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Valadez-Pacheco v. State Appellant's Reply Brief Dckt. 40386

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JUAN CARLOS VALADEZ-PACHECO,)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

S. Ct. No. 40386
Elmore Co. Case CV-2011-1044

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the Fourth
Judicial District of the State of Idaho
In and For the County of Elmore

HONORABLE LYNN NORTON
Presiding Judge

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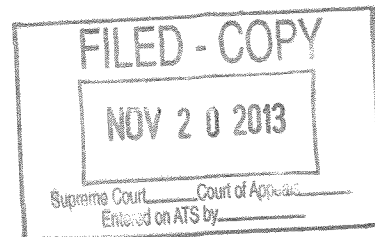


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II. ARGUMENT IN REPLY

A. **The District Court Abused its Discretion in Declining to Consider the Police and Forensic Reports Attached to Mr. Valadez-Pacheco's Initial and Amended Petitions for Post-Conviction Relief**

At the hearing on the state's motion for summary dismissal, it affirmatively represented that it had no objection to the district court considering all exhibits attached to Mr. Valadez-Pacheco's petition, including police and forensic reports. Tr. p. 14, ln. 15-23; p. 15, ln. 10-15. The district court then indicated it could consider the exhibits. *Id.* at p. 15, ln. 4-6. However, in its written opinion granting the state's motion, the district court found that the "affidavit did not include sworn or certified copies nor state these documents were made based upon the Petitioner's personal knowledge as required in Idaho Rule of Civil Procedure 56." R. 442.

In these circumstances – where a party informs the court it has no objection to exhibits and the court indicates it will consider them – the district court acted outside its discretion in later determining that those documents were inadmissible. Further, the purported deficiencies in the exhibits in no way detracted from their authenticity and the exhibits set forth facts that would have been admissible in the post-conviction evidentiary hearing. Accordingly, the district court abused its discretion in excluding the police and forensic reports from its consideration of whether Mr. Valadez-Pacheco presented issues of material fact to support his claims.

In response, the state claims that Mr. Valadez-Pacheco presented "no authority to support his contention that a district court errs by refusing to consider inadmissible evidence, absent objection, in relation to a summary disposition motion brought under I.C. § 19-4906(c)." Respondent's Brief p. 5. The state is incorrect. Mr. Valadez-Pacheco cited authority noting that summary dismissal pursuant to I.C. § 19-4906(c) is the procedural equivalent of summary

judgment under I.R.C.P. 56. Appellant's Brief p. 9, *citing Wolf v. State*, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011); *Chouinard v. State*, 127 Idaho 836, 837, 907 P.2d 813, 815 (Ct. App. 1995). Mr. Valadez-Pacheco further acknowledged that our Supreme Court has held that a trial court has discretion to decide the admissibility of an affidavit offered in support of or opposition to a motion for summary judgment, even if that issue is not raised by one of the parties. Appellant's Brief p. 10, *citing Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994); *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 782-83, 839 P.2d 1192, 1196-97 (1992). Mr. Valadez-Pacheco then distinguished his situation from cases such as *Rhodehouse* and *Hecla* by noting that the state affirmatively represented it had no objection to the exhibits at issue and the district court indicated it could consider them. Appellant's Brief p. p. 10-12. Mr. Valadez-Pacheco has thus supported his argument with authority and argument.

The district court may consider documents that do not meet Rule 56(e)'s requirements if a party does not object to their admissibility. *See James v. Mercea*, 152 Idaho 914, 918, 277 P.3d 361, 365 (2012) (If there is no timely objection, the trial court can grant summary judgment based upon an affidavit that does not comply with Rule 56(e)); *Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 917, 188 P.3d 854, 859 (2008) (same). The state expressly represented it had no objection to the exhibits and the district court indicated it could consider them. In these circumstances, the district court abused its discretion in later determining the exhibits were not admissible and in refusing to consider them in support of Mr. Valadez-Pacheco's petition.

The state also contends that any abuse of discretion was harmless because the police and forensic reports were attached to the PSI, which the district court considered. Respondent's Brief

p. 5-6. While the district court took judicial notice of the PSI, which included the reports at issue, it appears to have declined to consider those copies in support of Mr. Valadez-Pacheco's petition. The district court in part excluded the reports because it found that they contained hearsay, which applied equally to the copies attached to the PSI. The district court indicated it considered the statements in the police report to the extent discussed in the opinion. CR 442. Except the district court's indication that it considered Dave's statements in the police report for the limited purpose of being prior inconsistent statements, the police and forensic reports are not discussed in the opinion. *See* CR 447. It thus appears that the district court refused to consider the police and forensic reports attached to the PSI and Mr. Valadez-Pacheco was harmed by the district court decision to exclude the documents.

B. The District Court Erred in Summarily Dismissing Mr. Valadez-Pacheco's Petition for Post-Conviction Relief Because He Presented an Issue of Material Fact as to Whether He was Entitled to Relief

As discussed in Mr. Valadez-Pacheco's Opening Brief, he presented an issue of material fact as to whether he received effective assistance of counsel and whether his guilty plea was invalid because it was not knowing, voluntary and intelligent. Accordingly, the district court erred in summarily dismissing his petition for post-conviction relief. In response to Mr. Valadez-Pacheco's arguments, the state relies entirely on the district court's opinion. Respondent's Brief, pp. 8-9. Because Mr. Valadez-Pacheco fully addressed that opinion in his Opening Brief, no further reply is required.

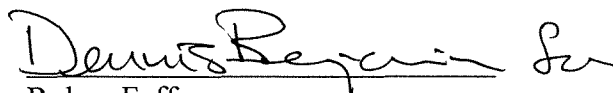
II. CONCLUSION

For the reasons set forth above and in his Opening Brief, Mr. Valadez-Pacheco respectfully asks this Court to reverse the district court's judgment dismissing his post-conviction

claims and to remand this case for further proceedings.

Respectfully submitted this 20th day of November, 2013.

NEVIN, BENJAMIN, McKAY & BARTLETT LLP


Robyn Fyffe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2013, I caused two true and correct copies of the foregoing to be mailed to:

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