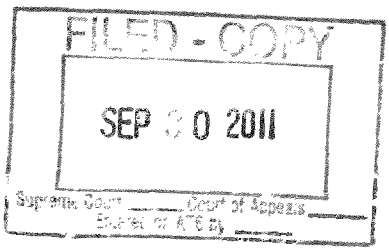
9-30-2011

Fields v. State Appellant's Brief Dckt. 38571

IN THE SUPREME COURT OF THE STATE OF IDAHO

ZANE JACK FIELDS,	)	
	)	
Appellant	)	**DOCKET NO. 38571-2011**
	)	
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	



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
Federal Defender Services of Idaho
Teresa A. Hampton
Bruce D. Livingston, *Pro Hac Vice*
702 W. Idaho, Suite 900
Boise, Idaho 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

Attorneys for Appellant

L. LaMont Anderson
Deputy Attorney General
Office of the Idaho Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-4542
Facsimile: 208-854-8074

Attorney for Respondent

IN THE SUPREME COURT OF
THE STATE OF IDAHO

ZANE JACK FIELDS,	)	
	)	
Appellant	)	**DOCKET NO. 38571-2011**
	)	
v.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

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
Federal Defender Services of Idaho
Teresa A. Hampton
Bruce D. Livingston, *Pro Hac Vice*
702 W. Idaho, Suite 900
Boise, Idaho 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

Attorneys for Appellant

L. LaMont Anderson
Deputy Attorney General
Office of the Idaho Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-4542
Facsimile: 208-854-8074

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

STATE RULES

DOCKETED CASES

OTHER AUTHORITIES

I. STATEMENT OF THE CASE

Zane Fields was convicted of the stabbing murder of Mary Catherine Vanderford during a robbery at the Wishing Well gift store on Fairview Avenue in Boise and sentenced to death. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995).[1] The crime occurred on February 11, 1988. Eleven days later Fields was arrested in the same neighborhood for an unrelated offense at Shopko. He was subsequently convicted and incarcerated in Orofino. More than a year later, on April 17, 1989, Fields was arrested for the murder. *See* T. R., p. 256, Certificate of Exhibits, PSI filed under seal at sentencing, Police Report by Dave Smith dated 4/25/89.

Seeking to prove his innocence, on June 27, 2002, Fields petitioned for post-conviction relief based upon advances in scientific testing. DNA PCR R. Vol. 1, p. 7. Fields sought DNA testing of scrapings taken from the victim's fingernails and hairs found on her body. *Fields v. State*, 151 Idaho 18, __, 253 P.3d 692, 694 (2011) (hereinafter "*Fields (DNA)*"). The DNA testing of the physical evidence was favorable to Fields. Male DNA was found in Mrs. Vanderford's fingernail scrapings, and Fields was excluded as a possible contributor. *Fields (DNA)*, 253 P.3d at 695. This Court ruled that Fields had not proved his innocence based on the results of the DNA testing. *Id.* at 698.

Fields sought to support his innocence claim by filing affidavits he obtained during the pendency of the DNA PCR in opposition to the State's summary dismissal motion. *Fields (DNA)*, 253 P.3d at 695. This Court ruled that the affidavits were "not relevant to prove that the

---

[1] Citations to prior proceedings relating to Fields' sentence of death will be designated by the proceedings abbreviation followed by the document type, e.g. Trial Transcript will be designated as T. Tr.; Trial Clerk's Record will be T. R.; Petition for Post-conviction Scientific Testing proceedings will be DNA PCR. Citations to the current appeal record will be pursuant to I.A.R. 35 as Tr. or R.

DNA test results demonstrate that Fields is not the person who committed the murder." *Id.* at 699. This Court also held that the affidavits were cumulative or impeaching and not a basis for post-conviction relief. *Id.* at 699-700.

On August 31, 2010, while the DNA PCR appeal was pending, counsel for Fields discovered that lead detective Dave Smith ordered the destruction of a trial exhibit, Defense Exhibit 22, a camouflage coat. R. 79, 82. The coat had been removed from district court custody by the State for DNA testing. The Court instructed the State to return the coat to the court clerk's office upon completion of the testing and to preserve the coat's integrity. R. 51-52, 76-77. At the time Detective Smith ordered the coat destroyed, Fields had a pending motion seeking independent scientific testing of the coat. R. 57.

On October 12, 2010, Fields filed a post-conviction action alleging that the destruction of the coat at Detective Smith's direction was new evidence that helped establish that Fields was innocent, and that the intentional destruction of the coat violated the Eighth and Fourteenth Amendments of the U.S. Constitution. R. 10-86. The State filed a motion to summarily dismiss Fields' petition on October 22, 2010. R. 99. Fields filed an opposition on December 6, 2010. R. 142. The parties filed supplementary briefs at the district court's request on January 7, 2011. R. 151, 173. Thereafter, the district court found that Fields' petition was timely, R. 189, but that the new evidence of Smith's destruction of the coat was barred under Idaho Code § 19-2719(5)(b) as cumulative or impeaching and because it did not cast doubt on the reliability of his sentence. R. 190-91. The district court rejected the destruction of evidence claim because "Petitioner has not shown that the evidentiary value of the coat was material or that he has been prejudiced by the

destruction of the evidence...." R. 194. Without granting discovery or an evidentiary hearing, the district court dismissed the petition. *Id.*

II. ISSUES PRESENTED ON APPEAL

Has Fields shown that the new evidence of the coat's destruction is material evidence that casts doubt on the reliability of his conviction, entitling him to post-conviction relief or to an evidentiary hearing to establish his innocence?

Does Detective Smith's intentional destruction of a material, exculpatory defense exhibit, in violation of a court order to preserve and return it, while Fields was seeking independent scientific testing of it, violate the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment?

III. ARGUMENT

A. Standard for Review

Summary dismissal is permissible only when the petitioner's evidence raises no genuine issue of material fact, which, if resolved in the petitioner's favor, would entitle the petitioner to the requested relief. I.C. § 19-4906(c). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted. *State v. LePage*, 138 Idaho 803, 806-07, 69 P.3d 1064, 1067-68 (Ct. App. 2003). Any inferences that may be drawn must be liberally construed in favor of the non-moving party. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). Any doubts must be resolved in favor of the non-moving party. *Anderson v. City of Pocatello*, 112 Idaho 176, 179, 731 P.2d 171, 174 (1986). Factual assertions made by the petitioner which are unrebutted must be accepted as true. *Ivey v. State*, 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). However, because the trial court is also the finder of fact and free to resolve conflicting

inferences, the district court "is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts." *State v. Yakovac*, 145 Idaho 437, 444, 180 P.3d 476, 483 (2008). Therefore, opposing presentations of the facts must be resolved in favor of the petitioner for the purposes of summary judgment; resolution cannot be made in favor of the respondent because granting summary judgment is a ruling "that there exists no material issue of fact requiring resolution." *State v. Christensen*, 102 Idaho 487, 489, 632 P.2d 676, 678 (1981).

To gain relief, Fields bears the burden of proof by a preponderance of the evidence. *Larkin v. State*, 115 Idaho 72, 764 P.2d 439 (Ct. App. 1988). On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this "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). This Court exercises free review of the district court's findings on questions of law. *State v. Pearce*, 146 Idaho 241, 247, 192 P.3d 1065, 1071 (2008). The district court's factual findings are entitled to deference unless those findings are clearly erroneous, and this Court exercises free review on whether constitutional requirements have been satisfied in light of the facts found by the district court. *Id.* at 1072.

B. New Evidence: Detective Smith's Destruction of the Coat

The newly discovered evidence that Detective Smith intentionally ordered the destruction of a court exhibit, Defense Exhibit 22, in violation of a court order to preserve and return it and while Fields was seeking independent testing of it, entitles Fields to post-conviction relief.

1. The Petition Was Timely Filed

Counsel for Fields discovered the destruction of the coat on August 31, 2010. R. 16, 82. Fields filed a petition within 42 days of that date on October 12, 2011. R. 8, 10. The district court correctly found that Fields' failure to learn of the coat's destruction earlier was reasonable, given the State's concessions that rendered DNA testing unnecessary.[2] R. 189. The petition was timely filed. *Id.* Fields diligently brought forward his claims regarding the destruction of the coat.

2. Smith's Destruction of the Coat Casts Doubt on The Reliability of Conviction

New evidence not presented at trial of Detective Smith's illegal conduct in this case undermines confidence in the verdict, would likely result in an acquittal, and mandates that this Court reverse the district court and grant the petition or remand for an evidentiary hearing. The district court erroneously ruled that Smith's destruction of the coat did not cast doubt on the reliability of Fields' conviction. R. 190-91. For the following reasons, the district court is incorrect.

The district court found that Smith's destruction of the coat was "irrelevant to the substance of the testimony of the inmate witnesses." R. 190. Fields argued that evidence of

---

[2] The State conceded in the DNA PCR that no evidence of possible blood from the coat could have supported a guilty verdict in the case: "[t]he jury was never given any reason to believe that the sample was the victim's blood to begin with;" R. 63 "the jury was told in unmistakable terms that the State Laboratory could not say that the blood stains were human." R. 69. *See also* R. 92-93 ("the jury knew that the blood on the orange coat was not human and so could not have possibly have been Mrs. Vanderford's" and the alleged blood evidence "did not contribute to the guilty verdict"); R. 94 ("the result of the testing could not possibly show that the petitioner was innocent because the jury did not rely on the blood on the coat in the original conviction since they knew that the blood was not human"). Given the State's concessions, Fields did not pursue testing of the coat. R. 143.

Detective Smith's destruction of the coat was relevant as another instance of misconduct, like Smith's feeding the informant witnesses information about the crime. Smith's misconduct and evidence tampering supports Fields' allegation that Smith purposefully altered evidence, in conformance with both Smith's belief that Fields committed the crime and his motive and plan to construct a case against Fields by any means necessary. Smith's selective alteration of evidence advanced those goals. Smith supplied or destroyed different pieces of information depending on how they would advance the case against Fields. While the coat may be irrelevant to the substance of the inmate informants' testimony, Smith's destruction of the coat is relevant to his pattern and conduct of falsifying and destroying evidence in this case.

The district court found that the destruction of evidence was "too remote in time" to be relevant to Smith's feeding of information to the inmate informants in 1990. R. 191. However, the number of instances of Smith's pattern and conduct of altering evidence to build or preserve a case against Fields need not be directly related to each other to be relevant.

Smith's involvement in the case continued. As lead detective at trial in 1990 and continuing through the 2002 post-conviction DNA case and thereafter, Smith functioned as the prosecution's designated law enforcement investigator. He coordinated the effort to secure, from inmate informants, purported "confessions" from Fields. He remained in control of the evidence years after the crime, as shown by the lab submission documents from 2003, when the coat was delivered to the state lab. R. 55 ("investigating officer" was "Dave Smith" of the "submitting agency," the Boise Police Department). After Fields finally got permission to review the evidence in September 2005, DNA PCR R. 154, Smith and Roger Bourne observed at the state lab while Fields' DNA expert Randell Libby, accompanied by counsel Bruce Livingston,

inspected the clothing and found the hairs and fingernail scrapings that Fields eventually tested. His authorization to destroy the evidence was not "too remote in time" from the trial or claim of innocence. Therefore, Smith's destruction of evidence contrary to a court order is not "irrelevant."

Understanding police practices and conduct in this case is important context for understanding Detective Smith's brazen misconduct in ordering the coat's destruction. With the exception of evidence that became court exhibits, the police maintained custody of all the evidence collected in the case, but denied the defense access to it unless the State's attorney, Roger Bourne, permitted access. DNA PCR R. 47-48. The State opposed granting defense access to the evidence for years. *See* DNA PCR R. 134-37. Nevertheless, the State recognized that the evidence needed to be preserved, and Bourne asserted in 2005, *even though the police were the custodians of the evidence*, that "[w]e're preserving the evidence" and have been doing that "[f]or 17 years, or however long this has – it's been since the original trial." DNA PCR Tr. Vol. 5 of 10, July 25, 2005 at 13. The district court ordered the State to "continue to do that which they say they have been doing for 17 years, which is to preserve the evidence." *Id.* at 15. *See* DNA PCR R. 142. Under these circumstances, with these understandings of the need to preserve evidence and with Detective Smith's involvement in the DNA case itself, the district court's "too remote in time" argument cannot stand.

Likewise, contrary to the district court's finding, Smith's destruction of the coat is not an impeaching attack on Smith's credibility regarding his conduct with witnesses. *See* R. 190. Rather, Smith's actions are substantive proof of his pattern and conduct of altering evidence to build and preserve a case against Fields. Detective Smith's destruction of the coat is not merely

cumulative or impeaching evidence. Along with the other evidence of misconduct, altered evidence and spoon-fed information to inmate informants, Detective Smith's destruction of the coat is substantive evidence of his continuing course of conduct in the case – to make and preserve the conviction of Fields through illegal means.

Detective Smith's destruction of an exculpatory defense exhibit, contrary to a court order to preserve and return it, R. 48-49, 186-87, is yet another example of his tampering with the evidence to secure or preserve Fields' conviction. As new additional evidence of improper police conduct aimed at preserving Fields' conviction, Detective Smith's order to "destroy the coat" casts doubt on the reliability of Fields' conviction. The jury that convicted Fields was unaware of many new facts, including that: Detective Smith provided inmate informant witnesses facts about the crime to bolster their story that Fields confessed to them, R. 44, T. Tr. Vol. 8, pp. 1727-28, 1733-34; the inmate informants admitted they made up their testimony against Fields, R. 45; the victim had male DNA under her fingernails that was not from Fields, R. 22, *Fields v. State*, 253 P.3d at 695; and Detective Smith ordered an exculpatory defense exhibit destroyed, R. 76-80, at a time when the defense was seeking DNA testing of that coat to establish that the victim's blood was not on it. R. 57.

This was a close case at trial. No physical evidence tied Fields to the crime: no blood, no fingerprints, no DNA. Two women were continuously at the scene until moments before the crime. T. Tr. Vol 5, pp. 924-65, 966-88, 1039, 1049-50; R. 31-42. *See Fields v. State*, 253 P.3d at 695. *See generally* Appellant's Opening Brief in DNA PCR appeal, No. 36508-2009 at 8-11. They witnessed a lone man that was not Fields who remained in the store with Mrs. Vanderford. *Id*. *See Fields v. State*, 253 P.3d at 698-99 ("the man they saw clearly did not match Fields"). At

most a minute or two after they left the store, Mrs. Vanderford was attacked, the store was robbed, the attacker fled, and a 911 operator confirmed with Mrs. Vanderford that the lone male attacker was gone. T. Tr. Vol. 5, pp. 994, 997-99. The State's case depended on an alleged eyewitness, Keith Edson, who claimed he saw Fields at the Wishing Well at the time of the crime and inmate informants who claimed Fields confessed to them.

Edson only placed Fields at the murder scene at the time of the crime after "the detectives" coached him into changing his testimony. Edson made a written statement on the day he spoke to the detectives, within a couple of days of Fields' arrest on February 22, 1988 for the Shopko incident. T. Tr. Vol. 6, p. 1246. In that statement, Edson wrote that "[o]n the day or day after the stabing (sic) at the wishwell, (sic) I was standing in the old Boise cascade parking lot." *See* State's [Trial] Ex. 23. At trial, Edson changed his story and claimed that he was definitely present on the day of the murder. T. Tr. Vol. 6, p. 1194-97, 1247-49. When asked what caused him to change his story, Edson's only explanation was "[g]oing over what I saw that day with the detectives." T. Tr. Vol. 6, p. 1249.

However, the detectives didn't coach Edson very well. Virtually every "fact" in Edson's testimony was wrong, including the camouflage coat, Defense Exhibit 22, which he alleged Fields was wearing when he entered the Wishing Well. The women at the Wishing Well, Hornecker-Heaton and Munk, saw one man in the store, and he was wearing a navy blue, zip-front sweatshirt. R. 35, 38.[3] When witnesses at the Linda Vista Plaza saw Fields about an hour later, he was wearing a solid orange to red coat with pockets on the outside, not the camouflage

---

[3] Hornecker-Heaton saw the man enter the store. T. Tr. Vol. 5, pp. 929-30, 945-49. In describing the man, she doesn't mention seeing him take off or carry a camouflage coat. *Id.* at 930-34, 948-58.

coat. *See, e.g.,* T. Tr. Vol. 5, pp. 1104, 1109-10, 1132, 1136. T. Tr. Vol. 6, pp. 1155, 1167-69, 1171-72, 1183.

Edson was impeached so extensively at trial that his testimony would not be believed by any jury. Edson testified that he arrived at the BMC parking lot next door to the Wishing Well at 11:00 a.m., T. Tr. Vol. 6, pp. 1196-98, saw Fields enter the store at 11:02 a.m., and then waited for him to leave, which he did, some ten to fifteen minutes later. *Id.* at 1255. Yet, Edson did not see any cars in the Wishing Well parking lot other than one cargo van (the kind without a lot of windows). *Id.* at 1265-66. Edson did not see the brown Honda Accord driven by Hornecker-Heaton[4] arrive and leave the Wishing Well parking lot. *Id.* at 1267. Nor did he see Hornecker-Heaton enter and leave the store. *Id.* pp. 1267-68. Edson did not see an Aerostar passenger van driven by Munk and "loaded with windows"[5] arrive and leave the Wishing Well parking lot. *Id.* at 1268. Nor did he see Munk enter and leave the store. *Id.* at 1270. Compare these "observations" to the affidavits and testimony of Munk and Hornecker-Heaton. Further, Edson did not see any cars or activity in the BMC parking lot (where he was allegedly standing) next door to the Wishing Well, because, he stated, the BMC store was closed. *Id.* at 1264-65. However, Mrs. Vanderford's husband, Herbert, was outside washing the Wishing Well's front windows at about 11 a.m. that day, and he testified that the BMC store next door was open, and that there were many cars in the BMC parking lot. T. Tr. Vol. 5, pp. 917-19.

---

[4] *See* T. Tr. Vol. 5, p. 945.

[5] *See* T. Tr. Vol. 5, pp. 981-82.

Edson was wrong about nearly every "fact" regarding the activities at the Wishing Well in the minutes preceding the crime.[6] His testimony could not have reasonably contributed to the guilty verdict at trial and would not likely lead to a conviction if this case were re-tried. *See* DNA PCR R. Vol. 2, p. 275, CE, Ex. 9, (Dave Smith Letter dated May 30, 1990, Exhibit A (noting inmate informants' testimony, not Edson's, led the jury to convict)).

With Edson completely unbelievable, the case against Fields hung on notoriously unreliable evidence, inmate informant testimony.[7] Inmate informant witnesses starting with Harold "Howie" Gilcrist came forward more than a year after the crime – after being solicited by lead detective Dave Smith – and testifed to purported "confessions" by Fields. *See, id.* These inmate informants procured the guilty verdict.

The defense blamed Detective Smith at trial for assembling tainted testimony, and argued that the inmate testimony against Fields was unreliable. *See* Tr. 48-49 (argument of Roger

---

[6] Edson could not even have purchased the drink he said he bought at Taco Bell, because that restaurant was still in the final stages of construction and had never been open for business by the day of the murder. *See* T. Tr. Vol. 6, pp. 1243-45, 1233 (Edson bought a pop at Taco Bell on Fairview next to the BMC store); *cf.* T. Tr. Vol. 8, pp. 1633-35 (the Taco Bell was not open for business until February 23, 1988, twelve days after the Wishing Well murder).

[7] Criminals are likely to say and do almost anything to get what they want, especially when what they want is to get out of trouble with the law.

This willingness to do anything includes not only truthfully spilling the beans on friends and relatives, but also lying, committing perjury, manufacturing evidence, soliciting others to corroborate their lies with more lies, and double-crossing anyone with whom they come into contact, including – and especially – the prosecutor.

Stephen S. Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 Hastings L.J. 1381, 1383 (1996).

Bourne asserting that this portion of Fields' argument is a repeat of what Fields argued at trial in 1990). Since trial, however, numerous additional facts have surfaced that undercut the case against Fields, point to his innocence and call into question Smith's actions. The new evidence casts doubt on the reliability of Fields' conviction. Had a jury been aware of these new facts, including Detective Smith's purposeful destruction of an exculpatory defense exhibit, contrary to a court order to preserve and return it and while the defense was seeking exculpatory DNA testing, the jury would likely have acquitted Fields.

"[E]vidence showing police tampering is sufficient to undermine the outcome of the trial." *Grube v. Blades*, No. CV-01-357-S-BLW, 2006 WL 297203, at *21 (D. Idaho Feb. 6, 2006) (Winmill, J.). The State's failure to disclose information about Detective Smith's evidence tampering violates the Due Process Clause of the Fourteenth Amendment, irrespective of the good or bad faith of the prosecution and even when the misconduct is known only to the police. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). *See Grube*, 2006 WL 297203 at *6, *21-*22. Detective Smith destroyed a coat that was a significant part of the exculpatory evidence in Fields' favor. This is at least the third instance of evidence tampering. It followed Smith's providing information about the crime to Gilcrist, Heistand and Bianchi, and identifying the correct murder weapon for inmate Acheson.[8] Because the mere failure to disclose this

---

[8] A fourth instance of Detective Smith's misconduct is currently being litigated in the district court. The first inmate to come forward with an alleged confession from Fields, Harold Gilcrist, has recanted his testimony that Fields confessed to him and stated that he learned the information in the alleged "confession" from Detective Smith. *See Fields v. State*, No. CV PC 1114403, Petition for Post-Conviction Relief (Ada County District Court, filed July 28, 2011).

information gives rise to a reasonable probability of a different result, a jury would likely acquit Fields when presented with this new evidence of tampering by Detective Smith, together with the additional exculpatory evidence, including DNA evidence, that has been discovered since trial.

DNA evidence, discovered post-trial in a timely DNA action, established that Mrs.Vanderford had male DNA under her fingernails and unknown hairs on her body, none of which came from Fields. *Fields v. State*, 253 P.3d at 695. Moreover, Mrs. Vanderford had a defensive wound on her hand. T. Tr. Vol. 5, p. 1063. A jury would likely conclude that she scratched her attacker, notwithstanding this Court's characterization of such a finding as "speculation." *Fields v. State*, 253 P.3d at 698. Mrs. Vanderford died without being asked whether she scratched her attacker, but this does not preclude the natural inference that she scratched her attacker, arising from the fact of a defensive wound on her hand and male DNA under her fingernails.

Moreover, the alleged confessions by Fields to inmate informants have been substantially discredited. After an interview with Detective Smith, Acheson had his testimony "corrected" by Smith, changing the discarded weapon from a gun to a knife. R. 44. Acheson later clarified that the weapon Fields said he discarded was a gun, not a knife. *Id.* Thus, Acheson's testimony is of no probative value with respect to the Wishing Well murder and clearly refers only to the shoplifting incident at Shopko. *State v. Fields*, 115 Idaho 1101, 1102, 772 P.2d 739, 740 (Idaho Ct. App. 1989)("suspect [Fields] fled to a nearby area where another store was then under construction" and police did not recover the gun that suspect had brandished, but "did recover a gun holster and ammunition from the construction site").

Inmate Scott Bianchi has previously recanted and unrecanted his testimony. Supplemental Trial Clerk's Record, pp. 5-21. At the motion for a new trial, Salvador Martinez testified that Bianchi admitted his testimony was lies, and that he didn't know anything about the murder from Fields. T. Tr. Vol. 8, pp. 1719-1727. Bianchi also admitted to Acheson that he made up his story. R. 45. Additionally, Bianchi couldn't get the story straight at trial. According to Bianchi, Fields said he killed Mrs. Vanderford in Linda Vista Plaza. T. Tr. Vol. 7, p. 1569. Bianchi repeated that testimony on cross examination. When asked if he was sure that Fields said the murder occurred at Linda Vista Plaza, Bianchi responded "I'm certain about that." T. Tr. Vol. 7, p. 1613. Linda Vista Plaza was not the location of the Wishing Well. The Wishing Well was about a half mile from Linda Vista Plaza. T. Tr. Vol. 5, p. 1114. However, Detective Smith gathered information from witnesses in the stores at Linda Vista Plaza about a strange man seen there. T. Tr. Vol. 7, p. 1378. Smith knew that information about the descriptions given by the Linda Vista Plaza witnesses was released to the media. T. Tr. Vol. 7, p. 1398. Bianchi's erroneous inclusion of the unrelated Linda Vista Plaza as the scene of the crime lends support to the position that the inmate informants made up their stories from information fed them by the police and other informant witnesses or gleaned from media accounts.

Joe Heistand is the only remaining inmate informant who has not recanted his testimony. However, Heistand admitted to Salvador Martinez that he learned about the case from other inmates. T. Tr. Vol. 8, p. 1733. Both Heistand and Harold "Howie" Gilcrist,[9] also admitted to Acheson that they made up their stories about Fields confessing to them. R. 45.

---

[9] Gilcrist has recanted his testimony, but that case is not yet before this Court. *See supra* note 8.

The fact that the jury had access to the coat at trial does not make the conviction reliable, contrary to the district court's order. *See* R. 191. The jury had a variety of exculpatory information including that Defense Exhibit 22, the coat Edson allegedly saw at the Wishing Well, was not the coat seen at Linda Vista Plaza. What the jury did not have, which makes Fields' conviction unreliable, were the facts of police misconduct by the lead detective on the case, inmate informants making up their story, and DNA evidence that another man's DNA was under the victim's fingernails. The new evidence of Smith's destruction of the coat, confirming a pattern of police misconduct, casts doubt on the reliability of Fields' conviction and is not barred by Idaho Code section 19-2719(5)(b), and would lead to Fields' acquittal at a new trial. This Court should reverse the district court and grant post-conviction relief or remand the case for an evidentiary hearing.

C. Smith's Destruction of Evidence Violates Due Process and the Eighth Amendment

The district court concluded that it need not examine the question of Detective Smith's bad faith because Fields could not meet the materiality and prejudice elements for destruction of evidence claims set forth in *Garcia v. State Tax Comm'n*, 136 Idaho 610, 615, 38 P.3d 1266, 1271 (2002). R. 192-94. For the reasons set forth below, the district court erred.

California v. Trombetta, 467 U.S. 479 (1984) and *Arizona v. Youngblood*, 488 U.S. 51 (1988), distinguish potentially exculpatory evidence of unknown value from material exculpatory evidence. The duty to preserve evidence under the Due Process Clause is limited to material evidence that "possess[es] an exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 488-89.

> The Due Process Clause of the Fourteenth Amendment, as interpreted in *Brady [v. Maryland*, 373 U.S.83 (1963)], makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.

Youngblood, 488 U.S. at 57. The line is clear: the duty to preserve and disclose *material exculpatory evidence* exists regardless of the existence of good or bad faith; in contrast, "failure to preserve *potentially useful evidence* does not constitute a denial of due process of law," unless the police act in bad faith. *Youngblood*, 488 U.S. at 58 (emphasis added).

Defense Exhibit 22, the camouflage coat, was material exculpatory evidence. Detective Smith intentionally ordered the destruction of material exculpatory evidence.

First, under *Garcia* and *Trombetta*, the destroyed evidence was material. The camouflage coat was an exculpatory defense exhibit introduced into evidence to prove that this coat, which Edson alleged Fields wore in and out of the Wishing Well, could not have been reversed inside-out and worn into the Linda Vista Plaza stores. The Linda Vista Plaza witnesses identified Fields as wearing a solid-colored coat with pockets on the outside. One of the Linda Vista Plaza witnesses speculated that perhaps the coat was reversible, and therefore, if it were worn inside-out, the camouflage markings would not have been seen by the witnesses at Linda Vista Plaza.[10] To disprove that possibility, Fields had the actual coat introduced into evidence as Defense Exhibit 22. During his closing argument, defense counsel urged the jury to physically examine the inside of the coat and note that it did not have any pockets on the inside. Because the coat seen in Linda Vista Plaza had pockets on the outside, Fields could have been wearing the

---

[10] Uniformly, the camouflage markings were not seen at Linda Vista Plaza. All of the witnesses there described a solid-color, orange to red coat.

camouflage coat "inside-out" *only if* the inside surface had pockets. The lack of inside pockets on Defense Exhibit 22 proved that Fields was not wearing the camouflage coat at Linda Vista Plaza.

Not having inside pockets, the camouflage coat was materially exculpatory evidence, exceedingly relevant to the question of whether Fields was innocent or guilty. *See Garcia*, 136 Idaho at 615, 38 P.3d at 1271. Moreover, its exculpatory value was apparent before it was destroyed. *See California v. Trombetta*, 467 U.S. 479, 489 (1984). Labeled as "Defense Exhibit 22," the exculpatory value of the coat was explicit.

Second, the destruction of the coat was prejudicial. The pictures of the coat are not adequate substitutes for the coat: they do not show the absence of inside pockets. Fields is "unable to obtain comparable evidence by other reasonably available means." *See Trombetta*, 467 U.S. at 489. The destroyed coat's lack of pockets on the inside precluded it from being the coat Fields wore at Linda Vista Plaza. By destroying this exculpatory, material defense exhibit, Detective Smith precluded this Court and all reviewing courts from examining the evidence and seeing that the camouflage coat did not have pockets on the inside and thus could not have been reversed inside-out and worn into Linda Vista Plaza. The prejudice is plain. *See Garcia*, 136 Idaho at 615, 38 P.3d at 1271. Materiality under *Trombetta* exists, and a violation of the Fourteenth Amendment's Due Process Clause and Article I, Section 13 of the Idaho Constitution arose as a consequence of Detective Smith's destruction of the coat.[11]

---

[11] When the State discovered the destruction of the coat, following inquiries from the Clerk's office about its whereabouts, the State sought to conceal the destruction from Fields. Roger Bourne wrote a letter of explanation to the clerk's office but did not copy Fields' counsel or file any notice with the court. R. 16, Petition ¶¶ 26-27. "[C]oncealment is one method of proving that the exculpatory value of the evidence was known to the government prior to its

Under *Trombetta*, when the exculpatory value of the destroyed evidence was apparent, bad faith need not be shown. In requiring bad faith even when material exculpatory evidence is destroyed, *Garcia* is inconsistent with *Trombetta* and must yield under the Supremacy Clause to the superior authority of *Trombetta* and the Fourteenth Amendment's Due Process Clause.

In the event that *Youngblood* controls and bad faith is required, Fields has presented prima facie evidence of bad faith and is entitled to discovery and a hearing, both of which the district court denied. R. 194. Detective Smith knew that he was ordering the destruction of a defense exhibit in a capital case. That destruction violated a court rule. *See* Idaho Ct. Admin. R. 38(b) and (d) (exhibits shall not be destroyed in a capital case). More significantly, Smith's destruction of the coat violated an explicit court order to preserve and return the specific item that he destroyed. Smith was a participant in this litigation, as shown by his being listed as the "investigating officer" for the "submitting agency" for DNA testing, and he must have known that litigation of this case was ongoing. Further, the practice of the police department and the prosecutor's office was to preserve all of the evidence, not just admitted exhibits. *See* DNA PCR Tr. Vol 5 of 10, July 25, 2005 at 13. As lead detective, Smith must have known that policy. At a minimum, Fields is entitled to discovery and an evidentiary hearing on the issue of Smith's bad faith.

A state court may interpret its constitution more liberally than similar provisions in the United States Constitution. *See State v. Osakalumi*, 194 W. Va. 758, 461 S.E.2d 504 (1995) (interpreting West Virginia Constitution more broadly than the U.S. Constitution to avoid what it

---

destruction." *Stuart v. State*, 127 Idaho 806, 816, 907 P.2d 783, 793 (Idaho 1995).

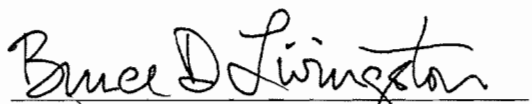
felt was the unduly restrictive nature of *Youngblood*). Fields argues that in this case, with the life of an innocent man at stake, that the Idaho Constitution's due process provision, Art. I, § 13, is violated by the intentional destruction of the camouflage coat. This irreplaceable physical evidence was a defense exhibit in a capital trial and was required to be preserved both by Idaho Court Administrative Rules 38(b) and 38(d), and by order of the District Court when it permitted the State to remove the exhibit from the Clerk's Exhibit Room. R. 51-52.

The Eighth Amendment requires heightened reliability in capital cases. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976); *Gregg v. Georgia*, 428 U.S. 153, 190 (1976). This capital case is tainted by the destruction of material exculpatory evidence and dependent upon alleged confessions brought forward by unreliable inmate informants. With no physical evidence against Fields, favorable DNA evidence consistent with his innocence, and two eyewitnesses who state that Fields was not the man at the scene of the crime, the Eighth Amendment proscription against cruel and unusual punishment precludes the sentence in this case.

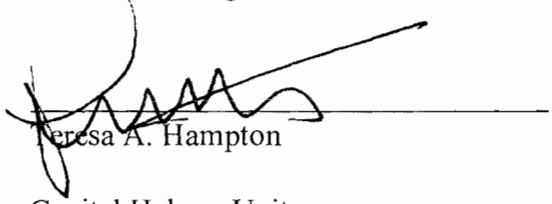
IV. CONCLUSION

For the foregoing reasons, this Court should reverse the district court and grant post-conviction relief or remand for discovery and an evidentiary hearing on the innocence claim presented in the petition.

Respectfully submitted this 30th day of September, 2011.



Bruce D. Livingston, *Pro Hac Vice*



Teresa A. Hampton

Capital Habeas Unit
Federal Defender Services of Idaho
702 W. Idaho, Suite 900
Boise, Idaho 83702
Telephone: 208-331-5530
Facsimile: 208-331-5559

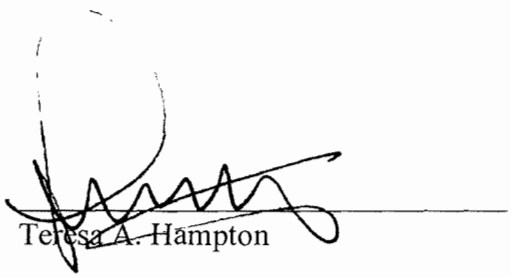
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2011, 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:

L. LaMont Anderson
Deputy Attorney General
Chief, Capital Litigation Unit
Statehouse Mail, Room 10
PO Box 83720
Boise ID 83720-0010

_X_ U.S. Mail
____ Hand Delivery
____ Facsimile
____ Federal Express



Teresa A. Hampton