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## STATEMENT OF THE CASE

### Nature Of The Case

Christopher Michael Cangro appeals from the district court's order granting in part the state's motion for summary dismissal and denying in part his motion for summary disposition of his petition for post-conviction relief.

### Statement Of The Facts And Course Of The Proceedings

On the night of July 20, 2017, Cangro was at the Longhorn bar in Kuna. (Trial Tr., p.201, Ls.6-11; p.216, Ls.10-14.<sup>1</sup>) At around 12:45 a.m., Cangro was driving his motorcycle near Cowgirls, a different bar, when law enforcement attempted to initiate a traffic stop. (Trial Tr., p.121, Ls.8-22; p.132, Ls.6-8.) Rather than stop, Cangro drove off at a high rate of speed and around several road blockages. (See Trial Tr., p.133, L.22 – p.139, L.7.) Law enforcement arrested Cangro at his home. (Trial Tr., p.187, Ls.11-17.) Officers noticed Cangro smelled of alcohol, had slowed and slurred speech, and glassy bloodshot eyes. (Trial Tr., p.187, L.18 – p.188, L.21.) Cangro refused to complete standard field sobriety tests or provide breath or blood samples. (Trial Tr., p.191, Ls.1-5; p.193, L.4 – p.194, L.4.)

The state charged Cangro with felony eluding a police officer and misdemeanor DUI. (R., pp.44-45.) The matter proceeded to a jury trial at which the jury found Cangro guilty of both counts. (See R., pp.70-80.) For felony eluding, the district court sentenced Cangro to five years with two years fixed, suspended the sentence, and ordered four years of probation; for misdemeanor DUI, the district court sentenced Cangro to thirty days of jail. (R., pp.113-15.)

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<sup>1</sup> The trial and sentencing transcripts, attached to Cangro's petition as Exhibit C, appear in the Record on pages 157-247. Citations to "Trial Tr." will use the transcript's internal pagination.

Cangro filed a timely petition for post-conviction relief claiming counsel was ineffective for failing to confront a witness with her prior inconsistent statement. (R., pp.5-14.) In discovery, the state disclosed two interviews with Longhorn bartender Tandra Prindle—an interview from the night of the incident in which she estimated Cangro left the bar around 12:30-12:45 a.m. and a later interview in which she recalled Cangro leaving the bar around 10:30 p.m. (See Ex. E (3:00-3:07); Ex. H (5:14-5:30).) At trial, Prindle testified Cangro left the Longhorn bar at 10:30 p.m. (Trial Tr., p.201, L.25 – p.202, L.1.) Cangro argued counsel was ineffective for failing to confront Prindle with her prior statement that Cangro left around 12:30-12:45 a.m., which he asserted would have refuted the state’s theories that Cangro was drinking elsewhere before he was seen driving at 12:45 a.m. and that he eluded officers to avoid getting a DUI. (See R., pp.11-13; see also Trial Tr., p.286, L.24 – p.287, L.10; p.311, Ls.2-4.) Cangro moved for summary disposition of his petition in his favor. (R., pp.263-73.) Along with his motion, Cangro submitted an affidavit from trial counsel stating that counsel was aware of Prindle’s prior inconsistent statement to law enforcement, failed to impeach her with that statement, that failure was not a strategic or tactical decision, and that failure was prejudicial to Cangro’s defense. (R., pp.279-80.) The state objected to Cangro’s motion and moved for summary dismissal of his petition. (R., pp.281-94.)

After a hearing, the district court granted in part and denied in part both parties’ motions. (See generally Tr.; see also R., pp.331-37.) First, the district court granted in part Cangro’s motion for summary disposition, vacating Cangro’s conviction for misdemeanor DUI. (R., pp.334-35.) The district court found that counsel was deficient for failing to confront Prindle with her inconsistent statement. (R., p.335.) The district court also found that Cangro was prejudiced by that deficiency; because the state’s case relied on an impairment theory, not a

specific BAC, and the state's theory was that Cangro consumed alcohol at another bar during the unaccounted-for time between when he left the Longhorn and was later seen by law enforcement, there was a reasonable probability that impeachment evidence that Prindle told law enforcement that Cangro was at the Longhorn during that entire time window would have changed the outcome on the DUI charge. (R., p.335.) Therefore, the district court granted Cangro's motion for summary disposition and denied the state's motion for summary dismissal of the petition on the DUI. (R., p.335, 339.)

Next, the district court granted in part the state's motion for summary dismissal, dismissing Cangro's petition as to the eluding conviction. (R., pp.336-37.) The district court first noted that motive is not an element of eluding and did not need to be proven by the state. (R., p.336.) At trial, Cangro admitted to attempting to elude the police but testified that he did not know the vehicle behind him and was afraid. (R., pp.336-37.) Thus, the factual dispute centered on whether Cangro willfully fled, given his testimony that he never saw the activated police lights. (R., p.337.) Therefore, the district court concluded that the deficiency prong was not satisfied because "Prindle's testimony concerning Petitioner's whereabouts prior to his encounter with the police and subsequent attempt to elude are unrelated factually." (R., p.337.) Nor was the prejudice prong satisfied where "there is no reasonable probability that the outcome of the felony eluding charge would have been different." (R., p.337.) The district court denied Cangro's motion for summary disposition and granted the state's motion for summary dismissal as to the eluding charge. (R., p.337.)

The district court entered judgment vacating Cangro's DUI conviction and denying Cangro's petition for post-conviction relief as to his eluding conviction. (R., p.339.) Cangro filed a timely notice of appeal. (R., pp.341-43.)

ISSUE

Cangro states the issue on appeal as:

Did the district court err in denying Mr. Cangro's motion for summary disposition and dismissing the ineffective assistance of counsel claim as to the eluding conviction, as the record establishes both deficient performance and prejudice?

(Appellant's brief, p.10.)

The state rephrases the issue as:

Has Cangro failed to show that the district court erred when it denied his motion for summary disposition and granted the state's motion for summary dismissal of his petition for post-conviction relief as to his eluding conviction?

## ARGUMENT

### Cangro Has Failed To Show That The District Court Erred When It Denied His Motion For Summary Disposition And Granted The State's Motion For Summary Dismissal Of His Petition For Post-Conviction Relief As To His Eluding Conviction

#### A. Introduction

Cangro argues that the district court erred when it dismissed his petition for post-conviction relief as to his eluding conviction. Cangro asserts that he is entitled to relief because the state argued that he eluded the officer to avoid getting a DUI and counsel's failure to impeach Prindle was therefore relevant to rebut that motive. (Appellant's brief, pp.12-18.) However, the state did not need to prove motive beyond a reasonable doubt, and impeachment of Prindle's testimony would not have impacted the state's eluding case. The undisputed evidence at trial, including Cangro's own testimony, established that Cangro saw Deputy Hickham's vehicle behind him and drove at speeds up to 80 miles per hour, around barricades, and off the main road to elude that vehicle. The only dispute was whether Cangro saw the activated police lights. Prindle's testimony about what time Cangro left the Longhorn was factually unrelated to any element of the crime of eluding, was not the sole basis of the state's motive theory, and counsel's failure to confront her with her inconsistent statement about that time would therefore have had no impact on the outcome of that charge. Thus, the district court properly summarily dismissed Cangro's petition for post-conviction relief from his eluding conviction.

#### B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the



facts and reasonable inferences in favor of the non-moving party.” Charboneau v. State, 144 Idaho 900, 903, 174 P.3d 870, 873 (2007).

C. The District Court Properly Granted The State’s Motion For Summary Dismissal And Denied Cangro’s Motion For Summary Disposition Of His Petition As To The Eluding Charge

A petition for post-conviction relief initiates a new and independent civil proceeding in which the petitioner bears the burden of establishing that he is entitled to relief. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007); State v. Bearshield, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983). A district court may summarily dismiss a petition for post-conviction relief if the petitioner “has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof.” Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). Until controverted by the state, allegations in a verified post-conviction petition are, for purposes of determining whether to hold an evidentiary hearing, deemed true. Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). However, the court is not required to accept mere conclusory allegations, unsupported by admissible evidence, or the petitioner’s conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994). Moreover, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather, the district court is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. Hayes v. State, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). Further, allegations contained in a post-conviction petition are insufficient for granting relief when they are clearly disproved by the

record of the original proceeding or do not justify relief as a matter of law. Workman, 144 Idaho at 522, 164 P.3d at 802.

A post-conviction petitioner alleging ineffective assistance of counsel must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). Under Strickland, a defendant must demonstrate both that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694; Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988). There is a strong presumption that counsel's conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). Bare assertions and speculation, unsupported by specific facts, do not make out a prima facie case for ineffective assistance of counsel. Roman, 125 Idaho at 649, 873 P.2d at 903.

The district court properly summarily dismissed Cangro's petition as to the eluding conviction because Cangro failed to make a prima facie case of ineffective assistance of counsel as to that charge. Although the district court found that counsel provided deficient performance for the DUI charge by failing to confront Prindle with her prior inconsistent statement, it properly determined that deficiency was factually unrelated to the eluding charge. Cangro has failed to show that counsel's deficiency affected his representation of Cangro for the eluding charge or that it had any impact on the outcome, given that the state did not need to prove motive, the undisputed evidence at trial established that Cangro engaged in a high-speed flight from the police vehicle behind him, and the time Cangro left the Longhorn was immaterial to the charge.

First, it is undisputed that motive is not an element of eluding that the state needed to prove beyond a reasonable doubt at trial. (See R., p.336; Appellant’s brief, p.17; see also I.C. § 49-1404.) In order to prove felony eluding, the jury was instructed that the state needed to prove beyond a reasonable doubt that:

1. On or about July 21, 2017
2. in the state of Idaho,
3. while driving a motor vehicle,
4. the defendant Christopher Cangro willfully fled or attempted to elude
5. a pursuing police vehicle
6. when a peace officer had given the defendant a visual or audible signal to bring the defendant’s vehicle to a stop, and
7. traveled in excess of thirty (30) miles per hour above the posted speed limit.

(R., p.97.) The instructions also provided “[a]n act is ‘willful’ or done ‘willfully’ when done on purpose. One can act willfully without intending to violate the law, or injure another, or acquire any advantage.” (R., p.103.) Thus, motive was not an element of the crime of eluding that the state needed to prove in order to prevail at trial. See Thomas v. State, 145 Idaho 765, 770, 185 P.3d 921, 926 (Ct. App. 2008) (“Motive is not an essential element of any crime unless it is made so by statute.”). As the state argued below, “[t]he state did not need to prove—and the jury did not need to decide—*why* Mr. Cangro eluded, only that he did.” (R., p.292 (italics in original).)<sup>2</sup>

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<sup>2</sup> Cangro asserts that the district court erred when it stated that “[w]hether or not Petitioner had the motive to elude police based on his belief that he was intoxicated and subject to the crime of DUI is immaterial to the crime charged.” (Appellant’s brief, p.12 (quoting R., p.336).) Read in context, the district court was making clear that the state’s case did not require it to prove that was Cangro’s motive in order to secure a conviction. (See R., pp.336-37.)

Second, the undisputed evidence at trial established that Cangro attempted to elude the officer; the only dispute was whether he did so willfully. Deputy Cody Hickham testified that around 12:45 a.m., he saw Cangro's motorcycle driving. (Trial Tr., p.121, Ls.8-22.) Deputy Hickham drove behind the motorcycle in his marked law enforcement vehicle and noticed the motorcycle fail to signal, fail to come to a complete stop at intersections, and speed at around 48 miles per hour in a 25 miles per hour zone. (Trial Tr., p.122, Ls.2-22; p.125, L.11 – p.126, L.2.) As they approached an intersection, Deputy Hickham activated his police lights. (Trial Tr., p.127, Ls.6-11.) Deputy Hickham estimated he was around twenty yards behind the motorcycle with the lights activated to the highest setting—red and blue lights on the vehicle brush guard, overhead lights with the highest intensity, rear lights, and “wigwag lights, which is where your headlights alternate between brights on and brights off...and per Idaho Code that has to be visible within a thousand feet.” (Trial Tr., p.132, L.19 – p.133, L.9.)

In response, the motorcycle drove through the intersection without stopping and “continued to accelerate very purposefully,” reaching speeds of 80 miles per hour. (Trial Tr., p.132, Ls.6-8; p.133, L.24 – p.134, L.9.) The street came to a dead end ahead; the motorcycle veered off the road into the dirt near a ditch and turned left down another street. (Trial Tr., p.134, L.18 – p.135, L.3; R., p.144.) Deputy Hickham followed the motorcycle through the dirt onto the next road with his lights still on. (Trial Tr., p.136, Ls.3-4.) The motorcycle approached another road closure and barricade at the end of the street but continued around it. (Trial Tr., p.136, Ls.13-19; p.138, Ls.12-15.) As the motorcycle was getting back on the road, the back tire slipped and Deputy Hickham became concerned the driver would further endanger himself or wreck, so he deactivated his police lights but continued to follow. (Trial Tr., p.136, Ls.3-12, 20-25.) The motorcycle continued to a third road barricade, drove past it, and through a canal bank.

(Trial Tr., p.139, Ls.2-7; R., p.145.) Deputy Hickham called in the motorcycle's plates and coordinated with other officers to intercept the motorcycle; the officers arrested Cangro at his home. (Trial Tr., p.144, L.11 – p.145, L.10.)

Cangro testified to an identical version of events. He testified that he was driving his motorcycle at around 12:45 a.m. and saw a vehicle behind him. (Trial Tr., p.218, Ls.1-4; p.239, Ls.10-12.) Cangro admitted he did not come to a full stop at the intersection and was speeding. (Trial Tr., p.218, Ls.9-11; p.240, Ls.4-8.) Cangro testified that the vehicle behind him came up close so he rolled through the next intersection and “gunned it to get away from the car that was behind” him, driving 80 miles per hour. (Trial Tr., p.220, L.25 – p.221, L.12; p.222, Ls.20-22; p.242, L.10.) He drove around road signs and barricades. (Trial Tr., p.223, Ls.13-19; p.224, Ls.10-15; p.243, Ls.15-17; p.243, L.24 – p.244, L.1; p.245, Ls.13-24; p.246, Ls.12-24.) Cangro could see the vehicle and headlights behind him. (Trial Tr., p.224, L.23; p.244, Ls.2-8.) Cangro testified he was “doing everything in [his] power to get away” from the vehicle. (Trial Tr., p.241, Ls.9-12.)

Thus, the only disputed issue at trial was whether Cangro recognized that the vehicle behind him was law enforcement attempting to pull him over. Deputy Hickham testified that it was a dark, clear summer night and there was nothing obstructing his view of the motorcycle nor anything that he could see that would have obstructed the motorcyclist's view of him. (Trial Tr., p.142, L.19 – p.143, L.10.) Deputy Hickham could clearly see the motorcycle and its plates, Cangro's body type and tattoos, and type of helmet he was wearing, which was a half helmet with straps that came down the sides that would not have obstructed his vision. (Trial Tr., p.141, L.8 – p.142, L.18.) Although Cangro testified that he saw headlights, he denied seeing the activated police lights. (Trial Tr., p.221, L.13-15.) However, Deputy Hickham testified that he

believed Cangro saw the police lights; before he activated the lights, Cangro accelerated to around 48 miles per hour after each intersection; after he activated the lights, Cangro accelerated to 80 miles per hour and was “just doing everything he could to get away from” Deputy Hickham. (Trial Tr., p.175, L.16 – p.176, L.24.)

Given the elements of eluding and the evidence at trial, the district court properly found that counsel’s failure to confront Prindle about her prior statement was factually unrelated to the eluding charge and did not impact its outcome. While the disputed timeline of when Cangro left the Longhorn was a key factual dispute with regards to the DUI, it was simply irrelevant to the eluding charge. Regardless of which of Prindle’s statements was correct, whether Cangro left the Longhorn at 10:30 p.m. or 12:30 a.m., or whether Cangro went to a different bar after the Longhorn, there is no dispute that Cangro was driving his motorcycle at 12:45 a.m. in Kuna on July 21, 2017. There is no dispute that Deputy Hickham was driving behind Cangro at that time and attempted to pull Cangro over. There is no dispute that Cangro accelerated to 80 miles an hour and drove around several road barricades to elude Deputy Hickham’s vehicle. The only dispute was whether Cangro saw the police lights and therefore attempted to elude the officer willingly. Where Cangro was coming from was irrelevant. What time he left the Longhorn was irrelevant. Accordingly, any impeachment of Prindle regarding what specific time she saw Cangro come and go was factually unrelated and ultimately immaterial to the eluding charge. Therefore, the district court did not err when it granted the state’s motion in part and summarily dismissed Cangro’s petition as to the eluding charge.

Cangro concedes that motive is not an element of eluding. (See Appellant’s brief, p.17; see also R., p.305.) However, motive is the only thread with which he attempts to tie counsel’s failure to impeach Prindle to the eluding conviction. Cangro asserts that “[a]bsent a motive to

run, the state's evidence on the eluding charge was weak" and that, "given Mr. Cangro's testimony, the jury could have rationally found that the deputy never activated his overhead lights...." (Appellant's brief, p.17.) Cangro then argues that "[t]here was no reason for Mr. Cangro to literally risk life and limb to avoid a traffic stop if he was not under the influence." (Appellant's brief, p.17.) Simply put, those arguments have nothing to do with Prindle's testimony or counsel's failure to confront her with her prior inconsistent statement.

First, contrary to his assertion, the state's evidence on eluding was strong and did not hinge on motive. Cangro himself testified that he sped off in an attempt to flee the vehicle behind him, bypassing road barriers and reaching speeds of 80 miles per hour. The state's eluding case did not depend on whether Cangro was also committing, charged with, or ultimately convicted of DUI. As discussed above, the state did not need to prove Cangro's motive for eluding, only that he did so. Further, the theory that Cangro was attempting to avoid getting a DUI is supported by the evidence, even without Prindle's testimony. Deputy Geisel testified that Cangro smelled of alcohol, had slurred and slow speech, and glassy bloodshot eyes when officers arrested him outside his home. (See Trial Tr., p.187, L.18 – p.188, L.21.) Therefore, Cangro has failed to show that counsel's failure to question whether Prindle was mistaken about the time Cangro left the Longhorn had an impact on the state's eluding case.

Second, the jury necessarily found that Deputy Hickham activated his lights. (See R., p.97.) Deputy Hickham testified that he activated his lights; Cangro testified he did not see police lights, but he did not challenge the deputy's testimony that the lights were activated. There is no basis beyond bare speculation to conclude that the jury's decision on that issue would have been at all affected by counsel questioning Prindle's recollection that Cangro left the Longhorn at 10:30 p.m.

Last, although Cangro argues that a person would only engage in high-speed, high-risk evasion if that person was intoxicated, it is undisputed that he did just that. He testified to the high-risk, high-speed, off-road maneuvers he took to avoid the vehicle pursuing him. The state did not need to prove, although it put on evidence, that Cangro did so because he was intoxicated. (See Trial Tr., p.187, L.18 – p.188, L.21.) Accordingly, Cangro has failed to show that the district court erred when it summarily dismissed his petition as to the eluding conviction.

### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 27th day of November, 2020.

/s/ Kacey L. Jones  
KACEY L. JONES  
Deputy Attorney General

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of November, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KLJ/dd