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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM JACK BIAS,	)	
	)	
Petitioner-Respondent,	)	**NO. 45037**
	)	
v.	)	**MADISON COUNTY NO. CV 2015-543**
	)	
STATE OF IDAHO,	)	**RESPONDENT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

HONORABLE GREGORY W. MOELLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The district court granted Mr. Bias's petition for post-conviction relief and ordered that his guilty plea be withdrawn after finding that his trial counsel was ineffective for failing to file a motion to suppress. The State appeals from the district court's order and asserts that the district court erred by ruling on an allegedly unpled claim and applying an incorrect ineffective assistance of counsel standard. The State's arguments ignore the unique and disturbing facts of this case, ignore the hearings that demonstrate the prosecution received ample notice of the relevant claim, and ignore the district court's meticulous and careful analysis. Indeed, a thorough review of all the facts, the district court's application of the law to those facts, and the district court's commitment to justice and fairness at every juncture of this case, shows the district court did not err.

Statement of the Facts and Course of Proceedings

After consulting with his trial counsel, Mr. Bias pleaded guilty to felony driving under the influence. (1/12/17 Tr., p.30, L.23 – p.32, L.16; R., p.48.) What Mr. Bias did not know when he made that decision was that his attorney never filed a request for discovery in his case and was therefore unaware that an exculpatory video of his traffic stop existed. Indeed, in this post-conviction case, the district court held that the video showed the officer did not have reasonable suspicion for the stop and thus would have supported a successful suppression motion. (R., pp.58-63, 67-70.) Such a motion to suppress, however, was never filed. Instead, Mr. Bias pleaded guilty, and the district court imposed a ten-year sentence, with five years fixed. (R., p.48.)

After he was sentenced, Mr. Bias filed a petition for post-conviction relief in which he made multiple ineffective assistance of counsel claims. (R., pp.4-7.) One of those claims alleged that his trial counsel was ineffective for failing to challenge the "protocol of the stop and jurisdiction of law enforcement" and refusing "to file a motion to suppress for jurisdiction."[1] (R., p.6 (spelling corrected.).) After finding that Mr. Bias alleged facts that gave rise to the possibility of some valid claims, the district court granted his request for court-appointed counsel. (R., pp.13-16.)

The first evidentiary hearing on the post-conviction claims was held on July 25, 2016. (R., pp.29-30.) At that hearing, Mr. Bias said that he had asked his trial counsel to file a motion to suppress "two or three times," but his attorney assured him that it was a "legitimate stop and basically refused to put in the motion to suppress . . . ." (7/25/16 Tr., p.18, Ls.4-12.) The district court said that it had to determine whether there were meritorious grounds for a motion to suppress on the jurisdictional issue. (7/25/16 Tr., p.69, Ls.14-25.) The district court stated it would, in the interest of "fairness" and "thoroughness," give Mr. Bias's post-conviction counsel ten days to file a memorandum on the issue, and it was "particularly interested in seeing a prejudice analysis under *Strickland*[2] as far as the claims of the unfiled motion to suppress." (7/25/16 Tr., p.70, L.16 – p.71, L.1.) It also said it would allow the State seven days to respond to the memorandum. (7/25/16 Tr., p.71, Ls.8-9.)

After Mr. Bias's counsel filed the memorandum, the parties stipulated to reopening the evidence, and the district court held a second evidentiary hearing on September 19, 2016.

---

[1] Mr. Bias "initially based his claim for ineffectiveness on his trial counsel's failure to file a motion to suppress on the basis that the arresting officer was acting outside of his jurisdictional boundaries." (R., p.60.)

[2] *Strickland v. Washington*, 466 U.S. 668 (1984).

(R., pp.31-39.) At the beginning of that hearing, the prosecutor confirmed that he wanted to put on evidence limited to the jurisdictional issue, and post-conviction counsel agreed that it was not planning on addressing other issues. (9/19/16 Tr., p.74, L.20 – p.75, L.17.) The prosecutor then called the police officer who originally stopped Mr. Bias, Corporal Robison. (9/19/16 Tr., p.75, L.22 – p.76, L.25.) He testified as to where he stopped Mr. Bias and revealed that there was a video of the stop. (9/19/16 Tr., p.77, L.8 – p.79, L.19.) He confirmed that the video was from his dashboard camera, and the video was admitted as State's Exhibit 1. (9/19/16 Tr., p.80, L.20 – p.81, L.12.)

After watching the video, however, Mr. Bias's counsel said neither he nor Mr. Bias had ever seen the video before, and that the video raised "a whole new set of issues whether the officer had probable cause or reasonable suspicion to even pull the vehicle over, based upon what we see in that video." (9/19/16 Tr., p.135, L.24 – p.136, L.6.) He encouraged the district court, in light of this new evidence the prosecution had introduced, to examine whether a motion to suppress should have been filed to challenge the reasonable suspicion for the stop. (9/19/16 Tr., p.136, Ls.8-14.) The district court said, "[I]t seems like the further we dig into this, the legal issues keep growing, like, exponentially; so I'm trying to get my head around the issues I have to rule on." (9/19/16 Tr., p.136, Ls.15-18.) The court then asked if Mr. Bias's counsel was "asserting a new basis for post-conviction relief on failure to suppress the evidence for lack of reasonable suspicion to pull over the vehicle," and counsel responded, "Well, I think we have to, based on what we saw today in this video, Your Honor." (9/19/16 Tr., p.136, Ls.19-24.) Counsel then reiterated that this was the first time he or his client had seen the video, and the video raised the issue of whether a motion to suppress should have been filed to challenge the reasonable suspicion for the stop. (9/19/16 Tr., p.136, L.25 – p.137, L.11.)

After watching the video, post-conviction counsel acknowledged that the jurisdictional issue was likely resolved by introduction of the video; he said that he and Mr. Bias thought the traffic stop had occurred farther north than the video showed because they had only seen the police report. (9/19/16 Tr., p.137, L.12 – p.138, L.3.) He argued, however, that the video did show that there was not enough evidence to establish reasonable suspicion for the stop because the video tended to disprove the police report. (9/19/16 Tr., p.139, Ls.4-23.) For example, the police report indicated that Mr. Bias was driving under the speed limit, "braked hard when approaching a curve in the road," drove on the fog line, and drifted in his lane of travel. (State's Exhibit 14.) But the video showed that Mr. Bias actually only tapped his brakes, did not swerve in his lane, and may not have even touched the fog line. (9/19/16 Tr., p.140, L.5 – p.141, L.24.)

When the district court asked the prosecutor if it wanted to respond to this "new area," the prosecutor said, "Well, as I understand it, Your Honor, we keep delving into new areas. As I understand the last hearing we had, this was raised as a side issue after it was all over." (9/19/16 Tr., p.142, Ls.4-10.) The district court agreed but said, "Well, let's assume we're all in this business because we're trying to get it right. So help me get it right." (9/19/16 Tr., p.142, Ls.11-20.) The prosecutor said, "Well, and I think we have got it right." (9/19/16 Tr., p.142, Ls.21-22.) He then argued that there was reasonable suspicion to make the stop, and the stop was made within the jurisdiction of the officer. (9/19/16 Tr., p.142, L.22 – p.144, L.3.) The district court asked if either party wished to brief the new issue, but the parties did not submit briefing. (9/19/16 Tr., p.144, L.16 – p.145, L.2.)

At the subsequent status hearing on November 28, 2016, the district court said it was working on its decision and had come across a case—*State v. Neal*, 159 Idaho 439 (2015). (11/28/16 Tr., p.146, L.19 – p.147, L.12.) The court recognized that *Neal* held touching the fog

line does not provide reasonable suspicion for a traffic stop. (11/28/16 Tr., p.147, Ls.13-21.) It also said it had looked at the video again and saw there was a car driving in front of Mr. Bias that was going the same speed, so it appeared Mr. Bias, "could have been driving with the flow of traffic." (11/28/16 Tr., p.148, Ls.16-21.) It also stated that, while Mr. Bias's car may have moved in its lane, any "weaving" was "virtually undetectable," and the brakes were only "tapped, not slammed on." (11/28/16 Tr., p.148, Ls.22-25.)

The district court then acknowledged that, at the beginning of the previous hearing, the parties were only arguing the jurisdictional issue. (11/28/16 Tr., p.149, Ls.4-11.) It explained, "And yet, at the very end of the hearing, we go into this new issue, which, if the Court considers, could be dispositive of the whole case. And so here's the quandary the Court is under. First of all . . . I don't think the State had adequate time to respond either in briefing or with additional evidence . . . to the issue about the reasonable suspicion for the stop, especially in light of *Neal*." (11/28/16 Tr., p.149, Ls.11-20.) As such, the district court said it would give the prosecution an opportunity, if it so desired, to submit briefing "on whether the Court should even consider this evidence, since there was an agreement that I wouldn't." (11/28/16 Tr., p.149, Ls.21-24.) And it went on to explain that although it was essentially finished with its opinion, its "sense of justice" found that "it wouldn't be fair to the State to proceed further without giving them a chance to address these concerns" that it raised because it had "never had a chance to respond . . . ." (11/28/16 Tr., p.150, Ls.12-17.) It said if the prosecution wanted the court to simply make its decision at that point, it would, but "if the State would like to present more, I think you have a right to, in fairness." (11/28/16 Tr., p.150, Ls.20-25.)

The prosecution said it would "appreciate some more time." (11/28/16 Tr., p.151, Ls.2-3.) The district court asked the prosecution if it would like to respond to the new issue, and how

much time it would need to do so; it also said the prosecution could respond in briefing or bring in other evidence or witnesses if it chose to. (11/28/16 Tr., p.152, Ls.13-20.) And it then stated, "I think in fairness you should be allowed to do that, because you weren't given proper notice that this issue was going to be raised." (11/28/16 Tr., p.152, Ls.20-22.) It also said, "And, of course, I also want you to brief whether or not I should even consider this issue procedurally." (11/28/16 Tr., p.152, Ls.23-25.)

The prosecutor asked for 45 days to submit briefing and said Corporal Robison would testify again. (11/28/16 Tr., p.153, Ls.1-13.) He also said that he would need Mr. Bias's trial counsel to testify because, while he was "sure we gave him discovery," he would need to find out whether he shared that discovery with Mr. Bias. (11/28/16 Tr., p.155, Ls.6-10.) The district court said, "I just want to get this right the first time; so we'll give everybody an opportunity to brief that issue further." (11/28/16 Tr., p.156, Ls.14-16.)

The prosecutor did not submit briefing, but instead chose to call more witnesses at the third evidentiary hearing, held on January 12, 2017. First, he called Mr. Bias's trial counsel who testified that, based on what he saw in the police report, he did not believe that there was a potentially successful suppression issue. (1/12/17 Tr., p.25, L.16 – p.26, L.2.) On cross-examination, however, he said that he did not review the video of the stop with Mr. Bias because he "did not ask for the video." (1/12/17 Tr., p.31, L.25 – p.32, L.6.) He said, "If Mr. Bias would have said, 'This is baloney, the stop. Let's challenge this,' then yeah, I would have—at a prelim I would have asked for videos. I would have handled the case completely differently than the way I did." (1/12/17 Tr., p.32, Ls.6-11.)

Mr. Bias's post-conviction counsel then asked if there had been times in trial counsel's practice when a video did not "match up" with a police report, and trial counsel confirmed this.

(1/12/17 Tr., p.32, Ls.21-25.) When asked if "this could have been a case where review of the police report may have been different than what the actual video" showed, trial counsel said he sometimes requested videos, and there had been times when the video did not match the police report. (1/12/17 Tr., p.33, Ls.1-22.) Trial counsel also said that if Mr. Bias had said he wanted to contest the stop, he would have asked for a copy of the video, and this was his typical practice. (1/12/17 Tr., p.33, L.24 – p.34, L.5.) He confirmed that his strategy was focused on sentencing, and he wanted to try to show the district court that Mr. Bias had made improvements in his life and should thus qualify for Drug Court. (1/12/17 Tr., p.34, L.25 – p.35, L.5.) However, when post-conviction counsel asked whether reviewing the video to see what happened in the stop could have given him "ammunition to help weaken the State's case," to get to that eventual result of probation and Drug Court," he said, "Yeah. If he would have at any time said, 'Man, let's fight this,' then that's exactly what I would have done." (1/12/17 Tr., p.35, Ls.6-13.)

The district court then asked whether trial counsel knew that a video of the stop existed, and counsel responded, "No. I don't recall ever asking the prosecutor. I don't recall." (1/12/17 Tr., p.36, Ls.3-6.) He agreed that if the prosecution did not disclose that a video existed, this would be grounds to challenge the conviction, and he said that the first time he became aware that the video existed was "[d]uring this post-conviction case." (1/12/17 Tr., p.36, Ls.7-20.) He also agreed that it would "typically behoove a defense attorney to review a video" before allowing a client to plead guilty. (1/12/17 Tr., p.37, Ls.7-11.) Similarly, when the district court asked whether constitutional problems with the stop could have "been a basis" for trial counsel to use in his "negotiations with the prosecutor to try to get a lower charge made or considerations in a sentencing recommendation," trial counsel also answered, "Yes." (1/12/17 Tr., p.38, Ls.1-6.) Finally, the court asked, "In your experience have you been able to negotiate better plea

agreements with a prosecutor because there's been some apparent constitutional issue with the stop?" (1/12/17 Tr., p.38, Ls.18-21.) And trial counsel again answered, "Yeah, yes." (1/12/17 Tr., p.38, L.22.)

Post-conviction counsel then asked if trial counsel filed a formal request for discovery in this case, and trial counsel replied, "I looked at the court file, I did not." (1/12/17 Tr., p.40, Ls.7-9.) Post-conviction counsel asked, "And so your request for discovery in this case was just an informal request to the prosecutor's office of police reports?" (1/12/17 Tr., p.40, Ls.10-12.) Counsel replied, "Yeah. When I get assigned to a case, I wander over to the prosecutor's office and ask for copies, and they produce them." (1/12/17 Tr., p.40, Ls.13-15.) Post-conviction counsel asked if it was trial counsel's practice to "just have kind of an informal relationship with the prosecutor's office and not request formal discovery in cases" such as Mr. Bias's. (1/12/17 Tr., p.40, Ls.16-19.) Trial counsel responded, "When there's going to be a fight, and I know there's going to be, then yes, I file a formal discovery. But otherwise, they have an open-door policy with me, and I've never had a problem with them hiding stuff from me." (1/12/17 Tr., p.40, Ls.20-24.)

The prosecution then called Corporal Robison to testify again. (1/12/17 Tr., p.43, L.2 – p.63, L.8.) It also called two other officers to testify about what they saw in the video.[3] (1/12/17 Tr., p.64, L.3 – p.112, L.8.) At the conclusion of the State's evidence, the district court said to the prosecutor, "Let's hear your argument then. Or if you are planning to brief this further, we can just let you submit it on your briefs. How would you like to proceed?" (1/12/17 Tr., p.113, Ls.3-12.) The prosecutor asked for an extension beyond the 45 days it had been given for

[3] As the State is not challenging on appeal the district court's holding that—if Mr. Bias had been able to file a motion to suppress—the motion would have been granted because Corporal Robison lacked reasonable suspicion to make the traffic stop, detail regarding the officers' testimony is not relevant to the issues before this Court.

briefing, but post-conviction counsel objected, so the district court agreed to hear the prosecutor's argument and decide whether any further briefing would be necessary. (1/12/17 Tr., p.113, L.13 – p.114, L.9.)

The prosecutor argued that the district court had to consider the state of the law at the time trial counsel made the decision not to file the motion to suppress and largely quoted from *Strickland* regarding judging the reasonableness of an attorney's actions. (1/12/17 Tr., p.114, L.20 - p.117, L.14.) He argued that trial counsel relied on Mr. Bias's statements to him, and his review of the police report, and this led to his strategy regarding sentencing. (1/12/17 Tr., p.117, L.15 – p.118, L.20.) But the district court said, while it did not "want to get into the business of second-guessing defense counsel's strategy . . . it's not the defendant with the legal training; it's the attorney with the legal training." (1/12/17 Tr., p.119, Ls.13-24.) The district court went on to ask how an attorney could make a decision on what to do "without seeing the video or inquiring further, to know whether or not there's even a basis to challenge any of the issues . . . ." (1/12/17 Tr., p.119, L.24 – p.120, L.3.) It then opined, "In other words, to say, 'Well, Mr. Bias told me he didn't think there was any problem,' that means the attorney with the law degree is relying upon the defendant without the law degree to make a legal conclusion. And I'm not sure *Strickland* necessarily quite supports that kind of way of practicing law." (1/12/17 Tr., p.120, Ls.3-9.) Finally, the prosecutor argued that there was no prejudice and cited to several cases to support its argument that there was reasonable suspicion to make the stop. (1/12/17 Tr., p.123, L.20 – p.126, L.18.)

Post-conviction counsel then pointed out that he thought it was "imperative" for attorneys to get as much information as possible because "a client's decision is really only based upon the information the client's provided." (1/12/17 Tr., p.127, Ls.1-20.) He said that his contract states

that he has a "responsibility, whether or not the client likes it, to go through and request formal discovery and then review it with my client." (1/12/17 Tr., p.130, Ls.2-13.) He then argued that the video did prove prejudice because the video did not match the police report. (1/12/17 Tr., p.131, L.24 – p.133, L.19.)

At the end of the hearing, the district court said again that it was close to issuing a decision at the end of the prior hearing, but because these "newer issues had just developed at the very end of our last hearing, without the State having had an opportunity to really—I felt like the State was a little bit unintentionally or accidentally ambushed, because I don't think the plaintiff was intending to raise that issue until he actually saw the video." (1/12/17 Tr., p.138, Ls.11-20.) It went on to explain, "I think everybody, including the State, is entitled to their day in court. And I feel like everyone's had that now." (1/12/17 Tr., p.138, Ls.23-25.) Post-conviction counsel asked about briefing on the issue, and the district court said, "At this point I think I'm going to take the matter under advisement. So I don't think any additional briefing—I think you two have argued it and presented evidence effectively." (1/12/17 Tr., p.139, Ls.4-10.)

The district court granted post-conviction relief after finding that trial counsel was ineffective for failing to file a motion to suppress challenging the reasonable suspicion for the traffic stop. (R., pp.58-64, 71-72.) In its order, the district court noted that the State initially objected when the discovery of the video prompted post-conviction counsel to expand the motion to suppress issue. (R., pp.59-60.) However, the district court found that Mr. Bias "did set forth a claim" that his attorney was ineffective for failing to challenge both the jurisdiction and the protocol of the stop. (R., p.60.) Thus, the district court held that "the legality of the stop had been previously raised by Bias, at least generally, long before the second evidentiary hearing." (R., p.60.)

Notably, the district court also thoroughly addressed two issues, which had "not been properly pled or raised prior to the three evidentiary hearings," but "caused the Court serious concerns." (R., pp.67-71.) It wrote that it was "alarmed to learn of: (1) the failure of trial counsel to request discovery before having his client plead guilty, and (2) the State's apparent violation of *Brady v. Maryland*, 373 U.S. 83 (1963), due to its failure to disclose obvious exculpatory evidence; i.e. the dashcam video." (R., p.67.) With respect to the first issue, it ruled that failure to request the video was prejudicial because it "would have strengthened Bias's case." (R., p.68.) Additionally, it noted that the United States Supreme Court had addressed the same issue and held that similar behavior places "at risk both the defendant's right to an 'ample opportunity to meet the case of prosecution' and the reliability of the adversarial testing process." (R., pp.68-69 (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986)).) It explained that even if it were to accept trial counsel's "explanation that he does not typically investigate further or file a motion to suppress when his client expresses a desire to get help, this does not excuse the fact that defense counsel is effectively depriving his client of the ability to make a knowing and intelligent decision to plead guilty . . . ." (R., p.69.) The district court also wrote that if Mr. Bias had been able to properly assert a claim of ineffective assistance of counsel for the failure to formally request discovery, "it may have justified a finding of ineffective assistance of counsel . . . ." (R., p.69.)

In its conclusion, the district court explained its decision in more detail. It stated that while most of Mr. Bias's claims lacked merit, it was "left with an abiding conviction that Bias—facing a ten year prison sentence—should have been permitted an opportunity to challenge the legality of his stop and view the dashcam video before deciding to plead guilty." (R., p.71.) It went on to write, "If, after reviewing the video and having the opportunity to discuss with his

attorney the weaknesses in the State's case it reveals, he had still wished to plead guilty, that would have been a knowing, intelligent, and voluntary decision to waive his right to challenge the State's evidence and plead guilty." (R., p.71.) It wrote that despite "the weakness in the evidence supporting reasonable suspicion for a stop as contained in the police report, Bias pled guilty anyway." (R., p.71.) And it stated, "[t]he failure to challenge the stop on the basis of the tenuous grounds alleged in the police reports alone fell short of the objective standard of reasonableness set forth by *Strickland*, and was a primary reason why the dashcam video was not discovered sooner. Therefore, the first *Strickland* prong has been met." (R., p.71.)

In regard to the prejudice prong, the district court wrote, "By so holding, the Court does not wish to second-guess a strategic decision made by an experienced defense attorney. However, this case clearly illustrates the pitfalls of having a defendant plead guilty without conducting thorough investigation and discovery." (R., p.72 (internal citation omitted).) It went on to state, "If a motion to challenge the legality of the stop had been properly brought, the Court concludes that it would have granted such a motion under the totality of the circusmtances." (R., p.72.) Finally, the district court wrote, "The Court must further conclude that but for counsel's failure to request discovery and challenge the constitutionality of the stop, Bias would not have pled guilty and would have insisted on going to trial. Therefore, Bias has shown that he was prejudiced by his attorney's actions, and the second prong of *Strickland* is also met." (R., p.72 (internal citation omitted).) The district court entered a judgment granting the petition, and the State filed a notice of appeal timely from the judgment. (R., pp.76-80.)

ISSUES

The State phrases the issues on appeal as:

1. Did the district court err by considering the unpled claim that counsel should have challenged the reasonable suspicion for the stop?

2. Did the district court err when it applied an incorrect legal standard to the claim of ineffective assistance of counsel for not filing a suppression motion?

(Appellant's Brief, p.5.)

Mr. Bias rephrases the issues as:

1. Has the State failed to show that the district court erred when it considered the claim that trial counsel was ineffective for failing to challenge the reasonable suspicion for the stop after the prosecution presented evidence that was never disclosed to Mr. Bias, and failed to further object to the district court's consideration of the issue but instead chose to call additional witnesses to testify on the issue?

2. Did the district court apply the correct legal standards when it held that Mr. Bias's trial counsel was ineffective?

ARGUMENT

I.
The State Has Failed To Show That The District Court Erred When It Considered The Claim That Trial Counsel Was Ineffective For Failing To Challenge The Reasonable Suspicion For The Stop After The Prosecution Presented Evidence That Was Never Disclosed To Mr. Bias, And Failed To Further Object To The District Court's Consideration Of The Issue But Instead Chose To Call Additional Witnesses To Testify On The Issue

A. Introduction

At the second evidentiary hearing on Mr. Bias's post-conviction claim that his trial counsel was ineffective for failing to file a motion to suppress on the grounds that the officer who stopped him was outside his jurisdiction, Mr. Bias discovered for the very first time that the State actually had a video of the traffic stop. The video showed that the officer did not have reasonable suspicion for the stop, which supported a claim that his trial counsel was ineffective for failing to file a motion to suppress on those grounds. Mr. Bias, therefore, immediately upon learning of the existence of the video, moved to amend the pleadings to make an additional ineffective assistance of counsel claim. The State argues that because Mr. Bias did not make his claim before learning of the video's existence—and therefore of the claim's existence—the district court should not have considered the claim.

But the district court appreciated that it was fundamentally unfair for Mr. Bias to have entered a guilty plea without seeing all the evidence in his case. And the district court found that his plea could not be knowing, intelligent, and voluntary without having ever seen the video of his traffic stop. Mr. Bias did not know about this evidence either because the State failed to provide it or because his trial counsel failed to request discovery. Regardless, the district court was gravely concerned about both Mr. Bias's decision to plead guilty without having had the opportunity to see the video, and the reasons he did not get that opportunity. Indeed, the district court included an additional four pages in its order discussing the reasons Mr. Bias was never

made aware of the video and trying to provide guidance for defense attorneys and prosecutors, so that a situation like this did not happen again.

In its attempt to argue that the district court erred, the State fails to discuss these facts or acknowledge their gravity. Thus, its arguments skirt the real problem in this case. The State argues that it was the prosecution that did not receive notice of the issue before the court because the district court considered an allegedly unpled claim. This is a specious argument for several reasons. First, the State ignores what occurred after the video was introduced by the prosecution. Indeed, the State's argument on this issue focuses on what happened at the second evidentiary hearing where the video was introduced, and the events prior to that hearing. The subsequent hearings, however, clearly show that the district court did not rule on the claim at the second evidentiary hearing but instead provided ample notice and an opportunity for the prosecution to respond to the issue raised by the newly revealed video. Thus, the district court's consideration of the issue was not prejudicial to the prosecution. Second, despite the prosecution's initial objection to the new issue, the subsequent hearings show that the issue was tried with the implied consent of the prosecution. And finally, even if the claim was technically "unpled," as the State argues, it was "unpled" precisely because the video was not disclosed until the prosecution introduced it to disprove the jurisdictional claim; it is impossible to make a claim and allege facts based on evidence you do not know exists.

B. Standard Of Review

Where the district court grants post-conviction relief after an evidentiary hearing, this Court views the evidence "in the light most favorable to the trial court's findings." *Howard v. State*, 126 Idaho 231, 233 (Ct. App. 1994) (citing *Storm v. State*, 112 Idaho 718, 720 (1987); *Estes v. State*, 111 Idaho 430, 434 (1986)). "Findings supported by competent and

substantial evidence produced at the hearing will not be disturbed on appeal." *Id.* (citations omitted). The "Court exercises free review of the district court's application of the relevant law to the facts." *Dunlap v. State*, 141 Idaho 50, 56 (2005).

C. The District Court Provided The State Ample Notice Of The Claim That Trial Counsel Was Ineffective For Failing To File A Motion To Suppress Challenging The Reasonable Suspicion For The Traffic Stop

Focusing this Court's attention on the second evidentiary hearing in this case, where the video was first revealed, the State makes a notice argument about Mr. Bias's initial pleading. (App. Br., pp.6-12.) Specifically, the State argues that the prosecution did not receive adequate notice of the claim that Mr. Bias's trial counsel was ineffective by failing to challenge the reasonable suspicion for the traffic stop, suggesting the inadequacy of that notice was unjust. (App. Br., pp.11-12.)

However, the "technical rules of pleading have long been abandoned in this state." *Clark v. Olsen*, 110 Idaho 323, 325 (1986) (citing *Rauh v. Oliver*, 10 Idaho 3, 9 (1904)). "It is clear that a trial court may and is required to grant any relief to a party which the evidence demonstrates a party is entitled to, whether or not such has been specifically requested." *Cady v. Pitts*, 102 Idaho 86, 90 (1981); *accord O'Connor v. Harger Constr., Inc.*, 145 Idaho 904, 911 (2008); *Child v. Blaser*, 111 Idaho 702, 704 (Ct. App. 1986) ("We also agree that the judge had the authority—even the duty—to grant the relief to which [plaintiffs] were shown to be entitled although they had not demanded such in their pleadings."). "The general policy behind the current rules of civil procedure is to provide every litigant with his or her day in court." *Clark,* 110 Idaho at 325 (citation omitted). "The key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it." *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 427 (2004) (citation omitted). Further, "Pleadings must be

construed so as to do justice." I.R.C.P. 8(e). Finally, trial courts have "wide discretion in permitting amendments of pleadings to conform to the proof." *Obray v. Mitchell*, 98 Idaho 533, 537 (1977) (citations omitted).

Here, the State's notice argument focuses almost exclusively on what occurred "through the second evidentiary hearing." (App. Br., pp.8-12.) For example, the State argues that the fact the "prosecutor was surprised when the theory was first presented . . . ." is important. (App. Br., p.11.) But this fails to acknowledge that the entire complexion of the case changed at the second hearing when the prosecutor introduced the video. Indeed, Mr. Bias was also quite surprised at that point. (9/19/16 Tr., p.136, Ls.1-6.)

Because everyone was surprised, the court was careful to give the State ample opportunities to meet the new claim and evidence. At the November status hearing, the district court made the following remarks: "I think the Court will need to have the issue, if the State wishes, briefed further on whether the Court should even consider this evidence, since there was an agreement that I wouldn't." (11/28/16 Tr., p.149, Ls.21-24.) It went on to say, "[A]lthough I'm essentially done with my decision, my sense of justice tells me it wouldn't be fair to the State to proceed without giving them a chance to address these concerns that I've raised, because" it never had a chance to respond to those. (11/28/16 Tr., p.150, Ls.12-17.) Finally, it said if the State wanted the court to simply make its decision at that point, it would, but "if the State would like to present more, I think you have a right to, in fairness." (11/28/16 Tr., p.150, Ls.20-25.) The State said it would "appreciate some more time." (11/28/16 Tr., p.151, Ls.2-3.)

The district court then asked how much time the prosecution would need and whether it wanted to respond with briefing, other evidence, or witnesses. (11/28/16 Tr., p.152, Ls.14-20.) It said, "I think *in fairness you should be allowed to do that, because you weren't given proper*

notice that this issue was going to be raised. And, of course, I also want you to brief whether or not I should even consider this procedurally." (11/28/16 Tr., p.152, Ls.20-25 (emphasis added).)

The prosecution was given the time it requested—45 days to brief not only the issue of whether there was reasonable suspicion for the traffic stop, but also the issue of the whether the district court should even consider it. (11/28/16 Tr., p.153, Ls.1-13, p.156, L.14 – p.157, L.21.) The prosecution filed no brief arguing that the issue was procedurally barred. Instead, it called several witnesses at the next evidentiary hearing to testify on the reasonable suspicion issue. (1/12/17 Tr., pp.9-111.) It also made legal arguments on the issue. (1/12/17 Tr., p.114, L.10 – p.119, L.12, p.123, L.10 – p.126, L.18.) Its argument now that it suffered an injustice due to lack of notice is disingenuous.

The State claims that the district court's conclusion that Mr. Bias had previously raised the legality of the stop in his petition "cannot be reconciled" with the district court's order appointing counsel in which it stated that Mr. Bias had failed to assert why the stop had been illegal. (App. Br., pp.7-9.) This argument is a red herring; the district court's conclusion does not need to be reconciled with its order appointing counsel. The relevant time period here is after the video was discovered. When it was, post-conviction counsel moved to amend the pleading. He said, "[A]fter watching that video, I can't help but raise the issue of probable cause for a stop in this case." (9/19/16 Tr., p.135, L.24 – p.136, L.1.) He went on to say, "I think looking at the video raises a whole new set of issues whether the officer had probable cause or reasonable suspicion to even pull the vehicle over . . . ." (9/19/16 Tr., p.136, Ls.3-6.) The district court then asked if post-conviction counsel was "asserting a new basis for post-conviction relief on failure to suppress the evidence for lack of reasonable suspicion to pull over the vehicle." (9/19/16 Tr., p.136, Ls.19-22.) Counsel answered, "Well, I think we have to, based

on what we saw today on this video, Your Honor." (9/19/16 Tr., p.136, Ls.23-24.) The prosecution was then given ample notice and an opportunity to respond. (11/28/16 Tr., p.152, Ls.13-25, p.156, L.14 – p.157, L.21.) I.R.C.P. 15(b) clearly supports this procedure. "A party may move, at any time . . . to amend the pleadings to conform them to the evidence and to raise an unpleaded issue." I.R.C.P. 15(b)(2). Further, "[t]he purpose of Rule 15(b) is to allow cases to be decided on the merits, rather than upon technical pleading requirements." *Dunlap v. State*, 141 Idaho 50, 57 (2005) (quoting *Noble v. Ada County Elections Bd.*, 135 Idaho 495, 500 (2000)); *see also Clark*, 110 Idaho at 326 (1986).

The State also argues that the district court's finding that the prosecution objected when the issue was first raised "forecloses any claim that the issue was litigated with the express or implied consent of the state." (App. Br., p.6, n.2.) This is not correct. I.R.C.P. 15(b)(1) states that when "a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended." The rule also indicates that the court "should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence." I.R.C.P. 15(b)(1). That is exactly what occurred here. When the prosecution introduced the video, post-conviction counsel moved to amend the pleadings as discussed above. The district court allowed post-conviction counsel to amend the pleading to conform to the evidence because it would aid in presenting the merits of the case. Also, when the prosecution objected, the district court allowed the prosecution to argue the issue. (9/19/16 Tr., p.142, L.18 – p.144, L.6.) It also allowed time—in the interest of fairness—for the prosecution to meet the evidence with

briefing on the issue, and it held a third evidentiary hearing, so the State could present witnesses and further argument on the issue. (11/28/16 Tr., p.152, Ls.13-25, p.156, L.14 – p.157, L.21.)

The district court, particularly in light of the fact that the prosecution introduced a video that the defense had never seen, properly allowed post-conviction counsel to rely on the new evidence to support its new argument. When the prosecution objected to the issue at the second evidentiary hearing, the district court said, "Well, let's assume we're all in this business because we're trying to get it right. So help me get it right." (9/19/16 Tr., p.142, Ls.7-20.) And, in recounting the progression of this case, the district court said because these "newer issues had just developed at the very end of our last hearing, without the State having had an opportunity to really—I felt like the State was a little bit unintentionally or accidentally ambushed, because I don't think the plaintiff was intending to raise that issue until he actually saw the video." (1/12/17 Tr., p.138, Ls.11-20.) It went on to state, "I think everybody, including the State, is entitled to their day in court. And I feel like everyone's had that now." (1/12/17 Tr., p.138, Ls.23-25.)

A complete review of the record—particularly the district court's focus on fair treatment for *all* the parties—shows that this was an accurate statement, and the prosecution was not prejudiced. Post-conviction counsel informed the district court, in the presence of the prosecution, on September 19, 2016, that the video revealed an additional ineffective assistance of counsel claim—for failing to challenge the reasonable suspicion for the stop. That issue was not argued until January 12, 2017. The prosecution had ample notice and failed to file a brief or make any further arguments on whether the district court should consider the issue. Thus, it also failed to satisfy the court that consideration of the new issue would prejudice its defense on the merits. As such, the district court did not err in considering the claim.

D. The Issue Of Whether Trial Counsel Was Ineffective For Failing To File A Motion To Suppress Challenging The Reasonable Suspicion For The Traffic Stop Was Tried With The Implicit Consent Of The Prosecution

On January 12, 2017, having failed to file a brief on the issue of ineffective assistance of counsel for failing to challenge the reasonable suspicion for the traffic stop and whether the district court should consider the issue, the prosecutor appeared at a hearing to determine whether there was reasonable suspicion for the stop. (1/12/17 Tr., p.6, Ls.8-23; R., pp.59-60.) He came prepared with four witnesses and made his arguments on the issue. (1/12/17 Tr., generally.)

Therefore, this issue was clearly tried with the implied consent of the prosecution. "When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised by the pleadings." I.R.C.P. 15(b)(2). "The requirement that the unpleaded issues be tried by at least the implied consent of the parties assures that the parties have notice of the issues before the court and an opportunity to address those issues with evidence and argument." *M. K. Transp., Inc. v. Grover*, 101 Idaho 345, 349 (1980). Additionally, "when a theory is fully tried by the parties, I.R.C.P. 15(b) allows a court to base its decision on a theory not pleaded 'and deem the pleadings amended accordingly . . . .'" *Dunlap*, 141 Idaho at 57 (quoting *Paterson v. State*, 128 Idaho 494, 502 (1996)).

The district court allowed the prosecution to brief why it might have been prejudiced by the court's consideration of the issue, and the prosecution had ample opportunity to continue to object along those lines. Instead of doing that, however, it called more witnesses at the next evidentiary hearing, and the parties litigated the issue thoroughly. (*See generally* 1/12/17 Tr.)

Finally, the district court identified this as an issue and ruled on it. Thus, even if post-conviction counsel never formally amended the pleading, the district court could deem the

pleading amended. *See Dunlap*, 141 Idaho at 57-58. Had the district court ruled on the issue after the second evidentiary hearing without giving the state time to meet the evidence, this would require a different analysis. However, that was not the case here. The issue was tried with the consent of the prosecution.

II.

The District Court Applied The Correct Legal Standards When It Held That Mr. Bias's Trial Counsel Was Ineffective

A. Introduction

The State asserts that the district court applied the wrong standard when it held that Mr. Bias's trial counsel was ineffective for failing to file a motion to suppress challenging the reasonable suspicion for Mr. Bias's traffic stop. The State's argument fails because it ignores relevant facts. First, the district court applied the proper standard because it specifically considered whether trial counsel's failure to request discovery and file the motion could have been a reasonable strategy. Second, the district court found that Mr. Bias would not have pled guilty if he had seen the video. Thus, it properly applied two correct standards in finding that Mr. Bias's trial counsel was ineffective for failing to file the motion.

B. Standard Of Review

"This Court exercises free review of the district court's application of the relevant law to the facts." *Dunlap v. State*, 141 Idaho 50, 56 (2005).

C. The District Court Applied The Correct Legal Standards

To prevail on an ineffective assistance of counsel claim, a defendant must show that his attorney's performance was deficient, and that he was prejudiced by the deficiency. *Strickland v.*

Washington, 466 U.S. 668, 687 (1984); *Heilman v. State*, 158 Idaho 139, 145 (Ct. App. 2015). "To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness." *Heilman*, 158 Idaho at 145 (citations omitted). "Ultimately, 'the standard for evaluating attorney performance is objective reasonableness under prevailing professional norms.'" *Wurdemann v. State*, 161 Idaho 713, 717 (2017) (quoting *State v. Mathews*, 133 Idaho 300, 306 (1999)). Strategic and tactical decisions made by trial counsel can be second-guessed only if "those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation." *Dunlap*, 141 Idaho at 60 (citation omitted).

"To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the proceeding would have been different." *Heilman,* 158 Idaho at 145 (citations omitted). Where a claimant alleges ineffective assistance of counsel for failing to file a motion to suppress, "a 'critical inquiry is whether the motion, if filed, should have been granted.'" *Wurdemann*, 161 Idaho at 717 (citations omitted). "[O]nce it has been determined the motion, had it been filed, should have been granted, the petitioner is still required to overcome the presumption that the decision not to file the motion 'was within the wide range of permissible discretion and trial *strategy*.'" *Wurdemann*, 161 Idaho at 718 (citation omitted) (emphasis in original). Prejudice can also be established if the claimant shows "that there is a reasonable probability that but for counsel's errors, he would not have pleaded guilty and would insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985); *Plant v. State*, 143 Idaho 758, 762 (Ct. App. 2006) (citation omitted).

Here, the district court found that a motion to suppress would have been granted if it had been filed. (R., pp.64, 72.) However, the State, relying on *Wurdemann*, claims that the district

court erred because it did not conduct "the proper analysis of whether Bias had overcome the presumption that the decision not to file the motion was within the wide range of permissible discretion and trial strategy." (App. Br., pp.13-17.) The State fails to acknowledge that trial counsel's strategy was specifically addressed in this case, and thus Mr. Bias did overcome the presumption that his trial counsel's actions were within the wide range of permissible discretion and trial strategy. In fact, both post-conviction counsel and the district court questioned trial counsel about his strategy at the third evidentiary hearing, and the district court—in its opinion—explicitly considered whether trial counsel's actions constituted a reasonable strategy. (1/12/17 Tr., p.32, L.21 – p.38, L.22; R., pp.64, 71-72.) For example, post-conviction counsel asked trial counsel whether reviewing the video to see what happened in the stop could have given him "ammunition to help weaken the State's case," to achieve his sentencing strategy, and trial counsel agreed that it would have. (1/12/17 Tr., p.34, L.25 – p.35, L.11.)

Similarly, trial counsel agreed with the district court that it would behoove him to review a video of the traffic stop before allowing his client to plead guilty. (1/12/17 Tr., p.37, Ls.7-11.) Trial counsel also agreed—when specifically questioned about his strategy—that he could have used constitutional problems with the stop in negotiating "to get a lower charge made or considerations in sentencing recommendation." (1/12/17 Tr., p.37, L.11 – p.38, L.6.) He further agreed that, if he had seen the video, it "could have played a role in the ultimate sentence" that he negotiated with the State. (1/12/17 Tr., p.38, Ls.7-22.) Also, when the prosecutor cited *Strickland* and argued that trial counsel's strategy of focusing on sentencing was reasonable because his client told him he made a mistake and wanted help, the district court said that, while it did not "want to get into the business of second-guessing defense counsel's strategy," it was trial counsel, not Mr. Bias, who had the legal training. (1/12/17 Tr., p.116, L.21 – p.119, L.24.)

The district court went on to further discuss whether trial counsel's strategy was reasonable. It asked how an attorney could make a decision on what to do "without seeing the video or inquiring further, to know whether or not there's even a basis to challenge any of the issues . . . ." (1/12/17 Tr., p.119, L.24 – p.120, L.3.) Finally, the district court said, "In other words, to say, 'Well, Mr. Bias told me he didn't think there was any problem,' that means the attorney with the law degree is relying upon the defendant without the law degree to make a legal conclusion. And I'm not sure *Strickland* necessarily quite supports that kind of way of practicing law." (1/12/17 Tr., p.120, Ls.3-9.)

In its discussion of whether trial counsel was ineffective for failing to request discovery, the district court wrote, "The Court is concerned about the precedent that would be set by too broadly permitting an attorney with a law degree to completely rely upon his client's lay analysis of his best legal strategy, without the benefit of complete discovery." (R., p.69.) It went on to state, "In order to make a knowing and intelligent decision to plead guilty, the defendant should at least know whether the evidence is sufficient to obtain a conviction. Even if the defendant intends to plead guilty, discovery could allow him greater leverage in negotiating a plea agreement." (R., p.69.)

Perhaps most importantly, the district court wrote—in addressing whether the first prong of *Strickland* had been met—that despite "the weakness in the evidence supporting reasonable suspicion for a stop as contained in the police report, Bias pled guilty anyway." (R., p.71.) It also wrote, "[t]he failure to challenge the stop on the basis of the tenuous grounds alleged in the police reports alone fell short of the objective standard of reasonableness set forth by *Strickland*, and was a primary reason why the dashcam video was not discovered sooner. Therefore, the first *Strickland* prong has been met." (R., p.71.) And it immediately conducted the analysis that the

State argues is missing here. It stated, "By so holding, the Court does not wish to second-guess a strategic decision made by an experienced defense attorney. However, this case clearly illustrates the pitfalls of having a defendant plead guilty without conducting thorough investigation and discovery." (R., p.72 (internal citation omitted).) Therefore, the court clearly held that trial counsel's representation was not within the trial counsel's permissible discretion and trial strategy. This comment, and the district court's various other comments on strategy, show that district court found that trial counsel's decisions were actually based on inadequate preparation or other shortcomings that the court could objectively evaluate—namely the failure to request discovery—and thus it could legitimately second-guess trial counsel's decisions tied to that failure, regardless of whether they are labeled "strategic."

The State also fails to acknowledge that the district court applied a second standard to hold that trial counsel's actions prejudiced Mr. Bias: "The Court must further conclude that but for counsel's failure to request discovery and challenge the constitutionality of the stop, Bias would not have pled guilty and would have insisted on going to trial. Therefore, Bias has shown that he was prejudiced by his attorney's actions, and the second prong of *Strickland* is also met." (R., p.72 (internal citation omitted).) Thus, contrary to the State's argument, the district court relied on two proper standards to find that that the prejudice prong of *Strickland* was met. And it specifically considered whether trial counsel's strategy was reasonable.

The State claims that "[t]his case is not meaningfully distinguishable from [*State v. Mathews*, 133 Idaho 300 (1999)]." (App. Br., p.15.) But, as the Court there specifically found that trial counsel had extensively investigated his client's case, it is highly distinguishable. In *Mathews*, the Idaho Supreme Court held that there was substantial and competent evidence to support the district court's finding that trial counsel "reasonably concluded, upon discovering the

discrepancy in the date on the warrant, that the error was merely a *clerical oversight* by the magistrate *not affecting the validity of the finding of probable cause*." 133 Idaho at 308 (emphasis added). Thus, it appeared that trial counsel properly investigated. As such, the Court, "applying a heavy measure of deference to counsel's judgments," also held that trial counsel's "failure to conduct additional investigation regarding the signing of the warrant and his failure to file a motion to suppress on that ground was reasonable *given the extent of his previous investigation of the issuance and execution of the warrants, his previous contact with the issuing magistrate, and his determination that probable cause existed to support the warrants*." *Id.* (emphasis added). Here, in stark contrast, trial counsel failed to request discovery, so he had no knowledge that an exculpatory video existed that proved there was no reasonable suspicion for the stop.

Further, the district court found that "the descriptions in the police report raise the same concerns as the video to a sufficient degree that defense counsel should have challenged the stop or at least investigated further." (R., p.64.) Similarly, the district court found that "the tenuous justification provided for the stop in the police reports at least required further inquiry and investigation—which the Court concludes would likely have led to the discovery of the dashcam video." (R., p.69.) The district court also stated, "The failure to challenge the stop on the basis of the tenuous grounds alleged in the police reports alone fell short of the objective standard of reasonableness set forth by *Strickland*, and was a primary reason why the dashcam video was not discovered sooner." (R., p.71.) These findings specifically disprove the State's claim that there was "neither evidence, *nor any finding*, based on counsel's experience with cases with similar facts and the state of the law in 2012, counsel's decision to pursue the suppression motion issue no further was unreasonable." (App. Br., p.15 (emphasis added).) They also disprove the

State's claim that the district court "did not find whether the decision to not file was even a 'close question' based on police reports . . . ." (App. Br., p.16.) The district court clearly found that trial counsel was deficient for failing to file a suppression motion based on the police reports alone.

Nevertheless, the State also argues that the district court erred by relying on repeated viewings of the dashcam video, which trial counsel did not rely on. (App. Br., p.16.) However, the district court said it was "mindful that defense counsel did not have access to the dashcam video prior to trial—just the police report." (R., p.64.) But, this is when the district court stated that the "descriptions in the police report raise the same concerns as the video to a sufficient degree that defense counsel should have challenged the stop or investigated further." (R., p.64.) And the State's argument again ignores the fact that trial counsel failed to request discovery. The State argues that the district court "specifically found that Bias had not raised a claim counsel was ineffective for not obtaining the video prior to deciding not to pursue suppression." (App. Br., p.16.) Such an argument, however, ties back to the basic premise here; it is impossible to raise an issue concerning something that you do not know exists. And the State is relying on technicalities of pleading instead of acknowledging that the district court properly decided the merits of the new issue and gave Mr. Bias his day in court. The only reason trial counsel did not see the video is he did not request discovery; he should have been the one repeatedly viewing the video on his client's behalf.

Finally, the State argues that the district court erred in relying on *State v. Neal*, 159 Idaho 439 (2015), because it was decided after trial counsel's decision not to challenge the stop. (App. Br., p.17.) But the district court's opinion clearly shows that its decision was not "wholly dependent on *Neal*," even acknowledging that trial counsel's "performance cannot be found to

have been deficient based on a case that was not decided yet." (R., p.61, n.23.) Instead, it relied on earlier cases—relied on in *Neal* and decided well before trial counsel's decision in this case—for the proposition that merely touching the fog line does not provide reasonable suspicion for a stop. (R., pp.61-62 (discussing *State v. Emory*, 119 Idaho 661, 664 (Ct. App. 1991), and *State v. Flowers*, 131 Idaho 205, 209 (Ct. App. 1998).) The district court also noted the many out of state cases, decided before 2012, holding that touching the fog line did not establish reasonable suspicion. (R., p.61, n.23.) In fact, when it discussed *Neal*, it said that were "indications in that case that perhaps that may have been the rule earlier." (11/28/16 Tr., p.151, Ls.21-24.) It also explained that the statute was clear that crossing the line was an infraction but touching it was not. (11/28/16 Tr., p.152, Ls.2-4.)

Furthermore, the district court properly applied a totality analysis to reach its holding that there was no reasonable suspicion for the stop and found that "[n]one of the factors cited by the officer, taken individually, would constitute an infraction of Idaho law or a violation of the rules of the road. More importantly, even taken together, the clues identified did not give rise to reasonable suspicion of DUI." (R., p.63.) It went on to state, "The Court concludes that during an approximately 60-second span of time, driving 55 mph in a 65 mph zone at night, lightly tapping the brakes, and briefly touching—but not crossing—the white fog line, do not provide reasonable suspicion to justify a stop on suspicion of DUI . . . ." (R., p.63.) Thus, the district court applied the correct legal standards when it held that Mr. Bias's trial counsel was ineffective.

CONCLUSION

Mr. Bias respectfully requests that this Court affirm the district court's order granting his petition for post-conviction relief.

DATED this 2nd day of March, 2018.

__________/s/________________
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of March, 2018, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

WILLIAM JACK BIAS
3185 ROMRELL LN
AMMEN ID 83406

GREGORY W MOELLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

JOSHUA GARNER
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_________/s/________________
EVAN A. SMITH
Administrative Assistant

RPA/eas