

9-12-2014

# Brummett v. State Appellant's Reply Brief Dckt. 41127

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FILED - COPY  
SEP 12 2014  
Supreme Court Court of Appeals  
Entered on ATS by

IN THE SUPREME COURT OF  
THE STATE OF IDAHO

David Brummett,  
Appellant,

vs.

State of Idaho,  
Respondent.

Case No. Docket. 41127-2013  
Dist Ada county. 2011-19332

STATE OF IDAHO

— Reply —  
— Affidavit In Support —

COUNTY OF ADA

I, David Brummett, being first duly sworn on oath,  
deposes and says:

1.) I am the affiant in the above entitled matter.

2.) That the district court erred in summarily dismissing my  
petition for post-conviction relief.

3.) That I filed a "motion for judicial notice", under I.R.E  
Rule 201, and that I didn't have an opportunity to be heard.

4.) That I wanted the district court to take judicial notice  
of all transcripts of the proceedings, motions filed by counsel,  
exhibits used at trial, video surveillance of March 11<sup>th</sup> 2007  
that was used against me at trial. Which was Late Disclosure  
of Exculpatory Evidence, because it was introduced the  
same day of trial by the prosecution and did not identify  
me, like claimed by the prosecution.

5.) The video in question is a "genuine issue of material  
fact?"

6.) The transcripts of the proceedings is admissible evidence  
and therefore is material fact to what's claimed happened  
at pre-trial and trial, as errors claimed as issues  
presented on appeal Post-Conviction.

7.) That the audio recording is a "material fact", that when  
asked if I had the "intent" required to prove a burglary  
for shoplifting, I responded "No". When asked.

The arresting officer lied and said I did say I had the intent.

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8.) That all the issues presented are of what occurred and are grounded by fact and supported by constitutional, State, United States, Federal law, case law that support my claims on post-conviction.

9.) That my court appointed "attorney" was ignorant in law and failed to protect suppress video, identification that was faulty through video, without person to person identification.

10.) That pre-trial, trial counsel failed to protect pre-trial and trial due-process, procedural, that the issues presented and stated are accurate of what occurred.

11.) The identification through blank, grainy video, was not credible, not reliable or admissible. There was no person to person identification, no photo line up. Identification was only through a video introduced the same day of trial.

12.) I was falsely accused of crimes, "shoplifting" not committed, and therefore was using this to trash and tarnish my character with no other evidence to prove burglary. My shoplifting at issue was an isolated incident.

13.) The video of March 11<sup>th</sup>, 2007, and the testimony at trial was coached testimony of a prior shoplifting by the prosecution and court.

14.) That the jury instructions was misleading and prejudicial and during closing arguments the prosecuting attorney mistated facts and law that I had intent to steal because I only had \$2. The amount of money I had was \$8.50, and the little amount of money a person has does not prove what my intentions are. So the prosecution mistated facts to the jury.

15.) That my "attorney" was late as stated in "attorneys" motion to dismiss hearing for lack of speedy trial.

16.) That my attorney didn't protect my rights to "due process" and my rights to a so called "fair trial."

17.) I want to assure this honorable court that everything stated in this affidavit and issues on appeal brief is true and correct as of what happened to me.

18.) That if giving a chance to an evidentiary hearing I can prove counsel was ineffective in representing me and that I was prejudiced as a result.

19.) That if my counsel was in anyway effective, the outcome would have been different.

20.) That my constitutional rights where violated under the "equal protection of the law" by charging me for Burglary, Petit theft, and persistent violator for Shoplifting, when other people just get charged for petit theft for Shoplifting.

21.) That in this case "double jeopardy" violation happened by charging me with burglary, Persistent violator and petit theft. All I'm guilty of is just petit theft. This is overkill, and malicious prosecution.

I respectfully request that this honorable court grant an evidentiary hearing or any other relief court sees as necessary and just.

Respectfully,  
David Brummett

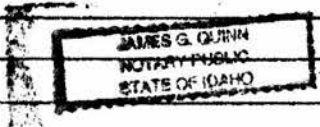
SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of September, 2014.

James G. Quinn

Notary Public For Idaho

9/10/2014

commission expires:



# CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11th day of September, 2014, I mailed a copy of this reply affidavit via prison mail system to:

Deputy Attorney General  
Criminal Division  
P.O. Box 83720  
Boise, Idaho 83720-0010

David Brummett  
Petitioner/Appellee