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IN THE SUPREME COURT OF THE STATE OF IDAHO

WYLIE GAIL HUNTER,)	
)	NO. 45967
Petitioner-Appellant,)	
v.)	KOOTENAI CO. NO. CV-2016-4345
)	
STATE OF IDAHO,)	APPELLANT'S
)	REPLY BRIEF
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE LANSING L. HAYNES
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Wylie Gail Hunter appeals from the district court's order summarily dismissing his successive petition for post-conviction relief. He asserts that he raised a genuine issue of material fact as to whether his due process rights were violated by the State's failure to disclose the existence of a DVD of the traffic stop in his criminal case, and its subsequent destruction of the DVD, and that the district court abused its discretion by denying his motion for a continuance at the summary dismissal hearing. This Reply addresses both issues.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Hunter's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

- I. Did the district court err by summarily dismissing Mr. Hunter's successive petition for post-conviction relief because he presented a genuine issue of material fact as to whether his due process rights were violated?
- II. Did the district court abuse its discretion by denying Mr. Hunter's motion for a continuance?

ARGUMENT

I.

The District Court Erred By Summarily Dismissing Mr. Hunter's Successive Petition For Post-Conviction Relief Because He Presented A Genuine Issue of Material Fact As To Whether His Due Process Rights Were Violated

A. Introduction

Mr. Hunter submits that, by showing that the State destroyed evidence that it had previously withheld from him in the criminal case, he raised a genuine issue of material fact as to whether his due process rights were violated.

B. The District Court Erred By Summarily Dismissing Mr. Hunter's Successive Petition For Post-Conviction Relief Because He Presented A Genuine Issue of Material Fact As To Whether His Due Process Rights Were Violated

The State asserts that Mr. Hunter has not demonstrated either a *Brady*¹ violation or a *Youngblood*² violation. These assertions will be addressed in turn.

1. Brady violation

As the State notes, in order to show a *Brady* claim, a petitioner must show 1) the evidence at issue was favorable to the accused; 2) that it was suppressed by the State; and 3) that prejudiced must have ensued. (Respondent's Brief, p.6 (citing *State v. Hall*, 163 Idaho 744, 830 (2018).) The State concedes that Mr. Hunter has demonstrated that the DVD was suppressed. (Respondent's Brief, p.7.) The State asserts however, that there is no evidence with regard to the other two prongs. The State is incorrect. It is important to note that this case was summarily dismissed. Thus, Mr. Hunter only had to raise genuine issue of material fact as to whether a *Brady* violation occurred; he did not have to prove it by a preponderance of the evidence. The

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

² *Arizona v. Youngblood*, 488 U.S. 51 (1988).

district court may only summarily dismiss a post-conviction relief if “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” I.C. § 19-4906(b), (c).

The State asserts that there is no evidence by which the district court could conclude that the DVD was exculpatory. (Respondent’s Brief, p.7.) This argument ignores the affidavit Mr. Hunter submitted in support of his petition. (*See generally*, Augmentation.) As noted in the Appellant’s Brief, Mr. Hunter asserted that the video would show that Trooper Sutton never approached the passenger’s side of the vehicle, which is where the district court in the criminal case found that probable cause developed. (Augmentation, p.4.) He also attached an affidavit that he prepared for a federal case where he again asserted that Trooper Sutton never walked to the passenger’s side of the vehicle. (Augmentation, p.203.) He asserted that the video would show how heavy the traffic was. (Augmentation, p.202.) He also asserted that the video would show that, due to the fact that it took Detective Morgan four to six minutes to arrive at the scene, Detective Morgan was never following his vehicle and could not have observed traffic violations. (Augmentation, p.204.) He also asserted that Detective Morgan was driving a different vehicle than what he testified to at the suppression hearing. (Augmentation, p.205.) He also asserted that Detective Morgan only approached the driver’s side of the vehicle. (Augmentation, p.207.) These facts were never addressed by the district court and are ignored by the State on appeal.

Further, accepting the State’s argument here, that Mr. Hunter had not presented evidence that the DVD was exculpatory, this would mean that the only way for Mr. Hunter to prove its exculpatory value would be to present the DVD to the court. This is, of course, impossible, due to the actions by the State in this case. Mr. Hunter submits that it would be absurd to require him to

present any more evidence than he already has in this case, because the entire point of his successive petition was the State denied him the opportunity to present this evidence to the district court in the first place.³

Finally, the State asserts that the stop of Mr. Hunter was justified before the events depicted in the video, and thus could not have led to a different result. (Respondent's Brief, 7.) This argument ignores the fact that, had the officers testified contrary to what was contained on the DVD and Mr. Hunter had been able to demonstrate this, this would have severely undermined the officers' credibility generally and, Mr. Hunter submits, the district court would never have found them credible. And, as the Court of Appeals noted in Mr. Hunter's first appeal, "the district court relied principally on the traffic violations." (*Hunter I*, p.5.) There is certainly a genuine issue of material fact as to whether the officers would be found credible in suppression hearing in which they were impeached by the DVD.

For these reasons, and for the reasons set forth in the Appellant's Brief, Mr. Hunter submits that he raised a genuine issue of material fact on his Brady claim.

2. Youngblood violation

With regard to the *Youngblood* issue, the State primarily argues that the destruction of the DVD was done pursuant to Idaho State Police policy because it was not designated as a felony or fatal event. (Respondent's Brief, p.10.) As Mr. Hunter noted in his Appellant's Brief, the Idaho State Police records retention schedule shows that closed case files involving felonies are to be permanently retained "up to 5 years in district then to State Archives for permanent retention."

³ The State also notes that, when arguing that the DVD is only potential exculpatory that, "if the DVD would in fact have backed up the officers' factual claims regarding the stop and search then it was not exculpatory and would not have changed the outcome of the suppression hearing." (Respondent's Brief, p.8.) Of course, if the DVD was actually inculpatory, one might have expected the State to rely on the DVD at the suppression hearing and remove any and all doubts relating to the officers' credibility.

(R., p.533.) Because Mr. Hunter’s case was a felony, the file should have been retained permanently. The DVD therefore should have been designated as evidence relating to a felony. The State acknowledges that the same log indicates that the DVD was indicated as stemming from a charge of “felony trafficking MJ” but asserts that nothing indicates that this should have been “cross-checked.” (Respondent’s Brief, p.10.) The following is the log at issue:

ID#:	DVD-R1-1619	CREATED:	07/18/2007	CREATED REGION:	Region 1 - Coeur d'Alene
OFFICER:	Sutton, Ronald g	START DATE:	09/02/2007	END DATE:	09/03/2007
CURRENT LOCATION:	Disposed	START TIME:	<none>	END TIME:	<none>
MEDIA TYPE:	Disc	NOTES:			
FAILURES?	No				

Case Number	Felony	Catality	Event	Location	Date	Received by
07-2339 Felony trafficking MJ	no	no	Evidence	Evidence		
9/27/07 out to Honeyman to copy 9/27/07 rtd			Dispose	Destroyed	02/26/2013	lcorreia

(R., p.12.) Mr. Hunter submits that, considering the “cross-check” is looking one inch to the left, there is a genuine issue of material fact as to whether the DVD was destroyed in contravention of the Idaho State Police’s policy. For this reason, as well as the reasons set forth in the Appellant’s Brief, Mr. Hunter submits that the raised a genuine issue of material fact with regard to a *Youngblood* violation.

II.

The District Court Abused Its Discretion By Denying Mr. Hunter’s Motion For A Continuance

A. Introduction

Mr. Hunter submits that the district court abused its discretion by denying his motion for a continuance after counsel acknowledged that she did not timely file her response to the State’s motion for summary dismissal. This Reply Brief addresses the State’s claim that Mr. Hunter’s arguments are not supported by authority.

B. The District Court Abused Its Discretion By Denying Mr. Hunter's Motion For A Continuance

The State asserts that Mr. Hunter has asserted that he should be excused from timeliness requirements because the State destroyed the DVD, and that this position is unsupported by authority. (Respondent's Brief, p.14.) This, however, is not Mr. Hunter's argument. In fact, Mr. Hunter noted that the district court's concerns about timeliness were generally reasonable. (Appellant's Brief, p.18.) Mr. Hunter's argument is simply that in a case like this, where years of delay are due to the State's failure to disclose the DVD, and a few more months to fully litigate the case is not unreasonable.

The State also claims that Mr. Hunter's assertion that his interest in obtaining a continuance was high to the fact that he could not pursue a claim that his post-conviction counsel was ineffective is not supported by authority. (Respondent's Brief, p.15.) The State's argument is curious, considering that Mr. Hunter cited *Murphy v. State*, 156 Idaho 389 (2014), for the proposition that he could not claim that his post-conviction counsel was ineffective, and cited *State v. Ransom*, 124 Idaho 703, 703 (1993), for the proposition that the court's role in evaluating a request for a continuance involves weighing the competing interests of the State and the petitioner. (Appellant's Brief, p.18.) Mr. Hunter's point is simply that he cannot litigate this issue in a subsequent post-conviction petition and therefore his interest in having the court address his claims in the instant case is very high.

CONCLUSION

Mr. Hunter requests that the district court's order summarily dismissing his petition be reversed and his case remanded for further proceedings. Alternatively, he requests that the denial of his motion for a continuance be reversed and his case remanded for further proceedings.

DATED this 31st day of May, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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JMC/eas