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# Fields v. State Appellant's Reply 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  
(Ada County Docket No. 2011-14403)

APPELLANT'S REPLY BRIEF

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

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## TABLE OF CONTENTS

|                                                                                                                                                                                                         |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES.....                                                                                                                                                                               | ii |
| I. INTRODUCTION .....                                                                                                                                                                                   | 1  |
| II. ARGUMENT .....                                                                                                                                                                                      | 1  |
| A. Fields Provided This Court With An Adequate Record.....                                                                                                                                              | 1  |
| B. Fields Established That His Petition Was Filed Within 42 Days of When its<br>Claims Were Known or Reasonably Should Have Been Known .....                                                            | 2  |
| 1. Fields Filed His Post-Conviction Petition Within 42 Days of Discovering the<br>Recantation and Made a Sufficient Prima Facie Showing that He Could Not<br>Have Known of the Recantation Earlier..... | 3  |
| 2. Fields Alleged Admissible Facts Under Oath or Affirmation.....                                                                                                                                       | 7  |
| 3. Affidavits Filed Subsequent to the Petition in a Successive Capital<br>Post-Conviction Case Must Be Considered When Ruling Upon a Summary<br>Dismissal Motion.....                                   | 8  |
| C. The Petition Is Not Facially Insufficient Because it Raised Substantive Claims<br>Not Limited to Impeachment .....                                                                                   | 13 |
| III. CONCLUSION.....                                                                                                                                                                                    | 14 |
| CERTIFICATE OF COMPLIANCE.....                                                                                                                                                                          | 16 |
| CERTIFICATE OF SERVICE .....                                                                                                                                                                            | 17 |

## TABLE OF AUTHORITIES

### FEDERAL CASES

|                                                                   |    |
|-------------------------------------------------------------------|----|
| <i>Batson v. Kentucky</i> , 476 U.S. 79 (1986) .....              | 3  |
| <i>Brady v. Maryland</i> , 373 US 83 (1963) .....                 | 14 |
| <i>Pacheco v. Artuz</i> , 193 F.Supp.2d 756 (S.D.N.Y. 2002) ..... | 6  |
| <i>United States v. Bagley</i> , 473 US 667 (1985) .....          | 14 |

### STATE CASES

|                                                                                               |           |
|-----------------------------------------------------------------------------------------------|-----------|
| <i>Fields v. State</i> , 135 Idaho 286, 17 P.3d 230 (2000).....                               | 2, 11, 12 |
| <i>Kelly v. State</i> , 149 Idaho 517, 236 P.3d 1277 (2010) .....                             | 7, 8      |
| <i>McKinney v. State</i> , 133 Idaho 695, 992 P.2d 144 (1999) .....                           | 3, 10, 11 |
| <i>Pizzuto v. State</i> , 127 Idaho 469, 903 P.2d 58 (1995).....                              | 2, 7      |
| <i>Pizzuto v. State</i> , 146 Idaho 720, 202 P.3d 642 (2008).....                             | 5         |
| <i>Pizzuto v. State</i> , 149 Idaho 155, 233 P.3d 86 (2010).....                              | 2, 9      |
| <i>State v. Araiza</i> , 124 Idaho 82, 856 P.2d 872 (1993).....                               | 3         |
| <i>State v. Rhoades</i> , 120 Idaho 795, 820 P.2d 665 (1991).....                             | 2         |
| <i>Stuart v. State</i> , 149 Idaho 35, 232 P.3d 813 (2010).....                               | 2, 6      |
| <i>Tri State Land Co., Inc. v. Roberts</i> , 131 Idaho 835, 965 P.2d 195 (Ct. App. 1998)..... | 8         |

### STATUTES

|                                |         |
|--------------------------------|---------|
| I.C. § 19-2719(5).....         | 9       |
| I.C. § 19-2719(5)(a)(i) .....  | 9       |
| I.C. § 19-2719(5)(a)(ii) ..... | 7, 8, 9 |

## I. INTRODUCTION

Petitioner Zane Jack Fields replies in support of his appeal of the district court's dismissal of his petition for post-conviction relief. Respondent, (the "State"), rephrases the issues into three primary arguments against Fields's appeal. State's Brief at 18. The State argues that: (1) Fields failed to provide an adequate record in the district court and on appeal in this Court; *id.* at 20-21; (2) Fields failed to establish that his successive petition was filed within 42 days of when its claims were known or reasonably should have been known; *id.* at 24-35; and (3) Fields's claims based on the Gilcrist recantation are barred under Idaho Code § 19-2719(5)(b) because they are merely cumulative or impeaching. *Id.* at 35-36. For the reasons set forth below, the State's arguments fail and this Court should remand this case to the district court for an evidentiary hearing.

## II. ARGUMENT

### A. Fields Provided This Court With An Adequate Record

The State argues that Fields failed to provide an adequate record of the underlying criminal and post-conviction cases in the district court and on appeal in this Court. State's Brief at 20-21. The State erroneously asserts that the district court did not rule on Fields's motion to take judicial notice of the underlying criminal and post-conviction cases. State's Brief at 20. The record contradicts this assertion. The district court granted Fields's motion for judicial notice of the underlying cases. R. 267. After the State filed its brief, Fields moved in this Court for judicial notice of the underlying criminal and post-conviction cases. Motion to Take Judicial Notice, filed May 8, 2013. This Court granted the motion. Order Granting Motion to Take Judicial Notice, filed May 9, 2013. The record on appeal is complete and includes the underlying criminal case and pertinent post-conviction cases.

**B. Fields Established That His Petition Was Filed Within 42 Days of When its Claims Were Known or Reasonably Should Have Been Known**

The State argues that the petition was untimely because he did not establish that it was filed within 42 days of when he knew or reasonably should have known of the claims based on Gilcrist's recantation. State's Brief at 24-35. To support its position, the State argues that Fields: did not make a sufficient showing of admissible facts with affidavits under oath, *id.* at 26-27; cannot rely upon subsequently filed affidavits to establish when the claim was known or reasonably should have been known, *id.* at 26, 27, 29; and did not make a sufficient showing that the recantation reasonably could not have been known earlier, even if the subsequent affidavits are considered. *Id.* at 30-35.

In the governing law section of its brief the State acknowledges that a successive capital petitioner "must make a *prima facie* showing" that the issues raised in the petition "were not known and reasonably could not have been known" within 42 days of entry of judgment. State's Brief at 22 (quoting *Pizzuto v. State*, 127 Idaho 469, 471, 903 P.2d 58, 60 (1995); *State v. Rhoades*, 120 Idaho 795, 807, 820 P.2d 665, 677 (1991)) (internal quotations omitted). In its argument, however, the State fails to address the implications arising from the requirement that Fields make a *prima facie* showing that he reasonably could not have known of the Gilcrist recantation earlier than its discovery in June, 2011.

The State overlooks the nature of a successive capital petitioner's initial burden – to make a *prima facie* showing that the new issues were unknown and reasonably could not have been known within 42 days of judgment. See, e.g. *Stuart v. State*, 149 Idaho 35, 41, 232 P.3d 813, 819 (2010); *Pizzuto v. State*, 149 Idaho 155, 160, 233 P.3d 86, 91 (2010); *Fields v. State*, 135 Idaho 286, 289, 17 P.3d 230, 233 (2000) ("*Fields II*"); *McKinney v. State*, 133 Idaho 695, 701, 992 P.2d 144, 150

(1999). A prima facie showing is only an initial showing. As the district court noted below, “[a] prima facie showing is a showing ‘sufficient to establish a fact or raise a presumption unless disproved or rebutted.’” R. 273 (quoting Black’s Law Dictionary 1228 (8<sup>th</sup> ed. 2004)). Once the prima facie showing is made, the opponent may submit facts contesting the showing, and thereafter the proponent may submit additional evidence in support of the original contention or in rebuttal of the arguments asserted by the opponent. See, e.g., *State v. Araiza*, 124 Idaho 82, 88, 856 P.2d 872, 878 (1993) (explaining initial burden of making a prima facie case and outlining three-step, alternating factual presentations in a challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986)). The characterization of a successive capital petitioner’s initial burden under § 19-2719(5) as a *prima facie showing* necessarily suggests that additional factual presentations in opposition and support of the statutory exception are contemplated. As shown in this and Fields’s opening brief, additional factual submissions are contemplated. In fact, they are routine and to be expected in the procedural equivalent of summary judgment, where countervailing affidavits are the norm.

**1. Fields Filed His Post-Conviction Petition Within 42 Days of Discovering the Recantation and Made a Sufficient Prima Facie Showing that He Could Not Have Known of the Recantation Earlier**

The State argues that the petition was properly dismissed because Fields failed to make a sufficient showing under Idaho Code § 19-2719(5)(a) and plead that he could not have reasonably known of the Gilcrist recantation earlier than its discovery in June, 2011. State’s Brief at 25-26, 30, 35. The State ignores the *prima facie* showing made by Fields in his petition and supporting affidavits.

The petition met the statutory exception and made a prima facie showing that Fields reasonably could not have known of the Gilcrist recantation. The petition stated that “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.” R. 7 ¶11. It acknowledged that despite repeated efforts, Fields “has been unable to procure a sworn statement from either Bianchi or Heistand.” R. 8 ¶12. However, Fields expressly stated that “[a]fter repeated, unsuccessful attempts to find Harold Gilcrist, an investigator for Fields was finally successful in the summer of 2011.” R. 8 ¶13. In support of all of these statements, Fields cited the Affidavit of investigator Greg Worthen, which was attached to the petition. *See* R. 7-8 ¶¶11-13, R. 60-64. In his affidavit, Worthen described earlier investigators’ unsuccessful past efforts to locate Gilcrist. Worthen also described his own efforts to locate Gilcrist. R. 61-63 ¶¶3-8.

Worthen stated that he got a lead on Gilcrist in May, 2011, only after trying mis-spellings of Gilcrist’s name in the VINELink website. He located a “Harold Gilcrest,” at the Kootenai County Jail. R. 63 ¶8. Worthen then confirmed that “Harold Gilcrest” was in fact Harold Gilcrist and arranged to interview him on June 17, 2011. *Id.* The day after the interview, Gilcrist was transferred to the Spokane County Jail in Washington. *Id.* On July 8, 2011, Worthen, an Idaho notary, *see* R. 264, obtained a declaration under penalty of perjury from Gilcrist, now an out-of-state Washington witness, while at the Spokane jail. R. 63 ¶8. *See* R. 70-71. The petition for post-conviction relief was filed on July 28, 2011, R. 4, twenty days after the declaration was obtained, and 41 days after the interview where Worthen first spoke to Gilcrist and learned of his recantation.

Fields filed the post-conviction petition within 42 days of discovering Gilcrist’s recantation. Fields acted promptly and filed his successive petition within a reasonable time of learning of Gilcrist’s recantation. Under *Pizzuto v. State*, 146 Idaho 720, 727, 202 P.3d 642, 649

(2008), “a reasonable time for filing a successive petition for post-conviction relief is forty-two days after the petitioner knew or reasonably should have known of the claim.” Fields’s petition was timely filed within 42 days of learning of the claims arising from the newly discovered recantation.

While the State suggests that Fields’s *petition* does not state when Fields knew of the recantation claims, State’s Brief at 30, it concedes that “the timeliness of a successive petition is a material fact that must be supported in the successive petition *or* with sworn statements accompanying the petition.” State’s Brief at 26 (emphasis added). As set forth above, Fields plainly stated when he learned of the recantation in Worthen’s affidavit attached to the petition. Fields filed his petition within 42 days of learning of the recantation. The State’s argument that Fields did not establish when he knew of the claim is meritless.

The State’s primary objection to the timeliness of Fields’s petition is that Fields “reasonably should have known” of the recantation earlier. State’s Brief at 30-35. The State asserts that Fields was required to show in detail his continuing efforts to find Gilcrist for twenty years before the recantation was obtained. Citing insufficient detail and efforts, the State argues that Fields failed to show that he reasonably could not have learned of Gilcrist’s recantation earlier. *See id.* at 25, 30-35.

The State’s position ignores the fact that Fields established he had been looking for Gilcrist unsuccessfully for years.<sup>1</sup> The State also ignores Gilcrist’s second affidavit, filed by Fields in response to the State’s attacks on his *prima facie* case. That affidavit explicitly stated that Gilcrist

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<sup>1</sup> Fields supplemented his pleadings and Worthen’s affidavit with an additional affidavit from his counsel, Bruce Livingston. R. 186-87. That affidavit provided additional details of the long search for Gilcrist, first by prior counsel in the mid-1990’s, and then by the Federal Defenders in the 2000’s. Those efforts continued as set forth in Worthen’s affidavit, culminating in his finally finding and interviewing Gilcrist in 2011 and obtaining the recantation.

“took stock of [his] life” after a near death experience and coma in 2009, and that he “would not have told the truth about what happened” before his medical crisis. R. 264.

The State acknowledges that “[i]n 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.” State’s Brief at 35 (quoting *Pacheco v. Artuz*, 193 F.Supp.2d 756, 761 (S.D.N.Y. 2002)). This is such a case, as shown by Gilcrist’s second affidavit indicating he would not have told the truth about his perjury and Detective Smith’s misconduct until after his near death experience in 2009. Without Gilcrist as a willing, recanting witness, Fields had no knowledge of any recantation claim that he could assert. The State ignores that fact and the import of *Pacheco* in arguing that Fields has not established that he reasonably could not have known of the recantation in the 20 years before it was obtained.

The State’s argument is wrong for several reasons. Nobody can compel a witness to recant his testimony. Gilcrist himself provided an affidavit saying he wouldn’t have recanted his testimony before his near death experience in 2009. Without Fields knowing of Gilcrist’s recantation, it is unreasonable to contend that Fields reasonably could have known of the non-existent recantation from a witness unwilling to recant. As this Court noted only a year before Fields obtained the recantation, a petitioner either “reasonably should have known” or “reasonably could not have known.” *Stuart*, 149 Idaho at 48, 235 P.3d at 826. Here, Fields reasonably should have known of any claims arising from Gilcrist’s recantation only after Gilcrist was willing to recant and Fields was able to find him and obtain the recantation. Accordingly, until that time, June 17, 2011, Fields reasonably could not have known of the recantation. The State’s arguments to the contrary are without merit.

## 2. Fields Alleged Admissible Facts Under Oath or Affirmation

The State asserts that Gilcrist's declaration must be disregarded because it "was not 'stated under oath or affirmation' as required by I.C. § 19-2715(5)(1)(ii) [sic]."<sup>2</sup> State's Brief at 26. For a variety of reasons, the State is wrong.

First, the State's argument that the original declaration did not constitute an affirmation is wrong. *See* State's Brief at 27. The State ignores the pertinent portion of the definition of "affirmation" referenced by Fields. *See* Appellant's Opening Brief at 14 ("An affirmation is a 'solemn declaration ... that the witness will tell the truth, etc. this being substituted for an oath in certain cases')(emphasis added in Opening Brief). The State's argument, that the "definition for 'affirmation' utilized by Fields is in conjunction with whether 'an affidavit is true[,]'" State's Brief at 27, ignores the definition relied upon by Fields, that an affirmation is a declaration that the witness will tell the truth. The State also argues that Gilcrist "failed to 'affirm' that the contents of the declaration are true." State's Brief at 27. Again, the State ignores the clear record evidence. In his declaration, Gilcrist affirmatively stated that "I declare under penalty of perjury that the foregoing is true and correct." R. 71.

Second, the State's reliance on *Kelly v. State*, 149 Idaho 517, 236 P.3d 1277 (2010), is misplaced. State's Brief at 26. *Kelly* did not involve an argument that the document at issue was a declaration of facts signed and affirmed to be true, as Fields argues here. Rather, *Kelly* involved a document denominated as an "Affidavit" but which was *unsigned*, in addition to not being notarized. *Kelly*, 149 Idaho at 523, 236 P.3d at 1283. In those circumstances, this Court had no difficulty in concluding that the unsigned document did not constitute an affidavit. *Id.*

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<sup>2</sup> The correct cite is I.C. § 19-2719(5)(a)(ii).

However, *Kelly* neither presented the question of what constitutes a precise statement of material facts made under affirmation, nor addressed it. *Id.* Cf. I.C. § 19-2719(5)(a)(ii).

Third, the State's reliance on *Tri State Land Co., Inc. v. Roberts*, 131 Idaho 835, 838-39, 965 P.2d 195, 198-99 (Ct. App. 1998), is likewise misplaced. See State's Brief at 26-27. *Tri State* was a summary judgment proceeding brought under Civil Rule 56 and only addressed whether the document in question was an affidavit. As with *Kelly*, the court in *Tri State* was neither presented with, nor addressed, the issue under § 19-2719(5)(a) regarding the requirements of a precise factual statement made under affirmation.

One significant aspect of *Tri State* which the State did not address was the failure of the proponent of the defective affidavit to "cure the alleged defect ... despite having notice of the defect several days prior to the hearing." *Tri State*, 131 Idaho at 837, 965 P.2d at 197. While *Tri State* was a summary judgment proceeding, that is the equivalent of summary dismissal in post-conviction proceedings. In this case, Fields subsequently submitted a sworn and notarized affidavit, in response to the State's objection to the Gilcrist declaration that was attached to the petition. That affidavit re-stated verbatim the factual allegations set forth in the declaration that was attached to the petition. R. 176-77. To the extent the declaration was defective, which Fields contends it was not, Fields "cured" any defect. That was perfectly acceptable under Idaho law, as noted in *Tri State* and set forth in the next section.

### **3. Affidavits Filed Subsequent to the Petition in a Successive Capital Post-Conviction Case Must Be Considered When Ruling Upon a Summary Dismissal Motion**

The State argues that the district court was correct in refusing to consider subsequently filed affidavits. State's Brief at 27. Contrary to the State's assertions, affidavits filed subsequent to the petition must be considered when ruling upon a summary dismissal motion. This is true

when the State seeks dismissal for petitioner's alleged failure to make a prima facie showing that he meets the exception of § 19-2719(5)(a) for issues "that could not reasonably have been known." Subsequent affidavits must also be considered when the State alleges that the petitioner failed to precisely state the issue with material facts by credible persons with first-hand knowledge under oath or affirmation. *See* I.C. § 19-2719(5)(a)(i & ii).

The State fails in its efforts to distinguish the cases on which Fields relies. State's Brief at 27-29. The cases cited by Fields all considered subsequent affidavits filed after the petition in ruling on the State's motion for summary dismissal. *See* Appellant's Opening Brief at 10-11.

The State concedes that a subsequent affidavit was considered in *Pizzuto*, 149 Idaho 155, 233 P.3d 86 (2010). State's Brief at 29. However, the State asserts that this Court "did not address the issue based upon heightened pleading requirements, but considered the content of Rice's subsequent affidavit and the fact it also failed to detail the timing of various events." State's Brief at 29 (citing *Pizzuto*, 149 Idaho at 161-62). According to the State, this shows that the heightened pleading requirement was not addressed. The State is wrong, and more importantly, misses the point.

After extensively discussing both Rice's initial affidavit and his subsequent affidavit, this Court plainly articulated its basis for rejecting Pizzuto's claims: he "failed to make a prima facie showing that his claims were not known or could not reasonably have been known" when he filed his first post-conviction petition. *Pizzuto*, 149 Idaho at 162, 233 P.3d at 93 (citing I.C. § 19-2719(5)). This Court explicitly discussed the subsequent affidavit and endorsed the State's argument that the information from Rice could have been known earlier because "Rice never stated he had previously been asked about the plea agreement and either lied or declined to answer." *Id.* This information directly relates to when Pizzuto reasonably should have known of

Rice's information about an undisclosed deal. It obviously concerns the heightened pleading requirement and the § 19-2719(5) exception for claims that reasonably could not have been known. Most significant is the information which the State and this Court considered and acknowledged might have helped Pizzuto make the required prima facie showing from Rice's subsequent affidavit, i.e., whether Rice previously refused to cooperate with the defense and disclose the truth. This is the exact kind of information that Gilcrist provided in his subsequent affidavit, i.e., that Gilcrist would not have told the truth prior to his near death experience in 2009.

The State also concedes that subsequently filed affidavits were considered in *McKinney*, 133 Idaho at 698, 992 P.2d at 147, but contends that the issue before the court was not whether the heightened pleading requirements had been met. State's Brief at 28. Instead the State characterizes the issue as whether IAC claims should have been raised in the first petition. *Id.* The State fails to recognize several aspects of the *McKinney* opinion which make clear that the heightened pleading burden was at issue, was addressed and was dispositive, notwithstanding the subsequently filed affidavits and evidence developed in discovery.

*McKinney* plainly stated the applicable law, including the petitioner's "heightened burden" to make "a prima facie showing" that the "issues raised were not known and could not reasonably have been known within 42 days of judgment." 133 Idaho at 701, 992 P.2d at 150. After permitting subsequent affidavits, the district court denied most of McKinney's claims on the ground that they should have been known during the first post-conviction and were barred by § 19-2719. *McKinney*, 133 Idaho at 698-99, 992 P.2d at 147-48. This Court refused to excuse the bar and upheld the dismissal of McKinney's ineffective assistance of counsel claims based explicitly on § 19-2719(5) and the fact that McKinney was restricted to claims he could not reasonably have known at the time of his first post-conviction petition. His claims were

dismissed because he failed to meet the exception, since the issues should reasonably have been known at the time of the first petition. *McKinney*, 133 Idaho at 704, 992 P.2d at 153. Just as significantly, this Court applied § 19-2719 to bar claims of prosecutorial misconduct, based on subsequently developed evidence of undisclosed, potentially exculpatory information, *McKinney*, 133 Idaho at 705-07, 992 P.2d at 154-56, because some of the information “reasonably should have been known at the time of McKinney’s first petition for post-conviction relief,” and for other evidence because McKinney “did not make the required prima facie showing that the issues could not reasonably have been known during the first proceeding.” *McKinney*, 133 Idaho at 707, 992 P.2d at 156. The State’s characterization of the *McKinney* case as not involving the prima facie showing of the “reasonably could not have been known” exception under §19-2719(5) is plainly incorrect.

The State also misapprehends the significance of an earlier *Fields* case, asserting that the case “actually bolsters the state’s argument.” State’s Brief at 29 (citing *Fields II*, 135 Idaho at 290-91, 17 P.3d at 234-35). The State acknowledges that a subsequent affidavit from Bryant was filed, but argues broadly that the contents of the affidavit were not considered because it could not be a basis for post-conviction relief on Fields’s original petition. State’s Brief at 29. The original petition set forth a *Brady* claim for non-disclosure of a deal with the inmate witnesses, but it did not include another different *Brady* claim that witnesses recanted their testimony and acknowledged being fed information by Detective Smith. *See* ISC#24119, R. 37. This Court considered the subsequent Bryant affidavit with respect to the *Brady* claim that was raised in the petition, regarding the alleged deal with the inmate informants, but rejected the claim on its merits because the subsequent Bryant affidavit and attached letter allegedly did not support a *Brady* claim. *Fields II*, 135 Idaho at 290-91, 17 P.3d at 234-35. *See* ISC#24119, R. 78-79 ¶2, 83-84



(subsequently filed affidavits allegations regarding inmate deal and attached letter from Detective Smith). What this Court declined to consider were additional allegations of a different *Brady* claim that had not been alleged in the petition. *Fields II*, 135 Idaho at 291, 17 P.3d at 235. See ISC#24119, R. 79-81 (raising allegations from Bryant's interviews with inmates Acheson, Bianchi and Troutner that were not included in the earlier filed petition). Cf. ISC#24119, R. 37. That aspect of *Fields II* is inapplicable here, however, as Gilcrist's subsequent affidavit re-stated verbatim the original allegations of his originally filed declaration which announced the recantation of his testimony and Detective Smith's misconduct. The substance of petitioner's claims and allegations did not change, and therefore the State's reliance on *Fields II* is unwarranted.

In conclusion, Fields presented enough evidence in his initial filing in this case to allow the fact-finder to infer Fields reasonably did not know and reasonably could not have known of Gilcrist's recantation until Fields obtained it, following many years of attempting to find and interview Gilcrist without success. Once the State asserted that Fields had not sufficiently shown that he could not have obtained the information earlier, Fields responded with additional affidavits setting forth additional efforts to obtain the recantation and Gilcrist's unwillingness to tell the truth until after his near death experience in 2009. These are the types of additional factual showings that have been contemplated and accepted by this Court in summary dismissal proceedings in capital and non-capital proceedings for many years.

This Court has never held that Idaho courts may not consider subsequently filed affidavits in support of a successive petition for post-conviction relief, either (1) to meet the exception under § 19-2719(5) for unknown claims that could not reasonably have been known, or (2) to meet the statute's requirement that the claims be supported with a precise statement of material facts under

oath or affirmation by credible person with first-hand knowledge, or indeed, (3) to establish the elements of each claim. The State offers no Idaho case with such a holding. On the contrary, the cases cited here and in Appellant's Opening Brief show that supplementary factual submissions are allowed and considered in making summary dismissal determinations. The district court wrongly refused to consider them in this case.

**C. The Petition Is Not Facially Insufficient Because it Raised Substantive Claims Not Limited to Impeachment**

The State acknowledges that Fields raised claims based on evidence of Detective Smith's misconduct. The State contends that Fields's citation to cases alleging suppression of exculpatory evidence and knowing use of perjured testimony "do not involve allegations of misconduct based upon Detective Smith's alleged misconduct that forms the basis of Gilcris't's recantation." State's Brief at 36. Though it is unclear precisely what this means,<sup>3</sup> the State concedes that Fields raised a prosecutorial misconduct (Due Process Clause) claim for the suppression of exculpatory evidence involving Detective Smith's feeding of information to inmates to inculcate Fields.

Yet the State contends that the recantation can only be used as impeachment since Gilcris't did not testify at trial. The State is wrong. Fields could have called Gilcris't to testify to the substance of Detective Smith's misconduct, particularly his willingness to feed critical unknown information about the crime to inmates willing to testify against Fields. This would have provided material, exculpatory evidence of undisclosed police wrongdoing that would have compromised the police investigation and case against Fields. Though there is an undeniable

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<sup>3</sup> Obviously, none of the Supreme Court cases cited by Petitioner, Appellant's Opening Brief at 15, will involve either Detective Smith's misconduct or Gilcris't's recantation, as neither was involved in any of those cases.

impeachment angle as well, the petition is not deficient, given the other substantive aspects of the recantation in establishing undisclosed exculpatory evidence. Evidence arising from the recantation certainly could have been used for impeachment purposes at trial. Those same facts provide substantive evidence of Detective Smith's conduct that goes to the heart of Fields's claims of innocence, suppressed exculpatory information and misuse of informants, all as outlined in Fields's petition. Moreover, even if § 19-2719(5)(b) purports to foreclose *United States v. Bagley*, 473 US 667 (1985) impeachment claims in the post-conviction process, the statute does not foreclose other substantive claims, *Brady v. Maryland*, 373 US 83 (1963), and otherwise, R. 4-16, nor those substantive claims that are inextricably intertwined with the impeaching material.<sup>4</sup> The district court's failure to address Fields's substantive claims cannot be excused based on § 19-2719(5)(b).

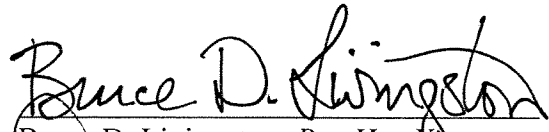
### III. CONCLUSION

For the reasons explained above and in Appellant's Opening Brief, this Court should reverse the district court and remand this case for an evidentiary hearing.

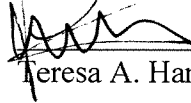
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<sup>4</sup> In a footnote at the end of its brief, the State contends that even if the allegations of Fields's petition are true, they do not "cast doubt on the reliability of the conviction or sentence." State's Brief at 36n.5. The allegations of Fields's petition must be taken as true at the summary dismissal stage. *See* Appellant's Opening Brief at 7 (court views the facts in a light most favorable to petitioner). Fields has not received an evidentiary hearing on his claims, which the State acknowledges involve unresolved credibility disputes. State's Brief at 36n.5. Fields agrees with the State that a clear, unresolved credibility dispute exists. Fields is entitled to an evidentiary hearing. Given the allegations in the petition and its supporting attachments, R. 4-117, along with Fields's additional argument and factual submissions, R. 164-87, 261-65, this Court must have doubt on the reliability of the conviction and sentence, contrary to the State's assertion.

Respectfully submitted this 22nd day of May, 2013.



Bruce D. Livingston, *Pro Hac Vice*



Teresa A. Hampton

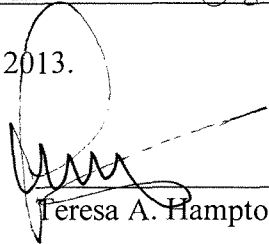
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## CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the electronic reply 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 22nd day of May, 2013.



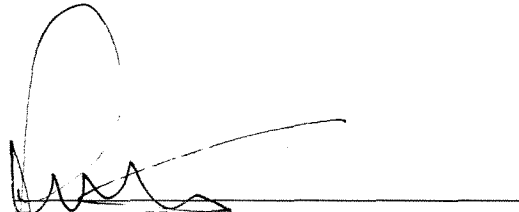
Teresa A. Hampton

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of May, 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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