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# Fields v. State Appellant's Reply Brief Dckt. 38571

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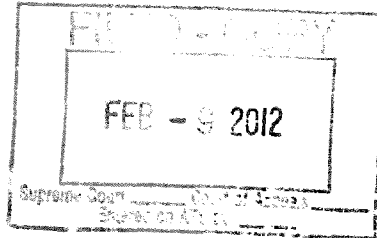
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IN THE SUPREME COURT OF  
THE STATE OF IDAHO

ZANE JACK FIELDS, )  
)  
Appellant, )  
)  
v. )  
)  
STATE OF IDAHO, )  
)  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO. 38571-2011



APPELLANT'S REPLY 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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Respondent State of Idaho makes a number of procedural and substantive objections that are either without merit, any significant effect, or are cured and addressed herein.

## **1. Procedural Objections Are Without Merit**

### **A. Record and Citation Issues**

The State makes several accusations of insufficient citations and an inadequate record. Brief of Respondent at 9-10, hereinafter “Res. Brief.” With respect to Fields’s citation to the prior trial, post-conviction and appellate records, Fields has asked this Court to take judicial notice of the prior records. *See* Motion to Take Judicial Notice, filed in this Court, Jan. 20, 2012. The State consented to judicial notice of the same materials in the district court, R. 106, and the court below plainly took judicial notice of the underlying record: it explicitly documented its review of the trial transcript and motion for new trial in its opinion. R. 190 & n.1. *See also* R. 191 (indicating review of underlying trial record in discussing jury’s access to the coat). Further, the State has the record from the prior proceedings, responded in its brief to the prior proceeding citations and arguments by Fields in his opening brief, and cited the various provisions of the prior records more than 50 times therein. There is no prejudice to the State, and this Court should simply grant the motion for judicial notice.

The State contends that Fields did not cite to the record testimony of various witnesses and counsel’s closing argument. Res. Brief at 32 (citing Opening Brief at 16-17). Record citations at that section of the Opening Brief would have been repetitive. Fields provided extensive citations only a few pages before. *See* Opening Brief at 9-10. The relevant portion of the closing

argument was noted, Opening Brief at 16, but not explicitly cited. That portion of the defense's closing argument appears on page 1676 of the trial transcript. T. Tr. Vol. 8, p. 1676.

The State also contends that Fields did not raise Eighth Amendment and state due process arguments relating to the destruction of the coat in his petition. Res. Brief at 34-35. Fields concedes he did not raise the Eighth Amendment claim below. However, he did raise the due process claim in briefing to the district court in support of his petition. R. 180-81 (citing *Id.* Const., Art. I, § 13).

#### **B. The Petition Was Timely**

Notwithstanding the district court's finding to the contrary, R. 189, the State contends that Fields's petition was untimely. Res. Brief at 13-17. In fact, Fields filed suit within 42 days of discovering the shocking news that the State had destroyed a court exhibit -- contrary to a direct court order. *See* R. 82 (discovery of coat's destruction on Aug. 31, 2011); R. 10 (petition filed Oct. 12, 2010).

In contending that Fields bore the burden to physically document and copy court exhibits, which are required to be preserved and kept for the duration of a capitally sentenced inmate's life pursuant to court rule and sound policy, the State relies on a peculiar view of diligence that absolves the State of its own wrong-doing. The State overlooks its own illegal destruction of Fields's coat as the cause of the lost evidence. Instead, the State wrongly seeks to escape blame by making an unwarranted allegation that Fields "should have known" of the coat's destruction earlier.

In arguing that Fields bears the blame for not discovering the State's destruction sooner, the State alleges that Fields should have argued his motion for independent testing of the coat rather than abandon it. Res. Brief at 13-16. The State accuses Fields of trying to "have it both ways," in arguing that he was still seeking testing of the coat at the time the coat was destroyed, but that he did not pursue testing after getting the State's concessions. Res. Brief at 22.

However, the coat was destroyed in 2004, and Judge Neville only granted Fields access to the evidence in 2006. DNA PCR R. 154, #36508, *cited in*, Res. Brief at 16. Since filing the DNA petition in 2002, Fields had been arguing for access to all of the evidence to see what was available for testing. Petition for Post-Conviction Scientific Testing, DNA PCR R. 11, #36508. It made little sense to notice for hearing the motion for testing on the coat, without first finding out what other evidence might be available for testing and more worthy of the effort and expense. The State had conceded that the jury could not have relied upon any forensic evidence regarding the coat. *E.g.*, R. 63 (State's Response to Motion for Independent Scientific Testing in the DNA PCR R. 82, #36508, filed Oct. 28, 2003) ("The jury was never given reason to believe that the sample was the victim's blood to begin with.").

The district court properly found that it was reasonable for Fields to forego testing the coat. Originally, the State presented equivocal testimony from which a fact-finder might infer that human blood was present on Fields's coat. After the State explicitly conceded that the jury had no basis to believe the coat had the victim's blood on it, the testing originally sought was moot. R. 189. *See* R. 63. Once Fields was granted access to the evidence held by the State, he discovered



hairs and fingernail scrapings taken from the victim. These were far more significant to his innocence claim.

It was perfectly reasonable for Fields to forego expensive DNA testing on a coat that concededly never had any forensic evidence of importance. It was equally reasonable for Fields to rely on a court order that the coat be preserved and returned to the court. It was also reasonable for Fields to presume that the prosecution and police would obey that order. “Ordinarily, we presume that public officials have properly discharged their official duties.” *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (quoting *Bracy v. Gramley*, 520 U.S. 899, 909 (1997)) (Internal quotation marks omitted). The State’s attempt to hold Fields responsible for its own misconduct is an extraordinary instance of unclean hands that ought not be countenanced. The district court was correct to find the petition was timely filed within 42 days of Fields’s discovery of the coat’s destruction.

**C. Fields Cited the Post-Conviction Statute, Which Governs Availability of Relief**

The State also alleges that Fields has not stated the legal grounds for the relief he seeks. Res. Brief at 17-18. The State’s contention that Fields has not made clear the basis for his claims cannot withstand scrutiny.

In his post-conviction petition, Fields plainly stated the basis for relief, which unsurprisingly is the post-conviction relief statute. *See* Petition, R. 10 (citing I.C. §§ 19-2719, 19-4901, 19-4902). He stated that the newly discovered evidence of the coat’s destruction entitled him to relief. R. 17. The district court dismissed this case under I.C. § 19-2719(5)(b).

In his opening brief, Fields repeatedly cited the pertinent statutory language, I.C. § 19-2719, that allows a petitioner to proceed in the successive post-conviction context in a capital case, i.e., assuming a timely successive petition, whether the petition casts doubt on the reliability of the conviction. Appellant's Opening Brief at 5, 8, 12, 15. Fields likewise cited the pertinent statutory provision, I.C. § 19-2719, to avoid summary dismissal, Appellant's Opening Brief at 15. His petition for post-conviction relief, itself, cited not only § 19-2719, but also §§ 19-4901 and 4902. *Id.* at 2.

Fields cited Detective Smith's misconduct as "substantive" evidence of Smith's efforts to "make and preserve the conviction through illegal means" that "casts doubt on the reliability of Fields' conviction," and is "not merely cumulative or impeaching" evidence. Appellant's Opening Brief at 7-8. Fields noted that Detective Smith's "tampering" with evidence "is sufficient to undermine the outcome of the trial." *Id.* at 12 (quoting *Grube v. Blades*, No. CV-01-357-S-BLW, 2006 WL 297203, at \*21 (D. Idaho Feb. 6, 2006) (Winmill, J.)). Based on all the new evidence, a new jury would likely acquit Fields. *Id.* at 12. All of the "new evidence" -- including DNA which does not match Fields, inmates making up their stories, and Smith's various instances of tampering with evidence and witnesses -- gave rise to a reasonable probability of a different result, a likely acquittal, and casts doubt on the reliability of the conviction. Appellant's Opening Brief at 12, 15. The likelihood of an acquittal is the standard method for evaluating whether a new trial should be granted based on newly discovered evidence. *See, e.g., State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (Idaho 1976).

Newly discovered evidence such as Detective Smith’s destruction of the coat constitutes “material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” I.C. § 19-4901(a)(4). The district court below dismissed Fields’s petition without an evidentiary hearing pursuant to I.C. § 19-2719(5)(b). R. 194. Respondent acknowledges that Fields bore the “burden of casting doubt on the reliability of the conviction,” Res. Brief at 21, and Fields cited that standard and § 19-2719(5)(b). Fields was entitled to prove his claim that he is innocent in light of all the evidence, including the new evidence. The new evidence casts doubt on the reliability of his conviction, and establishes that his conviction should be vacated “in the interest of justice.”

That Fields did not expressly cite § 19-4901 in his Opening Brief as the underlying authority for the petition does not create a basis for arguing he did not cite proper authority for obtaining relief in this court. First, Fields cited the petition itself, which cited §19-4901(a) as its underlying authority. More significantly, his petition was dismissed based on a failure to meet the requirements of § 19-2719(5)(b), not § 19-4901. Fields properly argued § 19-2719(5)(b) as the authority controlling this appeal, when he argued that the dismissal of his petition under that provision was error.

**2. Detective Smith’s Destruction of the Coat is a Basis for Post-Conviction Relief**

**A. The State’s Concession that the Coat had No Inside Pockets**

The State concedes that Defense Trial Exhibit 22, the destroyed coat that belonged to Fields, did not have pockets on the inside. Res. Brief at 34. This concession ameliorates much of the prejudice from the coat’s destruction. The inability to prove “no pockets on the inside”

after the coat was destroyed was the basis for the due process violation Fields alleged in Count II of the petition. Given the State's concession, this Court does not need to physically examine the coat to know conclusively that it had no pockets on the inside. Should Fields win a re-trial, with this concession in hand, he can inform the jury that the camouflage coat which Keith Edson claims he saw Fields wearing at the Wishing Well, Defense Exhibit 22, did not have pockets on the inside.

With this concession, the prejudice from the destruction of the coat is substantially diminished. Pictures in the record imperfectly but adequately convey the destroyed coat's bright camouflage pattern. R. 165-172 (attaching color copies of Trial Exhibits 18, 38, 39 and 40); R. Exhibits Ex. 3 pp. 6-7 (attaching color copy of Trial Exhibit 18). The State's concession that the destroyed coat did not have inside pockets resolves the due process claim relating to the loss of Defense Exhibit 22.

**B. The Destroyed Coat's Materiality to the Question of Innocence and the Lack of Confidence any Court Can have in the Conviction**

The State's concession does not resolve the question of Detective Smith's bad faith or whether in light of this new evidence Fields would still have been convicted. Fields was never given a hearing or the opportunity for cross-examination of Detective Smith. The district court avoided deciding the issue of bad faith, because it concluded that the coat was not material evidence and that Fields was not prejudiced by its destruction. R. 194. Fields contends that Detective Smith's bad faith destruction of the coat is a material fact that goes to the issue of whether Fields is innocent, I.C. § 19-4901(4) and (6), whether his conviction is reliable, I.C. § 19-2719(5), and whether his conviction should be vacated "in the interest of justice," I.C. §

19-4901(4). All of these issues are relevant to Count I, a general claim for post-conviction relief on the ground that Fields is innocent and would likely be acquitted at a new trial.

The coat's destruction is material for two reasons. First, it documents additional evidence tampering by Detective Smith. Fields has consistently denied confessing to the inmate snitches and alleged that Detective Smith inappropriately conveyed information about the case to the inmate snitches who testified against Fields. *See generally* Opening Brief at 8, 13-15 (citing Acheson's Affidavit that Smith fed him information, Salvador Martinez's testimony that Smith fed information to the inmates, and inmates' admissions that they cooked up their stories). Added to this information, Detective Smith's destruction of the coat is additional evidence of improper conduct aimed at maintaining Fields's conviction. This additional misbehavior makes the prior misconduct allegations more believable, *i.e.* that he fed witnesses information they didn't have. His destruction of the coat is not cumulative evidence, because it is substantially different in kind, but it is substantively relevant and helps the Court (and a jury at re-trial) understand the misguided or corrupt lead detective's single-minded efforts to obtain and preserve Fields's conviction. Fields should have been granted the opportunity for discovery and a hearing at which he could subject Detective Smith to the crucible of cross-examination.

The destroyed coat was also material because it complicated the State's theory and required that Fields would have had to carry and wear three coats in the course of the robbery. Edson described Fields as wearing a bright, multi-colored camouflage coat, Defense Exhibit 22, when Fields allegedly entered the Wishing Well store. T. Tr. Vol. 6, pp. 1208, 1218, 1224. However, Betty Hornecker-Heaton described a solid, navy blue, hooded sweatshirt on the man

who came in the store. *See* R. Exhibits, Ex. 1, pp. 2-3; T. Tr. Vol. 5, pp. 954-55.

Hornecker-Heaton saw the man enter the store, T. Tr. Vol. 5, pp. 928-29, 948, and she did not see the camouflage coat that Edson alleged Fields wore into the store a few minutes after 11 a.m. T. Tr. Vol. 5, p. 965. The Linda Vista Plaza witnesses describe a third coat, a puffy, solid, orange or red coat and they unanimously agreed that it was *not* the camouflage coat that Edson claimed to have seen on Fields. *See generally* Opening Brief at 9-10.

In light of all the evidence in this case, particularly Detective Smith's feeding of critical information to inmate witnesses, his destruction of the defense exhibit - - at a time Fields was seeking DNA testing of it - - is further substantive evidence of Detective Smith's intent to obtain and preserve a conviction without regard to rules or justice.

Smith's destruction of the coat is not merely cumulative evidence, as the State argues. Res. Brief at 20-21. Fields first raised Detective Smith's illegal conduct to the courts through Salvador Martinez. Mr. Martinez's testimony stood alone and the district court found him not credible. T. R., #16259, p. 145. Since then, however, several additional instances of Detective Smith's mis-conduct have been uncovered. Detective Smith told Jeff Acheson that the murder weapon was a knife not a gun. R. 44. And, in this case, Detective Smith, an experienced detective who should have known better, violated a court order and destroyed court evidence in a capital case. In the district court, below, in a new case, the first of the inmate witnesses to come forward, Harold Gilcrist, has recanted. He alleges that Detective Smith gave him information about the crime and showed him the Fields file. The facts calling into question the propriety of Detective Smith's handling of the investigation are important factual matters that undermine

confidence in the verdict. I.C. § 19-2719(5). This is particularly true, given that Fields has discovered that DNA under the victim's fingernails is from another man, *not Fields*, and the trial evidence showed that the victim had a defensive wound on her hand. Moreover, two women observed a larger, much older, bald man who was not Fields, who remained alone in the store with the victim when the last woman left the store about a minute before the murder. *See generally* Opening Brief at 8-9, 11-14.

If presented to a jury, this evidence would likely result in an acquittal. This Court should therefore reverse the district court and remand with instructions to allow discovery and an evidentiary hearing. After an opportunity for cross-examination, if Fields can establish the facts he has alleged regarding Detective Smith's misconduct, Fields's conviction should be vacated in the interest of justice.

### **3. Fields Timely Raised a Newly Discovered Evidence Claim and Does Not Rely on An Actual Innocence Exception to the Post-Conviction Relief Act**

As set forth *supra* at 5, Fields timely filed his petition within 42 days of discovering the destruction of the coat. The State contends that that Fields failed to provide a statutory basis for his innocence claim, because none exists in Idaho. Res. Brief at 18. The State purposely mis-reads this claim. Fields argued that the statutory basis for relief is simply the post-conviction statute, I.C. §§ 19-2719, 19-4901 and 19-4902. He maintains that position before this Court. In Fields's prior DNA case, this Court held that *House v. Bell*, 547 U.S. 518 (2006), and *Schlup v. Delo*, 513 U.S. 298 (1995), are inapplicable to Idaho's state post-conviction proceedings. *Fields v. State*, 151 Idaho 18, \_\_\_, 253 P.3d 692, 695-96 (Idaho 2011). This Court also declined to

consider all of the evidence Fields submitted under *House* and *Schlup*, because those federal cases are inapplicable to state proceedings. *Id.* at 695-96, 698-700. However, this Court made clear that post-conviction relief may be granted for newly discovered evidence, provided it is not cumulative, impeaching or untimely. *Id.* at 699-700.

Here, Fields is relying on this Court's interpretation of the post conviction statute announced in the DNA case. Fields has timely brought forward newly discovered evidence of the detective's destruction of the coat. *See supra*, at 5. He has made clear that his claim is based on the post-conviction relief statute, including I.C. § 19-4901(a)(4) (newly discovered evidence that requires vacation of conviction or sentence). Unless this Court chooses to overrule its recent *Fields* DNA opinion, the State's argument is misplaced. It is plain under the DNA case that Fields's only avenue for relief in state court is through the newly discovered evidence provision of the post-conviction statute. The "interest of justice" provision may be read to reach cases in which an acquittal likely would result if the case were re-tried, and on that basis, Fields contends he is entitled to post-conviction relief. In light of all the available evidence and not restricting Fields's claim for relief to the destroyed coat alone, Fields has presented sufficient evidence to undermine confidence in the reliability of his conviction. *See* I.C. § 19-2719(5)(b). The district court's decision should be reversed and the case remanded with instructions to hold an evidentiary hearing.

#### **4. Fields Does Not Seek Unnecessary Delay**

Lastly, the State suggests that Fields's primary purpose in this litigation is to delay the habeas proceedings in federal court. Res. Brief at 16-17. The State is wrong. As an innocent



man, wrongly convicted and sentenced to death, Fields's purpose in bringing this action is to prove that he is entitled to post-conviction relief.

With each new fact that comes to light, Fields has chipped away at the case the State presented against him. He has sought to have the courts of this State review his claims, examine the new facts, and look seriously at this case of an innocent man denied justice. The DNA results reveal the presence of another man's DNA under the victim's fingernails, on a hand that also had a defensive wound. Witnesses have come forward and revealed that the police's lead detective provided information to the inmate snitches, who themselves provided the only evidence, alleged "confessions," that led to Fields's conviction. Two women present at the scene until moments before the crime occurred were disturbed by the man who was present and remained behind, alone with the victim, a man they say was not Fields.

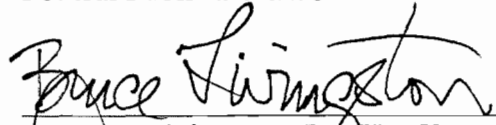
Fields now comes to this Court with undisputed evidence that the lead detective destroyed a coat that was an exculpatory defense exhibit, contrary to court order, and notwithstanding a pending request by defense counsel to conduct DNA testing on it. Fields comes to this Court not to delay proceedings in federal court, but seeking post-conviction relief, and ultimately, a new trial at which he can establish his innocence based on all the evidence.

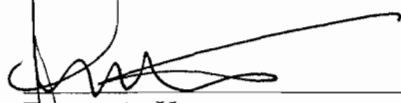
## **5. Conclusion**

This Court should reverse the district court and remand the case with instructions to grant Fields an evidentiary hearing on his claims.

Respectfully submitted this 9<sup>th</sup> day of February, 2012.

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### CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of February, 2012, 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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