988 during the original testing. The laboratory could not find any evidence of the bloodstains. The laboratory wrote a report that informed me, defense counsel and the Court of that finding.

After your request, our first step was to inquire of the ISP Forensic lab to see if they still had the coat. The lab informed us that they did not have the coat and their records show that it was picked up from the lab by Shawna Hilliard on April 16, 2003. Ms Hilliard was in charge of the Boise Police Department Crime Lab at that time.

We then checked with Bridget Kinney who is currently in charge of the Boise Police Department Crime Lab. Ms Hilliard moved away from Boise several years ago. Ms. Kinney confirmed that the coat was not located in the Boise Police Department Crime Lab.

Ms. Kinney located an email dated February 17, 2004 wherein she asked Boise Police Department Detective Dave Smith what he wanted done with the camouflage coat in question. She asked whether the coat should be placed back into property or be destroyed. She provided us with Detective Smith's email response dated February 17, 2004, which directed her to destroy the coat. Apparently, Ms. Hilliard had transported the coat from the ISP Forensic Lab to the Boise Police Department Crime Lab where it was stored from April 16, 2003 until February 2004 when Ms. Kinney asked Detective Smith what to do with it.

We then asked Vicki Drown, who is in charge of the Ada County Sheriff's Property Room, to see if the coat was there. Ms. Drown confirmed that the coat was not in the sheriff's property room.

Ms. Drown provided us a property invoice describing the coat and noting that it had been "booked for destruction" dated July 12, 2004. Ms. Drown informed us that the coat was no doubt destroyed according to the instructions on the property invoice. From the above information, I have every reason to believe the coat was destroyed as described above.

I'm attaching a copy of the above described email between Bridget Kinney and Dave Smith. I'm also attaching a copy of the property invoice from the sheriff's office with the notation to destroy the coat. I am also attaching a copy of the lab report dated January 15, 2003, describing that there is no longer evidence of a bloodstain visible to the laboratory. I have also reviewed the Court's Order requiring that the coat be released. I note that the coat was to be returned to the Ada County Court Clerk's Office upon completion of the testing. Unfortunately the decision to destroy the coat was made without consulting me or someone from this office. I assume that neither Shawna Hilliard, Bridget Kinney or Dave Smith remembered the requirements of the Order probably due to the passage of time.

If you have any other questions please feel free to call me or Tracie Smith and we'll do our best to answer them.

Sincerely,

GREG H. BOWER
Ada County Prosecuting Attorney



By: Roger Bourne
Deputy Prosecuting Attorney

GHB:RAB:ts

Enclosures

STATE OF IDAHO }
COUNTY OF ADA } ss

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original on file in this office. In witness whereof, I have hereunto set my hand and affixed my official seal this 28th day

of July, 2011

CHRISTOPHER D. RICH, CLERK

By Brenda J. Rich Deputy

Kinney - Re: sexual assault kit and coat from homicide

Page 1

From: Dave Smith
To: Kinney, Bridget
Date: 2/17/04 12:59PM
Subject: Re: sexual assault kit and coat from homicide

destroy the coat and property invoice the assault kit on Hanlon into property- thanks

>>> Bridget Kinney 02/17/04 12:67PM >>>

Hey there!

Shawna has assigned me a special project. I need to contact the Detective in charge regarding the status of the sexual assault kits and other evidence which was taken out of the refrigerators. There are two cases which are assigned to you. The first one is the homicide which occurred in 1988 (DR#802-602). This is a camouflage coat (with blood on it) collected by you. If you wanted it to be placed into Property, I need a property invoice from you (I looked through the case information available to us, and was not able to locate a property invoice to copy). The other case is the Hanlon homicide. I have a sexual assault kit, collected by Shawna (according to the box). I can get a property invoice from Shawna if you want it placed into property, otherwise, Shawna stated it could be taken to the hospital to be destroyed. This one is your call. I know this is a bother - sorry. If you could let me know as soon as possible what to do with the evidence in both cases, I would greatly appreciate it!

Thanks again!
Bridget

3-19-04



**ADA COUNTY
PROSECUTING ATTORNEY**

GREG H. BOWER

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

Margaret Lundquist
Exhibits Clerk
200 W. Front Street
Boise, Idaho 83702

Interdepartmental Mail

EXHIBIT 11
(Affidavit of Heidi Thomas)

I DECLARE UNDER penalty of perjury that the foregoing is true and correct. Executed at
Boise, Idaho on October 12, 2010

FURTHER YOUR AFFIANT SAYETH NOT

Heidi Thomas

SUBSCRIBED AND SWORN to before me this 12th day of October, 2010.



Linda Mroz
NOTARY PUBLIC FOR State of IDAHO
Residing at: Boise, ID
Commission Expires: 10-24-2014

FILED
 Thursday, July 28, 2011 at 03:33 PM
 CHRISTOPHER D. RICH, CLERK OF THE COURT
 BY: _____
 Deputy Clerk

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

ZANE JACK FIELDS, PLAINTIFF
 Plaintiff(s)

vs.

STATE OF IDAHO, DEFENDANT
 Defendant(s)

)
) **CASE NO. CV-PC-2011-14403**
)
) **CERTIFICATE OF MAILING**
)
)
)
)
)

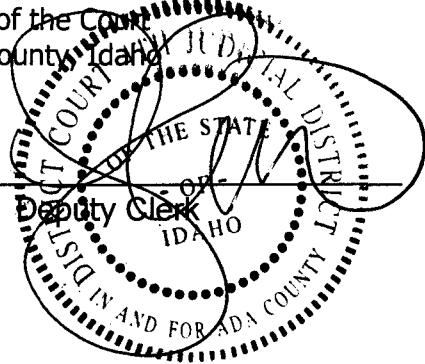
I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have hand delivered, through interdepartmental mail, one copy of the: **PETITION FOR POST CONVICTION RELIEF**, as notice pursuant to Rule 77 (d) I.R.C.P., to the Ada County Prosecuting Attorney.

Capital Habeas Unit
 Federal Defender Services of Idaho
 Teresa A Hampton
 702 W Idaho Ste 900 Boise, ID 83702
 (Hand Delivered)

Dated: Thursday, July 28, 2011

CHRISTOPHER D. RICH
 Clerk of the Court
 Ada County, Idaho

By: _____



1/10

JUL 28 2011

CAPITAL HABEAS UNIT

Federal Defender Services of Idaho

Teresa A. Hampton, ID Bar No. 4364 **THOMAS F. NEVILLE**

702 W. Idaho, Suite 900

Boise ID 83702

Telephone: 208-331-5530

Facsimile: 208-331-5559

CHRISTOPHER D. RICH, Clerk
By LARA AMES
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. **CV PC 1114403**
CAPITAL CASE
AFFIDAVIT OF
TERESA A. HAMPTON IN
SUPPORT OF PETITION FOR
POST-CONVICTION RELIEF


State of Idaho)
 :ss
County of Ada)

- I, Teresa A. Hampton, mindful of the penalties for perjury, declare as follows:
1. I am a person over eighteen (18) years of age and competent to testify.
 2. I am the Supervising Attorney for the Capital Habeas Unit of the Federal Defender Services of Idaho. I have worked with Bruce Livingston on the Zane Fields case since 2009.
 3. Exhibits 1, 3, 5, 6, 9 and 11 to the Petition for Post-Conviction Relief, filed July 28, 2011, are true and correct copies of documents obtained from prior records in cases of Mr. Fields including case numbers 16259, 16259A, SP-OT-0059*D; and CV-PC-2010-20085.

**AFFIDAVIT OF TERESA A. HAMPTON IN SUPPORT
OF PETITION FOR POST-CONVICTION RELIEF - 1**

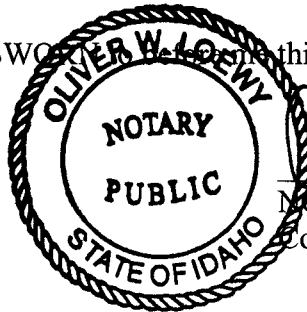
4. Exhibits 7, 8 and 10 are certified copies of documents obtained from the court files in cases of Mr. Fields including case numbers 16259 and SP-OT-0059*D.
5. Exhibit 4 had been duplicated by photocopy reproduction and is a true and correct copy of the original exhibit kept by the Federal Defender Services of Idaho.
6. Exhibit 2 is an original signed Affidavit by a Federal Defender Services of Idaho investigator.

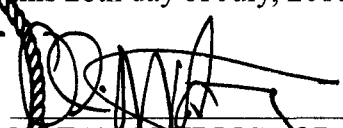
I declare under penalty of perjury that the foregoing is true and correct. Executed at Ada County, Idaho, on July 28, 2011.



Teresa A. Hampton

SUBSCRIBED AND SWORN TO before me this 28th day of July, 2011.





NOTARY PUBLIC FOR IDAHO
Commission Expires: 2/17/2015

Neoville,
Janet
8/26/11
cb

NO. _____ FILED _____
A.M. _____ P.M. 2:10

AUG 25 2011

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

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

Case No. CV PC 2011 14403

**STATE'S MOTION TO ALLOW
ADDITIONAL TIME FOR
STATE'S RESPONSE TO THE
JULY 28, 2011 PETITION FOR
POST CONVICTION RELIEF**


COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves this court for thirty (30) additional days within which to file the State's response to the latest successive petition filed by petitioner on July 28th, 2011. To respond to the current petition, the State must speak to individuals who testified in the original trial. At least one of those people is incarcerated out of state. Additionally, the State is in the process of reviewing the transcripts of the original case to refresh its memory of the details of testimony from the preliminary hearing, a suppression hearing and the trial so as to make a detailed and accurate response. The undersigned has spoken to petitioner's counsel, Teresa



Hampton, who has signed a stipulation indicating that she does not object to the states motion for additional time to respond.

RESPECTFULLY SUBMITTED this 24 day of August 2011.

GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of August 2011, I caused to be served, a true and correct copy of the foregoing **STATE'S MOTION TO ALLOW ADDITIONAL TIME FOR STATE'S RESPONSE TO THE JULY 28, 2011 PETITION FOR POST CONVICTION RELIEF** upon the individuals named below in the manner noted:

Name and address: Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.

By faxing copies of the same to said attorney(s) at the facsimile number: 331-5559



Neville
Janet
8/25/11
cj

NO. _____ FILED _____
A.M. _____ P.M. *DS*

AUG 25 2011

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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

Case No. CV PC 2011 14403

**STIPULATION TO EXTEND
TIME FOR THE STATE'S
RESPONSE TO THE JULY 28,
2011 PETITION**

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, and Teresa Hampton, Attorney for Petitioner, who advised the Court that they stipulate to the State's Motion to Allow Additional Time for the State's Response to the July 28, 2011 Petition for Post Conviction Relief. Both sides agree that the Court may enter an order granting the State thirty (30) additional days to file, making the State's response due September 28, 2011.

RESPECTFULLY SUBMITTED this 24th day of August 2011.

GREG H. BOWER
Ada County Prosecuting Attorney

Teresa Hampton
Teresa Hampton
Attorney for Defendant
8/25/11

R Bourne
Roger Bourne
Deputy Prosecuting Attorney

STIPULATION TO EXTEND TIME FOR THE STATE'S RESPONSE TO THE JULY 28, 2011 PETITION (FIELDS), Page 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of August 2011, I caused to be served, a true and correct copy of the foregoing **STIPULATION TO EXTEND TIME FOR THE STATE'S RESPONSE TO THE JULY 28, 2011 PETITION** upon the individuals named below in the manner noted:

Name and address: Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: 361-3359



SEP 06 2011

CHRISTOPHER D. RICH, Clerk
By [Signature] DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS	)	Case No. CV PC 2011 14403
)	
Petitioner,	)	ORDER FOR DELIVERY OF
	)	MEDICAL RECORDS TO THE
vs.	)	ADA COUNTY PROSECUTING
	)	ATTORNEY'S OFFICE
STATE OF IDAHO,	)	PURSUANT TO THE HEALTH
	)	INSURANCE PORTABILITY
Respondent.	)	AND ACCOUNTABILITY ACT
	)	AND IDAHO CODE §19-3004;
	)	ICR 17

This Court, upon information from the Ada County Prosecuting Attorney's Office that certain medical records described herein are necessary for preparation and presentation of the Prosecution's case in the above-captioned matter, and the Court concluding that the medical records do appear to be relevant and necessary to the proper adjudication of this matter, hereby orders that employees or representatives of **Sacred Heart Medical Center** produce all personal

ORDER FOR DELIVERY OF MEDICAL RECORDS TO THE ADA COUNTY PROSECUTING ATTORNEY'S OFFICE PURSUANT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND IDAHO CODE §19-3004; ICR 17,


[Handwritten mark]

health information, including but not limited to medical records, documents, photographs, and billing statements in their custody pertaining to **Harold Raymond Gilcrist DOB: [REDACTED]**
DOI: January 2009-December 2010 Medical records involving a coma due to a drug overdose to the Ada County Prosecuting Attorney's Office in response to a subpoena issued by the Prosecution in this case. The records may be generally provided in the manner set out in Idaho Code §9-420, except that the said records are to be made available for pickup by an agent of the Ada County Prosecuting Attorney's Office or law enforcement within three business days of the service of the subpoena, rather than be delivered to the Court.

This Order is also intended to require that personal health information, other than just the described written medical records, such as information known to employees or representatives of Sacred Heart Medical Center also be provided to the prosecution or criminal defense by interview when asked for and that those employees or representatives of Sacred Heart Medical Center testify if required.

Any questions regarding said records should be directed to the Ada County Prosecuting Attorney's Office, (208) 287-7700.

IT IS SO ORDERED this 6th day of Sept. 2011.



Magistrate Judge

ORDER FOR DELIVERY OF MEDICAL RECORDS TO THE ADA COUNTY PROSECUTING ATTORNEY'S OFFICE PURSUANT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND IDAHO CODE §19-3004; ICR 17,

that Fields has “consistently denied any participation in the crime;” the State denies that Fields has “never confessed to any participation in this crime.” He confessed to at least four men who he was in custody with.

Claim 1: New Evidence Establishes Fields’ Innocence

The State denies Fields’ Claim 1 “New Evidence Establishes Fields’ Innocence.” The State denies that the evidence establishes Fields’ innocence and denies that there is anything new about any of the allegations. Under this heading, Fields claims that a State’s witness at the preliminary hearing, “Harold Gilcrist,” has signed an “affidavit” claiming that he lied when he testified and that he conspired with other State’s witnesses to lie. The State denies that this allegation has any factual merit.

To begin with, this so-called “affidavit” is not an affidavit at all. It is a typed statement signed with the name Harold Gilcrist, but it is not notarized nor sworn to. To that extent, it is not an affidavit as contemplated by I.C. §19-4903 and is not otherwise admissible evidence.

Gilcrist claims that he received information from Detective Smith about the murder. Retired Detective Dave Smith, in his sworn affidavit, states that he gave no information to Gilcrist. Smith Affidavit, Exhibit 1. Gilcrist further states that he discussed testifying against Fields with Joe Heistand and Scott Bianchi. Detective Smith points out that Gilcrist was nowhere near either Heistand or Bianchi when those two men came forward with the information they testified to. Additionally, both Heistand and Bianchi, in their sworn affidavits, state unequivocally that they had no communication with Gilcrist before they came forward and there was no conspiracy between them and Gilcrist concerning any testimony. Acheson has never said that he lied. *See* Heistand Affidavit, Exhibit 2 and Bianchi Affidavit, Exhibit 3.

Additionally, the State points out that all of the information contained in paragraphs 22-38 contain information previously alleged in other post convictions petitions and as such do not constitute new evidence or information that has not previously been considered. The information contained in those paragraphs and the Court’s rulings on them are *res judicata* as having been considered and ruled upon by the Ada County trial court and appellate courts, and for that reason should not be reconsidered by this Court. It must be remembered that Harold Gilcrist did not testify at trial.

Claim 2: Police and Prosecutorial Misconduct Violated State and Federal Due Process Protections.

This is a rehash of the paragraphs alleged in Claim 1. No information was given to any of the inmates by Detective Smith.

The issue of the destruction of the coat is *res judicata*. It has been litigated in the last successive petition and decided against the petitioner. This Court's decision is believed to have been appealed to the Idaho Supreme Court. The State reiterates the facts determined by the Court in that decision, relating to the coat, which were that the coat had no exculpatory value and that it was destroyed years after the jury had seen it. There is nothing about the coat's destruction that is exculpatory or impeaching. It does not cast doubt on the reliability of the conviction and sentence.

Claim 3: The State Actions Violated Due Process and the Right to a Fair Trial.

The State denies Claim 3. There is no evidence that the defendant did not receive a fair trial. Rather all of the information contained in this newest petition has been heard, considered and rejected by every fact finder who has considered it up to this point.

The Petition is Untimely

Finally, as it relates to the Gilcrist statement, this petition is untimely.

After Fields' sentencing hearing the district court found that the State had proven three statutory aggravating circumstances and, after weighing the collective mitigation against the statutory aggravating factors individually, the trial court sentenced Fields to death on March 7, 1991.

Prior to the sentencing in March 1991, Fields filed a motion for new trial based on the testimony of an inmate named Salvador Martinez. Martinez claimed that the inmates who testified in the Fields proceedings, Bianchi, Heistand and Gilcrist, confessed to him that they conspired to lie and then lied at the trial. Trial counsel called all three of them at the hearing on the motion for new trial. All denied that they had said any such thing to Martinez. Judge Schroeder found Martinez to be unbelievable and denied the motion for new trial on November 1, 1990. See Memorandum Opinion and Order Denying Motion for New Trial, Exhibit 4

On April 18, 1991 trial counsel filed an application for post conviction relief. An amended petition was subsequently filed and trial counsel moved to withdraw because the

amended petition alleged ineffective assistance of counsel and other claims related to suppression over whether Bianchi was a State agent when Fields made statements to him. That amended petition was denied by Judge Schroeder by written order in June 1992. Fields filed a Second Amended Petition on July 13, 1992, along with a motion for new trial claiming that Bianchi had recanted his trial testimony. That petition was ultimately denied after an October 1992 evidentiary hearing. The Order denying is dated May 14, 1993.

While being represented by the public defender's office, Fields appealed his conviction, sentence and the district court's denial of post conviction relief. On February 16, 1995, the Idaho Supreme Court affirmed Fields' conviction, sentence and the district court's denial of post conviction relief.

Contrary to the implication in this newest petition, the relevant time for filing a petition or post conviction relief is not when the federal defender began working on Fields' case. The relevant time begins with his first post conviction attorneys work. The investigator, Greg Worthen, states in his affidavit that he was not assigned the case until the summer of 2010. He says that he found an email from a former investigator named Leonard from December 2007. Leonard's email allegedly details his attempts to find Gilcrist over some unknown period of time. There is no explanation as to why Gilcrist could not be or was not contacted by Fields' first post conviction attorneys in 1991. Gilcrist was available to those attorneys in 1991. The affidavit of Kevin Burnett, a paralegal assigned to the Idaho Department of Corrections, states in his affidavit that Gilcrist continued to be in the custody of the Idaho Department of Corrections until he was discharged from the prison in Orofino on July 23, 1992. *See* Affidavit of Kevin Burnett, Exhibit 5.

The State is informed that Leo Griffard was Fields' first federal habeas attorney and was appointed in October 1995. The State is informed that Joan Fisher and Scott Fouser substituted for Griffard in January 1996. The petitioner has made no effort to inform the Court what happened between 1996 and December 2007 when former Investigator Leonard indicated in an email that he had been looking for Gilcrist.

The Idaho Supreme Court has recently made it clear that I.C. §19-2719 bars claims such as Fields' as being untimely. In the recent case of Pizzuto v. State, 149 Idaho 155 (Sup. Ct 2010) the Court stated the following while citing to I.C. §19-2719:

Post-conviction proceedings are generally controlled by the Uniform Post-Conviction Procedure Act (UPCPA), I.C. §§19-4901 to -4911. McKinney v. State, 133 Idaho 695 at 700, 992 P.2d at 149 (1999). However, I.C. §19-2719 governs capital cases to the extent they conflict with the UPCPA. Id. “Any remedy available by post-conviction procedure... must be pursued according to the procedures set forth in this section and within the time limitations of subsection (3) of this section.” I.C. §19-2719(4). Idaho Code §19-2719(3) states that “[w]ithin forty-two. . . days of the filing of judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known.” If the party fails to apply for relief within forty-two days of the imposition of the death penalty, that party “shall be deemed to have waived such claims for relief as were known, or reasonably should have been known.” I. §19-2719(5). “The courts of Idaho shall have no power to consider any such claims....” Id. Thus, “in capital case, a successive petition is allowed only where the petitioner can demonstrate that the issues raised were not known or could not reasonably have been known within the forty-two day time frame.” McKinney, 133 Idaho at 701, (citing State v. Rhoades, 120 Idaho 795, 807, 820 P.2d 665, 677 (1991)). This is where I.C. §19-2719 differs from the UPCPA, which requires a waiver being knowing, voluntary, and intelligent. I.C. §19-4908; Id.

Idaho Code §19-2719 places a heightened burden on petitioners to make a prima facie showing that the issues raised after the forty-two day time period were not known or could not reasonably have been known. McKinney, 133 Idaho at 701, 992 P.2d at 150 (citing Paz v. State, 123 Idaho 758, 760, 852 P.2d 1355, 1357 (1993)). In addition to the prima facie showing, the claims must be raised “within a reasonable time” after they become known or reasonably could have become known. Id. (citing Paz, 123 Idaho at 760, 852 P.2d at 1357). Any petition for post conviction relief that fails to meet the above requirements must be summarily dismissed. I.C. §19-2719(11); Id.

The court in Pizzuto held that Pizzuto had failed to make a prima facie showing that his claims were not known or could not reasonably been known when Pizzuto filed his first petition for post conviction relief. Pizzuto alleged that there had been a secret plea agreement between a witness who testified against Pizzuto and the prosecution and trial court. The witness, named Rice, alleged in 2005 that there had been a secret plea deal. Pizzuto’s trial had occurred in 1986. The State argued that the investigation involving Rice’s alleged plea agreement was not even commenced until years after Pizzuto’s first post conviction petition. Apparently no one even questioned Rice until years after the first post conviction petition.

The Supreme Court held that Pizzuto had failed to make a prima facie showing that his claims were not known or could not reasonably have been known when Pizzuto filed his first petition for post conviction relief.

A similar holding can be found in Stuart v. State, 149 Idaho 35 (Sup. Ct. 2010). Stuart was originally convicted in 1982 of the murder of a two-year-old child. He filed his first petition for post conviction relief in 1986 and a successive petition in 1990. In the 1990 petition, he alleged that the sheriff's department had monitored certain telephone conversation between himself and his lawyer. For the next several years, until 1995, that issue was litigated with the Court eventually affirming the district court's decision denying the petition.

In 2002, Stuart filed another successive petition alleging ineffective assistance of counsel and prosecutorial misconduct. The trial court dismissed the petition and the Supreme Court affirmed the dismissal holding that it was untimely under I.C. §19-2719. The Court pointed out that Stuart was appointed substitute counsel in 1995 and then more than seven years passed between the appointment of that substitute counsel and the filing of the petition before the court in 2002. The Supreme Court said that Stuart's petition was silent as to when the facts supporting the 2002 petition became known or reasonably could have been known. The Court held the burden was on Stuart to present a petition alleging facts that would show that he fit within the exception to I.C. §19-2719. The Court found that Stuart's petition did not even attempt to meet that burden, that the petition was silent as to its timeliness and that his appeal should be denied.

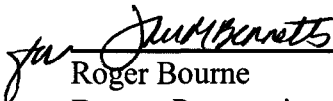
The same analysis can be made in the instant case. Inmate Gilcrist remained in the custody of the Idaho Department of Corrections until his full term release date of July 23, 1992. He was discharged from the correctional facility at Orofino. Fields' first petition for post conviction relief was filed on April 18, 1991. Fields makes no effort to allege why Gilcrist's current story was not known nor could not have reasonably have been known at the time of the filing of the original petition for post conviction relief. Further, no allegation is made as to why Gilcrist could not have been found and interviewed after his release from prison in 1992.

CONCLUSION

For the reasons set out above, that this successive petition is untimely and that Gilcrist's unsworn statement is unbelievable, there is no reason to lose confidence in the original conviction and sentence. This petition should be summarily dismissed. I.C. §19-2719(11)

RESPECTFULLY SUBMITTED this 28th day of September 2011.

GREG H. BOWER
Ada County Prosecutor



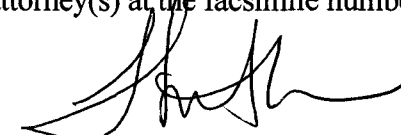
Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September 2011, I caused to be served, a true and correct copy of the foregoing **STATE'S RESPONSE TO JULY 28, 2011 SUCCESSIVE PETITION FOR POST CONVICTION RELIEF AND STATE'S MOTION TO DISMISS** upon the individuals named below in the manner noted:

Name and address: Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number:



GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS,)	
)	
Petitioner,	)	Case No. CV PC 2011 14403
vs.)	
	)	AFFIDAVIT OF SCOTT
THE STATE OF IDAHO.	)	BIANCHI
)	
Respondent.)	
)	
_____)	

BEING FIRST DULY SWORN your affiant declares as follows:

1. That your affiant, Scott Bianchi, is the same person who testified in the Zane Fields murder trial and related hearings back around 1990;
2. Your affiant is currently in custody in Dominguez State Jail located in San Antonio, Texas. Your affiant is serving approximately six months for a drug offense and expects to be released in December, 2011;
3. In about the month of August, 2011, your affiant was contacted while in custody by a man indentifying himself as an investigator working on behalf of Zane Fields. This man slid a sheet of paper under the glass to your affiant which the man said was a



document that he wanted your affiant to sign. The man said that the document said that your affiant had lied at the trial against Zane Fields. The man said that inmate Gilerist said that Gilerist and your affiant along with others made up a story against Zane Fields that your affiant, Gilerist and others told at trial. Your affiant would not sign the document because it was not true and told the man to leave;

- 4. Your affiant does not remember the man's name who presented the document. Your affiant doesn't know whether Gilerist has made any statement about lying in the trial or not. However, your affiant told the truth at the trial and during other hearings. Your affiant did not make up any story with Gilerist or anybody else about Zane Fields;
- 5. Your affiant remembers the circumstances surrounding your affiant's testimony and swears that your affiant testified truthfully. Your affiant has not been promised anything in return for this statement. Your affiant's physical and mental health are good.

Further your affiant sayeth not.

DATED this 22 day of Sept, 2011.

Scott Bianchi
SCOTT BIANCHI

STATE OF TEXAS)
) ss.
County of Bexar)

On this 22 day of September, 2011, before me, a Notary Public for Texas, appeared Scott Bianchi, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Mario Carvallo
Notary Public for the State of Texas
Residing at: 6585 Canyon Rd. San Antonio, Tx 78252
My Commission Expires: May 12, 2012

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA FILED 4:10
A.M. P.M.

3
4 NOV 1 1990

5 THE STATE OF IDAHO,)
6 Plaintiff,)
7 vs.)
8 ZANE JACK FIELDS,)
9 Defendant.)

BY JOHN BASTIDA, CLERK
DEPUTY

Case No. 16259

MEMORANDUM OPINION
AND ORDER DENYING
MOTION FOR NEW TRIAL

10
11 The above-named matter is before the court upon the
12 defendant's motion for new trial. The primary issue is raised by
13 the testimony of Salvador Martinez, an inmate at the Idaho
14 State Penitentiary, that various witnesses for the prosecution
15 had indicated they would give false testimony to implicate the
16 defendant to secure advantages for themselves.

17 The Idaho Supreme Court addressed the test to be utilized in
18 State v. Drapeau, 97 Idaho 685, 691, 551 P.2d 972 (1976):

19 "A motion based on newly discovered evidence must
20 disclose (1) that the evidence is newly discovered and
21 was unknown to the defendant at the time of trial; (2)
22 that the evidence is material, not merely cumulative
23 or impeaching; (3) that it will probably produce an
24 acquittal; and (4) that failure to learn of the
25 evidence was due to no lack of diligence on the part
26 of the defendant."

27 The court is satisfied that the first, second and fourth
28 elements of the Drapeau test have been met. That is, the



1 evidence was unknown at the time of trial, it would have been
2 material, and there was no lack of diligence by counsel for the
3 defense. There is a serious question under prong two of the test
4 concerning the issue of whether the testimony would have been
5 merely impeaching. It appears to be merely impeaching of the
6 inmate testimony at trial. However, that issue should not defeat
7 the defendant's motion. The evidence would have been impeaching
8 on a central question concerning the credibility of the inmate
9 testimony which was an important part of the state's case. This
10 court will not preclude consideration of the defendant's motion
11 based on prong two, recognizing that the language of Drapeau
12 might warrant doing so.

13 The critical element is number three, that is, would the
14 testimony probably produce an acquittal. The court concludes
15 that it would not. The testimony of Mr. Martinez was not
16 believable to this court and would not be believable to a jury.
17 There are significant facts that lead to these conclusions.

18 First, Mr. Martinez' professed willingness to sacrifice
19 his life for that of a stranger, Mr. Fields, by testifying
20 contrary to the inmate witnesses is not credible. It is
21 incredible. There is nothing about Mr. Martinez' demeanor that
22 indicates a willingness to martyr himself. The likelihood of Mr.
23 Martinez being persecuted for testifying against inmates who
24 have themselves broken the much discussed inmate code is slim to
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1 the point of being unbelievable to this court or any reasonable
2 jury.

3 Second, Martinez' claims of persecution by other inmates
4 are protean. At the hearing on this motion he testified that
5 foreign objects had been placed in his food as a consequence of
6 his willingness to come forward. Approximately a week before he
7 told this court that foreign objects had been placed in his food
8 because he was a rapist. His testimony is situational -- that
9 is, it meets whatever situation presents itself to him. This
10 discrepancy is apparent to this court, as it would be to a
11 reasonable jury.

12 Third, law enforcement made serious efforts to prevent the
13 inmates who testified from having contact with other inmates. It
14 is highly unlikely that Mr. Martinez had the opportunity to
15 engage in the conversations he claims. This is apparent to the
16 court as it would be to a reasonable jury.

17 Fourth, the testimony of the inmate witnesses that they had
18 not spoken to Mr. Martinez is credible. His testimony is not.
19 The idea that they would conspire to testify against Mr. Fields
20 and then undercut the supposed benefits of the conspiracy by
21 blabbing to Mr. Martinez is not believable, as it would not be
22 believable to a reasonable jury. From the testimony given the
23 court and the jury that tried this case concerning the inmate
24 code, it seems clear that the testimony of the inmates subjects
25 them to real dangers. It is reasonable to assume that admitting
26

1 to another inmate that they would testify falsely against one of
2 their own would subject them to even greater likelihood of
3 persecution. One may say that the same logic applies to the
4 inmates' claims that Mr. Fields made incriminating statements to
5 them. But that is not the case. They broke the inmate code by
6 subjecting Mr. Fields to prosecution. Mr. Martinez subjects
7 the witnesses to no legal prejudice.

8 The prosecution argues that there are significant
9 discrepancies between the unsigned affidavit drawn from
10 information given by Mr. Martinez and the testimony he gave at
11 the hearing. This is difficult to weigh, because Mr. Martinez
12 did not sign the affidavit, so there is not a conflict between
13 two sets of sworn statements. The court cannot determine how the
14 information in the unsigned affidavit came to be -- that is,
15 whether it was drawn from statements made by Mr. Martinez or
16 whether the investigator for the defense assumed more than was
17 contained in the statements. As a consequence, the court does
18 not give weight to the discrepancies. Taking the testimony of
19 Mr. Martinez under oath as the story he tells, it is still not
20 believable to the court, and would not be to a reasonable jury.
21 The third prong of Drapeau, supra, has not been met.

22 The defendant also raises other facts in support of the
23 motion. He argues that the inmates in fact received special
24 benefits prior to trial such as smoking privileges and contact
25 visits. This evidence carries little weight. First, they
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1 received no benefits in jail they would not have received in the
2 penitentiary. They in fact lost benefits at times. Second, this
3 is not newly discovered evidence within the meaning of
4 Drapeau. Finally, it does not lend weight to Mr. Martinez'
5 testimony.

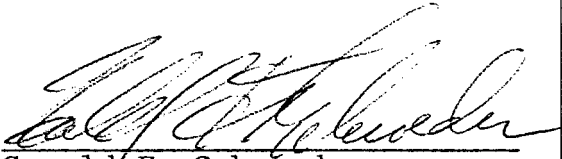
6 The defendant also argues that the inmates, particularly
7 Bianchi and Acheson, have received special treatment subsequent
8 to the trial, maintaining that this impeaches their testimony
9 that they were promised no benefits. It does not impeach their
10 testimony. There is nothing to indicate promises were made
11 before trial. The evidence is to the contrary.

12 The defendant's motion for new trial is based upon
13 impeachment of the inmate witnesses who testified at the trial.
14 There was, of course, other evidence presented by the state at
15 trial which supported the verdict of the jury. There is no newly
16 discovered evidence that undercuts the weight of the other
17 evidence that was presented to the jury. The question the court
18 must resolve is limited to whether the newly discovered evidence
19 that would be offered at a new trial would impeach the inmate
20 testimony sufficiently to produce an acquittal. The court
21 concludes it would not. The inmates were vigorously and very
22 competently cross-examined at trial. Possible motives for
23 fabricated testimony were presented to the jury. Any
24 inconsistencies between their testimony and within their own
25 testimony were pointed out to the jury. The likelihood of
26

1 acquiring the information about which they testified was explored
2 thoroughly. As the court has pointed out, the testimony of Mr.
3 Martinez simply is not believed by this court and would not be
4 believable to a reasonable jury. It would not produce an
5 acquittal, nor would the other evidence the defendant proposes
6 produce an acquittal.

7 Based upon the foregoing the motion for new trial is denied.

8 Dated this 31 day of October, 1990.

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11 Gerald F. Schroeder
12 District Judge
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GREG H. BOWER
Ada County Prosecuting Attorney

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

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

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

Case No. CV PC 2011 14403
**AFFIDAVIT OF KEVIN
BURNETT**

BEING FIRST DULY SWORN your affiant declares as follows:

Kevin Burnett, being first duly sworn on oath, deposes and says based on personal knowledge:

1. Your affiant, Kevin Burnett, is a paralegal assigned to the Idaho Department of Corrections (IDOC) and has his office at the IDOC administration building located at 1299 N. Orchard St. Boise, Idaho. Your affiant has been employed in this capacity since September, 1998. Part of your affiant's duties include accessing records of inmates who are or have been in the custody of the IDOC;

STATE'S
EXHIBIT

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000143

2. My duties include researching and compiling information contained in the records and files maintained by the IDOC in the normal course of business. I have unrestricted access to these records;
3. Pursuant to a request from the Ada County Prosecutors Office, your affiant reviewed IDOC records on Harold Raymond Gilcrist and found that he had been in the custody of the IDOC from May 27, 1983 until his full time release date of July 23, 1992. At the time of his release, Gilcrist was an inmate held at the Idaho Correctional Institution at Orofino Idaho. Gilcrist had been housed at Orofino from September 1, 1990 until his release on July 23, 1992;
4. The inmate records on Harold Raymond Gilcrist that your affiant reviewed are records made and kept in the course of a regularly conducted business activity of the IDOC, that they are accurate, and are relied upon by the IDOC and other state and local agencies, including courts.

Further your affiant sayeth not.

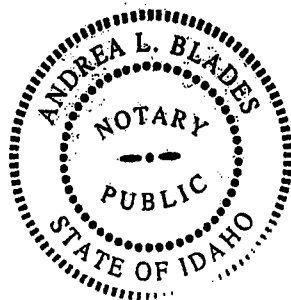
DATED this 23rd day of September, 2011.

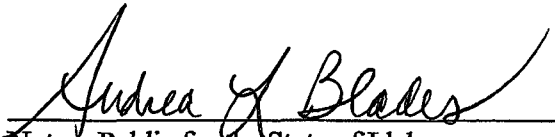


 KEVIN BURNETT

STATE OF IDAHO)
) ss.
 County of Ada)

On this 23 day of Sept. 2011, before me, a Notary Public for Idaho, appeared KEVIN BURNETT, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.





 Notary Public for the State of Idaho
 Residing at: Borise, Idaho
 My Commission Expires: 03/04/2016

NO. _____ FILED _____
A.M. _____ P.M. 4:29

SEP 29 2011

CHRISTOPHER D. RICH, Clerk
By JANET ELLIS
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

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


Case No. CV PC 2011 14403

**ADDENDUM TO STATE'S
RESPONSE TO JULY 28, 2011
SUCCESSIVE PETITION FOR
POST CONVICTION RELIEF
AND STATE'S MOTION TO
DISMISS**

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and puts Court and counsel on notice that the State is filing two affidavits that are referenced in the State's Response to the July 28, 2011 successive petition for post conviction relief as exhibits #1 and #2 being the affidavits of retired detective Dave Smith and Joseph Heistand.

RESPECTFULLY SUBMITTED this 29th day of September 2011.

GREG H. BOWER
Ada County Prosecutor



Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of September 2011, I caused to be served, a true and correct copy of the foregoing **ADDENDUM TO STATE'S RESPONSE TO JULY 28, 2011 SUCCESSIVE PETITION FOR POST CONVICTION RELIEF AND STATE'S MOTION TO DISMISS** upon the individuals named below in the manner noted:

Name and address: Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: 331-5559

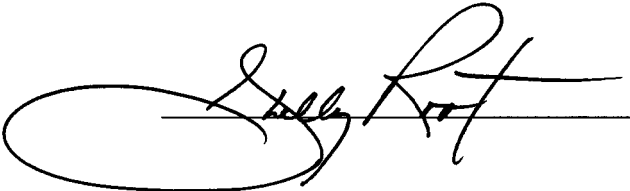


EXHIBIT #1

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS,)	
)	
Petitioner,	)	Case No. CV PC 2011 14403
vs.)	
	)	AFFIDAVIT OF DAVE SMITH
THE STATE OF IDAHO,)	
)	
Respondent.)	
)	
_____)	

BEING FIRST DULY SWORN your affiant declares as follows:

1. That your affiant, Dave Smith, is retired from the Boise City Police Department, but is still employed on a contract basis to do background checks on persons applying for employment at the Boise Police Department. Your affiant is involved in other security work at various businesses in the Boise area. Your affiant is the same Dave Smith who was a detective with the Boise Police Department and

worked on the investigation of the Wishing Well murder case and ultimately testified in the Zane Fields jury trial;

2. Your affiant was contacted in August, 2011 by the Ada County Prosecutor's Office and informed of the new Petition for Post Conviction Relief filed by Zane Jack Fields in July 2011. Your affiant read through the latest claim and particularly was directed to an affidavit written by Greg Worthen wherein he gives information about his recent contact with Harold Gilcrist;
3. Your affiant also read a signed statement alleged to be the "declaration" of Harold Raymond Gilcrist dated July 8, 2011. In that Gilcrist declaration, Gilcrist claims that Fields assaulted him on two different occasions in the mid 1980's. Gilcrist said that when he was interviewed by your affiant in 1989 that he decided to get even with Fields for those earlier assaults and now had the opportunity. Gilcrist claims that the information he gave to your affiant dealing with statements made by Fields, concerning the Wishing Well murder, was actually information that he now claims was given to him by your affiant. Gilcrist claims in the affidavit that your affiant gave him details about the murder of the woman in the gift shop including that the victim was an "old lady" and that she was killed for "fifty bucks". Gilcrist declaration paragraph 7;
4. Gilcrist also claims that your affiant left a file on the table for Gilcrist to look through and he saw photos of a woman in the file;
5. Your affiant swears that none of the claims made by Gilcrist, alleging that your affiant gave him information about the murder are true. Your affiant did not tell Gilcrist or any other inmate that the victim was an "old lady" or that she had been killed for "fifty bucks". Your affiant never showed a file to Gilcrist nor left a file in a place where Gilcrist could read it that had information in it concerning the Wishing Well murder;
6. Your affiant certainly never conspired with Gilcrist or with anybody else to "burn" Fields as now claimed by Gilcrist;

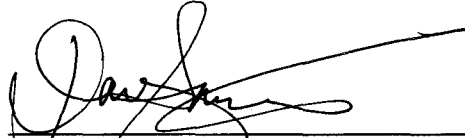
7. Further, your affiant has reviewed his own reports and testimony and has found that Gilcrist was not with the other inmates who testified, at the time that any of the inmates came forward with information about Fields' statements concerning the Wishing Well murder. Gilcrist was first contacted by your affiant in March 1989. Gilcrist had been confined in the Orofino prison facility since at least February 1988 prior to that. Your affiant interviewed Gilcrist and several other inmates that were living on the same tier with Fields at that time. Within a few days of that initial interview, Gilcrist advised your affiant of certain statements that Fields made to him concerning Fields' commission of the Wishing Well murder;
8. A couple of months after your affiant spoke to Gilcrist in Orofino, Idaho, your affiant spoke to Joseph Heistand at the Idaho State Correctional Institution near Boise. At that time Heistand told your affiant about statements made in May 1989 to Heistand by Fields. At the time that your affiant spoke with Heistand, Heistand and Gilcrist were not even in the same prison facility. Gilcrist was in Orofino Idaho which is hundreds of miles from the facility where Heistand was housed in Boise;
9. Your affiant recalls that Scott Bianchi did not speak to law enforcement until approximately November 1989. This was approximately three months after Zane Fields' preliminary hearing. Bianchi's testimony was that Fields showed Bianchi the preliminary hearing transcript of Gilcrist's testimony. Fields was mad at Gilcrist for testifying and called Gilcrist a snitch. Bianchi testified that Fields asked Bianchi to testify that Gilcrist told Bianchi that Gilcrist was going to lie. Fields apparently thought this would make Gilcrist look bad and ultimately assist Fields in his defense. This contact between Bianchi and Fields occurred after Gilcrist had been removed from the prison system and was being held in various county jails for his protection because he was now viewed as a "snitch".
10. Your affiant knows that inmate Jeff Attchison came to law enforcement in March 1990 while Attchison was being held in the Ada County Jail. Attchison's

testimony was only that his contact with Fields had been in the Ada County Jail in March 1988 while Fields was being held in the jail for an aggravated assault at a Shopko store. That aggravated assault occurred approximately ten days after the Wishing Well murder. During the time that Attchison and Fields were together in the jail, Fields would turn the TV off or change the channel whenever a news report would come on about the Wishing Well murder. During that time, Fields told Attchison that they would never pin the murder on Fields because Fields had gotten rid of the evidence. As stated above, Attchison came to law enforcement approximately two years later in March 1990. To your affiant's knowledge, Attchison and Gilcrist had not been housed together prior to March 1990;

11. Your affiant knows that Gilcrist could not have influenced Attchison, Bianchi or Heistand before those three inmates came forward with their information;
12. On August 30, 2011, your affiant traveled to the Spokane County Jail to interview Gilcrist. Gilcrist was brought into the interview room with your affiant and Boise City Detective Ayotte at the jail. Your affiant observed that Gilcrist was shaking and agitated and refused to talk to anyone. It appeared to your affiant that Gilcrist was irrational and didn't recognize your affiant or Detective Ayotte, both of whom had spent many hours with Gilcrist at the time of the trial. Your affiant observed that Gilcrist's health looked poor, he had patches of hair missing and he had skin sores, symptoms consistent with extended methamphetamine use;
13. Based upon your affiant's interaction with Harold Gilcrist at the time of the Fields trial, your affiant was impressed with Gilcrist's sincerity and apparent genuineness. Your affiant was certain then that Gilcrist and the other inmates were telling the truth about their contact with Zane Fields and the statements Fields made regarding the Wishing Well murder. Your affiant is uncertain why Gilcrist has made his current statement, if indeed he made the statement at all.

Further your affiant sayeth not.

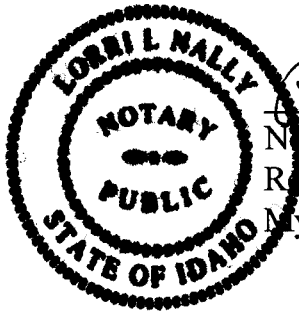
DATED this 29th day of September 2011.




DAVE SMITH

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of September 2011, before me, a Notary Public for Idaho, appeared DAVE SMITH, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.





Notary Public for the State of Idaho
Residing at: Borse, Idaho
My Commission Expires: 11/19/2014

EXHIBIT #2

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS,)	
)	
Petitioner,	)	Case No. CV PC 2011 14403
vs.)	
	)	AFFIDAVIT OF JOSEPH
THE STATE OF IDAHO,	)	HEISTAND
)	
Respondent.)	
)	
)	
_____)	

BEING FIRST DULY SWORN your affiant declares as follows:

1. That your affiant is fifty six (56) years of age and currently lives in the Boise area;
2. That your affiant is the same Joseph Heistand who cooperated with law enforcement and ultimately testified in the trial and related hearings of Zane Jack Fields in approximately 1989 and 1990;
3. That your affiant was contacted by an investigator in the summer of 2011 who claimed that he represented Zane Jack Fields and that he worked for the Federal

Public Defenders. This investigator told your affiant that another witness in the Zane Fields case, Harold Gilcrist, was now stating that Gilcrist had made up the testimony that he gave in the proceedings back in 1989 and 1990; that none of what he claimed Fields had said about Fields participation in the murder was true, and that Gilcrist had conspired with your affiant and other inmates to testify against Fields for revenge against Fields;

4. If Gilcrist is saying now what this investigator claims Gilcrist is saying, Gilcrist is not telling the truth. Your affiant was never involved in any conspiracy with Gilcrist or any other person to testify falsely against Zane Fields. Gilcrist never told your affiant, or anybody else that your affiant knows of, that Gilcrist was mad at Zane Fields nor that Gilcrist wanted revenge against Zane Fields nor that Gilcrist wanted to make up a story against Zane Fields and involve other people in the story to get revenge on Zane Fields;
5. Your affiant came forward to law enforcement with the information he knew about Zane Fields and the Wishing Well murder before your affiant knew anything about Harold Gilcrist's contact with Fields. Your affiant was being held at the Idaho State Correctional Institution (I.S.C.I) south of Boise when your affiant first spoke to law enforcement about Zane Fields and the Wishing Well murder;
6. Your affiant testified truthfully and accurately in the trial and related proceedings involving Zane Fields back at the relevant time concerning the information your affiant knew about the Wishing Well murder;
7. No threats or promises have been made to your affiant in exchange for the information contained in this affidavit. Your affiant is not in custody and has no charges pending. Your affiant's mental health and memory are good. Your affiant is not on parole, but is on one (1) year of unsupervised probation for a misdemeanor.

Further your affiant sayeth not.

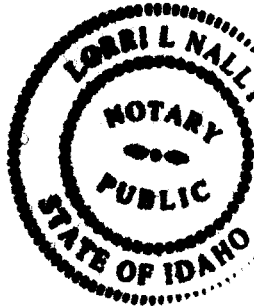
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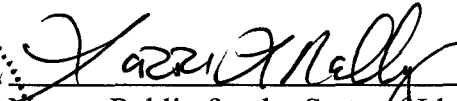


JOSEPH HEISTAND

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of September 2011 before me, a Notary Public for Idaho, appeared **JOSEPH HEISTAND**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.





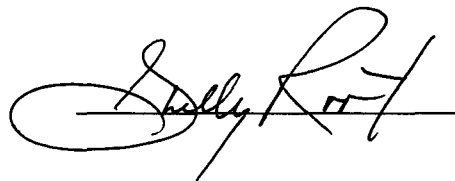
Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 11/19/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of September 2011, I caused to be served, a true and correct copy of the foregoing Affidavit of Joseph Heistand upon the individuals named below in the manner noted:

Name and address: **Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702**

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: 331-5559



Noted
Jared
11-10-24-11

A. J. V. 1005 FILED P.M.

OCT 21 2011

CHRISTOPHER D. RICH, Clerk
By LARA AMES
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Id. 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.)
THE STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV-PC-2011-14403
NOTICE OF HEARING

TO: ZANE JACK FIELDS and TERESA HAMPTON, his Attorney of Record, you will please take notice that on the 16th day of November 2011, at the hour of 3:00 of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Roger Bourne will move this Honorable Court for it's order to dismiss successive petitions in the above-entitled action.

DATED this 20 day of October 2011.

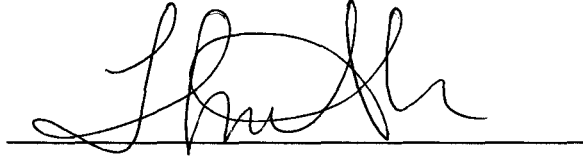
GREG H. BOWER
Ada County Prosecuting Attorney

By: R Bourne
Roger Bourne
Deputy Prosecuting Attorney

17

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Notice of Hearing to Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702 by depositing the same in the United States Mail, postage prepaid, this 20th day of October 2011.

A handwritten signature in cursive script, appearing to read "J. Hampton", is written above a horizontal line.

NO
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*Neville
Jones
10/25/11
for*

ORIGINAL

OCT 25 2011

CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

CAPITAL HABEAS UNIT
Federal Defender Services of Idaho
Teresa A. Hampton, ID Bar No. 4364
702 W. Idaho, Suite 900
Boise ID 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

Attorney for Zane Jack Fields

**IN THE DISTRICT COUR 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. CV PC 2011 14403
CAPITAL CASE
STIPULATION FOR ADDITIONAL
TIME TO FILE RESPONSE TO
STATE'S MOTION TO DISMISS

COMES NOW, Petitioner, Zane Jack Fields, by and through Teresa A. Hampton of the Federal Defender Services of Idaho, and Roger Bourne of the Ada County Prosecuting Attorney's Office, who hereby advise this Court they have conferred and stipulate to a sixty (60) day extension of time for Petitioner to file a response to the State's motion to dismiss these pending proceedings, making said response due on or before December 20, 2011.

The stipulated extension of time is necessary in that while counsel has been coordinating and assisting in the continued investigation of the instant matter, she has also been working on litigation in other capital cases in the Ninth Circuit and two out of district cases. Further, counsel has been preparing for clemency in Paul Rhoades' case and her investigator has been forced to


STIPULATION FOR ADDITIONAL TIME TO FILE
RESPONSE TO STATE'S MOTION TO DISMISS - 1

VP


spend substantial time on the Rhoades clemency package. Mr. Rhoades' execution is scheduled for November 18, 2011.

This stipulation is made in good faith in the interests of justice and not for the purposes of delay and Petitioner will promptly file his response to the State's motion to dismiss upon his completion of the investigation into the allegations made by the State.

RESPECTFULLY SUBMITTED this 21st day of October, 2011.



Teresa A. Hampton
Assistant Federal Public Defender
Counsel for Petitioner




Roger Bourne
Deputy Prosecuting Attorney
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2011, 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:

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

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



Teresa A. Hampton

**STIPULATION FOR ADDITIONAL TIME TO FILE
RESPONSE TO STATE'S MOTION TO DISMISS - 2**

NO. _____ FILED _____
A.M. _____ P.M. 1100

OCT 26 2011

CHRISTOPHER D. RICH, Clerk
By JANET ELLIS
DEPUTY

CAPITAL HABEAS UNIT
Federal Defender Services of Idaho
Teresa A. Hampton, ID Bar No. 4364
702 W. Idaho, Suite 900
Boise ID 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

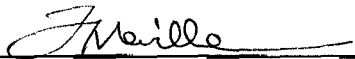
Attorney for Zane Jack Fields

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

ZANE JACK FIELDS,)	
	)	CASE NO. CV PC 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	ORDER GRANTING
STATE OF IDAHO,	)	STIPULATION FOR ADDITIONAL
	)	TIME TO FILE RESPONSE TO
Respondent.	)	STATE'S MOTION TO DISMISS
_____)	

Good cause appearing, the Stipulation for Additional Time to File Response to State's Motion to Dismiss is GRANTED. Petitioner is hereby ordered to file his response to the State's motion to dismiss on or before December 20, 2011. After filing of Petitioner's response, this Court shall set the matter for oral argument on the same.

IT IS SO ORDERED this 26th day of October, 2011.



Thomas F. Neville
District Judge

**ORDER GRANTING STIPULATION FOR ADDITIONAL TIME
TO FILE RESPONSE TO STATE'S MOTION TO DISMISS - 1**

2

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:

Teresa A. Hampton
Assistant Federal Defender
Federal Defenders Services of Idaho
702 W. Idaho, Ste. 900
Boise ID 83702

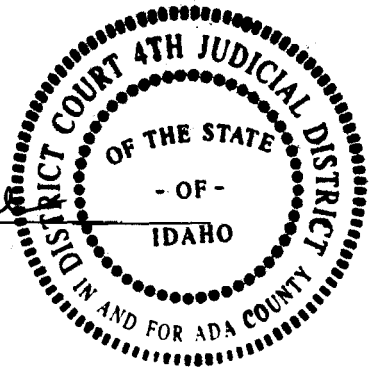
Roger Bourne
Deputy Prosecuting Attorney
Ada County Prosecuting Attorney's Office
200 W. Front Street, Room 3191
Boise ID 83702

Dated this 26th day of October, 2011.

Christopher Rich
Clerk of the Court

by


Deputy Clerk



ORDER GRANTING STIPULATION FOR ADDITIONAL TIME
TO FILE RESPONSE TO STATE'S MOTION TO DISMISS - 2

RECEIVED

DEC 21 2011

Ada County Clerk

CAPITAL HABEAS UNIT
Federal Defender Services of Idaho
Teresa A. Hampton, ID Bar No. 4364
702 W. Idaho, Suite 900
Boise ID 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

NO. 1031 FILED
A.M. 1031 P.M.

DEC 21 2011

CHRISTOPHER D. RICH, Clerk
By JAMIE RANDALL
DEPUTY

Attorney for Zane Jack Fields

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

ZANE JACK FIELDS,)	
	)	CASE NO. CV PC 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	PETITIONER'S RESPONSE IN
STATE OF IDAHO,	)	SUPPORT OF PETITION FOR
	)	POST CONVICTION RELIEF
Respondent.	)	AND IN OPPOSITION TO STATE'S
	)	MOTION TO DISMISS
_____)	

Petitioner Zane Jack Fields files this response in support of his petition for post-conviction relief and in opposition to the State's Motion to Dismiss. This petition arises from the recantation of Howard Gilcrist, who admitted that Fields did not confess to him, that the inculpatory information about Fields came instead from lead detective Dave Smith, and that he shared the information gained from Smith with fellow inmates Scott Bianchi and Joe Heistand. The petition is based on the entire record in prior post-conviction proceedings (other than the judge sentencing petition involving *Ring v. Arizona*), at trial, and in the associated prior appeals. It relies upon all prior evidence that involve facts that affect Fields's claim of innocence, including evidence of another man's DNA in the victim's fingernail scrapings, eyewitness testimony regarding the presence of a man other than Fields at the scene of the crime moments

PETITIONER'S RESPONSE IN SUPPORT OF PETITION FOR POST CONVICTION RELIEF AND IN OPPOSITION TO STATE'S MOTION TO DISMISS - 1

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before it occurred, and corroborating evidence from prior inmate witnesses both that Detective Smith willingly provided critical inculpatory evidence to inmate snitch witnesses and that inmates Gilcrist, Heistand and Bianchi admitted making up their testimony against Fields.

The State raises three primary attacks on the petition: factual challenges and legal arguments regarding the doctrine of *res judicata* and the timeliness of the petition. State's Response to July 28, 2011 Successive Petition for Post Conviction Relief and State's Motion to Dismiss at 2-6 (State's Response). The State's factual challenges to the petition merely serve to create a factual dispute regarding petitioner's claims of innocence and police misconduct. This dispute provides the basis for denying the State's motion to dismiss and granting petitioner's requests for discovery and an evidentiary hearing. The State's *res judicata* attack alleges that prior-considered evidence cannot be re-considered in the claim of innocence, and that Fields's claim must rise or fall on the evidence in Gilcrist's recantation alone. State's Response at 2. However, innocence is a factual inquiry dependent on the totality of the evidence, however, and additional evidence supportive of innocence cannot be considered in isolation. Lastly, the State claims that Gilcrist's recantation is untimely. State's Response at 3-6. Having filed the petition within 42 days of learning of the recantation, the petition is timely.

The State seeks dismissal of the petition based on disputed questions of fact. For example, the State alleges that "[r]etired Detective Dave Smith, in his sworn affidavit, states that he gave no information to Gilcrist." State's Response at 2. This is plainly contradicted by Gilcrist's sworn affidavit.¹ Gilcrist Aff., Ex. 1. The State also asserts that "[n]o information was

¹ As an initial matter, the State argues the Gilcrist statement attached to the petition is "not an affidavit," because it was neither "notarized nor sworn to," State's Response at 2, even though Gilcrist's statement expressly averred that it was made "under penalty of perjury." See Petition, Ex. 4 at 2. Petitioner supplies a notarized and sworn affidavit from Harold Gilcrist with this response and in support of his petition. See Affidavit of Harold Gilcrist, Exhibit 1 (attached) PETITIONER'S RESPONSE IN SUPPORT OF PETITION FOR POST CONVICTION RELIEF AND IN OPPOSITION TO STATE'S MOTION TO DISMISS - 2

given to any of the inmates by Detective Smith.” State’s Response at 3. This is contradicted not only by Gilcrist’s affidavit, but also by the Affidavit of Jeff Acheson, Petition Ex. 3, and the testimony of Salvador Martinez at the motion for new trial. T. Tr. Vol. 8 at 1732.

The State suggests that information from Gilcrist is unimportant because he did not testify at trial and could not have shared his information with the other inmate witnesses before they came forward. State’s Response at 2. However, Gilcrist testified at the preliminary hearing, the motion to suppress and at two hearings involving post-trial motions for a new trial. Preliminary Hearing Tr. At 119-176; T. Tr. Vol. 1 at 95-119; T. Tr. Vol. 8 at 1845-62; and T. Tr. Vol. 9 at 2056-58. He was housed with Heistand and Bianchi pre-trial and during the trial. Gilcrist expressly avers that the information he learned from Detective Smith was shared with both Heistand and Bianchi to assist them in their testimony against Fields. Gilcrist Aff., Ex. 1, Paras. 8-9.

Detective Smith attempts to foreclose the possibility that Gilcrist could have shared information learned from Detective Smith with inmate Joe Heistand before Heistand came forward. Affidavit of Dave Smith at 3, paras. 7-8, Exhibit 1 to Addendum to State’s Response (“Affidavit of Dave Smith”). However, Detective Smith is incorrect when he states that at the time Heistand told Smith of statements allegedly made by Fields in May of 1989 at the Idaho State Correctional Institution in Boise (“ISCI”), Gilcrist was in Orofino, “hundreds of miles from the facility where Heistand was housed in Boise.” At the time Heistand came forward in May, 1989, Gilcrist too was housed in Boise, albeit at the Ada County Jail. Defense Ex. 2, Motion for New Trial, referenced and admitted T. Tr. Vol. 8 at 1766-67 (Gilcrist arrived in Boise on April

(hereinafter, “Gilcrist Aff.”). Gilcrist’s affidavit re-states in full the allegations raised in Gilcrist’s declaration under penalty of perjury. *See id.*, *cf.* Petition, Ex. 4.

28, 1989). Short term stopovers of less than a day at the Ada County Jail, for court appearances, for example, are not recorded in the permanent housing record of inmates. Testimony of Sgt. Larry Scarborough, T. Tr. Vol. 8 at 1782-83. Far from being hundreds of miles away, Gilcrist was in that nearby short-term stopover facility, used by the IDOC and convenient to the Boise Police Department, before Heistand came forward to Detective Smith claiming that Fields had confessed.

Bianchi avers in his affidavit that he did not make up his testimony with Gilcrist. Affidavit of Scott Bianchi. However, Bianchi admitted scanning the preliminary hearing transcript that Fields showed him before Bianchi came forward with statements against Fields. Included was Gilcrist's testimony. Testimony of Scott Bianchi from the August 3, 1992 hearing on Motion for New Trial, attached to Petition as Ex. 1 at 20. Bianchi also admitted that Detective Smith showed Bianchi and the other inmates the complete police file, and that Bianchi shared that file with Gilcrist. *Id.* at 13. Despite recanting those statements during his testimony at the motion for a new trial, *id.*, Bianchi's changing story creates an additional credibility issue that should be resolved at an evidentiary hearing.

Detective Smith attempts to impugn Gilcrist's recantation by attacking Gilcrist's character and suggesting that Gilcrist is "irrational" and implying that Gilcrist is unable to think clearly or recall correctly because he "had patches of hair missing," "had skin sores," and appears to be suffering "symptoms consistent with extended methamphetamine use." Affidavit of Dave Smith at 4, para. 12. Smith asserts that Gilcrist did not appear to recognize him when they met on August 30, 2011. *Id.* Detective Smith's affidavit is directly contradicted by a Spokane County Sheriff Sergeant.

Sergeant Richard Smith of the Spokane County Sheriff's Department (hereinafter the "Spokane Sheriff Sgt.") escorted Gilcrist to and was present for the entire August 30, 2011 meeting with Detective Dave Smith. Affidavit of Richard Smith, Exhibit 2 (attached hereto). The Spokane Sheriff Sgt. stated that the detective who did most of the talking with Gilcrist "told me that he had come out of retirement to work on the case that brought him there to speak with Gilcrist." Affidavit of Richard Smith, at para. 17. Detective Dave Smith is retired from the Boise City Police Department. Affidavit of Dave Smith at 1; State's Response at 2.

Detective Smith's physical description of Gilcrist is at odds with what the Spokane Sheriff Sgt. observed. The Spokane Sheriff Sgt. acknowledges that Gilcrist "was unshaven and his hair was mussed," but notes that Gilcrist was not notified in advance of the meeting and had no time to prepare for it. Affidavit of Richard Smith, para. 5. Significantly, the Spokane Sheriff Sgt. denies observing that "Gilcrist had any patches of hair missing or any skin sores." *Id.*

While Detective Smith contends that Gilcrist did not recognize the Boise detectives, the Spokane Sheriff Sgt. swears that Gilcrist "recognized them very quickly, within a matter of seconds." *Id.* at para. 7. The Spokane Sheriff Sgt. noted that Gilcrist recognized Detective Smith when the detective offered to shake hands and that Gilcrist immediately declined to talk with him. *Id.* para. 9. The Spokane Sheriff Sgt. stated that Detective Smith and Gilcrist "called each other by their first names. They clearly knew each other." *Id.* para. 13 (also noting that "[w]hen each addressed the other by their first name, neither corrected the other."). *See also id.* para. 14 ("Gilcrist clearly recognized the detective").

The Spokane Sheriff Sgt. does not describe Gilcrist as an irrational, agitated person. The Spokane Sheriff Sgt. stated that "Gilcrist did not appear irrational to me." *Id.* para. 14. The Spokane Sheriff Sgt. noted that Detective Smith repeatedly tried to get Gilcrist to talk with him

after Gilcrist repeatedly refused to talk. *Id.* paras. 9-12. The Spokane Sheriff Sgt. states that only after Detective Smith “continued to try and prod Gilcrist into talking with him” did Gilcrist get “agitated,” and even then, Gilcrist “continued to decline to talk with the detectives.” *Id.* para. 13.

The Spokane Sheriff Sgt. ended the interview and escorted Gilcrist back to his cell block because it was apparent Gilcrist did not wish to talk to the detectives. *Id.* para. 15. During the escort back to his cell, Gilcrist informed the Spokane Sheriff Sgt. that “the detectives were asking him about an old murder case involving the death penalty, a case in which Gilcrist said he had recanted his previous testimony.” *Id.* para. 16.

Far from the methamphetamine-addled, irrational person who was not cognizant of his surroundings, as described by Detective Smith, the Spokane Sheriff Sgt. describes Gilcrist as a rational person, unmarred by skin lesions, who recognized the detectives and why they were there. The Spokane Sheriff Sgt. observes that the detectives were reluctant to take no for an answer, regarding Gilcrist’s unwillingness to talk, and essentially, that the detectives insistent request to talk caused whatever agitation Gilcrist eventually showed. Given the disputed facts, this Court should deny the motion to dismiss and grant discovery and an evidentiary hearing.

The Spokane Sheriff Sgt.’s observations are buttressed by the observations made by Gilcrist’s public defender in Spokane, Steve Reich. Reich met Gilcrist in person at least ten times and talked with him numerous other times on the phone since the attorney’s appointment on June 16, 2011. Affidavit of Steve Reich, Exhibit 3 at 1, attached hereto. At all times Gilcrist was rational, polite, and oriented, with good recall and appropriate responses to questions. *Id.* at 1, paras. 10-11. In contrast to Detective Smith’s observations, Reich observed that “Gilcrist appeared to be in good health,” and Reich never observed that Gilcrist had “patches of hair

missing” or “skin sores.” *Id.* at 2, paras. 13-14. Reich saw Gilcrist at times very close to Detective Smith’s August 30, 2011 meeting, including just three days afterwards on September 2, 2011. *Id.* at 2, paras. 14-15.

Questions about Detective Smith’s credibility are not confined to his description of his recent meeting with Gilcrist. As lead detective, Smith’s credibility goes to the heart of the case. Despite Detective Smith’s insistence that he did not provide information to inmates, sworn testimony contradicts him, creating a question of fact. *See, e.g.,* Gilcrist and Acheson Affidavits. Acheson and Gilcrist have offered sworn affidavits describing instances of Detective Smith providing inculpatory information to them. *Id.* In addition, witnesses have testified that Heistand and Bianchi admitted making up their testimony and/or receiving information from Detective Smith on several occasions. *See, e.g.,* Petition. Ex. 3 (Acheson Affidavit); T. Tr. Vol. 8, pp. 1727-28, 1733-34 (testimony of Salvador Martinez); Petition. Ex. 1 at 16, 21 (testimony of Scott Bianchi admitting he recanted to Amil Myshin). Detective Smith also destroyed a defense exhibit in a capital case that was the subject of a pending post-conviction DNA testing request, but claimed that he didn’t think the coat was needed any more, contrary to well known policy. For all of these reasons, his credibility is at issue, the motion to dismiss should be denied, and this Court should grant Fields discovery and an evidentiary hearing.

In prior cases, Fields sought to prove his innocence through the presentation of testimony, affidavits and DNA evidence. In this case, with additional powerful evidence that the lead detective supplied inculpatory information to Gilcrist, who shared it with other testifying inmates, Fields renews his claim of innocence in light of all the available evidence. The State contends that this Court may not consider any of the information that has previously been presented in prior proceedings on the ground that the case is *res judicata* as to those facts.

State's Response at 2-3. The question of innocence based on newly discovered evidence is necessarily a fact-intensive inquiry dependent on the totality of the evidence and how a jury would likely rule in light of the all the evidence, the new and the old, in determining whether a reasonable juror would vote to convict beyond a reasonable doubt or would vote to acquit. *See House v. Bell*, 547 U.S. 518, 538-39 (2006) (in federal habeas corpus procedural default context, considering totality of evidence and likely effect of new evidence on hypothetical jury deciding question of actual innocence). The "likely result in an acquittal" standard is the standard under *Drapeau*, which clearly contemplates examining whether the new and old evidence together would result in an acquittal or not. *See State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (Idaho 1976). Innocence simply cannot be examined in light of a single fact, but in light of all the facts. "We must be vigilant against imposing a rule of law that will work injustice in the name of judicial efficiency." *Sivak v. State*, 134 Idaho 641, 647, 8 P.3d 636, 642 (Idaho 2000) (new evidence supporting an old claim must be allowed in a subsequent post-conviction proceeding to allow Idaho courts to entertain claims of actual innocence in successive post-conviction petitions).

The State argues that Gilcrist's recantation comes too late, and that it could have been discovered in 1990 or thereafter, but well before 2011. State's Response at 3-6. For the reasons that follow, the State is incorrect.

First, Fields set forth the difficulties and efforts that current counsel faced in finding Gilcrist, who lived out of State and was homeless. Affidavit of Greg Worthen, Petition Ex. 2 (citing his efforts and those of two prior investigators with the Federal Defenders). Despite diligent searching for Gilcrist periodically since federal habeas counsel were appointed in 2001, Fields was unable to locate and talk with Gilcrist until 2011. *Id.*; Affidavit of Bruce Livingston,

Ex. 4 (attached hereto). Within 42 days of learning that Gilcrisp made up his testimony at trial and was recanting it, Fields filed Gilcrisp's statement under penalty of perjury with his petition re-asserting his innocence. Under the circumstances of this case, Fields filed the recantation within a reasonable time of discovering it. *See Pizzuto v. State*, 146 Idaho 720, 727, 202 P.3d 642, 649 (Idaho 2008) (claim must be filed within 42 days of when petitioner knew or should have known of the claim).

Gilcrisp testified at the preliminary hearing that Fields confessed to him about committing the murder at the Wishing Well by stabbing the lady and then taking \$48 to \$50 from the cash register. Preliminary Hearing T. 138-40. Gilcrisp also testified at the motion for new trial in 1990, addressing Salvador Martinez's claim that "Bianchi, Heistand and Gilcrisp confessed to [Martinez] that they conspired to lie and then lied at the trial." State's Response at 3. As the State concedes in its response, Gilcrisp explicitly denied he "said any such thing to Martinez." *Id.* Gilcrisp thus stood by his earlier testimony post-trial. *See T.Tr. Vol. 8 at 1850-51* (Gilcrisp denies knowing, seeing or speaking with Martinez).

The State argues that Fields was not diligent in obtaining Gilcrisp's recantation earlier, sometime between Gilcrisp's 1992 testimony and the early 2000's, the period after which the Federal Defenders were counsel for Fields but had been unable to locate Gilcrisp and procure a recantation until 2011. *But see* Affidavit of Bruce Livingston, Exhibit 4 (attached hereto) (setting forth efforts of prior post-conviction counsel to investigate Gilcrisp in 1996). Efforts to find Gilcrisp during this earlier time period occurred without success. Notes from prior counsel did reveal ongoing investigation into the snitch witnesses – Heistand, Bianchi, Acheson and Gilcrisp. As early as July 1996, investigations into Gilcrisp occurred, however contact was not made with him. *See generally* Affidavit of Bruce Livingston.

In addition to the difficulties imposed on finding witnesses, a witness who testifies falsely presents obstacles independent of locating them. These witnesses have incentive to continue the lie. That is a situation here. In a similar case involving a claim of innocence and a recantation by an eyewitness, the federal district court held that the recantation of perjured testimony “could not simply have been obtained through the exercise of due diligence.” *Pacheco v. Artuz*, 193 F.Supp.2d 756, 761 (S.D.N.Y. 2002).

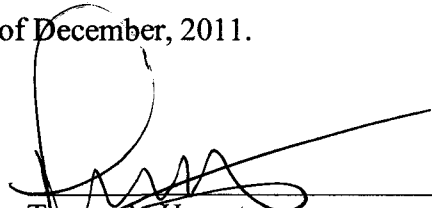
This sort of testimony is a unique form of newly discovered evidence in that it is completely incumbent on the recanting witness confessing to having misrepresented facts or having perjured himself. ‘Liars are hard to detect [...] discovery often comes by happenstance.’ [citation omitted]. In many cases, no amount of due diligence on the part of a petitioner can compel a witness to come forward and admit to prevaricated testimony....

Id. Accordingly, the court ruled that the evidence could not have been discovered until the petitioner learned that the witness was willing to recant. *Id.*

Like *Pacheco*, Fields’s case involves a recanting witness, but unlike *Pacheco*, this case did not involve the witness voluntarily coming forward on his own. Fields sought him out and procured the recantation only after diligently trying to locate Gilcrist for the better part of a decade. Moreover, Gilcrist indicated his continuing cooperation with the State in testimony at post-trial hearings, giving no indication that a recantation was likely. Given those facts and the inability of anyone to make a witness recant perjured testimony until the witness is willing to do so, Fields acted diligently in finally procuring Gilcrist’s recantation this summer.

This Court should deny the motion to dismiss, grant discovery and hold an evidentiary hearing.

RESPECTFULLY submitted this 20th day of December, 2011.



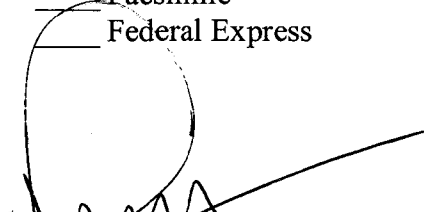
Teresa A. Hampton
Assistant Federal Public Defender
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2011, 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:

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

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



Teresa A. Hampton

EXHIBIT 1

**(Affidavit of Harold Gilcrist,
Dated September 30, 2011)**

AFFIDAVIT OF HAROLD RAYMOND GILCRIST

I, Harold Raymond Gilcrist, mindful of the penalties for perjury, declare under oath as follows:

1. I am a person over eighteen (18) years of age and competent to testify.
2. Despite my previous testimony and statements, Zane Fields never told me he killed anybody. Fields never implicated himself to me as the murderer or a participant in the murder of Mary Vanderford at the Wishing Well, the murder for which he was convicted and sentenced to death.
3. When Fields and I were in custody at a prison in Boise in the mid-1980s, Fields assaulted me on two different occasions.
4. In 1989 Detective Dave Smith came to the prison in Orofino, where I was an inmate. Smith interviewed me and a number of other inmates who were on the same tier as Fields.
5. I found myself in a position to hurt Fields and I took the opportunity hurt him as much as possible. I told Smith that Fields was a predator and I wanted to get him. Smith told me that this was my opportunity to get back at Fields. Smith told me, "Let's burn him." My motivation was to simply do whatever I could to burn Fields, and this was the perfect opportunity.
6. I communicated with Detective Smith both by phone and through a letter I sent to my father to be forwarded to Smith. Within a month of my first meeting with Detective Smith, I told him that Fields had confessed to me and that Fields had admitted killing an elderly woman in a Boise gift shop.
7. However, the information I said I got from Fields was actually information provided directly to me by Detective Smith. Smith gave me information about the crime he believed Fields committed at the Wishing Well gift shop. Smith told me details about the murder of the woman at the gift shop. For example, I asked Smith how much money had been stolen. Smith answered, "He killed an old lady for fifty bucks."
8. One time, before trial, Smith left a file on the table at one of our meetings and he got up and left the room. When I looked in the file I saw photos of a woman who was cut and it was very graphic. It looked like she was naked.

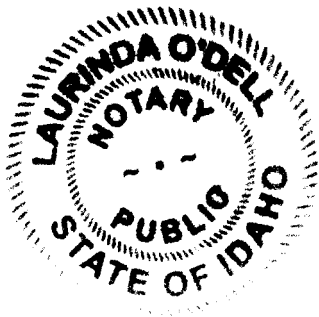
9. I discussed testifying against Fields with Joe Heistand and Scott Bianchi. I shared my desire to burn Fields with them, and I also shared the information I obtained from Detective Smith about the crime. Bianchi expressed his reluctance about testifying, but I told him it was for me, that we needed to burn Fields.
10. I would not have been able to testify as I did, and I would not have been able to help Bianchi and Heistand testify as they did, without the information provided to me by Detective Dave Smith.
11. I have never previously disclosed this information to anyone representing Zane Fields.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Coeur d'Alene, Idaho, on Sept 30, 2011.

Signed

Hansald Coyne

SUBSCRIBED AND SWORN to before me this 30th day of September, 2011.



Laurinda O'Dell

NOTARY PUBLIC FOR Idaho

Residing at: Coeur d'Alene, Idaho

Commission Expires: 02-10-2012

EXHIBIT 2
(Affidavit of Richard Smith,
Dated December 12, 2011)

AFFIDAVIT

STATE OF Washington)

: ss

County of Spokane)

RICHARD SMITH, being duly sworn upon oath, deposes and states as follows:

1. I am over eighteen years of age and competent to testify.
2. I am a sergeant with the Spokane County Sheriff's Department, and I work at the Spokane County Jail.
3. On August 30, 2011, I was informed that two detectives from Boise, Idaho had arrived at the jail and wanted to talk to inmate Harold Gilcrist. I went to the inmate module to retrieve Gilcrist and escort him to the interview.
4. Gilcrist was happy, cheerful and friendly with me when I met him to escort him. I told Gilcrist that he had a court date. (We say this to inmates when they are being escorted to talk with police, so other inmates do not think the inmate is a snitch.) Gilcrist's cheerful demeanor was consistent with my prior interactions with him. He has always been pleasant and respectful with me.
5. I did not warn Gilcrist in advance regarding this interview, and he was not prepared for it. He was unshaven and his hair was mussed, but I did not observe that Gilcrist had any patches of hair missing or any skin sores.
6. After Gilcrist and I left the inmate module, I told him I was bringing him to meet two detectives from Boise. Gilcrist seemed nervous about meeting them.
7. When we arrived outside the hallway where the detectives awaited him, Gilcrist tried to look at them through a window in the door and did not seem to recognize them. After they entered the hallway, however, Gilcrist recognized them very quickly, within a matter of seconds.
8. When I opened the door to the hallway, one of the detectives immediately came

forward and offered to shake Gilcrist's hand. This detective did virtually all of the subsequent talking and interaction in the attempt to interview Gilcrist. He appeared to be the older of the two.

9. When that detective shook Gilcrist's hand, it was as if "a light turned on" and Gilcrist recognized the detective. Upon recognizing the detective, Gilcrist told the detective that he did not want to talk to him, saying, "I don't have anything to say to you."
10. The detective kept trying to get Gilcrist to talk to him, and Gilcrist kept insisting, repeatedly, that he didn't want to talk to him.
11. I asked them to move inside the interview room, a soundproof room for privacy. Once we were all inside the room with the door closed, the older detective continued to try and get Gilcrist to talk to him, and Gilcrist continued to decline to participate in an interview, saying he had "nothing to say."
12. The detective mentioned something about Gilcrist's father and something about Gilcrist's testimony from the past. Gilcrist appeared to know what the detective was talking about, but he also continued to tell the detective that he had nothing to say.
13. Throughout the interview attempt, Gilcrist and the older detective (who was doing most of the talking), called each other by their first names. They clearly knew each other. When each addressed the other by their first name, neither corrected the other. As the detective continued to try and prod Gilcrist into talking with him, Gilcrist got agitated and continued to decline to talk with the detectives.
14. Though agitated, Gilcrist did not appear irrational to me. Gilcrist clearly recognized the detective who was attempting to talk with him, but just didn't want to talk.
15. It became obvious that the detective and Gilcrist were going around in circles unproductively, with the detective wanting Gilcrist to talk to him, and Gilcrist saying he had nothing to say. So I told the detectives the interview was over, and

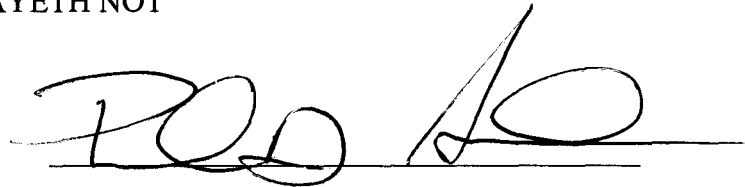
I escorted Gilcrist back to the inmate module. The entire episode only lasted a few minutes.

16. As we walked back to the inmate module, Gilcrist told me the detectives were asking him about an old murder case involving the death penalty, a case in which Gilcrist said he had recanted his previous testimony.

17. I do not recall the names of either of the detectives. The visiting records reflect they were Dave Smith and Mark Ayotte. . The detective who did most of the talking and immediately came forward to shake Gilcrist's hand as we entered the room seemed the older of the two. After the interview attempt ended and I had returned Gilcrist to his cell, the older detective who had done most of the talking told me that he had come out of retirement to work on the case that brought him there to speak with Gilcrist.

I DECLARE UNDER penalty of perjury that the foregoing is true and correct. Executed in the City of Spokane, County of Spokane, State of Washington on December 12, 2011 _____, 2011.

FURTHER YOUR AFFIANT SAYETH NOT



SUBSCRIBED AND SWORN to before me this 12 day of December, 2011.



Long, Stephan L.
NOTARY PUBLIC FOR Stephan L. Long
Residing at: Washington State, 1100 W. Mattow
Commission Expires: 12-31-2012 Spokane WA.
17260

EXHIBIT 3

**(Affidavit of Steve Reich,
dated December 16, 2011)**

AFFIDAVIT OF STEVE REICH

STATE OF Washington)

: ss

County of Spokane)

Steve Reich, being duly sworn upon oath, deposes and states as follows:

1. I am over eighteen years of age and competent to testify.
2. I am a public defender in Spokane, Washington.
3. I represent Harold Gilcrist in a criminal proceeding that is before the Superior Court in Spokane County, Washington.
4. I was first appointed to represent Mr. Gilcrist in this matter on or about June 16, 2011.
5. I saw Mr. Gilcrist six times for court appearances and spoke with him on each of those occasions. The dates of those appearances were all in 2011: June 30; August 4; August 12; August 19; September 2; and September 16.
6. In addition to those court appearances, I visited with Mr. Gilcrist a number of additional times during the same general time frame in 2011. Overall, I saw him on at least ten occasions.
7. In addition to those inter-actions with Mr. Gilcrist, I spoke with him on the phone on a number of other occasions during the same general time frame.
8. I met with Mr. Gilcrist frequently because I wanted to stay on top of his case and get him moved to Idaho where he had better housing options, freedom, treatment and programming opportunities.
9. Mr. Gilcrist's Spokane case is currently set for trial on February 6, 2012, pending treatment completion in Idaho.
10. In all of my inter-actions with Mr. Gilcrist, he was rational. He always recognized me after our first introduction, recalled our prior inter-actions and the purpose of my representation, and conducted himself politely and appropriately.
11. During my contacts with Mr. Gilcrist, I found him to be oriented, having good recall and giving appropriate responses to questions.
12. I have had no concerns about Mr. Gilcrist's rationality at any time during my representation of him. If I had had any such concerns, I would have sought a

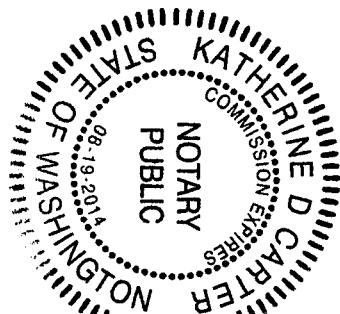
mental health examination. I did not seek a mental evaluation of Mr. Gilcrist, because nothing during my extensive number of conversations with him triggered any mental health concerns on my part or indicated any need for a mental evaluation of him.

13. I understand that Dave Smith, a retired Boise detective, observed Mr. Gilcrist on August 30, 2011 and described in an affidavit that "Gilcrist's health looked poor, he had patches of hair missing and he had skin sores consistent with extended methamphetamine use."
14. During my contacts with Mr. Gilcrist, I did not observe "patches of hair missing" or "skin sores," and Mr. Gilcrist appeared to be in good health. I note that I saw Mr. Gilcrist repeatedly, both before Detective Smith's August 30 attempt to interview Mr. Gilcrist, but also only three days afterwards on September 2, 2011.
15. In his affidavit, Detective Dave Smith also characterized Mr. Gilcrist as "irrational" and "shaking and agitated and refused to talk to anyone." While I was not present, I can affirm that Mr. Gilcrist has appeared rational in all of my inter-actions with him, including those that are very close in time to the August 30 occasion referenced by Detective Smith. In all of my inter-actions with Mr. Gilcrist, he has been pleasant, cooperative and talkative.

I DECLARE UNDER penalty of perjury that the foregoing is true and correct. Executed in the City of Spokane, County of Spokane, State of Washington on December 16th, 2011.



On this 16th day of December, 2011, before me, a Notary Public for the State of Washington, personally appeared Steve Reich, a person known to me, who subscribed his name and executed this instrument by signing it.



Katherine D. Carter
NOTARY PUBLIC FOR State of Washington
Residing at Spokane, WA.
Commission Expires: 8-19-2014

EXHIBIT 4

**(Affidavit of Bruce Livingston,
dated December 20, 2011)**

AFFIDAVIT OF BRUCE LIVINGSTON

STATE OF IDAHO)

: ss

COUNTY OF ADA)

Bruce Livingston, being duly sworn upon oath, deposes and states as follows:

1. I am over eighteen years of age and competent to testify.
2. I am an assistant federal defender employed in the Capital Habeas Unit of the Federal Defender Services of Idaho in Boise, Idaho.
3. The Capital Habeas Unit was appointed to this case in May, 2001 and I appeared as the lawyer responsible for the case at that time.
4. I immediately began the task of meeting the client, familiarizing myself with the case, reviewing the files and drafting an amended petition.
5. It became obvious that this was a case with a viable claim of actual innocence, and I began to work toward proving Mr. Fields was innocent.
6. Over the course of the next year, I filed an amended petition in federal court and filed a state court case in June 2002 seeking DNA testing.
7. By 2002 I had an investigator, Ben Leonard, working on the case with me. We endeavored to review the file for information about evidence, eyewitnesses, and inmate snitch witnesses, including Scott Bianchi, Joe Heistand, Jeff Acheson and Harold Gilcrist.
8. Included in our file were various notes and memoranda from J.C. Bryant, the investigator retained by prior counsel, Scott Fouser. These memoranda set forth efforts in 1996 to find and review files at the prison regarding the inmate snitch witnesses including Gilcrist.
9. Those files also reflected that Bryant did in fact interview inmates Bianchi, Acheson and Heistand. However, despite Bryant's review of files pertaining to Gilcrist, there are no notes of an interview with Gilcrist.
10. Mr. Leonard and I likewise attempted to interview the snitch witnesses, along with other important eyewitnesses.
11. We were able to interview the female eyewitnesses who said another man was present immediately before the crime, and not Fields. We obtained affidavits

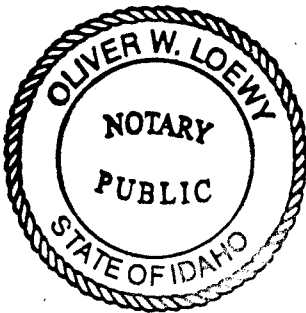
from them in 2003.

12. We obtained an affidavit from Jeff Acheson in 2004.
13. During this same general time period, we were unable to obtain affidavits from inmates Bianchi and Heistand, although Mr. Leonard visited with Heistand, and he and I both visited with Mr. Bianchi.
14. In our attempts to locate witnesses, which began in 2002 or 2003, we were unable to locate Mr. Gilcrist, who was not in a prison in Idaho, insofar as we could determine. We were unable to find or contact Mr. Gilcrist. The closest we got to him was in Spokane, Washington, and Mr. Leonard had several trips to Spokane in which he tried to find Gilcrist without success. We learned that Gilcrist was homeless and probably battling substance abuse problems, but despite our efforts we could not contact him.

I DECLARE UNDER penalty of perjury that the foregoing is true and correct.

Bruce Livingston

On this 20th day of December, 2011, before me, a Notary Public for the State of Idaho, personally appeared Bruce Livingston, a person known to me, who subscribed his name and executed this instrument by signing it.



[Signature]

NOTARY PUBLIC FOR IDAHO
Residing at: Bona, Ada County, Idaho
Commission Expires: 2/17/2015

Abigail/Saier
1/5/12 LT

NO. _____ FILED 3:10
A.M. _____ P.M.

CAPITAL HABEAS UNIT
Federal Defender Services of Idaho
Teresa A. Hampton, ID Bar No. 4364
702 W. Idaho, Suite 900
Boise ID 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

JAN 04 2012

CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

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

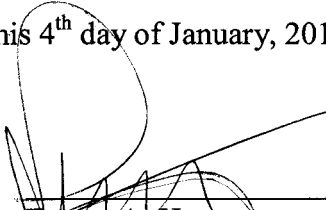
ZANE JACK FIELDS,)	
	)	CASE NO. CV PC 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	PETITIONER'S MOTION TO
STATE OF IDAHO,	)	TAKE JUDICIAL NOTICE
)	
Respondent.)	
_____)	

Petitioner Zane Jack Fields moves the Court pursuant to I.R.E. 201 for judicial notice of the files and transcripts in the underlying criminal case, the initial post-conviction, *State v. Fields*, Ada County Case Nos. 16259 and 16259A, and the following post-conviction proceedings: *Fields v. State*, Ada County Case No. SPOT 9600369D, *Fields v. State*, Ada County Case No. CV-PC-2002-21895 (formerly Case No. SPOT 0200590D), and *Fields v. Idaho*, Ada County Case No. CV PC 2010 20085. See summary of records and transcripts contained in these court files, attached hereto as Appendices A, B, C and D respectively. Because petitioner asserts his innocence in this case, the record of the evidence at trial and new evidence that has been developed in support of his innocence including the DNA testing is germane to whether petitioner has shown his innocence in light of all admissible evidence.

K2

Bruce D. Livingston of the Federal Defenders Office emailed counsel for Respondent, Roger Bourne, to obtain his consent to this motion, but has not yet received a response from Mr. Bourne.

RESPECTFULLY SUBMITTED this 4th day of January, 2012.



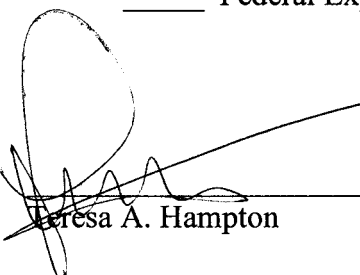
Dorena A. Hampton
Counsel for Petitioner Zane Jack Fields

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2012, 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:

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

- U.S. Mail
- Hand Delivery
- Facsimile (208-287-7709)
- Federal Express



Dorena A. Hampton

APPENDIX A
Summary of Records for
***State v. Fields*, Ada County Case Nos. 16259 and 16259A**

Court Transcripts for *State v. Fields*, Ada County Case Nos. 16259 and 16259A

- Preliminary Hearing Transcript, August 2, 1989
- Original Trial Transcript on Appeal, Volumes I–IX, December 11, 1989–January 10, 1992
- Motion for New Trial Hearing Transcript, August 3, 1992, September 14, 1992 & October 29, 1992

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EXHIBIT LIST

David F. Schmitt 1 h' Winnic
 Judge Clerk

Page 1 of Pgs.

DATE May 7 1910 DISPOSITION Jury Trial

CASE NO. 16-259

The State of Idaho

Plaintiff

Roger Bourse
Joel Hester
 Attorney(s)

vs.

Law Jack Fields

Defendant

Mar Hackney
John Ryan
 Attorney(s)

BY	NO.	DESCRIPTION	STATUS
State	1	Diagram of Taylor's washing well	Filed 5-7-10 admitted
State	2	Diagram of interior of washing well	offered 5-7-10 admitted
State	3	Photo of victim	offered 5-7-10 admitted
State	4	Cocette tape of victim calling 911	offered 5-8-10 admitted
State	5	Composit drawing of a suspect	offered 5-11-10 admitted
State	6	Picture of Mr. Weaver	offered 5-8-10 admitted
State	7	Letter from Laven Woodford to Mr. Weaver	offered 5-7-10 admitted
State	8	Photo line-up with six pictures	offered 5-8-10 admitted
State	9	Photo of defendant	offered 5-8-10 admitted
State	10	Diagram of small person	offered 5-11-10 admitted
State	11	Photo of wound on finger	offered 5-8-10 admitted
State	12	Photo of wound on head	offered 5-8-10 admitted
State	13	Photo of wound on neck	offered 5-8-10 admitted
State	14	Diagram of interior of head-neck	offered 5-8-10 admitted
State	15	Diagram of Linda Vista Plaza	offered 5-14-10 admitted
State	16	Diagram of Bull Crossing	offered 5-14-10 admitted
State	17	Photo line-up	offered 5-8-10 admitted

State	17	Photo	Em-up	Admitted
State	18	Photo	of a coat also #38	admitted
State	19	Asia P	photograph	offered 5-8-92 Admitted
State	20	Diagram	of T-shirt & Ties	offered 5-8-92 Admitted
State	21	Diagram	of Victim's Shoe	offered 5-8-92 Admitted
State	22	Coat		offered 5-8-92 Admitted

CERTIFICATE OF EXHIBITS -258-

State	23	Copy	of Keith Edson's statement	offered 5-8-92 Admitted
State	24	Copy	of Keith Edson's statement	offered 5-8-92 Admitted

BY	NO.	DESCRIPTION	STATUS
Def	25	Diagram from Preliminary Drawing ^{washing well - BMC Parking}	offered 5-9-90 admitted offered 5-9-90
State	26	Report by Officer Maxon	admitted offered 5-9-90
State	27	Photo of washing well - center	admitted offered 5-9-90
State	28	Photo of washing well telephone area	admitted offered 5-9-90
State	29	Photo of Blood on floor	admitted offered 5-9-90
State	30	Photo of Blood on glass display case	admitted offered 5-9-90
State	31	Photo of Blood on floor in back of display	admitted offered 5-9-90
State	32	Photo of front of washing well	admitted offered 5-9-90
Def	33	Composite drawing	admitted offered 5-9-90
State	34	Letter from Mike Weaver to Det. Wallace	admitted offered 5-9-90
State	35	Letter from Blackfoot Police Dept to Det. Wallace	admitted offered 5-9-90
Def	36	Brown handled folding knife - a hair	admitted offered 5-10-90
Def	37	Camouflage knife	admitted offered 5-10-90
State	38	Photo of coat sk #22	admitted offered 5-10-90
State	39	Closeup photo of coat area d-7	admitted offered 5-10-90
State	40	Closeup photo of coat area d-8	admitted offered 5-10-90
State	41	Diagram of T-Taxt in Ada County, Id	admitted offered 5-10-90
Def	42	Tim B. Umix & diagram	admitted offered 5-10-90
Def	43	Letter to Judge Schroeder from Mr. Heiland	admitted offered 5-15-90
Def	44	Letter to Men Johnson from Mr. Heiland	admitted offered 5-15-90
State	45	Letter to Dan Smith from Scott Bianchi ^{original}	admitted offered 5-15-90
State	46	Letter to Dan Smith from Scott Bianchi ^{Copy}	admitted offered 5-15-90
State	47	Letter to Law Field from Scott Bianchi	admitted offered 5-15-90
Def	48A	Time Log for Taco Bell	admitted offered 5-15-90
Def	48B	Plan & Specification Review	admitted offered 5-15-90
Def	48C	General Comment Sheet	admitted offered 5-15-90

By	48C	General Comment Sheet
By	48D	Inspection Report 2-19-1988
By	48E	Inspection Report 2-23-1988
By	48F	License for Alco Bell 2-23-1988
	★	These exhibits are being held in the District Vault in compliance with Rule 31 & 48 of the Idaho Appellate Rules. These exhibits will be made available to counsel upon their request.
CERTIFICATE OF EXHIBITS		-259-

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

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

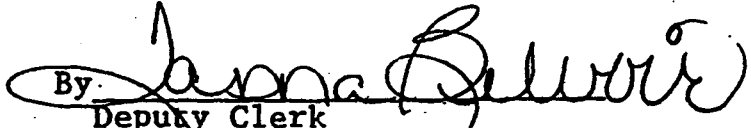
CASE NO. 19185
CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify: The requested exhibit of the Scott Bianchi Letter, has already been submitted with the original exhibits with the Supreme Court.

The Proposed and Final Jury Instructions are submitted as exhibit. Jeffery Acheson Review Report is being submitted as a Confidential exhibit. All are being forwarded to the Supreme Court with the Supplemental Clerk's Record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Boise, Idaho on this 21st day of October, 1993.

J. David Navarro
Clerk of the District Court

By: 
Deputy Clerk

APPENDIX B
Summary of Records for
***Fields v. State*, Ada County Case No. SPOT 9600369D**

Court Transcripts for *Fields v. State*, Ada County Case No. SPOT 96-00369D

- **Post Conviction Relief Hearing Transcripts, November 27, 1989, August 26, 1991 & March 6, 1997**

Case Number Result Page

Ada

1 Cases Found.

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant			
CV-PC-1996-60713		Post	
Case: Old Case: SP-OT-96-00369*D	District Filed: 09/11/1996	Subtype: Conviction Relief	Judge: Thomas F. Neville
			Status: Closed 07/23/1997
Subjects: Fields, Zane Jack			
Other Parties: State of Idaho			
Register Date of actions:			
09/11/1996 New Case Filed			
09/11/1996 Post Conviction Relief Filing			
09/11/1996 Certificate Of Mailing			
10/16/1996 Resp To Petition For Pcr, & Motion To Dismiss			
10/17/1996 Motion For Appointment Of Counsel			
02/20/1997 Hearing Scheduled - Motn To Dismiss (03/06/1997) Thomas Neville			
03/05/1997 Affidavit Of J.c. Bryant			
03/05/1997 Affidavit Of Zane Fields			
03/06/1997 Case Taken Under Advisement - Motn To Dismiss			
04/28/1997 Memorandum Decision And Notice Of Intent To			
04/28/1997 Dismiss			
05/15/1997 Motion For Preparation Of Transcript			
05/19/1997 Response To Notice Of Intent To Dismiss			
05/29/1997 St's Response To Motn For Prep Of Transcript			
06/23/1997 Rpt To Id Supreme Crt & Request For Extension			
07/23/1997 Order Of Dismissal And For Other Matters			
08/29/1997 Notice Of Appeal			
08/29/1997 Motion For Appointment Of Appellate Counsel			
08/29/1997 Affidavit In Support			
10/29/1997 Order Denying Motion For Appellate Counsel			
02/02/2001 Remittitur			

Connection: Secure

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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/Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 24119
CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial

District of the State of Idaho in and for the County of Ada, do hereby certify:

That there were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as exhibits to the Record:

1. Packet of miscellaneous papers including: Letter dated November 26, 1996 from Attorney Scott E. Fouser to Judge Thomas F. Neville, Ex Parte Motion for Expert Assistance, Declaration of Counsel Scott E. Fouser in Support of Ex Parte Motion for Expert Services, Memorandum in Support of Ex Parte Motion for Ex Parte Services, and Ex Parte Order for Expert Assistance; Received in Chambers December 2, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 30th day of March, 1998.

J. DAVID NAVARRO
Clerk of the District Court

By ANITA J. HANKS
Deputy Clerk

SEAL

CERTIFICATE OF EXHIBITS

00146

000212

APPENDIX C
Summary of Records for
***Fields v. State*, Ada County Case No. CV-PC-2002-21895**
(formerly SPOT 02-00590D)

Court Transcripts for *Fields v. State*, Ada County Case No. CV PC 02-21895 (formerly SPOT 02-00290D)

- **August 19, 2004, May 1, 2008 & November 12, 2008 transcripts, vol. 3 of 10**
- **September 21, 2004, February 8, 2008 & May 22, 2009 transcripts, vol. 4 of 10**
- **July 25, 2005 & September 27, 2005 transcripts, vol. 5 of 10**
- **May 5, 2005 transcript, vol. 6 of 10**
- **May 11, 2007 transcript, vol. 7 of 10**
- **September 5, 2007 transcript, vol. 8 of 10**
- **October 29, 2001 transcript, vol. 9 of 10**
- **November 13, 2007 transcript, vol. 10 of 10**

Case Number Result Page

Ada

1 Cases Found.

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant						
Case:	CV-PC-2002-21895	District	Filed: 06/27/2002	Subtype: Post Conviction Relief	Judge: F. Thomas Neville	Status: clerk action 05/21/2009
	Old Case: SP-OT-02-00590*D					
Subjects: Fields, Zane Jack						
Other Parties: State of Idaho						
Disposition:	Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
	04/03/2009	Dismissal With Prej			Fields, Zane Jack (Subject), State of Idaho (Other Party)	Dismissed
Register of actions:	Date					
	06/27/2002	New Case Filed				
	06/27/2002	Post Conviction Relief Filing				
	06/28/2002	Change Assigned Judge Neville				
	07/19/2002	Motion To Extend Time For Filing Response To				
	07/19/2002	Petition For Post Conviction Scientific Ts				
	07/23/2002	Order Granting Extension Of Time To Respond				
	08/30/2002	State's Response To Petition For Pst Crvctn				
	11/25/2002	State's Amended Response To Petition				
	12/03/2002	Order For Release Of Exhibit 22				
	12/03/2002	Notice Of Appearance(benjamin For Fields)				
	12/03/2002	Response To State's Part Motn To Dismiss				
	12/03/2002	Petition For Post-conviction Scientific Test				
	10/10/2003	Motion For Permission To Conduct Limited Disc				
	10/10/2003	Motion For Independent Scientific Testing				
	10/30/2003	Resp 2 Motn 4 Independant Scientific Testing				
	11/24/2003	States Resonse To Petitioner's Motion To				
	11/24/2003	To Conduct Limited Discovery				
	06/28/2004	Amend Motion For Permission To Conduct Disc.				
	07/22/2004	State's Response To Petitioner's Amended Motn				
	07/22/2004	For Permission To Conduct Limited Disc &				
	07/22/2004	State's Motion To Dismiss				
	07/22/2004	Notice Of Hearing August 19, 2004 @ 1:30 P.m.				
	07/22/2004	Order To Transport (8/19/04 @ 1:30 P.m.)				
	07/22/2004	Notice Of Hearing (8/19 @ 1:30 P.m.)				
	08/12/2004	Pet's Response To State's Motion To Dismiss				
	08/12/2004	Pet's Request That Court Take Judicial Notc				
	08/12/2004	Affidavit Of Counsel In Opposition				
	08/24/2004	Affidavit Of Robert Kerchusky				
	08/24/2004	2nd Affd Of Counsel Oppsitr To St.motn/dismis				
	08/31/2004	2nd Affd Of R. Kerchusky				
	09/03/2004	Affidavit In Opposition To Motn To Dismiss				
	09/21/2004	Case Taken Under Advisement				
	03/30/2005	Petnrs Motn For Production Of Documents				

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04/04/2005 Affidavit Of Lisa Allyn Dimeo
04/21/2005 Hearing Scheduled - Motn For Prodn (05/23/2005) Thomas Neville
05/23/2005 Hearing Vacated - Motn For Prodn
06/06/2005 Petitioner's Motion For Access To Evidence
06/06/2005 Hearing Scheduled - Ptner's Motions (07/25/2005) Thomas Neville
06/28/2005 St's Objtn To The Petnr Motn For Accss Evidnc
07/25/2005 Motion Held - Ptner's Motions
08/08/2005 Order Granting Mot To Continue & Preserve
08/08/2005 Evidence
09/12/2005 Certificate Of Service
09/12/2005 Affidavit In Support Of Motion Access Evidence
09/15/2005 Affidavit Of Pamela Marcum In Support
09/27/2005 Hearing result for Hearing Scheduled held on 09/27/2005 01:30 PM: Hearing Held
05/05/2006 Order (Nunc Pro Tunc) granting in part petitioner's motion for production of documents and for access to evidence
05/05/2006 Hearing Scheduled (Status 09/05/2006 04:00 PM)
05/10/2006 Order RE: Status Conference
08/28/2006 Petitioner's Motion for Joint Access to Fingerprints and AFIS Testing Thereof
11/20/2006 Hearing result for Status held on 11/20/2006 01:30 PM: Hearing Held
03/27/2007 Hearing Scheduled (Status 05/11/2007 01:15 PM)
03/27/2007 Notice Of Status Conference
05/11/2007 Hearing result for Status held on 05/11/2007 01:15 PM: Conference Held
05/11/2007 Hearing Scheduled (Status 06/15/2007 02:15 PM)
06/15/2007 Hearing result for Status held on 06/15/2007 02:15 PM: Conference Held continued further conference to July 6, 2007 @ 3:00 p.m.
11/05/2007 Motion to Dismiss the Petition for Post Conviction Scientific Testing
12/31/2007 Affidavit of Counsel with Material in Opposition to Respondent's Motion for Summary Judgment
02/08/2008 Hearing Scheduled (Hearing Scheduled 06/06/2008 09:00 AM)
04/07/2008 Motion for Release of Trial Exhibits and for DNA Testing
04/07/2008 Motion for Request for Production
04/07/2008 Affidavit of Kelly Nolan
04/11/2008 Response to State's Motion to Dismiss Petition for Post Conviction Scientific Testing
04/16/2008 Notice Of Hearing Re: Motion for Release of Trial (05-01-08@10:30AM)
04/16/2008 Hearing Scheduled (Motion 05/01/2008 10:30 AM)
04/25/2008 State's Response to Petitioner's Response to the State's Motion for Dismissal
04/25/2008 State's Motion for DNA Testing
04/25/2008 Notice Of Hearing (05/01/08 at 10:30 AM)
05/01/2008 Order For DNA Testing
05/01/2008 Hearing result for Motion held on 05/01/2008 10:30 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages
05/02/2008 Order Releasing Trial Exhibit for DNA Testing and Directing State to Submit Documents for DNA Testing

06/04/2008 Notice Of Hearing
06/04/2008 Continued (Hearing Scheduled 08/06/2008 01:30 PM) Reset awaiting DNA results per counsel
08/05/2008 Continued (Hearing Scheduled 09/12/2008 11:30 AM) Reset awaiting DNA results per counsel
08/05/2008 Notice Of Status Conference
09/11/2008 Continued (Hearing Scheduled 10/17/2008 11:30 AM) Reset awaiting DNA results per counsel
10/17/2008 Hearing result for Hearing Scheduled held on 10/17/2008 11:30
10/17/2008 Hearing Scheduled (Motion 11/12/2008 01:30 PM)
10/17/2008 Minute Entry Hearing type: Hearing Scheduled Hearing date: 10/17/2008 Time: 11:30 am Court reporter: In chambers
11/12/2008 Hearing result for Motion held on 11/12/2008 01:30 PM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages
04/03/2009 Civil Disposition entered for: State of Idaho, Other Party; Fields, Zane Jack, Subject. Filing date: 4/3/2009 MEMO DECISION AND ORDER OF DISMISSAL OF PETITION FOR POST-CONVICTION SCIENTIFIC TESTING
04/03/2009 STATUS CHANGED: Closed
05/15/2009 Appealed To The Supreme Court
05/15/2009 Motion That Costs Of Appeal Be At County Expense
05/21/2009 Hearing Scheduled (Status 05/22/2009 10:30 AM)
05/21/2009 STATUS CHANGED: Closed pending clerk action
05/22/2009 Order On Motion that Costs of Appeal Be at County Expense
05/22/2009 Hearing result for Status held on 05/22/2009 10:30 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Less than 100 pages
07/13/2009 Certificate of Lodging - Supreme Court Docket No. 36508
07/13/2009 Notice of Transcript Lodged - Supreme Court Docket No. 36508
08/07/2009 Objection to Clerk's Record and Request for Additional Transcripts
08/21/2009 Hearing Scheduled (Motion 09/09/2009 01:30 PM) Objections to clerks record
08/21/2009 Notice Of Hearing
08/25/2009 Response to Petitioner's Objections to Clerk's Record and Request For Additional Transcripts
09/03/2009 Stipulation Regarding Objection to Clerk's Record and Request for Additional Transcripts
09/04/2009 Prosecutor assigned ROGER BOURNE
09/08/2009 Hearing result for Motion held on 09/09/2009 01:30 PM: Hearing Vacated Objections to clerks record
09/08/2009 Order On Stipulation RE: Objections to Clerk's Record and Request for Add'l Transcripts

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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-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 36508

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Affidavit Of Counsel In Opposition To State's Motion To Dismiss, filed August 12, 2004.
2. Affidavit Of Robert J. Kerchusky, filed August 24, 2004.
3. Second Affidavit Of Counsel In Opposition To State's Motion To Dismiss, filed August 24, 2004.
4. Second Affidavit Of Robert J. Kerchusky, filed August 30, 2004.
5. Affidavit Of Counsel In Opposition To State's Motion To Dismiss And In Support Of Limited Discovery And The Preservation Of Evidence In This Case, filed September 3, 2004.
6. Affidavit Of Lisa Allyn DiMeo, filed April 4, 2005.
7. Affidavit Of Randall T. Libby In Support Of Petitioner's Motion For Access To Evidence, filed September 12, 2005.
8. Affidavit Of Pamela Marcum In Support Of Petitioner's Motion For Access To Evidence, filed September 15, 2005.
9. Affidavit Of Counsel With Material In Opposition To Respondent's Motion For Summary Dismissal, filed December 31, 2007.

CERTIFICATE OF EXHIBITS

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10. Affidavit Of Kelly Nolan, filed April 7, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 24th day of June, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk



CERTIFICATE OF EXHIBITS

000224

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APPENDIX D
Summary of Records for
***Fields v. State*, Ada County Case No. CV PC 2010-20085**

Court Transcripts for *Fields v. State*, Ada County Case No. CV PC 2010-20085

- Motion Hearing, December 10, 2010
- Motion Hearing, February 4, 2011

Case Number Result Page

Ada

1 Cases Found.

Zane Jack Fields, Plaintiff vs State Of Idaho, Defendant

Case: **CV-PC-2010-20085** District Filed: **10/12/2010** Subtype: **Post Conviction Relief** Judge: **Thomas F. Neville** Status: **Closed pending clerk action 05/17/2011**

Subjects: **Fields, Zane Jack**
Other Parties: **State Of Idaho**

Disposition: Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
02/18/2011	Petition Denied	02/18/2011	Dismissed/Terminated	Fields, Zane Jack (Subject), State Of Idaho (Other Party)	Other Party

Register of actions:

- 10/12/2010 New Case Filed - Post Conviction Relief
- 10/12/2010 Judge Change: Adminstrative
- 10/12/2010 Petition for Post Conviction Relief
- 10/13/2010 Prosecutor assigned Roger Bourne
- 10/14/2010 Certificate Of Mailing
- 10/22/2010 State's Response to the October 2010 Successive Petition for Post Conviction Relief and State's Motion to Dismiss
- 10/22/2010 State's Motion To Dismiss
- 10/27/2010 Notice Of Hearing (11/24/10 @ 9 am)
- 10/27/2010 Hearing Scheduled (Hearing Scheduled 11/24/2010 09:00 AM)
- 11/02/2010 Stipulation to Continue Hearing
- 11/16/2010 Continued (Hearing Scheduled 12/10/2010 10:00 AM)
- 12/03/2010 Motion to Take Judicial Notice
- 12/06/2010 Response to Motion to Dismiss
- 12/10/2010 Hearing result for Hearing Scheduled held on 12/10/2010 10:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
- 12/10/2010 Hearing Scheduled (Hearing Scheduled 02/04/2011 09:00 AM) Motion to Dismiss
- 01/07/2011 States Response to Petitioners Response to States Motion to Dismiss the October 2010 Successive Petition for Post Conviction Relief
- 01/07/2011 Petitioner's Supplementary Brief Re Destruction of Evidence
- 02/04/2011 Hearing result for Hearing Scheduled held on 02/04/2011 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Motion to Dismiss LESS THAN 100 pages
- 02/18/2011 Memorandum Decision and Order of Dismissal of Petition for Post-Conviction Relief
- 02/18/2011 Civil Disposition entered for: State Of Idaho, Other Party; Fields, Zane Jack, Subject. Filing date: 2/18/2011
- 02/18/2011 STATUS CHANGED: Closed
- 02/25/2011 Appealed To The Supreme Court
- 02/25/2011 Motion That Costs Of Appeal Be At County Expense

03/08/2011 Order RE: Costs of appeal at County Expense
04/21/2011 Notice of Transcript Lodged - Supreme Ct. Docket No. 38571
05/17/2011 Petition's Objections to the Record and Reporter's Transcripts
05/17/2011 Notice Of Hearing
Hearing Scheduled (Hearing Scheduled 06/13/2011 02:00 PM)
05/17/2011 Petitioners Objections to the Clerk's Record and Reporter's
Transcripts
05/17/2011 STATUS CHANGED: Closed pending clerk action
Hearing result for Hearing Scheduled held on 06/13/2011 02:00 PM:
05/18/2011 Hearing Vacated Petitioners Objections to the Clerk's Record and
Reporter's Transcripts (SET ON WRONG JUDGES CALENDAR)
05/18/2011 Notice Of Hearing Vacated
05/24/2011 Response To Petitioner's Objections to the Record and Reporter's
Transcripts
06/13/2011 Stipulation Regarding Objections To The Record And Reporter's
Transcripts
06/13/2011 Hearing Scheduled (Hearing Scheduled 07/14/2011 11:00 AM)
06/13/2011 Hearing Scheduled (Motion 07/14/2011 11:00 AM)
Hearing result for Hearing Scheduled held on 07/14/2011 11:00 AM:
06/14/2011 Hearing Vacated Objections to the Clerk's Record and Reporter's
Transcripts
06/14/2011 Order RE: Stipulation regarding objections to the Record and
Reporter's Transcripts
06/28/2011 Hearing result for Motion scheduled on 07/14/2011 11:00 AM:
Hearing Vacated

Connection: Secure

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

THOMAS F. NEVILLE/JANET ELLIS
DISTRICT JUDGE DEPUTY CLERK

FEBRUARY 4, 2011

ZANE JACK FIELDS,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC10-20085

EXHIBIT LIST

APPEARANCES:

ROGER BOURNE
ADA COUNTY PROSECUTING ATTORNEY

Counsel for State of Idaho

THERESA HAMPTON

Counsel for Petitioner

BY	NO.	DESCRIPTION	STATUS
PET	1	Artist Sketch of Suspect	CONSIDERED
PET	2	Photo of Zane Jack Fields	CONSIDERED
PET	3	CAMO JACKET WORN BY ZANE JACK FIELDS	CONSIDERED

*Don't say
Heshe 27. Done*

NO. 909 FILED _____
A.M. _____ P.M. _____

JAN 20 2012

CHRISTOPHER D. RICH, Clerk
By LARA AMES
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS,	)	Case No. CV PC 2011 14403
)	
Petitioner,	)	STATE'S REPLY TO THE
vs.	)	PETITIONER'S RESPONSE IN
	)	SUPPORT OF THE JULY 28TH
THE STATE OF IDAHO,	)	2011 SUCCESSIVE PETITION
	)	FOR POST CONVICTION
Respondent.	)	RELIEF AND IN OPPOSITION
	)	TO STATE'S MOTION TO
_____	)	DISMISS

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and makes the State's Reply to the Petitioner's Response in Opposition to the State's Motion to Dismiss filed December 21, 2011 as follows.

The Petitioner's sixth successive petition for post conviction relief filed July 28, 2011 makes three (3) basic claims;

Claim I: New Evidence Establishes Fields' Innocence;

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Claim II: Police and Prosecutorial Misconduct Violated State and Federal Due Process Protections;

Claim III: The State's Actions Violated Due Process and a Right to a Fair Trial.

All three of these claims are based on a statement made by Harold Gilgrist in the summer of 2011 wherein he claimed that the information he gave law enforcement about statements made by the defendant to him in approximately 1989 were untrue.

The State denied the allegations in the petition. The State responded to the July 28, 2011 successive petition and moved to dismiss it on September 28, 2011. The State's motion to dismiss asserted that none of the "evidence" claimed by the petitioner was actually new evidence at all nor did it establish Fields' innocence as described in Claim I of the original petition.

Second, the State asserted that the July 28, 2011 Petition was untimely and should be dismissed.

The Petitioner has now responded to the State's motion to dismiss in the form of argument and factually with affidavits attempting to establish that the July 28, 2011 was timely filed. The State reasserts all of the grounds for the Motion to Dismiss set out in its response dated September 28, 2011. This reply speaks specifically to the issue of timeliness argued by the petitioner in his response.

In his response, the petitioner argues that he was diligent in obtaining Gilgrist's recantation. He claims that he diligently searched for Gilgrist and points to the Affidavit of Greg Worthen, which was attached to the original petition filed July 28, 2011 and to the Affidavit of Bruce Livingston which was attached to the December 21, 2011 response. Neither of those

affidavits establishes the factual basis necessary to support the petitioner's claim of making a diligent search for Gilcrist nor that the petition was timely filed.

The State's response sets out that Fields filed a motion for new trial in March 1991. That motion was based on the testimony of an inmate named Salvador Martinez. Martinez claimed that the inmates that testified in the Fields proceedings, Bianchi, Heistand, and Gilcrist confessed to him that they had conspired to lie and then had lied at the trial. All three of those inmates testified at the hearing on the motion for new trial and denied that they had said any such thing to Martinez. Judge Schroeder found Martinez to be unbelievable and denied the motion for new trial on November 1, 1990. Fields was then sentenced to death in March 1991.

On April 18, 1991 trial counsel filed an application for post conviction relief which was amended and was argued along with the motion for new trial in 1992. The motion for new trial then claimed that Bianchi had recanted his trial testimony. The matter went to hearing and Bianchi recanted his recantation, essentially testifying that he had been threatened in the prison to recant his trial testimony or suffer physical consequences. That petition and motion for new trial was denied in October 1992. The Order denying is dated May 14, 1993.

Fields appealed his conviction, sentence and the district court's denial of post conviction relief to the Idaho Supreme Court which affirmed the conviction, sentence and denial of post conviction relief on February 16, 1995. The records shows that Leo Griffard filed a Habeas Corpus Petition in Federal Court in October 1995.

Attached to this reply is the affidavit from Deputy Attorney General Lamont Anderson. Deputy Attorney General Anderson sets out that he is familiar with the court record in the federal habeas case wherein the petitioner Zane Jack Fields is challenging his conviction for the murder

of Mary Katherine Vanderford. He has reviewed the federal record in preparation for his affidavit.

The State has included three of the Appendices that Deputy Attorney General Anderson references namely, H. Petitioners Motion to Conduct Civil Discovery, filed in March 1996, which requests permission to depose inmate witnesses including Harold Gilgrist; I. Order Granting in Part and Denying in Part Petitioner's Motion to Conduct Discovery which grants authority to depose the inmate witnesses including Harold Gilgrist dated April 11, 1996, signed by Judge Edward Lodge; V. Order dated August 12, 1996 granting additional time until November 1, 1996 to conduct discovery signed by Judge Edward Lodge. The other appendices referred to by Deputy Attorney General Anderson are available, but not reproduced here.

On January 3, 1996 the petitioner came back to State Court to file a successive petition and at that time Scott Fouser and Joan Fisher were appointed. In July 1996 Scott Fouser filled an affidavit claiming a conflict between the defendant and Joan Fisher and at that time attorney Mike Wood was appointed to the case as co-counsel with Fouser.

On April 11, 1996 the defendant requested discovery in the federal case and was given authority to depose Inmates Gilgrist, Bianchi, Heistand and Atchison. Exhibit I. On August 12, 1996 Mr. Fouser was granted additional time until November 1996 to complete the depositions. To the knowledge of the undersigned, and based upon the attached Affidavit of Lamont Anderson, Deputy Attorney General, no depositions were taken of any of the inmates. The record has no indication that the depositions were not completed because the deponents were unavailable to the petitioner.

The record shows that on May 22, 2001 that the Capital Habeas Unit of the Federal Defender Services of Idaho were appointed to represent the petitioner. On October 28, 2002 the

record shows that Dennis Benjamin substituted for Scott Fouser which meant that Dennis Benjamin and the Capital Habeas Unit represented the petitioner. It was during that period that a successive petition was filed requesting that certain DNA and other forensic work be done on the case.

Going back to the Affidavits of Greg Worthen and Bruce Livingston, the State notes that Greg Worthen claims in his affidavit that he was assigned to assist the Capital Habeas Unit in the summer of 2010. Mr. Worthen claims that he found an email between two previous investigators, Noland and Leonard dated December 2007 where Leonard stated that he made attempts contact Gilcrist through Gilcrist's family members, but had been unable to find Gilcrist.

The other investigator, Noland stated that in January 2008, Noland had contacted Gilcrist's Washington probation officer, but was unable to find Gilcrist who had an outstanding warrant for violating probation. Worthen then describes how he found Gilcrist in a county jail in May 2011. Worthen gives no information concerning efforts made by himself or anybody else to find Gilcrist from the time of the Idaho Supreme Court's affirming the conviction in 1995 until investigator Noland claims to have contacted Gilcrist's probation officer in January 2008.

The affidavit of Bruce Livingston similarly gives them no support for their timeliness argument. Livingston's affidavit, which is attached to the December 21, 2011 response states that he is employed by the Capital Habeas Unit and as such was appointed to the petitioner's case in May 2001. He states that in 2002 he and investigator Leonard reviewed the file for information about evidence, eyewitnesses and inmate witnesses including Bianchi, Heistand, Atchison and Gilcrist.

Mr. Livingston states at Paragraph 8 of his affidavit that he reviewed various notes and memoranda from J.C. Bryant, the investigator obtained by prior counsel, Scott Fouser. Mr. Livingston states “these memoranda set forth efforts in 1996 to find and review files at the prison regarding the inmate snitch witnesses including Gilcrist.”

In Paragraph 9 of Mr. Livingston’s Affidavit he states “those files also reflected that Bryant did in fact interview inmates Bianchi, Atchison, and Heistand. However, despite Bryant’s review of files pertaining to Gilcrist, there are no notes of an interview with Gilcrist.”

Mr. Livingston states that he and Mr. Leonard interviewed some of the other witnesses in the case in 2003 and 2004.


Mr. Livingston simply makes the general claim in Paragraph 14 that he made attempts to locate witnesses in 2002 or 2003, but was unable to locate Mr. Gilcrist who was not in prison. He claims Mr. Leonard made several trips to Spokane, but could not find Gilcrist.

Neither of those affidavits makes any attempt to establish why Gilcrist was not searched for, found and interviewed in 1992 or the next 10 years to 2002 when the federal defenders were appointed. Mr. Livingston states that there were some attempts made in 2002 or 2003 to find Gilcrist in Spokane, but he makes no attempt to explain why additional efforts were not made in 2004, 2005, 2006, or 2007. It appears that a phone call was made by an investigator to Gilcrist’s probation officer in January 2008, but no additional follow up is described for the rest of 2008, 2009 or until the summer of 2010. In other words, no effort is made to explain why efforts were

not made to locate Mr. Gilcrist for over 10 years. As such, the petitioner's claim that the July 28, 2011 petition was timely filed is unsupported. As such, this petition should be dismissed.

RESPECTFULLY SUBMITTED this 20th day of January 2012.

GREG H. BOWER
Ada County Prosecutor



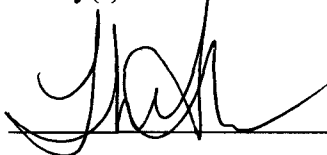
Roger Bourne
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 20th day of January 2012, I caused to be served, a true and correct copy of the foregoing **STATE'S MOTION TO ALLOW ADDITIONAL TIME FOR STATE'S RESPONSE TO THE JULY 28, 2011 PETITION FOR POST CONVICTION RELIEF** upon the individuals named below in the manner noted:

Name and address: Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702

- By depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number:



GREG H. BOWER
Ada County Prosecuting Attorney

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

Attorneys for Respondent

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 2011-14403
)	
Petitioner,)	
)	
vs.	)	AFFIDAVIT OF
	)	L. LAMONT ANDERSON
THE STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

L. LaMont Anderson, being first duly sworn on oath, deposes and says:

1. Your affiant is Chief of the Idaho Attorney General's Capital Litigation Unit and represents Respondent Joe Klauser in Fields v. Klauser, #95-422-S-EJL, a federal habeas case in which Zane Jack Fields (Fields) is challenging his conviction and death sentence for the first-degree murder of Mary Katherine Vanderford.

AFFIDAVIT OF L. LAMONT ANDERSON - 1

2. The appendices attached to this affidavit are true and correct copies of original documents filed with the federal court, or true and accurate copies of documents provided by Fields' attorneys to the Idaho Attorney General's Office in Fields v. Klausner, #95-422-S-EJL. While some of the documents do not have file stamps, your affiant has compared the documents with the federal court's register of actions (Appendix LL) to ascertain that they were actually filed with the court and the date on which they were filed. The other appendices referred to below, which are not attached, have been reviewed by your affiant and the summary describing each one is accurate.

3. On October 27, 1995, Leo N. Griffard, an attorney in Boise, Idaho, filed an Application for Permission to Proceed in Forma Pauperis and for Appointment of Counsel, requesting that he be appointed to represent Fields in federal habeas corpus proceedings. (Appendix A.)

4. Griffard's motion was granted by the Honorable Edward J. Lodge on October 30, 1995. (Appendix B.)

5. On November 20, 1995, Griffard filed a Motion for Substitution of Counsel, asking that new counsel be appointed in Fields' habeas case because Griffard had too many obligations in other cases. (Appendix C.)

6. Griffard's motion was granted on January 3, 1996, and Joan M. Fisher was appointed as lead counsel and Scott D. Fouser appointed as co-counsel. (Appendix G.)

7. On March 25, 1996, Fields filed a discovery motion seeking, among other things, to take multiple depositions, including the deposition of Harold Gilcrist, and inquire through interrogatory and requests for production regarding Gilcrist. (Appendix H.)

8. On April 11, 1996, Fields' discovery motion was granted in part, with Judge Lodge expressly permitting the deposition of Gilcrist. (Appendix I.)

9. On April 24, 1996, based upon Fields' request, Fisher moved to withdraw as his attorney. (Appendix J.)

10. On May 2, 1996, Fields filed another discovery motion seeking to depose additional individuals (Appendix K), which was granted in part on May 28, 1996 (Appendix L).

11. The state responded to Fields' interrogatories and requests for production on June 19, 1996 (Appendix M), which were subsequently amended (Appendix O).

12. On July 2, 1996, Fields filed a motion asking the court to appoint Fouser as lead counsel and Michael J. Wood as co-counsel (Appendix N), which was granted on July, 18, 1996 (Appendix Q).

13. On July 22, 1996, Fields filed a motion to stay federal habeas proceedings (Appendix R), which included an affidavit from Fouser detailing the investigation that had been completed (Appendix S).

14. On July 29, 1996, Fields filed a Motion to Extend Time, seeking an extension of time to conduct discovery, which had not been completed pursuant to the court's July 29, 1996 deadline (Appendix T), which included an affidavit from Fouser explaining why discovery had not been completed (Appendix U).

15. The federal district court granted Fields' Motion to Extend Time giving him until November 1, 1996, to complete discovery and explaining if it was not completed by that date the requests for discovery would "no longer [be] authorized; the

court also agreed to stay the federal habeas case pending completion of state successive post-conviction proceedings. (Appendix V.)

16. Fields never noticed the depositions the district court permitted him to take and no depositions were ever taken in his federal habeas case.

17. Upon completion of state court proceedings, the stay was lifted on May 3, 2001. (Appendix W.)

18. On May 14, 2001, Fields filed a motion to permit Wood to withdraw and to substitute the Federal Defenders of Eastern Washington and Idaho (Federal Defenders) as co-counsel (Appendix X), which the district court granted on May 22, 2001 (Appendix Z).

19. Despite having missed the deadline for completing discovery, on June 14, 2002, Fields filed another discovery motion (Appendix AA), which the district court denied (Appendix HH, pp.15-17).

20. On October 8, 2002, Fields filed another motion to substitute counsel seeking to discharge Fouser and have Dennis Benjamin appointed as co-counsel (Appendix BB) with a supporting affidavit (Appendix CC), which the district court granted on October 28, 2002 (Appendix GG); the Federal Defenders and Benjamin continue to represent Fields in his habeas case.

21. On August 27, 2008, the district court entered a sua sponte order staying Fields' habeas case pending completion of additional successive post-conviction proceedings. (Appendix II.)

22. On January 5, 2012, your affiant filed a Motion to Vacate Stay (Appendix JJ) with an accompanying brief (Appendix KK), asking the district court to lift the stay imposed on August 27, 2008, which remains pending before the court.

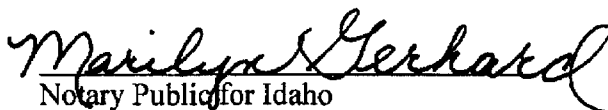
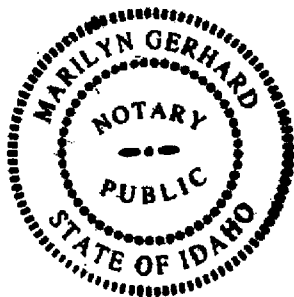
Further your affiant sayeth naught.

DATED this 20th day of January, 2012.



L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

SUBSCRIBED and Sworn to before me this 20th day of January, 2012.



Notary Public for Idaho
Residing at: Middleton, Idaho
My Commission Expires: 10/22/2016

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OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

* * * * *

ZANE JACK FIELDS,)	
	)	NO. 95-422-S-EJL
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	PETITIONER'S MOTION TO
JOE KLAUSER, et al,	)	CONDUCT CIVIL DISCOVERY
	)	AND PROPOSED INITIAL
Respondents.	)	REQUEST FOR DISCOVERY
)	

COMES NOW, ZANE JACK FIELDS, petitioner in the above entitled action, by and through his attorneys, JOAN M. FISHER and SCOTT E. FOUSER, and requests this Honorable Court to grant him leave to conduct discovery as follows pursuant to Rules 6 and 11 of the Rules Governing §2254 Cases in the United States District Courts, Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, and District of Idaho Local Rule 9.4(g)(5), and submits the following requests for production and interrogatories, to be

PETITIONER'S MOTION TO CONDUCT
CIVIL DISCOVERY AND PROPOSED
INITIAL REQUEST FOR DISCOVERY - 1

Appendix 0242H

provided fully in writing, under oath, within thirty (30) days from the date of service of said requests upon respondents. In addition, petitioner requests permission to require the depositions of persons set forth below.

PROPOSED INITIAL REQUESTS FOR DISCOVERY

TO: JOE KLAUSER and to ALAN G. LANCE, ATTORNEY GENERAL

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, petitioner herewith submits the following Interrogatories and Request for Production, each of which, you shall answer, under oath, in writing, separately, and in accordance with the definitions and instructions set forth below. The answers shall be signed by the person making them, and a copy of the answers, together with your objections, if any, shall be served not later than thirty (30) days after the service of these Interrogatories and Requests for Production. The answers shall also be signed by the attorney representing the person(s) answering the Interrogatories.

You are under a duty to make timely supplementation of your responses with respect to any Interrogatory addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at any hearing held in regard to this action, the subject matter on which he is expected to testify, and the substance of such testimony. In addition, you are under a continuing obligation to supplement your responses as to the

INTERROGATORY NO. 17.: Identify each and every communication between any person acting on behalf of the prosecution in this case and Keith Edson, Betty Hornecker, Nancy Carol Miller, Vickie Tippetts and Robert Starbrad, witnesses at trial.

ANSWER TO INTERROGATORY NO. 17.:

REQUEST FOR PRODUCTION NO. 13.: Produce for inspection and copying each and every document or communication upon which you relied in your Answer to Interrogatory No. 17.

REQUEST FOR PRODUCTION NO. 14.: Produce for inspection and copying the institutional records of inmates, Scott Bianchi, Jeffrey L. Acheson, Joe Heistand, Salvador Martinez, Harold Gilcrist and petitioner, including, but not limited to, the institution, unit number, wing, tier and cell number in which such inmates have been housed from February, 1980, to the present time, and any and all records regarding pardon, parole, commutation of sentence of the aforementioned inmates and any and all documents evidencing requests for and granting or denial of, any special,

favorable or preferential treatment during incarceration of the
aforementioned individuals; specifically including records of
inmate classification and visitations, and all records of inmate
request forms prepared by the aforesaid individuals.

DEPOSITIONS

In addition, petitioner respectfully requests leave to
conduct depositions of the following:

Detective Dave Smith, A.C.S.D.

Detective Mark Ayotte, B.C.P.D.

Pam Sonnen, Deputy Warden, I.C.I.O.

Harold Gilcrist

Scott Bianchi

Joe Heistand

Jeffrey L. Acheson

Alan E. Trimming

Amyl Myshin

Richard Johnson

Glen Elam

Gar Hackney

John Lynn


Roger Bourne

Kerry Troutner

Said depositions are necessary and material to the just
disposition of the pending Petition.

RESPECTFULLY SUBMITTED this 25 day of March, 1996.

JOAN M. FISHER
WIEBE & FOUSER, P.A.



SCOTT E. FOUSER
Attorneys for Petitioner
Residing at Caldwell, Idaho

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing document was mailed to:

Lynn Thomas
Deputy Attorney General
Statehouse Rm. 210
P.O. Box 83720
Boise, ID 83720

properly enclosed in an envelope, with postage prepaid, on this 25 day of March, 1996.



SCOTT E. FOUSER

Handwritten initials

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OF THE STATE OF IDAHO

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

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(JDE)

ZANE JACK FIELDS,

Petitioner,

v.

JOE KLAUSER, Warden,

Respondent.

CIVIL NO. 95-422-S-EJL

CAPITAL CASE

ORDER GRANTING IN PART
AND DENYING IN PART
PETITIONER'S MOTION TO
CONDUCT DISCOVERY

The petitioner seeks permission pursuant to Rules 6 and 11 of the Rules Governing § 2254 Cases to engage in discovery in the form of interrogatories, requests for production, and depositions of fifteen named individuals. The respondent opposes the motion on the grounds that the petitioner is seeking to relitigate the petitioner's guilt, and that the requested discovery is not supported by a demonstration of good cause. After reviewing the discovery requests and the parties' memorandum, the court rules as follows.

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DISCUSSION

Rule 6 of the Rules Governing § 2254 Cases allows the petitioner "to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so." To demonstrate good cause the petitioner must show the discovery would assist in establishing a ground for relief set forth in the petition for writ of habeas corpus. See Harris v. Vasquez, 949 F.2d 1497, 1512-13 (9th Cir. 1990), cert. denied, 503 U.S. 910 (1992). The decision to permit discovery is committed to the sound discretion of the habeas court. Campbell v. Blodgett, 982 F.2d 1356, 1358 (9th Cir. 1993).

1. Interrogatories and Requests for Production

After reviewing the petitioner's proposed interrogatories and requests for production, the court finds that many are over broad and not sufficiently supported by a showing of good cause. Accordingly, the following requests will not be allowed as currently presented.

Interrogatory No. 3 is over broad and has little relevance to the petitioner's efforts to secure habeas relief. Therefore, this interrogatory will not be allowed.

Interrogatory No. 4 is premature; if a motion for evidentiary

hearing is granted, the parties will be required to give prior notice of the witnesses they intend to call. This interrogatory will not be allowed.

Interrogatory No. 5 and Request for Production No. 2 relate to a ground for relief that was not presented to the Idaho Supreme Court. Because the subject matter of this interrogatory involves an unexhausted claim, the interrogatory and request for production will not be allowed.

Interrogatories No. 6, 7, 8, and 9, and Requests for Production No. 3, 4, 5, and 6 concern the testimony of the "jailhouse informants." Discovery relating to the jailhouse informants is relevant to the petitioner's efforts to obtain relief in the habeas action, but only as it concerns the murder of Mary Vanderford. Accordingly, the court will permit this discovery, but will limit the scope of the interrogatories and requests for production to communications between the jailhouse informants and the state, and to documents concerning the same, that relate to the "Wishing Well" murder of Mary Vanderford.

Interrogatories No. 10 and 11 and Requests for Production No. 7 and 8 pertain to individuals that did not testify at any of the proceedings culminating in the conviction of the petitioner. The petitioner has not demonstrated good cause for allowing these

discovery requests, and therefore the interrogatories and requests for production will not be allowed.

Interrogatory No. 13 does not seek to elicit any information relevant to the petitioner's habeas claims, and therefore will not be allowed.

Request for Production No. 11 concerns the exhibits offered and introduced into evidence at trial. Because the court has by other order allowed the petitioner to review all exhibits offered during the state court proceedings, this request will not be allowed.

Request for Production No. 12 relates to a ground for relief that was not presented to the Idaho Supreme Court, and therefore this request will not be allowed.

Interrogatory No. 15 is over broad and is not adequately supported by a showing of good cause. Therefore, this interrogatory will not be allowed.

Interrogatory No. 16 seeks information that is requested by other interrogatories and therefore will not be allowed.

Interrogatory No. 17 and Request for Production No. 13 are over broad and unsupported by a showing of good cause. The requests will not be allowed.

2. Depositions

The court concludes that the petitioner has shown good cause to conduct depositions of the following individuals:

- A) Detective David Smith
- B) Detective Mark Ayotte
- C) Harold Gilcrist
- D) Scott Bianchi
- E) Joe Heistand
- F) Jeffrey L. Acheson
- G) Amyl Myshin
- H) Gar Hackney
- I) John Lynn

The petitioner fails to make a good cause showing in regards to the following individuals: Pam Sonnen, Alan E. Trimming, Richard Johnson, Glen Elam, Roger Bourne, and Kerry Troutner. The petitioner supports his request as to Alan E. Trimming, Glen Elam, and Roger Bourne by citing grounds for relief that have not been exhausted in the state court. Because the habeas court cannot consider unexhausted claims, factual development of the claims is not warranted. Therefore the court will not grant the petitioner's request to depose these individuals.

The petitioner fails to state with precision the information relevant to the exhausted claims that he hopes to obtain from the

depositions of Pam Sonnen, Richard Johnson, and Kerry Troutner. Accordingly, the petitioner's request as to these individuals also is denied.

ORDER

Based on the foregoing, and being otherwise fully informed in the premises, the court HEREBY ORDERS that:

1. The petitioner's motion for leave to conduct discovery (dkt #20) is GRANTED in part and DENIED in part as follows:

A) The petitioner may submit, for the respondent's answer, interrogatories Nos. 1, 2, 12, and 14. Interrogatories Nos. 6, 7, 8, and 9 may be submitted if limited to a request for identification of communications that relate to the "Wishing Well" murder of Mary Vanderford.

B) The petitioner may submit requests for production Nos. 1, 9, 10, and 14. Requests for production Nos. 3, 4, 5, and 6 may be submitted if the requests are limited to the production of documents that relate to the "Wishing Well" murder of Mary Vanderford.

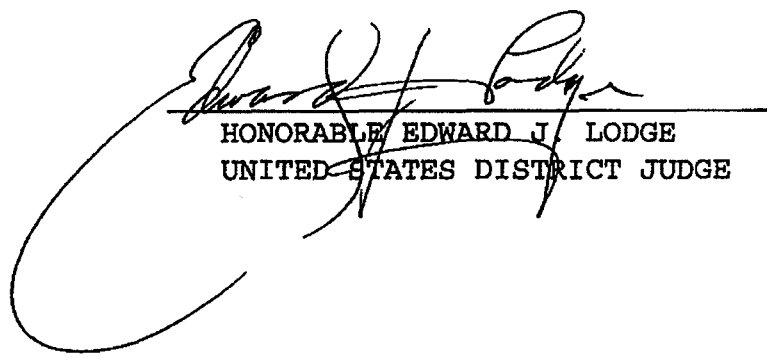
C) The petitioner is authorized to take the depositions of Detective David Smith, Detective Mark Ayotte, Harold Gilcrist, Scott Bianchi, Joe Heistand, Jeffrey L. Acheson, Amyl Myshin, Gar

Hackney, and John Lynn.

IT IS FURTHER ORDERED that the petitioner shall not engage in discovery outside that enumerated without further permission from the court.

IT IS SO ORDERED.

DATED this 11th day of April, 1996.



HONORABLE EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

PAID

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

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ZANE JACK FIELDS,
Petitioner,
v.
JOE KLAUSER, Warden,
Respondent.

CIVIL NO. 95-422-S-EJL
CAPITAL CASE
ORDER

The petitioner, in two separate motions, has requested that the court extend the deadline for the completion of discovery and other ancillary services, and that the court hold in abeyance all other aspects of this habeas action until the petitioner has exhausted his state court remedies. The respondent opposes both motions. The court, finding good cause, will grant the motions.

The petitioner is currently in the process of presenting to the state court his unexhausted claim regarding the alleged ineffectiveness of his appellate counsel. The petitioner maintains that certain other claims were not presented to the state court because appellate counsel labored under a conflict of interest. Because it is not yet entirely clear whether such a conflict of interest is a circumstance that excuses the time-bar of Idaho Code § 2719, the court finds it advisable to defer to the Idaho courts' construction of the state's procedural rules. Accordingly, the

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court will hold in abeyance consideration of the legal issues presented by this habeas action until the state court has ruled on the petitioner's claims. See Neuschafer v. Whitley, 860 F.2d 1470, 1472 n.1 (9th Cir. 1988), cert. denied, 493 U.S. 906 (1989).

The court recognizes that proceeding in this manner has the potential to delay the ultimate resolution of the habeas proceeding. However, the court is confident that the state court will make its determination in an expedient manner, and that the timely resolution of this case will not be materially affected.

The petitioner also asks for an extension of time to complete discovery and other ancillary services previously authorized by the court. The court will grant the request, but cautions that further extensions will not be allowed absent a showing that exceptional and unforeseen events have transpired that make it impossible for the petitioner to comply with the deadline.

ORDER

Based on the foregoing, and the court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that:

1) The petitioner's motion for extension of time (dkt. #50) is GRANTED. The petitioner shall have up to and until November 1, 1996, to complete all authorized discovery and other ancillary services; if not completed by this date they are no longer authorized. All other deadlines set by the order of February 6, 1996, are VACATED.

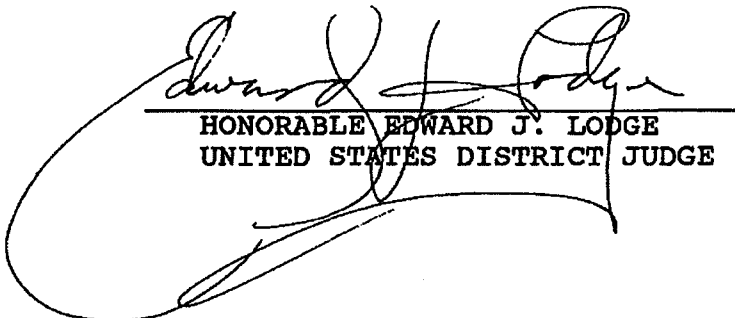
2) The petitioner's motion to hold the habeas proceedings in abeyance (dkt. #46) is GRANTED. The petitioner shall have up to and including thirty (30) days from the date of this order in which to file a second petition for post-conviction relief with the state district court. In the event the petitioner does not file a second state petition within the time required by this order, the respondent may move for reconsideration of the court's present ruling.

3) Counsel for the petitioner shall file quarterly status reports relating to the status of the state proceedings beginning on September 30, 1996, and continuing every three months thereafter. Within seven (7) days of a dispositive ruling on the second petition by a state court, counsel for the petitioner shall file a copy of the written order with this court.

4) The stay of execution previously issued shall remain in full force and effect until final disposition of the matter.

IT IS SO ORDERED.

DATED this 12th day of August, 1996.


HONORABLE EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

Mentioned Law Clerk 1/20/12 by

NO. 924 FILED
A.M. _____ P.M. _____

JAN 25 2012

CHRISTOPHER D. RICH, Clerk
By **JOANNA ORTEGA**
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
Idaho State Bar No. 2127
200 W. Front Street, Room 3191
Boise, Id. 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.)
THE STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV-PC-2011-14403
NOTICE OF HEARING

TO: ZANE JACK FIELDS and TERESA HAMPTON, his Attorney of Record, you will please take notice that on the 8th day of March 2012, at the hour of 1:30 p.m. of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Roger Bourne will move this Honorable Court for it's order to dismiss successive petitions in the above-entitled action.

DATED this 23 day of January 2012.

GREG H. BOWER
Ada County Prosecuting Attorney

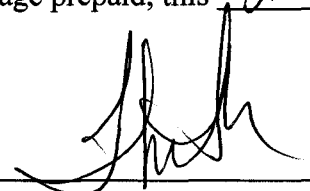
R Bourne

By: Roger Bourne
Deputy Prosecuting Attorney

Jo

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Notice of Hearing to Teresa A. Hampton, 702 W. Idaho, Suite 900, Boise, Idaho 83702 by depositing the same in the United States Mail, postage prepaid, this 20th day of January 2012.



NO. _____ FILED _____
A.M. _____ P.M. 450

FEB 08 2012

CHRISTOPHER D. RICH, Clerk
By ROSE WRIGHT
DEPUTY

Samuel Richard Rubin
Federal Public Defender
Teresa A. Hampton, Idaho Bar No. 4364
Federal Defender Services of Idaho
Capital Habeas Unit
702 W. Idaho St., Ste. 900
Boise, ID 83702
Telephone: 208-331-5530
Fax: 208-331-5559

Attorney for Zane Jack Fields

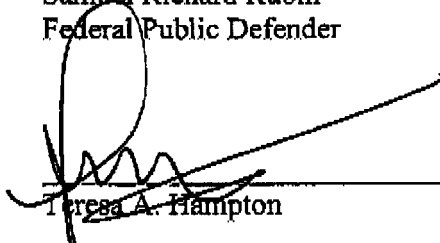
**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ZANE JACK FIELDS,)	
	)	CASE NO. CV PC 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	AMENDED NOTICE OF HEARING
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

NOTICE IS HEREBY GIVEN that the hearing set for the 8th day of March, 2012, has been reset to April 13, 2012 at 1:30 pm. This hearing is set for argument on the Respondent's Motion to Dismiss the successive petition and on Petitioner's Motion to Take Judicial Notice in the above entitled matter.

DATED this 8th day of February, 2012.

Samuel Richard Rubin
Federal Public Defender



Teresa A. Hampton

Attorney for Petitioner Zane Fields

NOV 11 2 19 PM '12

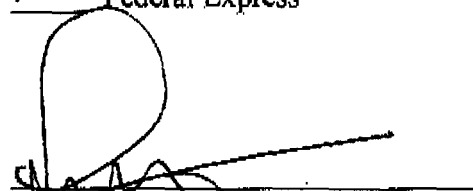
22

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2012, 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:

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

- U.S. Mail
- Hand Delivery
- Facsimile (208-287-7709)
- Federal Express



Telesa A. Hampton

NO. 11-17-12

NO. _____ FILED 5:53 P.M. APR 4 2012

Samuel Richard Ruben
Federal Public Defender
Teresa A. Hampton, Idaho Bar No. 4364
Federal Defender Services of Idaho
Capital Habeas Unit
702 W. Idaho St., Ste. 900
Boise, ID 83702
Telephone: 208-331-5530
Fax: 208-331-5559

APR 04 2012

CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

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

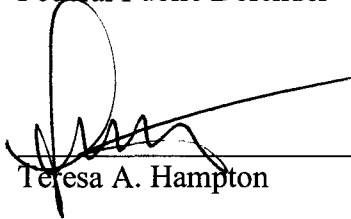
ZANE JACK FIELDS,)	
	)	CASE NO. CV PC 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	NOTICE OF FILING
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

Petitioner Zane Jack Fields, by and through his counsel of record, Teresa A. Hampton, hereby files the attached Affidavit of Harold Gilcrist, dated March 14, 2012. Petitioner files said Affidavit in support of his Petition for Post-Conviction Relief filed on July 28, 2011 and his Response in Support of Petition for Post Conviction Relief and in Opposition to State's Motion to Dismiss filed on December 20, 2011. Said Affidavit is also filed in opposition to the State's Response to Successive Petition for Post Conviction Relief and Motion to Dismiss filed on September 28, 2011, the Addendum to the State's Response to Successive Petition for Post Conviction Relief and Motion to Dismiss filed on September 29, 2011, and the State's Reply to the Petitioner's Response in Support of Successive Petition for Post Conviction Relief and in Opposition to State's Motion to Dismiss filed on or around January 20, 2012.

SK

DATED this 4th day of April, 2012.

Samuel Richard Rubin
Federal Public Defender



Teresa A. Hampton

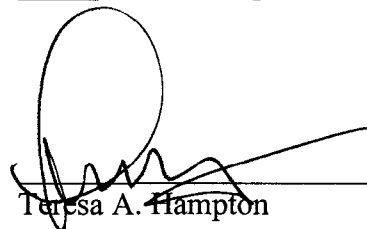
Attorney for Petitioner Zane Fields

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2012, 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:

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

____ U.S. Mail
 Hand Delivery
____ Facsimile (208-287-7709)
____ Federal Express



Teresa A. Hampton

ATTACHMENT
(Affidavit of Harold Gilcrist
Dated March 14, 2012)

AFFIDAVIT OF HAROLD RAYMOND GILCRIST

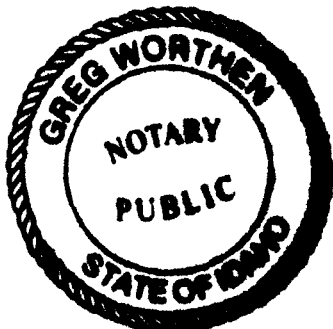
I, Harold Raymond Gilcrist, mindful of the penalties for perjury, declare under oath as follows:

1. I am a person over eighteen (18) years of age and competent to testify.
2. I have previously provided an affidavit regarding the Zane Fields case, and I am providing this affidavit as a supplement to that affidavit.
3. The affidavit I previously provided is the truth.
4. For years I was unwilling to tell anybody what really happened regarding my testimony against Zane Fields.
5. In 2009 I had a major medical crisis and was in a coma for a period of time.
6. It was only after that major medical crisis, which resulted in my near death, that I took stock of my life and realized the incredible amount of guilt I felt at having falsely testified against Zane Fields. When Greg Worthen of the Federal Defender Services of Idaho approached me in 2011, while I was in the Kootenai County Jail, it gave me the opportunity to tell the truth and come clean about my false story and testimony that Zane had confessed to me. That is when I was finally able to tell somebody not only how I had lied, but also from where I got my information, how I helped other people lie, and my motivation for lying.
7. Prior to this medical crisis, which occurred in 2009, I would not have told the truth about what happened.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Coeur d'Alene, Idaho, on March 14, 2012.

Signed Harold Gilcrist

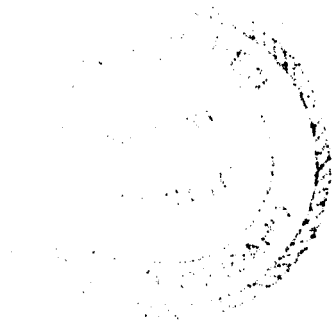
SUBSCRIBED AND SWORN to before me this 14th day of March, 2012.



[Signature]
NOTARY PUBLIC FOR Idaho

Residing at: Ada County

Commission Expires: 8/24/13



Neville Law Clerk
6-29-12
TIME RECEIVED
June 27, 2012 1:16:26 PM

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CAPITAL HABEAS UNIT

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JUN 28 2012

CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

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

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

ZANE JACK FIELDS,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.


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Case No. CV PC 2011 14403


STIPULATION TO WAIVE
ORAL ARGUMENT AND TO
ALLOW COURT TO DECIDE
CASE BASED UPON THE
PLEADINGS

COMES NOW, Roger Bourne, Deputy Prosecuting Attorney, and Teresa Hampton, Capital Habeas Unit, Attorney for Petitioner, who advised the Court that they stipulate and agree that oral argument is waived by both parties and that the case is fully submitted to the Court for determination on the pleadings.

RESPECTFULLY SUBMITTED this 27th day of June 2012.


Teresa Hampton
Attorney for Defendant

GREG H. BOWER
Ada County Prosecuting Attorney


Roger Bourne
Deputy Prosecuting Attorney

94

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA NOV 27 2012

CHRISTOPHER D. RICH, Clerk
By JANET ELLIS
DEPUTY

ZANE JACK FIELDS,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-14403

MEMORANDUM DECISION
AND ORDER OF DISMISSAL OF
PETITION FOR POST-CONVICTION
RELIEF

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 Jack Fields' Petition for Post-Conviction Relief filed July 28, 2011; the State's Motion to Dismiss filed September 28, 2011, and the Petitioner's Motion to Take Judicial Notice. On June 28, 2012, the parties filed their Stipulation to Waive Oral Argument and to Allow Court to Decide Case Based on the Pleadings. The Petitioner's Motion to Take Judicial Notice is unopposed, and is hereby GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is currently incarcerated 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 on Fairview Avenue in Boise with the intent to commit robbery. The jury found the Petitioner guilty after a trial during which the State offered the testimony of the following inmate informant

J

1 witnesses: Jeffrey Acheson, Scott Bianchi, and Joe Heistand. Harold Gilcrist was another inmate
2 informant who did not testify at trial, but who testified at other proceedings including the
3 preliminary hearing as well as in the hearing regarding the Defendant's motion for new trial.

4 On July 28, 2011, the Petitioner filed his latest successive Petition for Post-Conviction
5 Relief. The successive petition filed July 28, 2011, is approximately the Petitioner's sixth
6 successive petition. The July 28, 2011 successive petition alleged three claims. Claim I is entitled
7 "New Evidence Establishes Fields' Innocence." Claim II is entitled "Police and Prosecutorial
8 Misconduct Violated State and Federal Due Process Protections." Finally, Claim III is entitled "The
9 State Actions Violated Due Process and the Right to a Fair Trial." Paragraphs twenty-two (22)
10 through thirty-eight (38) of the successive petition filed July 28, 2011, repeat and restate issues
11 which have already been adjudicated in the Petitioner's prior post-conviction petitions.
12

13 Attached to the July 28, 2011 successive petition are a number of exhibits which were
14 previously submitted in support of several of the Petitioner's prior post-conviction petitions, along
15 with several new exhibits, including the Affidavit of Greg Worthen (an investigator for the Capital
16 Habeas Unit of the Federal Defender Services of Idaho), and the unsworn and unverified
17 Declaration of Harold Raymond Gilcrist. In his Affidavit, Mr. Worthen set forth facts regarding the
18 efforts of the Federal Defenders to locate Mr. Gilcrist since December of 2007. In his unverified
19 Declaration dated July 8, 2011, Mr. Gilcrist stated that "Despite my previous testimony and
20 statements, Zane Fields never told me he killed anybody. Fields never implicated himself to me as
21 the murderer or a participant in the murder of Mary Vanderford at the Wishing Well, the murder for
22 which he was convicted and sentenced to death." Mr. Gilcrist further stated that "the information I
23 said I got from Fields was actually information provided directly to me by Detective Smith."
24

25 On September 28, 2011, the State's Response to July 28, 2011 Successive Petition for Post
26 Conviction Relief and State's Motion to Dismiss was filed. In its Response and Motion to Dismiss,

1 the State argued that the unverified Declaration of Harold Gilcrist "is not an affidavit as
2 contemplated by I.C. § 19-4903 and is not otherwise admissible evidence." In addition, the State
3 argued that the successive petition was untimely, and that "the relevant time for filing a petition
4 [f]or post conviction relief is not when the federal defender began working on Fields' case. The
5 relevant time begins with his first post conviction attorneys work."

6 On December 21, 2011, the Petitioner's Response in Support of Petition for Post Conviction
7 Relief and in Opposition to State's Motion to Dismiss was filed. Attached to the back of the
8 Petitioner's brief as Exhibit 1 is the verified Affidavit of Harold Raymond Gilcrist. Mr. Gilcrist's
9 Affidavit appears to contain the same information as the Declaration filed with the successive
10 Petition; however, the Petitioner apparently attempted to cure the defect alleged by the State, as the
11 Affidavit is notarized. In addition, the Affidavit of Bruce Livingston, an assistant federal defender,
12 was attached to the Petitioner's brief in Response in an apparent attempt to respond to the State's
13 argument regarding timeliness. There is no explanation in the record why Mr. Gilcrist did not verify
14 the facts he originally alleged in his unsworn declaration for a period of approximately five months
15 after the filing of the July 28, 2011 successive petition; nor is there any explanation in the record
16 why the information contained in Mr. Livingston's affidavit was not part of the July 28, 2011
17 successive petition.
18
19

20 On January 20, 2012, the State's Reply to the Petitioner's Response in Support of the July
21 28th 2011 Successive Petition for Post Conviction Relief and in Opposition to State's Motion to
22 Dismiss was filed, in which the State argued further that the successive petition was untimely, and
23 that none of the affidavits submitted (including those filed on December 21, 2011) establish the
24 factual basis necessary "to support the petitioner's claim of making a diligent search for Gilcrist nor
25 that the petition was timely filed." Specifically, the State pointed out that none of the affidavits
26

1 made “any attempt to establish why Gilcrist was not searched for, found and interviewed in 1992 or
2 the next 10 years to 2002 when the federal defenders were appointed.”

3 On April 4, 2012, Petitioner filed another Affidavit of Harold Raymond Gilcrist, in which
4 Mr. Gilcrist made the new claim, more than eight months after the filing of the July 28, 2011
5 successive petition, that he had a “major medical crisis” in 2009, and that prior to that crisis, he
6 “would not have told the truth about what happened.” Although Mr. Gilcrist’s medical crisis was
7 alleged to have occurred in 2009, no attempt has been made to explain why that fact was omitted
8 from the July 28, 2011 successive post-conviction, and why that fact was only uncovered more than
9 eight months after the successive petition was filed, and after strenuous argument by the State
10 regarding the timeliness of the petition. On June 28, 2012, the parties filed their Stipulation to
11 Waive Oral Argument and to Allow Court to Decide Case Based Upon the Pleadings.
12

13 DISCUSSION

14 Idaho Code § 19–4901(a)(4) provides for or allows a claim for post-conviction relief when
15 “there exists evidence of material facts, not previously presented and heard, that requires vacation of
16 the conviction or sentence in the interest of justice.” *Id.* (emphasis added). Accordingly, the
17 portions of this successive petition filed July 28, 2011, including but not limited to paragraphs
18 twenty-two (22) through thirty-eight (38), which merely restate facts previously presented and
19 previously heard in prior proceedings, are not properly the subject of this post-conviction petition.
20 The Petitioner’s argument that this Court must consider all evidence, including that previously
21 presented and heard either at trial or in each of Petitioner’s prior post-conviction claims, has
22 previously been rejected by the Idaho Supreme Court. *Fields v. State*, 151 Idaho 18, 23, 253 P.3d
23 692, 697 (2011) (“Fields’s argument that all evidence must be considered would also conflict with
24 the requirement in section 19–2719 that claims for relief that were known, or reasonably should
25 have been known, are waived if they are not brought within the time limits set forth in that
26

1 section”); *Row v. State*, 135 Idaho 573, 576, 21 P.3d 895, 898 (2001) (“claims raised in a prior
2 application for post-conviction relief are barred by operation of Idaho Code § 19-2719(5)”).

3 However, the Court notes that the July 28, 2011 successive petition also includes new
4 allegations not previously raised in prior proceedings, which allegations are based upon the
5 Declaration of Harold Gilcrist; specifically, Mr. Gilcrist’s statements that the Petitioner did not
6 confess to Mr. Gilcrist, and that Mr. Gilcrist obtained information about the case from now retired
7 Boise Police Department Detective Dave Smith. Because the claims already presented by the
8 Petitioner in prior proceedings are not properly the subject of this successive post-conviction
9 proceeding, those claims are dismissed with prejudice. Accordingly, this Court’s analysis focuses
10 solely on the Petitioner’s new allegations based upon the Declaration of Harold Gilcrist.
11

12 I.C. § 19–2719 provides a defendant just one opportunity to raise all challenges to a
13 conviction and sentence in a petition for post-conviction relief unless it can be demonstrated that
14 claims raised in a successive petition were not known and reasonably could not have been known
15 within forty-two days of the entry of the judgment of conviction. *State v. Rhoades*, 120 Idaho 795,
16 820 P.2d 665 (1991), *cert. denied*, 504 U.S. 987 (1992). Idaho Code § 19-2719(11) provides in part
17 that any successive petition for post-conviction relief not meeting those requirements “shall be
18 dismissed summarily.”
19

20 I.C. § 19-2719(5) sets forth under what circumstances a successive petition may be
21 considered, and provides in pertinent part:
22

23 If the defendant fails to apply for relief as provided in this section and within the time limits
24 specified, he shall be deemed to have waived such claims for relief as were known, or
25 reasonably should have been known. The courts of Idaho shall have no power to consider
26 any such claims for relief as have been so waived or grant any such relief.

- (a) An allegation that a successive post-conviction petition may be heard because of the applicability of the exception herein for issues that were not known or could not reasonably have been known shall not be considered unless the applicant

1 shows the existence of such issues by (i) a precise statement of the issue or issues
2 asserted together with (ii) material facts stated under oath or affirmation by
3 credible persons with first hand knowledge that would support the issue or issues
4 asserted. A pleading that fails to make a showing of excepted issues supported by
5 material facts, or which is not credible, must be summarily dismissed.

6 (b) A successive post-conviction pleading asserting the exception shall be deemed
7 facially insufficient to the extent it alleges matters that are cumulative or
8 impeaching or would not, even if the allegations were true, cast doubt on the
9 reliability of the conviction or sentence.

10 Idaho Code § 19-2719 sets forth what the Idaho Supreme Court has coined a “heightened
11 pleading requirement” for successive post-conviction petitions. *Stuart v. State*, 149 Idaho 35, 47,
12 232 P.3d 813, 825 (2010). Such heightened pleading requirement means that “petitioner bringing a
13 successive petition for post-conviction relief has a heightened burden and must make a prima facie
14 showing that issues raised in that petition fit within the narrow exception provided by the statute.”
15 *Pizzuto v. State*, 127 Idaho 469, 471, 903 P.2d 58, 60 (1995). Where a claim is brought which
16 alleges that a claim could not reasonably be known within the forty-two day period prescribed by
17 I.C. § 19–2719(5), the Court reviews “the allegations in [a] successive petition to determine whether
18 ... claims were known or reasonably should have been known within statutory time limits
19 established in I.C. § 19–2719. If such claims are barred...[the Court] will dismiss the successive
20 petition.” *Porter v. State*, 139 Idaho 420, 421, 80 P.3d 1021, 1022 (2003) (citing I.C. § 19–
21 2719(11)).

22 The judgment imposing the Petitioner’s death sentence was filed in March of 1991. Within
23 forty-two days of the filing of the judgment, the Petitioner was required to file any factual challenge
24 to his conviction that was known or reasonably should have been known. I.C. § 19–2719(3). While
25 there is an exception for claims that were not and could not have been known within that time
26 period, a Petitioner is required to bring those claims within a reasonable time after they were known
or should have been known. *Fields v. State*, 151 Idaho 18, 25, 253 P.3d 692, 699 (2011); *Pizzuto v.*

1 *State*, 134 Idaho 793, 798, 10 P.3d 742, 747 (2000). Claims not raised within a reasonable time are
2 deemed to be waived. *Stuart v. State*, 149 Idaho 35, 41, 232 P.3d 813, 819 (2010).

3 It appears that Mr. Gilcrisp last testified with regard to this case in the first post-conviction
4 proceeding. A review of the transcript of that testimony, which occurred on January 6, 1992,
5 reveals that Mr. Gilcrisp had not yet changed his story within forty-two days of the filing of the
6 judgment, and the Court finds that the facts regarding Mr. Gilcrisp's new story, alleged in the July
7 28, 2011 successive petition, could not reasonably have been known within that time period. Thus,
8 the issue in this case, when determining whether the new claim not previously alleged based on Mr.
9 Gilcrisp's changing story is barred pursuant to I.C. § 19-2719, is when the new facts alleged
10 reasonably should have been known and whether the Petitioner brought those claims within a
11 reasonable time after they should have been known.
12

13 A prima facie showing is a showing "sufficient to establish a fact or raise a presumption
14 unless disproved or rebutted." Black's Law Dictionary 1228 (8th ed. 2004). To make the required
15 prima facie showing to meet the heightened pleading requirement of I.C. § 19-2719, the Petitioner
16 bears the burden of alleging facts showing when his claim was known or reasonably should have
17 been known. *Stuart*, 149 Idaho at 42, 232 P.3d at 820. A petition which is "silent as to when the
18 facts supporting [a Petitioner's] claims were known or reasonably could have been known" does not
19 meet that burden. *Id.*
20

21 In this case, the July 28, 2011 successive petition is silent as to when the facts regarding Mr.
22 Gilcrisp's decision to change his story reasonably could have been known.¹ Additionally, the
23 Affidavit of Greg Worthen attached to the petition fails to show that the petitioner's claims
24
25

26 ¹ The July 28, 2011 successive petition contains no information regarding when Mr. Gilcrisp decided to change his story regarding Fields' confession, a fact which is central to the determination of when the claim reasonably should have been known.

1 regarding Mr. Gilcrist's changed story could not reasonably have been discovered through the
2 exercise of due diligence between 1992 and 2007, as Mr. Worthen's affidavit does not mention the
3 date of any specific efforts to locate Mr. Gilcrist prior to 2007. With regard to the later affidavits
4 submitted by the Petitioner months after the July 28, 2011 successive petition was filed, the
5 Petitioner has cited no authority which stands for the proposition that a petition which fails to meet
6 the heightened pleading requirement to allege facts showing when the Petitioner's claims were
7 known or reasonably could have been known, may be "cured" by submitting further affidavits
8 approximately five months after the successive petition was filed (the Affidavit of Bruce Livingston
9 attached to a brief filed December 21, 2011), or eight months after the successive petition was filed
10 (the Affidavit of Harold Raymond Gilcrist filed April 4, 2012). Accordingly, the Court finds that
11 the Petitioner has not met his burden of alleging facts showing when his claim was known or
12 reasonably should have been known, pursuant to I.C. § 19-2719. Thus, the July 28, 2011 successive
13 post-conviction petition is barred pursuant to I.C. § 19-2719.

15 However, even if the July 28, 2011 successive petition had not been barred for failure to
16 meet the heightened pleading requirement imposed on successive post-conviction petitions, the July
17 28, 2011 successive petition would be barred pursuant to Idaho Code § 19-2719(5), which requires
18 that the pleading make the showing of excepted issues supported by material facts stated under oath
19 or affirmation by credible persons with first hand knowledge. A post-conviction petition "must
20 present or be accompanied by admissible evidence supporting its allegations, or the petition will be
21 subject to dismissal." *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008) (*citing* I.C. §
22 19-4903); *Row v. State*, 135 Idaho 573, 580, 21 P.3d 895, 902 (2001) (holding that post-conviction
23 petitions which do not include or are unaccompanied by sworn statements setting forth the material
24 facts are properly dismissed).

1 The Petitioner's new allegations contained in the July 28, 2011 successive petition regarding
2 Mr. Gilcrist's changing story were not supported by material facts stated under oath or affirmation,
3 as Mr. Gilcrist's Declaration was unsworn and unverified. Thus, the July 28, 2011 successive
4 petition does not meet the requirement of I.C. § 19-2719(5) that the pleading make the showing of
5 excepted issues supported by material facts stated under oath or affirmation. Nor did the July 28,
6 2011 successive petition meet the requirement of I.C. § 19-4903 that the petition present or be
7 accompanied by admissible evidence supporting its allegations.

8
9 The language in I.C. § 19-2719(5) requiring summary dismissal does not allow for pleadings
10 which fail to make a showing of excepted issues supported by material facts stated under oath or
11 affirmation to be "cured" by attaching a new, notarized, recitation of the facts to the back of a brief
12 opposing the State's Motion to Dismiss, approximately five months after the successive post-
13 conviction petition was filed. In addition, the Petitioner has not even attempted to explain why he
14 was unable to submit Mr. Gilcrist's sworn statement when the Petition was filed. Was Mr. Gilcrist
15 willing to sign an unsworn statement, but not a sworn statement until being finally convinced
16 months after the petition was filed? The record is silent on this point, which, in addition to the
17 suspect timing of the late-filed documents, weighs against the requirement of I.C. § 19-2719(5) that
18 the statement be made under oath or affirmation by credible persons.² In any event, the plain
19 language of I.C. § 19-2719(5) states that *pleadings* which fail to make the required showing of
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25 ² The Court declines at this point to make a credibility determination, but notes that in the Response to State's Motion to
26 Dismiss Petition for Post-Conviction Scientific Testing filed on April 11, 2008 in Ada County Case No. SPOT
0200590D, the Petitioner attacked the credibility of the inmate informant witnesses, such as Mr. Gilcrist, whom the State
did not call to testify at trial. The Petitioner characterized such witnesses as "dirty" and "unsavory." The July 28, 2011
successive petition is silent regarding the issue of the Petitioner's current view of Mr. Gilcrist's credibility.

1 excepted issues supported by material facts stated under oath or affirmation “must be summarily
2 dismissed.” *Id.* (emphasis added).

3 Finally, even if the July 28, 2011 successive petition had not been barred for failure to meet
4 the heightened pleading requirements, or for failure to make a showing of excepted issues supported
5 by material facts stated under oath or affirmation, the Court finds that the July 28, 2011 successive
6 post-conviction petition must be dismissed pursuant to I.C. § 19-2719(5)(b) because Mr. Gilcrist’s
7 changing story is merely impeaching.

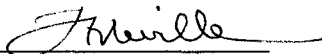
8 As noted previously, Mr. Gilcrist did not testify at the Petitioner’s underlying criminal trial.
9 Thus, Mr. Gilcrist’s own testimony played no part in the jury’s verdicts. Mr. Gilcrist’s statements
10 that “the information I said I got from Fields was actually information provided directly to me by
11 Detective Smith” and that he “shared the information [he] obtained from Detective Smith about the
12 crime” with Joe Heistand and Scott Bianchi, and that he “would not have been able to help Bianchi
13 and Heistand testify as they did, without the information provided to [him] by Detective Dave
14 Smith” merely serves as an attempt to impeach the testimony of Scott Bianchi, Joe Heistand, and
15 Detective Dave Smith, all of whom testified at the trial. Statements which are merely impeaching
16 cannot support a successive application for post-conviction relief. *Fields v. State*, 151 Idaho 18, 25,
17 253 P.3d 692, 699 (2011).
18
19

20 CONCLUSION

21 On the basis of this successive Petition for Post-Conviction Relief and the present record,
22 this Court is satisfied that Petitioner is not entitled to post-conviction relief and that no purpose
23 would be served by any further proceedings. The portions of the July 28, 2011 successive post-
24 conviction petition alleging facts previously presented and considered are barred pursuant to I.C. §§
25 19-4901, 19-2719. The new claims alleged in the July 28, 2011 successive petition supported by
26 Mr. Gilcrist’s new statements that the Petitioner did not confess to Mr. Gilcrist, and that Mr. Gilcrist

1 obtained information about the case from now retired Boise Police Department Detective Dave
2 Smith are barred by Idaho Code § 19-2719 for failure to meet the heightened pleading requirement
3 to allege facts showing when the claim reasonably should have been known. In addition, the July
4 28, 2011 successive petition does not meet the requirement of I.C. § 19-2719(5) that the pleading
5 make the showing of excepted issues supported by material facts stated under oath or affirmation.
6 Finally, the Court finds that Mr. Gilcrist's changing story is merely impeaching and cannot support a
7 successive application for post-conviction relief pursuant to I.C. § 19-2719(5)(b). For the foregoing
8 reasons, the Petition for Post-Conviction Relief is DISMISSED with prejudice. AND IT IS SO
9 ORDERED.
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11 Dated this 27th day of November, 2012.

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14 Thomas F. Neville
15 District Judge
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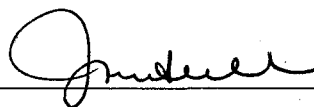
CERTIFICATE OF MAILING

I hereby certify that on this 27 day of November 2012, I mailed (served) a true and correct copy of the within instrument to:

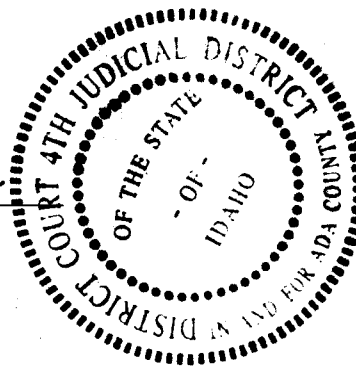
TERESA A. HAMPTON
FEDERAL DEFENDER SERVICES OF IDAHO
702 W. IDAHO, SUITE 900
BOISE, ID 83702

GREG BOWER/ROGER BOURNE
ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho



Deputy Clerk



NO. _____ FILED _____
A.M. 11:58 P.M. _____

NOV 29 2012

CHRISTOPHER D. RICH, Clerk
By JANET ELLIS
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Roger Bourne
Deputy Prosecuting Attorney
ISB No. 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)	
)	
Petitioner,	)	CASE NO. CV PC 2011 14403
)	
vs.	)	ORDER DISMISSING PETITION
	)	FOR POST CONVICTION RELIEF
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

For the reasons set out in the Court's Memorandum Decision and Order filed November 27, 2012 in the above case, the Petitioner's Petition for Post Conviction Relief is dismissed. *So Ordered.*

Jm

DATED this 29th day of November, 2012.

Thomas F. Neville
Thomas F. Neville
District Judge

✓

Samuel Richard Rubin
Federal Public Defender
Teresa A. Hampton, Idaho Bar No. 4364
Federal Defender Services of Idaho
Capital Habeas Unit
702 W. Idaho St., Ste. 900
Boise, ID 83702
Telephone: 208-331-5530
Fax: 208-331-5559

DEC 18 2012

CHRISTOPHER D. RICH, Clerk
By CHELSIE PINKSTON
DEPUTY

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 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	NOTICE OF APPEAL
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

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) and 17, NOTICE IS HEREBY GIVEN THAT:

1. Zane Jack Fields, the above named petitioner, by and through his attorney Teresa A. Hampton of the Federal Defender Services of Idaho, appeals against the above named respondent to the Idaho Supreme Court from the Memorandum Decision and Order of Dismissal of Petition for Post-Conviction Relief granting the State's Motion to Dismiss, entered and filed in the above entitled action on November 27, 2012, by Honorable Thomas F. Neville.

KW

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).

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

a. Whether additional sworn affidavits, filed in support of a petition for post-conviction relief after the filing of the petition, must be considered as material facts stated under oath or affirmation under I.C. § 19-2719 (5)?

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 in this matter be included in the Clerk's Record in addition to those automatically included pursuant to Idaho Appellate Rule 28.

6. 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.)

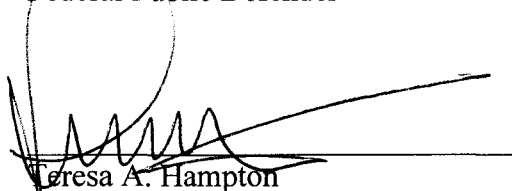
b. That Mr. Fields is exempt from paying the estimated clerk's record fees because he is incarcerated on death row and is indigent;

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.

DATED this 18th day of December, 2012.

Samuel Richard Rubin
Federal Public Defender



Teresa A. Hampton
Attorney for Petitioner Zane Fields

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2012, 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:

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

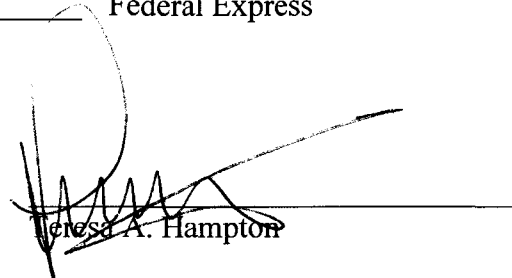
U.S. Mail
 Hand Delivery
 Facsimile (208-287-7709)
 Federal Express

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



DEC 18 2012

CHRISTOPHER D. RICH, Clerk
By CHELSIE PINKSTON
DEPUTY

**Samuel Richard Rubin
Federal Public Defender
Teresa A. Hampton, Idaho Bar No. 4364
Federal Defender Services of Idaho
Capital Habeas Unit
702 W. Idaho St., Ste. 900
Boise, ID 83702
Telephone: 208-331-5530
Fax: 208-331-5559**

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 2011 14403
Petitioner,)	
	)	CAPITAL CASE
vs.)	
	)	MOTION THAT COSTS OF APPEAL
STATE OF IDAHO,	)	BE AT COUNTY EXPENSE
)	
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, 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 post-conviction 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. The Capital Habeas Unit of the Federal Defender Services of Idaho has represented Mr. Fields since 2001, and undersigned counsel states that, to the best of her knowledge, Mr.

KW

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 post-conviction relief in this capital case. U.S. Const. Amend. VI, VIII, 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 and reporter's transcripts, shall be at county expense.

DATED this 18th day of December, 2012.

Samuel Richard Rubin
Federal Public Defender



Teresa A. Hampton

Attorney for Petitioner Zane Fields

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 2012, 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:

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

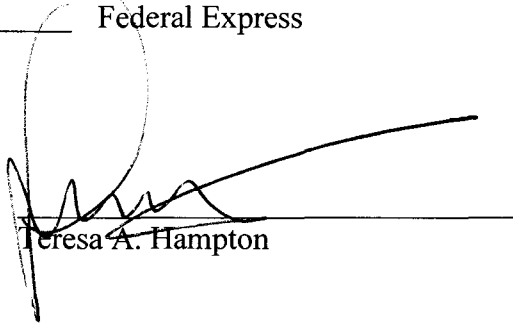
- U.S. Mail
- Hand Delivery
- Facsimile (208-287-7709)
- Federal Express

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



Teresa A. Hampton

RECEIVED

DEC 18 2012

Ada County Clerk

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

NO. _____ FILED P.M. 4:25

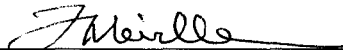
DEC 21 2012

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

CASE NO. CV PC 2011 14403 CHRISTOPHER D. RICH, Clerk
By JANET ELLIS DEPUTY
CAPITAL CASE
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 Petitioner's motion, it is hereby ordered that the costs of appeal, including the cost of the Clerk's Record, shall be at County Expense.

Dated this 21st day of December, 2012.



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:

Teresa A. Hampton
Assistant Federal Defender
Federal Defenders Services of Idaho
702 W. Idaho, Ste. 900
Boise ID 83702

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

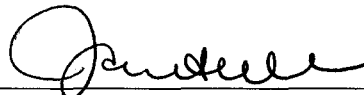
L. LaMont Anderson
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Court Reporter
Ada County District Court
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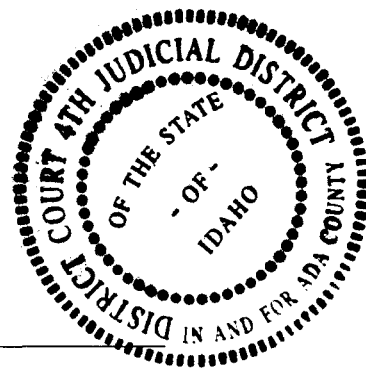
Dated this 21 day of December, 2012.

J. David Navarro
Clerk of the Court

by



Deputy Clerk



ORDER ON MOTION THAT COSTS
OF APPEAL BE AT COUNTY EXPENSE - 2

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-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 40586

CERTIFICATE OF EXHIBITS

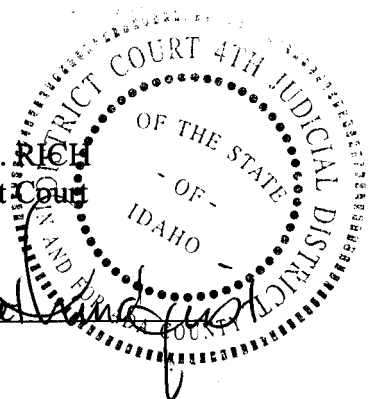
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of
the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 24th day of January, 2013.

CHRISTOPHER D. RICH
Clerk of the District Court

By Margaret Lindquist
Deputy Clerk



CERTIFICATE OF EXHIBITS

000288

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-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 40586

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

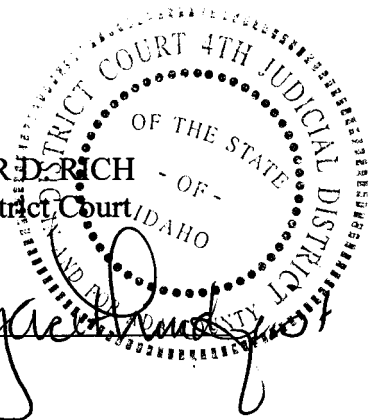
TERESA A. HAMPTON, FEDERAL PUBLIC DEFENDER
ATTORNEY FOR APPELLANT
BOISE, IDAHO

LAWRENCE G. WASDEN
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

Date of Service: JAN 25 2013

CHRISTOPHER D. RICH - OF -
Clerk of the District Court

By *Margaret Dendy*
Deputy Clerk



CERTIFICATE OF SERVICE

000289

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-Appellant,

vs.

STATE OF IDAHO,

Respondent.

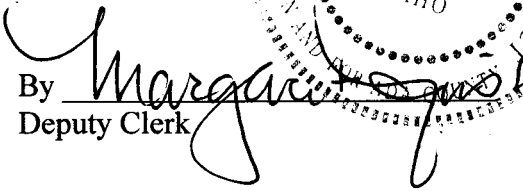
Supreme Court Case No. 40586

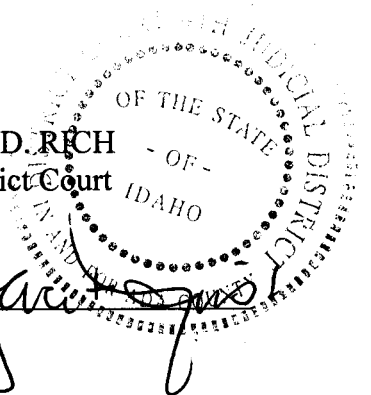
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 18th day of December, 2012.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk



CERTIFICATE TO RECORD

000290