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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45566**
Plaintiff-Respondent,	)	
	)	**Twin Falls County Case No.**
v.	)	**CR-2011-8021**
	)	
ROBERT BENJAMIN BRACKETT,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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Nature of the Case

Robert Benjamin Brackett appeals from the district court's order denying his fourth motion for a new trial.

Statement of Facts and Course of Proceedings

This is Brackett's sixth appeal relating to his 2013 convictions for possession of sexually exploitive materials and sexual battery on a minor child sixteen or seventeen years of age.[1] In its opinion affirming Brackett's judgments of conviction on direct appeal, the Idaho Court of Appeals summarized the underlying facts and proceedings as follows:

> In January 2011, a minor reported to authorities that she had a sexual relationship with forty-six-year-old Brackett. At the time of the relationship, the minor was sixteen years old. Officers recovered a camera containing many sexually explicit photos of the minor, which the minor claimed were taken by Brackett and some of which depicted her having sexual contact with Brackett. Brackett was charged with eight counts of possession of sexually exploitive materials, I.C. § 18–1507A, and eight counts of sexual battery on a minor child of sixteen or seventeen, I.C. § 18–1508A. Brackett's first trial ended in a mistrial after Brackett, during his opening statement, violated the district court's pretrial order. After his second trial, Brackett was found guilty by a jury of eight counts of possession of sexually exploitive materials and five counts of sexual battery on a minor child of sixteen or seventeen.

State v. Brackett, 160 Idaho 619, 624, 377 P.3d 1082, 1087 (Ct. App. 2016).

While Brackett's direct appeal was still pending, he filed his first motion for a new trial, in which he asserted the existence of newly discovered evidence. See State v. Brackett, Docket No.

[1] See State v. Brackett, Docket No. 40867 (denial of motion construed as writ of mandamus); State v. Brackett, 160 Idaho 619, 377 P.3d 1082 (Ct. App. 2017) (Docket. No. 41578, direct appeal); State v. Brackett, Docket No. 44143, 2017 WL 5166933 (Idaho App. 2017) (appeal from denial of second motion for a new trial); State v. Brackett, Docket No. 45071, 2018 WL 2145658 (Idaho App. 2018) (appeal from denial of third motion for a new trial); Brackett v. State, Docket No. 45402 (post-conviction appeal, pending decision).

44143, 2017 WL 5166933 at *1 (Idaho App. 2017) (unpublished). The district court denied the motion and Brackett did not file a timely notice of appeal from this denial order. See id.

Brackett filed a second motion for a new trial on October 5, 2015, in which he again asserted the existence of newly discovered evidence. Id. at *1-3. Specifically, Brackett produced an affidavit of Timothy J. Miner. Id. In the affidavit, Miner alleged that he spoke with the victim after the second jury trial. Id. at *2. According to the affidavit, the victim told Miner that the prosecutor threatened to "put [the victim] in prison for perjury and contempt of court" if she changed her anticipated testimony about Brackett's conduct, and that the victim should "just take the money for her and her family and walk away." Id. at *2. Miner further alleged that the victim informed him that she had initially told authorities that "nothing happened" between her and Brackett, but she later changed her story so that she could "go about her day." Id. at *2. The Idaho Court of Appeals affirmed the district court's conclusion that Brackett failed to satisfy the Drapeau[2] standard for motions for a new trial based upon newly discovered evidence because the affidavit constituted inadmissible hearsay, could only have been used for impeachment, and would not probably have resulted in an acquittal. Id. at * 3.

Brackett next filed a third motion for a new trial. See State v. Brackett, Docket No. 45071, 2018 WL 2145658 at *1 (Idaho App. 2017) (unpublished). In this motion, Brackett asserted, among other things, that the state committed a Brady[3] violation based upon an affidavit from Joshua Gabbert. (See id. at *1; #45071 R., pp.177-180.[4]) In this affidavit, Gabbert alleged that

[2] State v. Drapeau, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976).

[3] Brady v. Maryland, 373 U.S. 83 (1963).

[4] Contemporaneous with this brief, the state filed a motion requesting that the Idaho Supreme Court take judicial notice of the clerk's record associated with Brackett's appeal from the district court's denial of his third motion for a new trial, Docket No. 45071.

the victim in Brackett's case falsely accused him of rape to the Jerome County Sherriff. (#45071 R., p.180.) The district court entered an order denying the motion for a new trial. (#45071 R., pp.186-187.) The Idaho Court of Appeals affirmed the denial on a different ground than set forth by the district court – that Brackett's Brady claim based on the Gabbert affidavit was untimely pursuant to I.C.R. 34(b)(2), and also failed a matter of law because Brackett did not demonstrate that the state suppressed the allegations in the affidavit or that there was a reasonable probability that the allegations would have led to a different result, as required to make a successful Brady claim. Brackett, Docket No. 45071, 2018 WL 2145658 at *2-3.

In September 2017, Brackett filed a fourth motion for a new trial raising two grounds. (R., pp.97-116.) First, Brackett asserted that the state committed a Brady violation by withholding a 2014 letter written by Megan Gonzalez to the victim that was referenced by the prosecutor during an April 1, 2016 hearing on Brackett's second motion for a new trial, and which, Brackett asserts, corroborated the allegations set forth in the Miner affidavit. (R., pp.97-99.) Brackett submitted a transcript of the hearing as an exhibit. (R., pp.103-115.) In the letter to the victim, according to the prosecutor's statement at the 2016 hearing, Gonzalez wrote, "[t]here was once a person that you love and loved you, and that person never hurt you," and "[t]his person knows that the prosecutor promised you money." (R., p.111.) The prosecutor referenced the letter in response to Brackett's argument regarding the Miner affidavit, in the context of arguing that the allegations in the Miner affidavit were not newly discovered and were cumulative with Brackett's underlying defense at the trial that the state conspired with the victim to wrongfully accuse Brackett of the charged crimes. (R., pp.104-113.) Next, Brackett asserted the discovery of new evidence, specifically, the same Gabbert affidavit that was the basis of the Brady claim raised in Brackett's third motion for a new trial, in which Gabbert asserted that the victim in Brackett's case had falsely

accused Gabbert of rape. (R., pp.99, 116.) The state did not file a response to the motion. (See R., p.95.)

The district court denied Brackett's fourth motion for a new trial.[5] (R., pp.122-123.) The court first concluded that, since no copy of the Gonzalez letter was in the record, it had no basis from which to evaluate the letter's relevance, if any. (R., p.122.) The court, apparently construing Brackett's Brady claim regarding the Gonzalez letter as an extension of Brackett's previous newly discovered evidence claim related to the Miner affidavit, also noted that it had already rejected Brackett's arguments regarding the Miner affidavit and that it lacked jurisdiction to revisit these rulings. (Id.) The district court also rejected Brackett's Drapeau newly discovered evidence claim related to the Gabbert affidavit. (R., p.123.) The court concluded that Brackett failed to satisfy the Drapeau standard because he failed to demonstrate that the allegations in the Gabbert affidavit were newly discovered, constituted material rather than merely impeachment evidence, would probably have produced an acquittal, or that the failure to learn of the allegations was due to no lack of diligence on Brackett's part. (Id.) Brackett timely appealed. (11/22/17 Notice of Appeal; see also 12/27/17 Order (withdrawing Court's previous order conditionally dismissing Brackett's appeal after Brackett submitted evidence that he placed the notice of appeal in the prison mailing system in a timely matter).)

[5] In this order, the district court erroneously referred to Brackett's motion as his "third" motion for a new trial. (R., p.122.) This confusion may be based on the fact that Brackett did not file an appeal from the district court's denial of his first motion for a new trial. See Brackett, Docket No. 44143, 2017 WL 5166933 at *1.

ISSUES

Brackett states the issues on appeal as:

1. Did the district court error[sic] and/or abuse its discretion in denying defendant[‘]s motion for a new trial[?]

2. Did the district court error [sic] and/or abuse its discretion by allowing due process and/or Brady law violations by the state[?]

3. Did the court violate due process and/or Brady law by attempting to dilute due process protections concerning disclosure and/or application of exculpatory and/or material evidence by casting them in terms of state case law and/or evidentiary law[?]

(Appellant’s brief, pp.2-3 (capitalization modified).)

The state rephrases the issue on appeal as:

Has Brackett failed to show that the district court erred by denying his fourth motion for a new trial?

ARGUMENT

Brackett Has Failed To Show That The District Court Erred By Denying His Fourth Motion For A New Trial

A. Introduction

Brackett contends that the district court abused its discretion by denying his fourth motion for a new trial. (See generally Appellant's brief.) A review of the record reveals that the district court acted within its discretion to deny the motion because: (1) Brackett's Brady claim related to the Gonzalez letter was non-cognizable in a motion for a new trial and untimely; and (2) the district court properly applied the Drapeau standard and correctly concluded that Brackett failed to demonstrate he was entitled to a new trial on his newly discovered evidence claim related to the Gabbert affidavit.

B. Standard Of Review

Granting or denying a motion for a new trial is within the district court's discretion and will not be disturbed on appeal unless that discretion is abused. State v. Jones, 127 Idaho 478, 481, 903 P.2d 67, 70 (1995). A district court's abuse of discretion is harmless if it does not affect the defendant's substantial rights. See, e.g., State v. Shackelford, 150 Idaho 355, 363, 247 P.3d 582, 590 (2010).

C. The District Court Acted Well Within Its Discretion To Deny Brackett's Fourth Motion For A New Trial

1. *Brady* Claim

In his fourth motion for a new trial, Brackett asserted that the state committed a Brady violation by withholding a 2014 letter written by Megan Gonzalez to the victim that was referenced by the prosecutor during an April 1, 2016 hearing on Brackett's second motion for a new trial, and

which, Brackett asserts, corroborated the allegations set forth in his previously-submitted Miner affidavit. (R., pp.97-99.) The district court rejected this claim because the Gonzalez letter was not in the record and was thus incapable of review, and because the court had already rejected Brackett's related arguments pertaining to the Miner affidavit in the context of one of Brackett's previous motions for a new trial. (R., p.122.)

Regardless of the manner in which the district court chose to address Brackett's Brady claim, this Court can affirm the district court's denial order because the claim is both non-cognizable in a motion for a new trial and untimely. An appellate court may affirm a district court order on any correct legal theory. See, e.g., State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997); State v. Diaz, 158 Idaho 629, 636, 349 P.3d 1220, 1227 (Ct. App. 2015); see also Brackett, Docket No. 45071, 2018 WL 2145658 at *2-3 (affirming the district court's denial of Brackett's Brady claim raised in his third motion for a new trial on grounds different than those set forth by the district court).[6]

Brackett's Brady claim is non-cognizable in a motion for a new trial. As the Idaho Court of Appeals noted in Brackett, Docket No. 44143, 2017 WL 5166933 *2 n.3, the Idaho Supreme Court has consistently recognized that the bases for a new trial enumerated in I.C. § 19-2406 are the exclusive grounds upon which a defendant's motion may be granted. State v. Page, 135 Idaho

[6] The Idaho appellate courts have recently reiterated that appellate court review is limited to the evidence, theories, and arguments that were presented below and that parties are precluded from presenting legal questions and theories on appeal different than the ones they presented to the lower court. See, e.g., State v. Dahl, 162 Idaho 541, 548, 400 P.3d 629, 636 (Ct. App. 2017); State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017); State v. Cohagan, 162 Idaho 717, 721, 404 P.3d 659, 663 (2017); State v. Hoskins, ___ Idaho ___, ___ P.3d ____, 2018 WL 4169337 (Ct. App. 2018) (not yet final). In this case, however, the state did not file a response to Brackett's fourth motion for a new trial (See R., p.95), and now requests only that the appellate court do what the Court of Appeals did in Brackett, Docket No. 45071, 2018 WL 2145658 at *2-3, affirm the district court's denial of Brackett's I.C. § 19-2406 Brady claim on a correct legal theory – that the claim clearly fails as a matter of law as presented to the district court.

214, 223, 16 P.3d 890, 899 (2000); State v. Lankford, 162 Idaho 477, 493, 399 3d 804, 820 (2017). The enumerated list of permissible grounds for motions for a new trial contained in I.C. § 19-2406 does not include Brady claims. Further, I.C.R. 34, which governs motions for a new trial, does not itself provide any distinct grounds for a new trial that are not contained in I.C. § 19-2406. State v. Page, 135 Idaho 214, 223, 16 P.3d 890, 899 (2000). The state notes that in Lankford, the Idaho Supreme Court recognized these principles, but chose to consider Lankford's Brady/prosecutorial misconduct claim raised in an I.C. § 19-2406 motion for a new trial where Lankford challenged the district court's denial of the motion in the course of his direct appeal. Lankford, 162 Idaho at 493-494, 399 P.3d at 820-821. The Court stated it did so in that case because it "regularly review[s] such claims on direct appeal to determine whether the judgment should be vacated and a new trial granted." Id.; see also State v. Branigh, 155 Idaho 404, 420-422, 313 P.3d 732, 748-750 (2013) (considering district court's denial of defendant's Brady claim raised in motion for new trial where challenge to denial was made in direct appeal). To the contrary, in the present case, Brackett's direct appeal has long since concluded. See Brackett, 160 Idaho 619, 377 P.3d 1082. Therefore, Brackett's Brady claim is non-cognizable in an I.C. § 19-2406 motion for a new trial, and should not be considered by this Court in a distinct appeal outside the context of Brackett's direct appeal.

Further, even if Brackett's Brady claim was cognizable, it was untimely. Pursuant to I.C.R. 34(b)(1), a motion for a new trial based on an assertion of newly discovered evidence must be filed within two years of the final judgment. For the purposes of this rule, a judgment becomes "final" when the appeal or time for appeal has completed. State v. Parrott, 138 Idaho 40, 42, 57 P.3d 509, 511 (Ct. App. 2002). However, "[a]ny motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict, finding of guilty, or imposition of sentence, or within any further time the court may set during the 14-day period."

I.C.R. 34(b)(2). Brackett was convicted of the underlying criminal charges in February 2013, and was sentenced in September 2013. (See #45071 R., pp.65-71, 127.) Pursuant to I.C.R. 34(b)(2), Brackett had 14 days from the "verdict, finding of guilty, or imposition of sentence," to file a motion for a new trial grounded on any reason other than newly discovered evidence. Brackett's fourth motion for a new trial, filed on September 25, 2017 (R., pp.97-100), was therefore clearly untimely with respect to his Brady claim.[7] Therefore, just as the Idaho Court of Appeals concluded with respect to the Brady claim raised in Brackett's third motion for a new trial, Brackett, Docket No. 45071, 2018 WL 2145658 at *2, Brackett's Brady claim raised in his fourth motion for a new trial was likewise untimely.

Finally, even if this Court chooses to reach the merits of Brackett's Brady claim, the claim fails. As the district court noted (R., p.122), the Gonzalez letter was not a part of the record so the court had no basis from which to evaluate it. Therefore, Brackett could not demonstrate that any letter from Megan Gonzalez was suppressed by the state, or that prejudice resulted, as required for a Brady claim. Brady v. Maryland, 373 U.S. 83, 87 (1963); State v. Dunlap, 155 Idaho 345, 389, 313 P.3d 1, 45 (2013).[8]

Brackett's Brady claim related to the Gonzalez letter is both non-cognizable in an I.C. § 19-2406 motion for a new trial and untimely. Because the claim thus fails as a matter of law,

[7] Assuming a defendant could meet the procedural requirements, including that the issue could not have been raised on direct appeal, a post-conviction petition would be the appropriate means by which to raise a Brady claim after the I.C.R. 34(b)(2) time limit expired. See I.C. § 19-4901.

[8] The state acknowledges that the district court's other stated ground for denying the claim, that it had already rejected Brackett's arguments related to the Miner affidavit and that it lacked jurisdiction to revisit that ruling, was erroneous. Brackett's claim from his second motion for a new trial regarding the Miner affidavit was not the same as his Brady claim from his fourth motion for a new trial that was based upon the Gonzalez letter.

this Court should affirm the district court's order denying it.[9]

2. Newly Discovered Evidence

In his fourth motion for a new trial, Brackett also argued that a March 2016 affidavit of Joshua Gabbert, which Brackett previously submitted in the context of a Brady claim in his third motion for a new trial, constituted newly discovered evidence that entitled him to a new trial. (R., p.99.) On appeal, Brackett contends that the district court erred by applying the Drapeau standard to this claim. (Appellant's brief, pp.4-7.) Brackett's argument fails because Drapeau is the relevant applicable standard to motions for a new trial raised in Idaho. In any event, as the district court properly concluded (R., p.123), the allegations contained in the Gabbert affidavit do not satisfy this standard.

In State v. Drapeau, 97 Idaho 685, 551 P.2d 972 (1976), the Idaho Supreme Court articulated the four-part test a defendant must satisfy in order to be entitled to a new trial based upon newly discovered evidence. That test requires a defendant to show that the evidence offered in support of his motion for a new trial: (1) is newly discovered and was unknown to the defendant at the time of trial; (2) is material, not merely cumulative or impeaching; (3) will probably produce an acquittal; and (4) failure to learn of the evidence was due to no lack of diligence on the part of the defendant. Id. at 691, 551 P.2d at 978. The burden to show that each of these criteria is satisfied rests with the movant. State v. Dopp, 129 Idaho 597, 605, 930 P.2d 1039, 1047 (Ct. App. 1996).

In announcing this four-part test, the Court cited Professor Wright's text on Federal Practice

[9] The state has construed Brackett's claim related to the Gonzalez letter as a Brady claim due to the multiple references to Brady and to the alleged withholding of evidence contained in Brackett's fourth motion for a new trial. (R., pp.97-99.) However, even if this Court chooses to construe Brackett's claim regarding the Gonzalez letter as a newly discovered evidence claim, the claim still fails because it cannot satisfy the Drapeau standard. Because the letter is not in the record, Brackett cannot demonstrate any of the Drapeau prongs, or even that he has "discovered" any "new evidence" to begin with.

and Procedure and specifically noted his comment, "after a man has had his day in court, and has been fairly tried, there is a proper reluctance to give him a second trial." Drapeau, 97 Idaho at 691, 551 P.2d at 978 (citation omitted). "Motions for a new trial based on newly discovered evidence are disfavored and should be granted with caution, reflecting the importance accorded to considerations of repose, regularity of decision making, and conservation of scarce judicial resources." State v. Stevens, 146 Idaho 139, 144, 191 P.3d 217, 222 (2008) (internal quotations and citations omitted) (quoting State v. Hayes, 144 Idaho 574, 577, 165 P.3d 288, 291 (Ct. App. 2007)).

On appeal, Brackett does not appear to contend that the district court erred in its application of the Drapeau standard to the facts of this case. Instead, Brackett contends that the district court erred by applying the Drapeau standard in the first place. (Appellant's brief, pp.4-7.) Specifically, Brackett asserts that Drapeau is an "outdated case," and that the district court should have instead applied United States Supreme Court caselaw such as United States v. Bagley, 473 U.S. 667 (1985), Kyles v. Whitley, 514 U.S. 419 (1995), and Youngblood v. West Virginia, 547 U.S. 867 (2006), in which the United States Supreme Court analyzed Brady claims. (Appellant's brief, pp.4-7.)

Brackett is incorrect because he confuses constitutional Brady claims, which may be raised on direct appeal or in post-conviction petitions, with state-law based motions for a new trial based upon newly discovered evidence raised pursuant to I.C. § 19-2406. See Lankford, 162 Idaho at 502-503, 399 P.3d at 829-830 (discussing the distinction between Brady claims and I.C. § 19-2406 newly discovered evidence claims and noting that the standards for relief on a Brady claim are less stringent than that required by the Drapeau standard because a defendant's burden of proof under Brady is lower than it is under Drapeau); see also Branigh, 155 Idaho at 420-422, 313 P.3d at 748-

750. The Idaho Supreme Court has not disavowed the Drapeau standard for I.C. § 19-2406 newly discovered evidence claims, which continues to be applied by Idaho appellate courts. See, e.g., State v. Zuniga, Docket No. 45388, 2018 WL 2710901 at *1-2 (Ct. App. 2018) (unpublished); State v. Fairbanks, Docket No. 43324, 2016 WL 4486429 at *3-5 (Ct. App. 2018) (unpublished); State v. Jimenez, 159 Idaho 466, 472-474, 362 P.3d 541, 547-549 (Ct. App. 2015); State v. Ellington, 157 Idaho 480, 485-488, 337 P.3d 639, 644-647 (2014). Therefore, the district court did not err by applying the Drapeau standard in this case.

In any event, even if this Court chooses to review the district court's Drapeau analysis, Brackett cannot show that the district court erred in concluding that the allegations in the Gabbert affidavit failed to satisfy the Drapeau standard. First, the Idaho Court of Appeals has already concluded that the Gabbert affidavit did not satisfy the more stringent Brady standard, and that Brackett failed to demonstrate even a "reasonable probability" that the disclosure of the evidence would have led to a different result. Brackett, Docket No. 45071, 2018 WL 2145658 at *3. For the same reasons, Brackett cannot satisfy the less-stringent Drapeau standard that the evidence would "probably" produce an acquittal. The Gabbert affidavit consisted of alleged hearsay statements of the victim that would be inadmissible at trial. A district court conducting a Drapeau analysis may consider the admissibility of newly discovered evidence supporting a motion for a new trial in determining whether such evidence would probably produce an acquittal. See State v. Palin, 106 Idaho 70, 77, 675 P.2d 49, 56 (Ct. App. 1983). Additionally, the hearsay allegations against the victim, even if admissible, would not probably have resulted in an acquittal considering the overwhelming evidence of Brackett's guilt presented at the jury trial. (See #41578 Trial Tr.,

p.2817, L.5 – p.2843, L.5; p.2899, L.10 – p.2910, L.22)[10] (the prosecutor's summary of the state's evidence of Brackett's guilt recited during closing and rebuttal arguments at the conclusion of the second jury trial, including evidence obtained from a camera and SD memory card found at Brackett's residence which corroborated the victim's testimony).)

The allegations in the Gabbert affidavit also fail the Drapeau test because they consist of merely impeachment evidence. The Idaho Court of Appeals has described the difference between impeachment evidence and substantive evidence as follows:

> Unlike substantive evidence which is offered for the purpose of persuading the trier of fact as to the truth of a proposition on which the determination of the tribunal is to be asked, impeachment is that which is designed to discredit a witness, i.e. to reduce the effectiveness of his testimony by bringing forth the evidence which explains why the jury should not put faith in him or his testimony.

State v. Marsh, 141 Idaho 862, 868-869, 119 P.3d 637, 643-644 (Ct. App. 2004). Evidence may be both substantive and impeaching. Id.

In this case, the proffered allegations of Gabbert against the victim constituted, at best, impeachment evidence. None of the allegations would be offered "for the purpose of persuading the trier of fact as to the truth of a proposition" regarding whether or not Brackett engaged in a sexual relationship with the victim or possessed the sexually explicit photos. Instead, the allegations could be used only to attempt to discredit the victim's credibility.

Finally, as the district court additionally concluded (R., p.123), Brackett failed to allege that the information in the affidavit was newly discovered or unknown to him at the time of trial, or that any failure to learn of the evidence prior to trial was not due to the lack of due diligence on his part. (See R., pp.97-100.) Brackett therefore failed to satisfy any of the prongs of the Drapeu

[10] Contemporaneous with this brief, the state filed a motion requesting that the Idaho Supreme Court take judicial notice of the transcript from Brackett's second jury trial, which was part of the appellate record in Brackett's direct appeal, Docket No. 41578.

test with respect to this evidence.

The district court properly concluded that the allegations in the Gabbert affidavit do not satisfy the Drapeau newly discovered evidence test. Therefore, this Court should affirm the district court's denial of this claim and Brackett's fourth motion for a new trial.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Brackett's fourth motion for a new trial.

DATED this 28th day of September, 2018.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 28th day of September, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

ROBERT BENJAMIN BRACKETT
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/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd