

4-2-2013

## Fields v. State Appellant's Brief Dckt. 40586

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IN THE SUPREME COURT OF  
THE STATE OF IDAHO

ZANE JACK FIELDS, )

Appellant, )

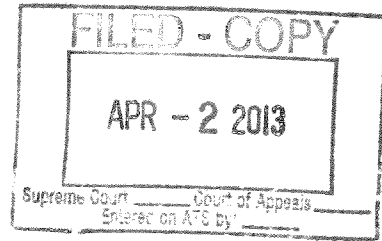
v. )

STATE OF IDAHO, )

Respondent. )

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DOCKET NO. 40586-2012



APPELLANT'S OPENING BRIEF

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

**Capital Habeas Unit**

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IN THE SUPREME COURT OF  
THE STATE OF IDAHO

|                   |   |                       |
|-------------------|---|-----------------------|
| ZANE JACK FIELDS, | ) |                       |
|                   | ) |                       |
| Appellant,        | ) | DOCKET NO. 40586-2012 |
|                   | ) |                       |
| v.                | ) |                       |
|                   | ) |                       |
| STATE OF IDAHO,   | ) |                       |
|                   | ) |                       |
| Respondent.       | ) |                       |
| _____             | ) |                       |

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## I. STATEMENT OF THE CASE

### A. Nature of the Case

Zane Fields (hereinafter “Fields”) was convicted of murdering Mary Catherine Vanderford by stabbing her during a robbery at the Wishing Well gift store on Fairview Avenue in Boise in 1988. He was sentenced to death. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995).

This case is an appeal from the denial of a successive post-conviction relief petition. Fields challenged his conviction and death sentence based on newly discovered evidence of recanted testimony and police misconduct. His successive petition was summarily dismissed by the district court.

### B. Course of Proceedings Below

Fields filed this Petition for Post-Conviction Relief on July 28, 2011 (hereinafter “Petition”). R. 4. This was within 42 days of a State’s witness orally recanting his pre-trial testimony. R. 63.

The proceedings below focused upon whether summary dismissal was appropriate. No discovery or evidentiary hearing occurred.

On September 28, 2011, the State filed a Response to the July 28, 2011, Successive Petition for Post Conviction Relief and State’s Motion to Dismiss. R. 128. The State raised three grounds for dismissal: 1) the supporting declaration under penalty of perjury was an unsworn statement and invalid affidavit; 2) evidence relied upon by Fields had been previously raised and considered and therefore was *res judicata* and unworthy of further consideration; and 3) the Petition was untimely because the information should have been discovered much sooner. R. 129-33. The State filed affidavits in support of its motion to dismiss. R. 135-36, 143-57. Fields responded with legal argument and additional supporting affidavits on December 21, 2011.

R. 164-187. The State replied on January 20, 2012, R. 230, and included an additional affidavit. R. 237. Countering the additional affidavit and argument, Fields filed an additional affidavit from the former State witness in support of the Petition and in opposition to all of the State's moving papers. R. 261-65. The district court dismissed the Petition on November 27, 2012. R. 267.

Fields filed his timely Notice of Appeal on December 18, 2012. R. 280. After settlement of the record, Fields agreed to expedite briefing and hereby files this Opening Brief pursuant to the established briefing schedule. *See* Response to Motion to Expedite Appeal filed on February 14, 2013 and Order Granting Motion to Expedite Appeal filed on February 22, 2013.

**C. Concise Statement of Facts**

After on-going efforts to undermine the inmate testimony reporting Fields confessed to killing Mrs. Vanderford, Fields filed this successive Petition upon uncovering contrary evidence. Through an investigator, federal habeas counsel tracked down Harold Gilcrist, traveled to him and talked with Gilcrist about his testimony. On June 17, 2011, Gilcrist verbally recanted and on July 8, signed a declaration under penalty of perjury. R. 63. Gilcrist affirmed that Fields never confessed and testimony about Fields confessing was a lie. R. 70. Gilcrist stated he used information from the police investigation to fabricate the confession. The information about the crime came from Detective Dave Smith. *Id.* The most critical information was Detective Smith's statement to Gilcrist that Fields "killed an old lady for fifty bucks." *Id.* Gilcrist stated that he shared the crime information with inmates, Joe Heistand and Scott Bianchi, who testified at trial against Fields. R. 70-71.

On July 28, 2011, Fields filed the underlying Petition for Post-Conviction Relief. Three claims were raised: innocence based on Gilcrist's recantation of his testimony reporting a



confession by Fields; prosecutorial misconduct based upon Detective Smith's manipulation of witnesses; and violations of right to counsel, due process and fair trial rights under the Sixth and Fourteenth Amendments. R. 4-15.

The State moved to summarily dismiss the Petition under Idaho Code § 19-2719. R. 131, 134. The State challenged Gilcrist's declaration made under penalty of perjury as an inadmissible unsworn statement and invalid affidavit. R. 129. The State also alleged that much of the evidence relied upon by Fields had been previously raised and considered and therefore was *res judicata* and unworthy of further consideration. R. 129-30. Although Fields had filed his Petition within 42 days of discovering Gilcrist's recantation, the State also alleged that the Petition was untimely because the information should have been discovered much sooner, perhaps as early as 1991 when the initial post-conviction petition was filed. R. 131. The State filed affidavits rebutting some of the material facts in the Petition. R. 148-51, 135-36, 154-56.

Fields responded and filed additional sworn affidavits. He obtained and filed a sworn, notarized affidavit from Gilcrist re-stating verbatim the facts asserted in the original declaration made under penalty of perjury. R. 176. Fields also filed an affidavit from federal habeas attorney Bruce Livingston, detailing more extensively the consistent and periodic efforts to find Gilcrist since 2001. Livingston reviewed prior counsel's file, noted evidence of efforts in 1996 to investigate the various inmate informant witnesses, including Gilcrist, but found no interview notes for Gilcrist. R. 186. Finally, Fields filed affidavits disputing the State's attempt to rebut some of the material facts in the Petition, plainly making Detective Smith's credibility a disputed question of fact. R. 179-84.

The State replied and asserted that Fields's additional affidavits did not establish that the successive Petition was timely filed. R. 231-32. Arguing that Fields should have discovered the

Gilcrist recantation sooner than 2011, R. 232-36, the State filed an additional affidavit and supporting materials. R. 237-56.

Responding to the State's additional argument, Fields filed a separate, additional affidavit from Gilcrist. Gilcrist admitted he had been unwilling to tell anybody "what really happened" regarding his testimony against Fields. R. 264. Gilcrist swore that prior to a 2009 medical crisis and near death experience, he would not have told the truth about how he fabricated the confession. *Id.*

The district court determined that the recantation could not have been known within 42 days of the March 1991 judgment. R. 272-73. The court then framed the issue as to when the recantation reasonably could have been known and whether the Petition was brought within a reasonable time thereafter. R. 273.

The court found the Petition did not allege facts establishing when the claims reasonably should have been known. R. 274. The court first excluded the Gilcrist declaration attached to the Petition because it was not made under "oath or affirmation." R. 275. The court then excluded the subsequently filed affidavit, re-stating Gilcrist's declaration verbatim, because it was not submitted with the Petition. R. 275-76. Likewise, the court excluded all subsequent affidavits submitted in support of the Petition. R. 274. The court concluded that the heightened pleading requirements of Idaho Code § 19-2719(5) had not been met, R. 274, and that the Petition did not make a required showing under § 19-2719(5) for excepted issues supported by material facts stated under oath or affirmation. R. 274-75.

Lastly, the court found that Gilcrist's recantation was "merely impeaching" because Gilcrist did not testify at trial and the information only served to impeach the testimony of

Detective Smith and two inmate witnesses. R. 276. The court also dismissed the Petition under § 19-2719(5)(b). R. 276-277.

## II. ISSUES PRESENTED ON APPEAL

The district court improperly applied Idaho Code § 19-2719(5) and incorrectly dismissed this Petition. The district court:

1. Improperly applied § 19-2719(5) to find the Petition did not meet the exception for successive petitions, when it found the Petition did not plead facts asserting the new information in Gilcrist's declaration could not reasonably have been known until the June 2011 discovery.
2. Improperly applied § 19-2719(5) by refusing to consider any subsequent evidence submitted in opposition to the State's summary dismissal motion, reply and supporting affidavits to establish the exception for successive petitions.
3. Improperly applied § 19-2719(5) by refusing to consider material facts stated under affirmation and filed with the Petition to establish the exception for successive petitions.
4. Improperly applied § 19-2719(5)(b) by finding the newly discovered evidence is merely impeaching.

### III. ARGUMENT

#### A. Standard for Review

Post-conviction proceedings are civil in nature and are governed by the Idaho Rules of Civil Procedure. *Stuart v. State*, 149 Idaho 35, 40, 232 P.3d 813, 818 (2010); *Rhoades v. State*, 135 Idaho 299, 300, 17 P.3d 243, 244 (2000). Post-conviction procedures are generally governed by the Uniform Post-Conviction Procedures Act (UPCPA), Idaho Code §§ 19-4901 *et seq.* *Stuart*, 149 Idaho at 40, 232 P.3d at 818. However, in a capital case, Idaho Code § 19-2719 prescribes specific procedures applicable to post-conviction proceedings. *Id.*

Applicable here is the requirement that claims which were “known or reasonably should have been known” at the imposition of the judgment and death sentence are waived if not raised within 42 days of the imposition of sentence. Idaho Code § 19-2719(5). *See Pizzuto v. State*, 149 Idaho 155, 160, 233 P.3d 86, 91 (2010) (hereinafter “*Pizzuto (2010)*”). An exception to this waiver is made if “the issues raised were not known or could not reasonably have been known within the forty-two day time frame.” *Id.* (quoting *McKinney*, 133 Idaho at 701, 992 P.2d at 150). A petitioner bringing a successive petition has a heightened burden of making a *prima facie* showing that the issues raised fall within the narrow exception provided by § 19-2719(5). *Pizzuto (2010)*, 149 Idaho at 160, 233 P.3d at 91; *Paradis v. State*, 128 Idaho 223, 227, 912 P.2d 110, 114 (1996). The excepted claims must be raised within 42 days after the petitioner knew or should have known of the claim. *Pizzuto v. State*, 146 Idaho 720, 727, 202 P.3d 642, 649 (2008) (hereinafter “*Pizzuto (2008)*”).

Summary dismissal of a petition for post-conviction relief is the procedural equivalent of summary judgment under Idaho Rule of Civil Procedure 56. *Rhoades*, 135 Idaho at 300, 17 P.3d at 244; *McKinney v. State*, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999). To withstand summary

dismissal, a petitioner ““must present evidence establishing a *prima facie* case as to each element of the claims upon which the applicant bears the burden of proof.”” *Pizzuto (2008)*, 146 Idaho at 728, 202 P.2d at 650 (quoting *State v. Lovelace*, 140 Idaho 53, 72, 90 P.3d 278, 297 (Idaho 2003)). “On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the Court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file.” *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008). See *Rhoades*, 135 Idaho at 300, 17 P.3d at 244 (same); *McKinney*, 133 Idaho at 700, 992 P.2d at 149 (same).

When this Court reviews a motion to dismiss based upon § 19-2719, the standard of review is to determine if the statutory exception to the waiver of claims has been met. *Stuart*, 149 Idaho at 40, 232 P.3d at 818. The court views the facts “in a light most favorable to the petitioner.” *Pizzuto (2010)*, 149 Idaho at 160, 233 P.3d at 91 (citing *Charboneau v. State*, 140 Idaho 789, 793, 102 P.3d 1108, 1112 (2004)). A “trial court’s determination that no material issue of fact exists is the same type of determination as in a summary judgment proceeding.” *Id.* Whether a successive petition for post-conviction relief was properly dismissed pursuant to Idaho Code § 19-2719 is a question of law and is reviewed *de novo*. *Pizzuto (2010)*, 149 Idaho at 159-60, 233 P.3d at 90-91.

## **B. The New Claims Meet the Statutory Requirements for the Exception to the Waiver Rule**

### **1. The Petition Was Timely Filed**

The Petition was timely and meets the exception to the waiver rule. Idaho Code § 19-2719(5). A petition for successive relief may be filed for claims that were not known or reasonably could not have been known within the initial 42 days after judgment. Idaho Code §

19-2719(5). The district court found that the facts of the recantation could not reasonably have been known within the initial 42 day statutory time period. R. 273. “Mr. Gilcrisp had not yet changed his story within forty-two days of the filing of the judgment, and the Court finds that the facts regarding Mr. Gilcrisp’s new story, alleged in the July 28, 2011 successive Petition, could not reasonably have been known within that time period.” R. 273.

Fields filed the Petition within 42 days of knowing the facts that formed the basis for his new claims. R. 4. On June 17, 2011, Gilcrisp verbally recanted his prior testimony and on July 8, signed a declaration under penalty of perjury. R. 63. On July 28, 2011, less than 42 days after learning of Gilcrisp’s recantation, Fields filed a verified Petition supported by affidavits and other admissible evidence. R. 4. This was within a reasonable time of discovering the claim. *See Pizzuto (2008)*, 146 Idaho at 727, 202 P.3d at 649.

The district court rejected the time when Gilcrisp made the disclosure as the reasonable time in which the claim should have been known. The court ignored this timely filing and instead focused upon “when the new facts alleged reasonably should have been known...” R. 273.

This was an incorrect application of the statute and the district court should be reversed.

## **2. The Petitioner Properly Pled Facts Meeting the Heightened Pleading Burden to Establish Waiver Exception**

The district court analyzed the timeliness of the Petition based upon when the facts disclosed by Gilcrisp (the “Recantation”) reasonably should have been known. R. 273-74. The district court held that Fields did not meet the heightened pleading requirement of § 19-2719. The district court found that Fields had not alleged facts within the Petition showing when his claim reasonably should have been known. R. 274. The district court’s conclusion was erroneous.

Fields alleged facts in his Petition and attached affidavits showing that he had been attempting to find Gilcrist, repeatedly, for years without success. R. 7 ¶11, 8 ¶13, 61-64. Gilcrist affirmed that he had never previously disclosed the information to anyone representing Fields. R. 71 ¶11. The State asserted that Fields had not established why the claim was not discovered sooner. R. 130-33. In response, Fields provided additional sworn testimony addressing the State's objections. R. 176-87; R. 264. Fields also argued that "Gilcrist indicated his continuing cooperation with the State in testimony at post-trial hearings, giving no indication that a recantation was likely." R. 173.

The district court ruled that Fields had not shown that the Gilcrist Recantation could not reasonably have been known sooner than when Fields ultimately discovered it. The Petition was dismissed because it was silent as to when Gilcrist decided to change his story. R. 273 & n.1. The district court reached this conclusion because it refused to consider the declaration attached to the Petition and any affidavit not attached to the Petition.

Under §19-2719, the issue is not when Gilcrist decided to change his story, but when the Recantation reasonably should have known. *See Pacheco v. Artuz*, 193 F.Supp.2d 756, 761 (S.D.N.Y. 2002) (recantation is an unique form of evidence and no amount of due diligence can compel a witness to admit to lying). All of the filed affidavits established the *prima facie* case that Fields could not reasonably have known of Gilcrist's Recantation until Gilcrist was tracked down and interviewed in June, 2011. R. 176-87, 264. The district court's rejection of this as the reasonable time in which to know of the claim was erroneous and must be reversed.

### 3. Subsequent Evidence Submitted to Cure Pleading Defects Must Be Considered

The district court ruled that defects in the Petition's heightened pleading requirements may not be cured with additional supporting affidavits. R. 275. The State did not object to Petitioner filing subsequent affidavits to cure alleged defects in the Petition's factual allegations. R. 128-34, 230-36. Both parties submitted affidavits and documents for the court's consideration on multiple occasions. R. 18-120, 135-57, 176-87, 237-56, 264. The district court *sua sponte* disregarded the subsequent supporting affidavits and gave no notice to Fields about this issue. R. 274.

Excluding subsequent affidavits is an improper application of §19-2719(5) and this Court's jurisprudence on successive capital petitions. A petitioner in a successive capital post-conviction proceeding may defend against attacks on the timeliness of a petition by submitting contravening affidavits. Here, the supporting affidavits established the *prima facie* pleading requirements, created genuine issues of material facts, and made summary dismissal inappropriate.

This Court's jurisprudence approving supplementary affidavit evidence in cases subject to the heightened pleading requirements of §19-2719 reaches back at least to *McKinney*. In response to the district court's notice of intent to dismiss, McKinney filed a reply and "several affidavits in support" of his initial petition. *McKinney*, 133 Idaho at 698, 992 P.2d at 147. Subsequently, the district court permitted limited discovery, and based on information gained in discovery, McKinney sought to amend his petition. *Id.* Ultimately, the court dismissed most of the claims under Idaho Code § 19-2719, and eventually dismissed the remaining "failure to disclose exculpatory evidence" claim as a claim that should have been known in the first post-conviction proceeding.



In *Pizzuto (2010)*, the petitioner filed a supplemental affidavit supporting his *prima facie* case. *Pizzuto (2010)*, 149 Idaho at 161-62, 233 P.3d at 92-93. The petition was filed on November 25, 2005, and an amended petition was filed on May 4, 2006. *Id.* at 158, 233 P.3d at 89. A supplemental affidavit, signed after the amended petition, attempted to explain why an earlier affidavit had not revealed relevant timeliness disclosures. *Id.* at 161, 233 P.3d at 92. This Court considered and relied upon the later-filed affidavit. *Id.* at 162, 233 P.3d at 93.

In another successive post-conviction case subject to Idaho Code §19-2719, this Court again considered subsequently filed affidavits. In that case, the heightened *prima facie* pleading requirement at issue was not timeliness, but the elements of the claim itself. This Court acknowledged that to withstand summary dismissal, the petitioner had to present evidence establishing a *prima facie* case as to each element of the claim. *Pizzuto (2008)*, 146 Idaho at 728, 202 P.3d at 650. The petition was filed on June 29, 2003, with a number of attached affidavits. *Id.* at 727, 202 P.3d at 649. In analyzing the case, this Court considered a subsequently filed affidavit in determining whether the petitioner met the statutory pleading requirements of establishing a *prima facie* case. *Id.* at 730, 202 P.3d at 652.

In *Fields II*, this Court considered and relied upon a subsequent affidavit attaching new evidence filed in support of a successor petition. *Fields v. State*, 135 Idaho 286, 290-91, 17 P.3d 230, 234-35 (2000) (*Fields II*). The affidavit asserted that a trial witness recanted testimony and that the State suppressed its deals with testifying inmates in violation of *Brady v. Maryland*. *Fields II*, 135 Idaho at 290, 17 P.3d at 234. This Court declined to consider the new substantive *Brady* recantation claim raised in the affidavit, because Fields failed to amend his petition to include those claims. This Court considered the new evidence with regard to the substantive

claim of the suppressed “inmate deal” and denied relief on the merits. *Id.* at 290-91, 17 P.3d at 234-35.

This Court has held that the § 19-2719 heightened pleading burden may be satisfied by the allegations in the petition and documents and affidavits filed in support of the petition and, in general language, does not expressly limit the supporting materials to those physically attached to the petition. *See, e.g., Rhoades*, 135 Idaho at 300, 17 P.3d at 244 (2000) (“On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court must determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with *any affidavits on file.*”) (emphasis added). The district court failed to apply this Court’s jurisprudence when determining whether to consider subsequently filed affidavits.

The district court’s discussion of *Stuart*, 149 Idaho at 42, 232 P.3d at 820, regarding a petition silent as to when a petitioner should have known of a successive claim, missed the point relevant to this case. R. 273. *Stuart’s* application to this case is not whether the record was silent as to the *prima facie* showing of timeliness. *Stuart*, 149 Idaho at 42, 232 P.3d at 820. The relevant point from *Stuart* is its acknowledgment that a petitioner may make his *prima facie* showing through the petition itself “or otherwise attempting to demonstrate by way of supporting affidavit(s) that his claims were not known to him nor could they reasonably have been known.” *Stuart*, 149 Idaho at 41, 232 P.3d at 819.

In the current case, Fields alleged a *prima facie* claim that he could not have reasonably known about Gilcrist’s changed story until 2011 based upon the Petition, attached affidavits and supporting documents, and subsequently filed affidavits. Initially, Fields noted that his lawyers and investigators had been attempting to find and contact inmate witnesses, including Gilcrist,

“repeatedly over the intervening years since Fields was convicted.” R. 7, 61-64. In a subsequent affidavit, Fields outlined prior counsel’s efforts. This included that prior counsel identified Gilcrist as a target of investigation. No interview notes for Gilcrist were found in prior counsel’s files. R. 186. Fields presented a reasonable inference that Gilcrist could not be found by prior counsel. R. 186. After repeated unsuccessful attempts by federal counsel to find Gilcrist, Fields was finally successful in the summer of 2011. R. 4, 7-8, 61-64, 70-71, 186-87. Additionally, Fields filed a subsequent affidavit by Gilcrist. In that affidavit, Gilcrist signed under oath to the same factual allegations in the initial declaration under penalty of perjury. R. 70, 176. Nothing changed in substance, and the allegations in both instances were reliable evidence.

Fields filed another, second affidavit from Gilcrist which also should have been considered. This affidavit completed the *prima facie* case regarding when the information should have been discovered. Fields’s pleadings stand in direct contrast to those found lacking in *Pizzuto (2010)*. In *Pizzuto (2010)*, concluding that a *prima facie* showing had not been made regarding newly found information from a witness, this Court stated: “[the witness] never stated he had previously been asked about the plea agreement and either lied or declined to answer.” *Pizzuto (2010)*, 149 Idaho at 162, 233 P.3d at 93. Gilcrist expressly stated that prior to his medical crisis in 2009, he “would not have told the truth about what happened,” R. 264, and that he “never previously disclosed this information to anyone representing Zane Fields.” R. 71, 177. In his Petition and supporting affidavits, Fields established not only that Gilcrist had not been asked about the new information, but that the information would not have been forthcoming. Fields affirmatively demonstrated the new information could not have been discovered from Gilcrist until after his 2009 medical crisis.

Gilcrist's second affidavit stating that he would not have disclosed the information until his near-death experience in 2009, R. 264, together with affidavits explaining Fields's repeated efforts to find Gilcrist (and evidence of the fabricated confession and police misconduct from other sources) long before 2009 through 2011, established a *prima facie* case that Fields reasonably could not have known of the Gilcrist Recantation until the summer of 2011. Fields diligently and timely brought forward his claims regarding the Gilcrist Recantation.

The Petition included admissible evidence establishing that the claim reasonably could not have been known until counsel found and obtained the Gilcrist Recantation. Some of this evidence was submitted with the Petition and additional evidence was submitted in response to the State's arguments. Affidavits are routinely submitted in opposition to summary judgment in civil cases generally, and in post-conviction proceedings in an attempt to cure defects in the petition in response to a motion for summary dismissal or a court's notice of intent to dismiss. *See, e.g., Pizzuto (2010)*, 149 Idaho at 161-62, 233 P.3d at 92-93; *Fields II*, 135 Idaho at 288, 290-91, 17 P.3d at 232, 234-35; *McKinney*, 133 Idaho at 698-700, 992 P.2d at 147-49. The district court's narrow construction and application of §19-2719 was improper and should be reversed.

#### **4. Sworn, Admissible, Material Evidence Supported The Petition**

The district court stated that the Petition was "not supported by material facts stated under oath or affirmation, as Mr. Gilcrist's Declaration was unsworn and unverified." R. 275. The *prima facie* case was supported by a declaration under penalty of perjury, an affirmation, if not a sworn statement under oath. R. 70. *Cf.* Idaho Code § 19-2719 (requiring statement of material facts under "oath *or* affirmation") (emphasis added). *See* Black's Law Dictionary 55 (5<sup>th</sup> ed. 1979) (An affirmation is a "solemn and formal *declaration* or asseveration that an affidavit is true, *that the witness will tell the truth*, etc; this being substituted for an oath in certain cases.")

(emphasis added). “The basic purpose behind an oath is to affirm the import and necessity of telling the truth.” *State v. Nunez*, 138 Idaho 636, 641, 67 P.3d 831, 836 (2003). The initial declaration satisfied the basic purpose of an oath and constituted an affirmation under §19-2719.

#### **5. The Gilcrist Affidavit is Substantive Evidence**

The district court also dismissed the Petition under Idaho Code § 19-2719(5)(b), finding Gilcrist’s story was “merely impeaching.” R. 276. The district court noted that Gilcrist did not testify at trial and Gilcrist’s allegations served only to impeach Detective Smith and other inmates who testified at trial. The nature of the Recantation and misconduct information is twofold: it was impeaching with regard to Detective Smith and the other testifying inmate snitches, but it was also substantive evidence of Smith’s misconduct. Gilcrist’s affidavit provides substantive evidence of police misconduct, a rogue detective willing to cheat justice to obtain a conviction, and feeding information to witnesses to procure a conviction of an innocent man with false testimony. Detective Smith suppressed this information, and the State did not disclose it. As set forth in the Petition, that conduct violates the Due Process Clause of the Fourteenth Amendment, *Brady v. Maryland*, 373 U.S. 83 (1963); *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). While including an impeaching component, *United States v. Bagley*, 473 U.S. 667, 676 (1985), the Gilcrist Recantation also substantively supported the claims alleged in the Petition. The use of Gilcrist as a state agent, funneling false information to the other inmates, likewise violated Fields’s Sixth Amendment right to counsel and the Fourteenth Amendment. The district court erred in dismissing the Petition on the ground that it was merely impeaching.


**CONCLUSION**

The district court erred by concluding the Petition was facially inadequate, refusing to consider facts stated under affirmation, and refusing to consider the subsequent affidavits when determining the timeliness of the Petition. The district court also erred by dismissing the substantive nature of the new evidence and dismissing the Petition's claims as impeaching.

The district court's order dismissing the successive Petition must be reversed and the case remanded for further proceedings consistent with this Court's capital successive petition jurisprudence.

Respectfully submitted this 2nd day of April, 2013.

  
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Bruce D. Livingston, *Pro Hac Vice*

  
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Teresa A. Hampton

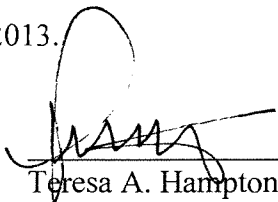
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## CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address: Lamont.anderson@ag.idaho.gov.

Dated and certified this 2nd day of April, 2013.



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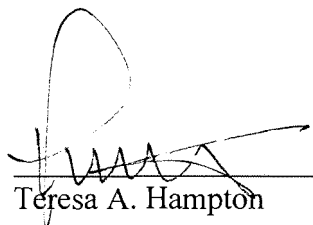
Teresa A. Hampton

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of April, 2013, I caused to be served two true and correct copies of the foregoing document by the method indicated below, postage prepaid where applicable, addressed to:

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