No. 24- _____

SUPREME COURT OF THE UNITED STATES

Stephen Lundquist,

Petitioner

vs.

State of Idaho,

Respondent

On Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Nineth District Circuit

PETITION FOR A WRIT OF CERTIORARI

Stephen Lundquist
Petitioner
5124 West Cove Street
Boise, Idaho 83714
Tel.: (208) 854-9353
E-mail: stevelundquist1560@msn.com

I. Questions Presented

1. Is the Idaho state court in violation of the rule in *Brady v. Maryland* by changing the evidence, contrary to uncontroverted evidence, in dismissing the third component of a *Brady* violation that obviates "reasonable probability of a different verdict"?

2. When pursuant to the Uniform Post Conviction Procedure Act, where only a preponderance of evidence is required, does the standard of reasonable probability become more attainable when only a preponderance of evidence is the threshold?

3. Is the State of Idaho in conflict with Federal laws and other States where duress negates criminal intent?

II. Related Cases

1. Stephen Lundquist v. State of Idaho, Docket No. 49532-2022, Supreme Court of the State of Idaho. Order Denying Petition for Review and Motion to Augment the Record entered November 27, 2023.
2. Stephen Lundquist v. State of Idaho, Docket No. 49532-2022, Court of Appeals of the State of Idaho. Opinion on Appeal entered August 30, 2023.
3. Stephen Lundquist v. State of Idaho, CV01-19-7369, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Opinion on Appeal entered December 22, 2021.
4. Stephen Lundquist v. State of Idaho, CV01-19-7369, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Order Denying Post Conviction Relief entered March 1, 2021.
5. State v. Lundquist, CR01-19-00061, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Judgment entered March 28, 2019.
6. State v. Lundquist, CR01-18-30736, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Judgment entered August 15, 2018.

III. Table of Contents

III. Table of Authorities

Cases

Statutes

Constitutional Provisions

V. Petition for Writ of Certiorari

Stephen Lundquist respectfully petitions this court for a writ of certiorari to review the opinion of the Idaho Court of Appeals.

VI. Opinion

The Opinion by the Idaho Court of Appeals denying Mr. Lundquist's petition for post-conviction relief is unpublished, filed on August 30, 2023 (docket No. 49532-2022). Attached at Appendix at 2-9. The Idaho Supreme Court denied Mr. Lundquist's Petition for Review and Motion to Augment Record on November 27, 2023. Attached at Appendix at 1.

VII. Jurisdiction

Mr. Lundquist's Petition for Review and Motion to Augment Record to the Idaho Supreme Court was denied on November 27, 2023. Mr. Lundquist invokes this Court's jurisdiction under 28 USC section 1257, having timely filed this petition for a writ of certiorari within ninety days of the Idaho Supreme Court order.

VIII. Constitutional Provisions Involved

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject top the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens on the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

IX. Statement of the Case

Over 60 years ago, this Court held in *Brady v. Maryland* that the State must disclose all exculpatory evidence to the defendant in criminal cases. In *Giglio v. United States* that evidence extends to impeaching evidence of a witness. *Strickler v. Greene* defined three components of a *Brady* violation: the evidence at issue must be favorable to the accused, either exculpatory or impeaching; that evidence was suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. Ever since *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony, and that the prosecution knew, or should have known, of the perjury violates the Fourteenth Amendment. In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury then the resulting conviction must be set aside. In *United States v. Agurs* it is this line of cases on which this Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. In *Kyles v. Whitley* found that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence of the verdict. In *U.S. v. Bagley* this Court has found prejudice must be considered "in light of the totality of circumstances" and a Constitutional error results when the Government suppresses this evidence "if there

is reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different".

1. The violation of a No Contact Order

Mr. Lundquist was arrested and charged with violation of a no contact order when Ms. Gena Santa Lucia, the protected person, came to Mr. Lundquist's home uninvited on December 31, 2018, and she was found there by police. Mr. Lundquist entered a not guilty plea, trial was on March 28, 2019, and found guilty by jury.

Mr. Lundquist filed a timely petition for Post-Conviction Relief (PCR) because the State did not disclose a police report of an interview of Ms. Santa Lucia conducted by police Detective Dozier (Dozier report) despite proper request for discovery by the defense. This interview of Ms. Santa Lucia was on March 4, 2019, twenty-four (24) days before the trial and discussed the violation of the no contact order. This non-disclosure of the Dozier report caused a *Brady* violation. Dozier report was discovered by Mr. Lundquist seven months later in October 2019. In the Dozier report Ms. Santa Lucia claimed fear of Mr. Lundquist. At trial, Ms. Santa Lucia testified she was in a dating relationship with Mr. Lundquist and implied no fear whatsoever. This non-disclosure by the State of the Dozier report prevented Mr. Lundquist to present an affirmative defense at trial. Mr. Lundquist argues the violation of the no contact order was a result of duress from extortion by Ms. Santa Lucia and as such there was no intent to the crime pursuant to Idaho Code Section 18-114 which requires *mens rea* for a crime to be committed. Ms. Santa Lucia's contradictions would have allowed the defense to impeach her

testimony that there was a dating relationship and would have corroborated Mr. Lundquist's testimony he was a victim of extortion by her. Trial counsel provided an affidavit that averred that Mr. Lundquist had told him of the extortion before the trial but based on the evidence at the time, trial counsel did not think that an affirmative defense that Mr. Lundquist was under duress to be a viable defense. During pre-trial review of the evidence that was provided, primarily the police report of the night of the incident, December 31, 2018, Ms. Santa Lucia told police then she had "rekindled" the relationship with Mr. Lundquist and they had been seeing each other on a regular basis. This was deemed this would be the same story she would use at trial to explain why she was at Mr. Lundquist's home despite a no contact order in effect presumably to protect her.

Decision by magistrate court found that the first two prongs of a *Brady* violation, had been satisfied that the Dozier report was "at least impeaching, and that it was not disclosed" but ruled Mr. Lundquist failed to show the third component, that there was prejudice. The magistrate court concluded there was no prejudice because it found there was no extortion by Ms. Santa Lucia as claimed by Mr. Lundquist. Decision was appealed to the district court and was affirmed, and then to the Court of Appeals where again affirmed. Thereafter, Mr. Lundquist filed for a Petition for Review with the Idaho Supreme Court and was denied.

2. Petition for Post-Conviction Relief (PCR)

This proceeding of a Post-Conviction Relief was brought pursuant to the Uniform Post Conviction Procedural Act and is a civil case in nature which only

requires a preponderance of evidence to prevail.

This PCR was filed pursuant to Idaho Code Section 19-4901(a)(1):

> 19-4901. REMEDY — TO WHOM AVAILABLE — CONDITIONS. (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
> (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

The conviction in this case violated of the Constitution of the United States (XIV Amendment).

X. REASONS FOR GRANTING THE WRIT

A. The Court Disregarded and Even Changed Evidence That Supported There was Extortion then Concluding There was No Reasonable Probability of a Different Verdict Ignoring the Totality of Circumstances

The matter in question of this PCR was not for the court to convict Ms. Santa Lucia of extortion beyond a reasonable doubt, but to find the withholding of the Dozier report was a violation of Mr. Lundquist's rights under Federal and State constitutions and Idaho law, violating due process and preventing a fair trial. The evidence presented in the PCR to the magistrate and subsequent appeals clearly warrants the guilty verdict of violating the no contact order to be vacated. The magistrate court focused on the relationship between Mr. Lundquist and Ms. Santa Lucia and made numerous factual errors in the circumstances, formulating a flawed theory to find there was no extortion by Ms. Santa Lucia against Mr. Lundquist and thus no prejudice. This finding contradicted the preponderance of evidence that supports the third component of a *Brady* violation, that there was prejudice. In this case the preponderance of evidence presented by Mr. Lundquist

clearly met the measure needed to vacate conviction because it undermines the confidence of the verdict as required by *Kyles*. The Idaho State Court found that the first two components had been satisfied, but ruled that Mr. Lundquist failed to meet the third component because he failed to show "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different". The reasonable probability standard provides a clear and consistent measure by which judges can accurately gauge the effect of a *Brady* violation. By virtue of its reliability and endurance, this standard safeguard the due process rights afforded to every citizen under the Fourteenth Amendment. But in this case, the reliability of this standard of *reasonable probability* is negated when the court does not follow the evidence and particularly when only a preponderance of evidence is needed.

Mr. Lundquist presented argument in the PCR and in the appeals to district and Court of Appeals that supports that the withholding of the Dozier report did cause prejudice when Ms. Santa Lucia claimed fear of Mr. Lundquist in the Dozier report, contradicting her trial testimony. The magistrate court made several errors in assessing the relationship between Ms. Santa Lucia and Mr. Lundquist and resulted in the incorrect finding there was no extortion. But judicious examination of the "totality" of circumstances, as required in *Bagley*, in the relationship with Mr. Lundquist's and Ms. Santa Lucia's and their actions, clearly shows that allegation of extortion is credible. The factual errors made in the decision of the initial post-conviction relief proceedings (CV01-20-07369) by the magistrate were

clearly defined by Mr. Lundquist in appeals to both the District Court and the Idaho Court of Appeals. Nonetheless, these errors in the circumstances were repeated by the Idaho District Court in appeal there which affirmed the denial of post-conviction relief and was then affirmed by Idaho Court of Appeals. In this case Idaho courts not only disregarded the totality of the circumstances but *changed* the circumstances in contravention of uncontroverted evidence.

Magistrate stated the following in its Order Denying Post-Conviction Relief. The factual errors made by the magistrate contradicts the uncontroverted evidence that was presented:

> After being released from custody on this charge on August 24th, 2018, Petitioner was walking home when Santa Lucia drove by him. She stopped her vehicle, and offered him ride home. In the ensuing months, despite the no-contact order, Petitioner and Santa Lucia frequently saw each other, but their relationship was not entirely stable. There were accusations of infidelity, and in September of 2018, Petitioner filed for, and received, civil protection order against Santa Lucia, based on an incident where Petitioner believed that Santa Lucia had vandalized his car. That order was later dismissed when Petitioner learned that Santa Lucia had not been involved in the incident. (R. p. 171, paragraphs 2).

There are numerous errors here. Mr. Lundquist (Petitioner) was released on August 15, 2018, not August 24th. There were no accusations of infidelity. They did not see each other frequently. And most importantly, Mr. Lundquist did not file for his civil protection order in September 2018, it was filed in April 2018, the significance of which is explained below.

The magistrate then made the erroneous conclusion there was no extortion, therefore no prejudice in the suppression of the police report based on the following finding:

> This court finds that the lack of supporting evidence for the extortion defense is due to simple fact: that there is none because the allegation is not true. Two items lead the court to this conclusion. First, Petitioner claims that that he could not tell anyone about this extortion because it would lead to false accusations by Santa Lucia that would put him in legal jeopardy. But Petitioner was quick to file for civil protection order when he believed that Santa Lucia had damaged his windshield. He did not appear to seek the protection of the law when he thought that he had been wronged. If he was willing to do so over piece of broken glass, it would seem as if he would seek the legal protection to avoid going to jail.
>
> Second, his own words condemn him. As pointed out by the state at length, when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation. (R. p. 171, paragraphs 2 and 3)

The analysis of the correct sequence of events, or the "totality of circumstances" between Mr. Lundquist and Ms. Santa Lucia in the nine months from April through December 2018 is paramount in determining the plausibility of Mr. Lundquist's assertion he was being extorted for payback for Ms. Santa Lucia's attorney's fees she incurred because of a civil protection order he filed against her on April 6, 2018, after his vehicle was vandalized. Ms. Santa Lucia admitted under oath at trial she was "upset" at incurring her attorney's fees, obviously her motive, first for filing her civil protection order against Mr. Lundquist, and then the extortion. She had made that clear to Mr. Lundquist when the extortion was ongoing. These events are described in detail in Mr. Lundquist's declarations and his testimony at the evidentiary hearing held on January 7, 2021, and are uncontroverted by the State.

First, the finding by the magistrate court there was no extortion was based on its erroneous timing of when Mr. Lundquist filed his civil protection order against Ms. Santa Lucia. The magistrate incorrectly stated Mr. Lundquist filed for his civil protection order in September 2018 when the extortion was ongoing. However, his civil protection order was filed months before, in April 2018, precipitating the events *leading* to extortion. Mr. Lundquist dismissed his protection order in late May 2018, and within five days Ms. Santa Lucia vindictively filed for a civil protection order against him and made false allegations against him, which resulted in Mr. Lundquist being arrested with criminal charge of felony stalking, incarceration, and having to retain an attorney in June through August 2018. Mr. Lundquist was simply attempting to avoid a repeat of this situation once again during the period of extortion which was September through December 2018. The magistrate court erroneously postulated if Mr. Lundquist was willing to seek legal protection (civil protection order) at time of being extorted, he should have also been willing to report the extortion as well if it was true. The filing date of his protection order was provided in Mr. Lundquist's declaration and his testimony at evidentiary hearing also detailed the filing if his and Santa Lucia's protection orders. This error was pointed out and the correct date was again stated in argument in the appeal to the district court. Nonetheless, the district court repeated the magistrate court's error of his filing date as September 2018 and again, the resulting erroneous logic that Mr. Lundquist should have been willing to report the extortion and was affirmed by Court of Appeals. The correct date is

relevant because it started the tumultuous conflict between the parties which led to Mr. Lundquist's first arrest and criminal charges in June 2018, thereafter to the extortion and the coerced contact, finally his second arrest on December 31, 2018, for violating the no contact order. The opinion by Court of Appeals addressed this issue and continues citing the incorrect filing date of September 2018, but did cite the State's admission in footnote it was filed on March 6, 2018, (although incorrect). The Court of Appeals Opinion also addressed Mr. Lundquist's motion to augment the record with a copy of both civil protection orders, but states the motion was denied because the issue was not presented to or considered by the magistrate or the district court. That is not correct. As stated, this error of timing of the civil protection order was presented and argued in the appeal to the district court, and even the State admitted in its Response there that Mr. Lundquist's civil protection order was indeed filed prior to September 2018. Respondent's brief in the district appeal erroneously states the date of filing as March 6, 2018, rather than the correct date of April 6, 2018. Either way, Mr. Lundquist's civil protection order was not filed while being extorted months later, invalidating the court's logic that he should have been willing to report the extortion during the same time-period if he filed for a protection order. The magistrate's conclusion Mr. Lundquist did not want to report the extortion he was subjected to as, "defies logic". That conclusion itself defies reality. The hesitance by Mr. Lundquist to report the extortion during the time frame of August through December 2018, and instead, just pay the relatively smaller amount of money demanded by Ms. Santa Lucia;

when compared to being threatened with yet another arrest, incarceration, more attorney costs, and possible prison sentence imposed due to probation violation (which ultimately did happen) was simply a cost/benefit analysis at the time. Mr. Lundquist testified as such at the evidentiary hearing and was uncontroverted. As outlined above, Mr. Lundquist was arrested on June 14, 2018, after Ms. Santa Lucia vindictively filed her own civil protection order on May 29, 2018, against him only five days after he dismissed his on May 24, 2018, and made false allegations of stalking against him. This also resulted in a charge of a probation violation from a previous case. Santa Lucia was aware of Mr. Lundquist's probation which made her extortion even more effective. This was the first time she used the false fear factor when she filed for her civil protection order claiming she needed protection from Mr. Lundquist. This resulted in him being arrested, incarcerated for 64 days, and incurring $10,000.00 in attorney fees. The criminal charge of felony stalking in the June arrest was adjudicated with a plea agreement in early August and a no contact order was issued by the court. Bail had been denied due to the probation violation allegation. Even though Mr. Lundquist believed he was innocent of the charges, but because he was experiencing severe pain and not receiving proper medical treatment while in jail for a past injury he received in the military and was not allowed to post bail due to the probation violation, he accepted the plea deal rather than continue intense suffering in jail for several more months while waiting for the trial scheduled for late November 2018. Prior to this arrest Mr. Lundquist was being treated by the Veterans

Administration Medical Center with prescription opiate pain medication which was denied to him by the jail. The denial of bail and lack of adequate medical care essentially forced the acceptance of the plea agreement. Mr. Lundquist's probation was reinstated as part of plea and was released from jail on August 15, 2018, and only twenty minutes later during heavy traffic, Ms. Santa Lucia offered him a ride in her car as he was walking home causing him utter shock. Her testimony at trial characterized it as coincidental and she was not stalking him:

("[S]o I pulled over, and I told him, I said, it's okay. I'm not stalking you.").

She also testified that Mr. Lundquist told her he could not be near her because of the no contact order. But why is she waiting, watching for him, and offering a ride to her stalker immediately after his release from jail? Obviously, there was no fear by her, instead she had used the judicial system to exact revenge for his civil protection order and her having to expend money to hire an attorney. Ms. Santa Lucia's behavior substantiates Mr. Lundquist's belief he was innocent of the criminal charges he had just been prosecuted for. These details were not considered by the court in the decision.

As noted earlier, the magistrate also gave a second reason to find there was no extortion in the following:

> Second, his own words condemn him. As pointed out by the state *at length*, (emphasis added) when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation.

This issue was raised by the Respondent in the PCR to the magistrate court, who was the prosecutor for the probation violation and as stated by the magistrate, the argument was "at length". Of note, this Respondent was also the same prosecutor who tasked Detective Dozier to interview Ms. Santa Lucia.

The magistrate, district, and Court of Appeals brought into question why Mr. Lundquist did not present the extortion defense at his probation violation hearings that were held after the trial, and this somehow proves there was no extortion. This cannot be considered to determine post-conviction relief of the violation of the no contact order because what was said at the probation violation hearings were separate proceedings in a different case *after* the trial. The notion, that not presenting a defense later in a different case when there is nothing to support it, is not evidence. Furthermore, certified transcripts of the probation hearings were never entered into evidence in this PCR and are not part of the record. Even if Mr. Lundquist had claimed extortion at probation hearings, it would not have changed the verdict of the previous trial, which was the basis for the probation violation. The magistrate court accepted this illogical reasoning which contravenes both to justice and Idaho Rules of Evidence. Furthermore, an analysis of not presenting the affirmative defense then must be done in context.

Mr. Lundquist was convicted of the no contact violation on March 28, 2019, in the magistrate court; the admit/deny probation violation hearing was held April 9, 2019, in the district court, and the sentencing hearing April 26, 2019. First, the district court only asked Mr. Lundquist if was willing to admit he violated the law

by being convicted of violating the no contact order. An affirmative answer was the only answer since there was a conviction. There was no admission to willfully violating probation as the magistrate erroneously states.

Then at the sentencing hearing Mr. Lundquist was following his defense counsel's advice not to bring up the extortion because it was not presented at the trial and would only antagonize the court as it would appear he was fabricating an excuse never heard before. And just like at the trial, the prosecution would certainly have argued that Mr. Lundquist was only trying to shift all the blame on Ms. Santa Lucia for his violation of the no contact order with nothing to substantiate his claim. Importantly, the Dozier report still had not been disclosed before these probation hearings as well. Mr. Lundquist testified at the January 7, 2021, evidentiary hearing, if he had the Dozier report then, his allocution would have changed and would have had grounds to challenge the probation violation. And lastly, the charge of violating the no contact order, which was the basis for the probation violation, would have been an acquittal if the State had provided the Dozier report as required. The probation violation would have been dismissed. Withholding of the Dozier report harmed the defense in both the trial and the probation violation proceedings.

B. *Mens rea* or Criminal Intent

Idaho Court of Appeals addressed the issue of *mens rea* and ruled that to establish a violation of Idaho Code Section 18-920, the State need only to prove that the defendant had contact with the victim in violation of a valid No Contact

Order (NCO) with notice that the NCO was in effect. Idaho Code Section 18-920 provides, in relevant part:

> (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.
>
> (2) A violation of a no contact order is committed when:
>
> (a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and,
>
> (b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and,
>
> (c) The person charged or convicted has had contact with the stated person in violation of an order.

Opinion further states violation of this statute does not require specific intent. But that opinion is irreconcilable with Idaho Code Section 18-114 which states:

> 18-114. Union of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

The statute is clear about intent, "every crime" and "must exist". The opinion given by Court of Appeals ruled Idaho Code Section 18-920 contains no wording to any specific mental state. Idaho Code Section 18-114 precedes all criminal statutes, almost all of which do not contain wording about mental state. Idaho Code Section 18-114 must be applied here as in any other crime. Even the State/Respondent admitted in its Response Brief to Idaho Court of Appeals:

> "Lundquist has not contested the fact that he had contact with Gena in violation of the no contact order, and had notice that the order was in effect. That is all that the law requires - unless he was legally excused by duress."

Mr. Lundquist also cited in his argument that Idaho Criminal Jury Instruction (ICJI) no. 305 is applicable. This was argued in the original filings of the PCR. ICJI no. 305 states:

> In every crime or public offense there must exist a union or joint operation of act and [intent] [or] [criminal negligence].

Other State courts of last resort have found intent to be negated when there is duress and coercion that conflict with Idaho courts:

> Duress negates an element of the crime charged-the intent or capacity to commit the crime-the defendant need raise only a reasonable doubt that he acted in the exercise of his free will. *People v. Graham*, 57 Cal.App.3d 238 (1976).

Opinion of Idaho Court of Appeals found that the magistrate court correctly determined that the victim's (Santa Lucia) impeached testimony would not have been material to this issue. But this finding is contrary to United States Supreme Court's precedence:

> Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury for determination in the light of all relevant evidence, and the trial court may not withdraw or prejudge the issue by instructing the jury that the law raises a presumption of intent from a single act. *Morrissette v. United States*, 342 U. S. 273-276.

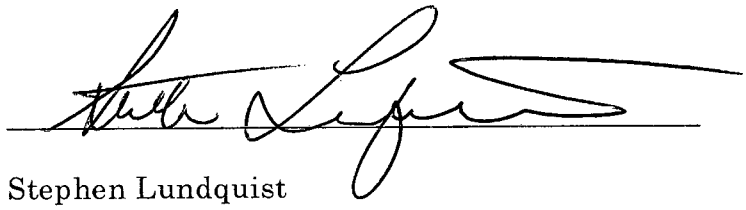
Mr. Lundquist argued that if the State had provided the Dozier report as required, the affirmative defense of duress could have been presented successfully. The jury would have come to a different verdict based on the impeached testimony of Santa Lucia and the totality of the circumstances.

XI. CONCLUSION

For the forgoing reasons, Mr. Lundquist respectfully requests that this Court issue a writ of certiorari to review the record and the judgment of the Idaho Court of Appeals and vacate the conviction.

DATED this 20th day of February 2024.

Respectfully submitted,



Stephen Lundquist

Appendix Table of Contents

In the Supreme Court of the State of Idaho

STEVEN WILLIAM LUNDQUIST,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

Order Denying Petition for Review and Motion to Augment Record

Docket No. 49532-2022

Ada County District Court No. CV01-20-07369

A PETITION FOR REVIEW, BRIEF IN SUPPORT OF PETITION FOR REVIEW, and MOTION TO AUGMENT THE RECORD were filed by Appellant on October 25, 2023, seeking review of the Unpublished Opinion of the Court of Appeals released August 30, 2023, and requesting to augment the record with a copy of a transcript. An OBJECTION TO APPELLANT'S "MOTION TO AUGMENT THE RECORD" was filed by counsel for Respondent on October 27, 2023. Therefore, after due consideration,

IT IS ORDERED that Appellant's PETITION FOR REVIEW is DENIED.

IT IS FUTHER ORDERED that Appellant's MOTION TO AUGMENT THE RECORD is DENIED.

Dated November 27, 2023

By Order of the Supreme Court

G. Richard Bevan, Chief Justice

ATTEST:

Melanie Gagnepain, Clerk of the Courts

Stephen W. Lundquist
5124 W Cove Street
Garden City, Idaho 83714

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 49532

STEVEN WILLIAM LUNDQUIST, Petitioner-Appellant, v. STATE OF IDAHO, Respondent.	Filed: August 30, 2023 Melanie Gagnepain, Clerk THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Gerald F. Schroeder, District Judge. Hon. Thomas P. Watkins, Magistrate.

Decision of the district court, on intermediate appeal from the magistrate court, affirming denial of petition for post-conviction relief, affirmed.

Stephen William Lundquist, Boise, pro se appellant.

Hon. Raúl R. Labrador, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge Pro Tem

Steven William Lundquist appeals from a decision of the district court, on intermediate appeal from the magistrate court, affirming the denial of his petition for post-conviction relief. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

In 2014, Lundquist was charged with first degree stalking, a felony. After a jury found him guilty, the district court sentenced Lundquist to a unified term of five years, with a minimum period of confinement of two years; suspended the sentence; and placed Lundquist on probation for five years. Thereafter, Lundquist met the victim. After a probation violation, he was reinstated on probation with an additional condition that he have no contact with the victim. In 2018,

Lundquist pled guilty to stalking the victim (second degree stalking, a misdemeanor). He was returned to probation in the felony case and granted probation in the misdemeanor case. The magistrate court in the misdemeanor case entered a no-contact order (NCO) prohibiting Lundquist from having contact with the victim.

On the same day Lundquist was released from custody on the misdemeanor charge, he was walking home. The victim drove by him, stopped her vehicle, and offered him a ride home. In the ensuing months Lundquist and the victim frequently saw each other but their relationship was unstable. There were accusations of infidelity. At one point, Lundquist filed for and received a civil protection order against the victim based upon his belief that the victim had vandalized his car. That order was later dismissed when Lundquist realized the victim had not been involved in the incident. By December 2018, while the NCO was in effect, Lundquist and the victim had resumed contact with each other. On December 31, 2018, Lundquist's probation officer found the victim at Lundquist's home. The State then charged Lundquist with violating the NCO and filed a motion for probation violation in the 2014 felony stalking case. Before the trial on the NCO charge, the victim filed a motion to quash the NCO and submitted a letter in support. During the hearing on that motion, the victim withdrew the motion to quash and claimed that Lundquist had actually drafted the letter and that it contained falsehoods. The victim testified at the trial on the NCO violation. A jury found Lundquist guilty of violating the NCO. He admitted the probation violation in the felony case and his probation was revoked.

A few weeks before the trial on the NCO charge, Detective Dozier conducted an interview with the victim in connection with an investigation of a possible charge against Lundquist for filing a false document with the court--the letter the victim had submitted with her motion to quash the NCO. Detective Dozier prepared a report (Dozier report) in connection with the interview which included the victim's statements regarding contacts with Lundquist at various times, including contacts at his home and various aspects of their relationship. Some of the statements made by the victim during the interview were inconsistent with her testimony at the trial. Neither the interview with the victim nor the Dozier report were disclosed to Lundquist until after the trial on the NCO charge. It appears that Lundquist received this information from the State as part of discovery in the false documents case involving the letter. Lundquist filed a petition for post-conviction relief in the NCO case alleging that nondisclosure of the interview with the victim was a violation of his

rights[1] and therefore his conviction was obtained in violation of the Constitution of the United States or in violation of the laws or Constitution of the State of Idaho.[2] After an evidentiary hearing, the magistrate court denied the petition. Lundquist appealed and the district court affirmed. Lundquist again appeals.

II.

STANDARD OF REVIEW

For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate court, we review the record to determine whether there is substantial and competent evidence to support the magistrate court's findings of fact and whether the magistrate court's conclusions of law follow from those findings. *Pelayo v. Pelayo*, 154 Idaho 855, 858-59, 303 P.2d 214, 217-18 (2013). However, as a matter of appellate procedure, our disposition of the appeal will affirm or reverse the decision of the district court. *Id.* Thus, we review the magistrate court's findings and conclusions, whether the district court affirmed or reversed the magistrate court and the basis therefor, and either affirm or reverse the district court.

In order to prevail in a post-conviction proceeding, the petitioner must prove the allegations by a preponderance of the evidence. I.C. § 19-4907; *Stuart v. State*, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); *Baxter v. State*, 149 Idaho 859, 861, 243 P.3d 675, 677 (Ct. App. 2010). When reviewing a decision denying post-conviction relief after an evidentiary hearing, an appellate court will not disturb the trial court's factual findings unless they are clearly erroneous. I.R.C.P. 52(a); *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004); *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct. App. 1990). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the trial court. *Dunlap*, 141 Idaho at 56, 106 P.3d at 382; *Larkin v. State*, 115 Idaho

---

1 *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).

2 Lundquist also filed a petition for post-conviction relief in the 2014 felony stalking case based on the same facts. He alleged that, had the Dozier report been disclosed prior to trial on the NCO charge, he would not have been found guilty and his probation in the 2014 stalking case would not have been revoked. The State's motion to dismiss was granted. This Court, in an unpublished opinion, affirmed. *See Lundquist v. State*, Docket No. 48741 (Ct. App. Oct. 12, 2022).

72, 73, 764 P.2d 439, 440 (Ct. App. 1988). We exercise free review of the trial court's application of the relevant law to the facts. *Baxter*, 149 Idaho at 862, 243 P.3d at 678.

III.

ANALYSIS

Due process requires all exculpatory evidence known to the State or in its possession to be disclosed to the defendant. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Grube v. State*, 134 Idaho 24, 27, 995 P.2d 794, 797 (2000). There are three essential components of a true *Brady* violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. *Strickler v. Greene*, 527 U.S. 263, 263 (1999). Prejudice is shown where the favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. *Thumm v. State*, 165 Idaho 405, 422, 447 P.3d 853, 871 (2019). A reasonable probability of a different result is accordingly shown when the government undermines the confidence in the outcome of the trial. *Id.* at 417, 447 P.3d at 865.

Following an evidentiary hearing on Lundquist's petition for post-conviction relief, the magistrate court entered an order stating that the first two prongs of the *Brady* test had been satisfied--that the Dozier report was "at least impeaching, and that it was not disclosed." The magistrate court concluded, however, that Lundquist failed to meet the third element of the test--prejudice--because he failed to show "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." On appeal, Lundquist argues that he did suffer prejudice because, if he had the Dozier report prior to the NCO violation trial, the result would have been different. He asserts the Dozier report would have raised a reasonable doubt about his *mens rea* to violate the NCO and would have enabled him to raise a coercion defense. He also argues that the victim would have been shown to be not credible because of her inconsistent statements.

A. *Mens rea* and Victim's Credibility

Lundquist argues that he could have used the Dozier report to impeach the victim's testimony and show that she was not credible to the extent that "the jury could have questioned

the validity of *anything* [the victim] said." There were inconsistencies between the victim's testimony at trial and her statements in the Dozier report, but two probation and parole officers testified that they observed the victim with Lundquist in his home. Idaho Code Section 18-920 (violation of a no-contact order) provides, in relevant part:

> (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.
>
> (2) A violation of a no contact order is committed when:
>
> (a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and,
>
> (b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and,
>
> (c) The person charged or convicted has had contact with the stated person in violation of an order.

Violation of the statute does not require specific intent. To establish a violation of I.C. § 18-920, the State need only prove that the defendant had contact with the victim in violation of a valid NCO with notice that the NCO was in effect. *State v. Beeks*, 159 Idaho 223, 231, 358 P.3d 784, 792 (Ct. App. 2015). When a criminal statute does not set forth any specific mental state as an element of the crime, the intention with which the criminal act is done, or lack of criminal intent, is immaterial. *State v. Fox*, 124 Idaho 924, 925-26, 866 P.2d 181, 182-83 (1993). The general intent element is satisfied if the defendant knowingly performed the proscribed act, or by criminal negligence failed to perform the required act, regardless of whether the defendant intended to commit a crime. *Id.* at 926, 866 P.2d at 183.

The State was only required to prove that Lundquist had contact with the victim in violation of a valid NCO with notice that the NCO was in effect. The magistrate court correctly determined that the victim's testimony would not have been material to these issues.

B. Duress

Duress is an affirmative defense. Lundquist asserts that he was coerced by the victim into having contact with her and giving her money. He argues that he would have been able to present evidence of extortion, coercion, and duress if he had the Dozier report at trial. In support, he points to inconsistencies between the victim's testimony and the Dozier report regarding the victim's

financial dependence on Lundquist, arguing that the victim was financially dependent upon him which he believes would have resulted in an inference that the victim had motive to extort money from him and force him to have contact with her. The magistrate court found that, according to the Dozier report, the victim enjoyed the security Lundquist provided, that he would pay her bills and take care of her and that he was paying her rent and providing monetary benefits. However, the magistrate court also found that the report contained no information not known or brought forward at trial regarding the victim's alleged financial dependence. Therefore, Lundquist could not have been prejudiced by late disclosure of this evidence.

Lundquist also argues that that the Dozier report would have shown that the victim claimed she was in fear of Lundquist but that her testimony at trial showed that she was not. His argument is that the Dozier report would have shown that she was keeping the NCO in place in order to extort money from him and she needed to claim she feared Lundquist in order to accomplish that end. Like the magistrate court, we do not perceive how the victim's statement in the Dozier report that she was in fear of Lundquist reasonably supports an inference of duress or extortion.

Similarly, Lundquist argues that the victim misrepresented the nature of her relationship with him as an on-going one in order to keep the NCO in place so she could continue to extort money from him and coerce him. Some of the victim's statements about the nature of her relationship with Lundquist were inconsistent. The magistrate court best explained the relationship between the victim and Lundquist as follows:

> [T]he contents of the [Dozier report] do not prove that [Lundquist] and [the victim] were not in some kind of a relationship. While [the victim] did tell Det. Dozier that she didn't want the no-contact order terminated, and that she was fearful of him, she also told Det. Dozier that she felt sorry for [Lundquist] and that she enjoyed the security he provided. This up-and-down nature of their relationship came up during the trial when [the victim] testified about [Lundquist's] efforts to get a civil protection order against her when he believed that she had thrown a rock through his windshield. The victim also testified about discussions she and [Lundquist] had about false claims of infidelity. Her testimony showed that she and [Lundquist] had the typical highs and lows of many relationships, and Det. Dozier's report reinforced that. The court finds that [Lundquist] has not carried his burden of establishing prejudice on this issue.

The magistrate court did not err in finding that Lundquist failed to establish prejudice on this issue.

Lundquist also supports his claim of coercion by reference to an affidavit from his trial counsel who averred that Lundquist told trial counsel prior to trial that the victim was threatening

Lundquist with requesting more criminal charges if he did not pay the victim back for attorney fees she incurred in defending the NCO Lundquist obtained against her. Trial counsel averred that duress and coercion were discussed with Lundquist but abandoned because "based on the evidence at the time, [trial counsel] did not feel that this was a viable defense." As noted by the magistrate court, trial counsel's affidavit did not state that the Dozier report provided evidence of such a defense.

In rejecting Lundquist's claim that he was acting under duress the magistrate court also relied upon the fact that Lundquist had sought and received a civil protection order against the victim which undermined his claim that he could not tell anyone about the extortion because it would result in legal problems.[3] Finally, the magistrate court considered Lundquist's allocution before the district court at the probation disposition hearing at which Lundquist stated that he was happy to see the victim on December 31 and that she had been on her way to the airport to pick up her daughter but stopped to visit with Lundquist. According to Lundquist she also asked a favor of him--to borrow his four-wheel drive vehicle to drive on the snow. Lundquist said he was flattered by this request and told the district court that he knew it was wrong to have contact with the victim and that it would not happen again. As the magistrate court observed, Lundquist knew he had a right to a hearing to determine whether he had violated his probation and he knew he was facing prison for what was his third probation violation. We agree with the magistrate that Lundquist's explanation that he did not want to bring up his claim that he was being extorted by the victim because he did not want to anger or upset the judge defies logic.

Regarding the defense of duress or coercion, the magistrate court concluded "the lack of supporting evidence for the [duress] defense is due to a simple fact: that there is none because the allegation is not true." Plainly, the magistrate court found Lundquist's testimony on this issue to

---

[3] The date of the civil protection order was found by the magistrate court to be in September 2018. Lundquist asserts that the actual date was March 6, 2018. His request to augment the record to reflect the correct date was denied because the issue was not presented to or considered by the magistrate court or the district court. Nonetheless, the State does not dispute that Lundquist filed for the protection order against the victim on March 6, 2018. Whether the protection order was sought in September or March 2018 is of little relevance. Lundquist argues that the victim did not begin to coerce him to have contact with her until August but his act of requesting the protection order, whenever the request was made, shows that he was willing and able to assert his claims against the victim through legal process.

be untrue. The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the trial court. *Dunlap*, 141 Idaho at 56, 106 P.3d at 382; *Larkin*, 115 Idaho at 73, 764 P.2d at 440. In the end, Lundquist had no credible evidence to support his claim that he could have presented an affirmative defense of coercion or duress based upon inconsistencies in the Dozier report.

Lundquist did not meet his burden to show prejudice caused by the State's failure to disclose the Dozier report prior to trial. Having reviewed the record, we hold that the magistrate court did not err in denying Lundquist's petition for post-conviction relief.

IV.

CONCLUSION

Lundquist has failed to meet his burden of showing that he was prejudiced as a result of the State's nondisclosure of the Dozier report. Accordingly, the decision of the district court, affirming the magistrate court's denial of Lundquist's petition for post-conviction relief, is affirmed.

Judge GRATTON and Judge HUSKEY, **CONCUR**.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEPHEN LUNDQUIST

Appellant

v.

STATE OF IDAHO

Respondent

Sup Ct. Case No. 49532-22

BRIEF IN SUPPORT OF PETITION FOR REVIEW

Appeal From The Order of Senior Judge Gerald F. Schroeder
In the District Court of the Fourth Judicial District of the State of Idaho
In and For the County of Ada

STEPHEN LUNDQUIST
5124 West Cove St.
Boise, ID 83714
stevelundquist1560@msn.com

RAUL LABRADOR
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010
ecf@ag.idaho.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution

Statutes and Rules

ISSUES FOR SUPREME COURT TO REVIEW:

I. Idaho Code Section 9-316 must be applicable in criminal proceedings. Court of Appeals has disregarded this statute and decided a question of substance not heretofore determined by the Supreme Court.

II. The lower courts committed reversible error in decision there was not a preponderance of evidence showing prejudice of a *Brady* violation due to factual errors. The decision is not in accord with applicable decisions by the Idaho Supreme Court or of United States Supreme Court, nor is their decision is in the interest of justice that requires further appellate review.

III. Idaho Code Section 18-114 (regarding intent) must be applied to vacate this conviction, specifically when there is duress and coercion. *Mens rea.* Court of Appeals disregarded this foundational statute contravening prior decisions by U.S. and Idaho Supreme Court and other Courts and requires further appellate review in the interest of justice.

IV. Court of Appeals affirmed that an affirmative defense that was not made in a subsequent case is admissible evidence in a Post-Conviction Relief proceeding which contravenes Idaho Rules of Evidence, that calls for the exercise of the Supreme Court's power of supervision.

FACTUAL AND PROCEDRAL BACKGROUND

Appellant was arrested and charged with violation of a no contact order when Gena Santa Lucia, the protected person, came to Appellant's home uninvited on December 31, 2018, and found there by police. Appellant entered a not guilty plea, trial was on March 28, 2019, and was found guilty by jury.

Appellant filed a timely petition for post-conviction relief (PCR) because the State did not disclose a police report of an interview of Santa Lucia conducted by Detective Dozier (Dozier report) despite proper request for discovery by the defense, (R. p. 19-22). This interview of Santa Lucia was on March 4, 2019, twenty-four (24) days before the trial and discussed the violation of the no contact order. This non-disclosure of the Dozier report caused a *Brady* violation, *Brady v. Maryland,* 873 U.S. 88, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963). Dozier report was discovered by Appellant seven months later in October 2019. In the Dozier report Santa Lucia claimed fear of Appellant. At trial, Santa Lucia testified she was in a dating relationship with Appellant and implied no fear whatsoever. This non-disclosure by the State of the Dozier report prevented the Appellant to present an affirmative defense at trial. Appellant argues the violation of the no contact order was a result of duress from extortion by Santa Lucia and as such there was no intent to the crime pursuant to Idaho Code Section 18-114. Decision by magistrate court found that the first two prongs of a *Brady* violation, had been satisfied-that the Dozier report was "at least impeaching, and that it was not disclosed" but ruled the Appellant failed to show the third component, that there was prejudice. The magistrate court concluded there was no prejudice because it found there was no extortion by Santa Lucia as claimed by Appellant. Decision was appealed to the district court and was affirmed, and then to the Court of Appeals where again affirmed after a petition for rehearing.

ARGUMENT

I. Idaho Code Section 19-4901 and 9-316

This PCR was filed pursuant to Idaho Code Section 19-4901(a)(1):

> 19-4901. REMEDY — TO WHOM AVAILABLE — CONDITIONS. (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
> (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

The conviction in this case violated of the constitution of the United States (V, VI and XIV Amendments), constitution of state of Idaho (Article I-13) and the laws of Idaho (Idaho Code Section 9-316). The withholding of the police report violated Appellant's federal and state constitutional rights to a fair trial and to due process, but also violated Idaho law:

> 9-316. OFFICIAL REPORTS AS EVIDENCE ACT. Written reports or findings of fact made by officers of this state, on a matter within the scope of their duty as defined by statute, shall, insofar as relevant, be admitted as evidence of the matters stated therein.

The State violated this statute by withholding the police report and prevented Detective Dozier as a witness for Appellant at trial. The State has not objected to, and lower courts have agreed the Dozier report as relevant. The violation of this law by the State requires a vacation of the conviction pursuant to Idaho Code Section 19-4901(a)(1).

II. That There is a Preponderance of Evidence that Shows Withholding the Dozier Report Caused Prejudice that Refutes the Verdict.

The Appellant argues in his PCR his violation of the no contact order was the result of duress and coercion due to extortion by Santa Lucia and negated intent to violate the no contact order. Appellant could have used the information in the Dozier report to present an effective affirmative defense of extortion at trial, but that affirmative defense was denied due to the State not disclosing the report. The magistrate court wrongly concluded there was no extortion

despite the abundance of evidence presented, therefore no prejudice, was affirmed by the district court and affirmed here by Court of Appeals.

The matter in question of this PCR was not for the court to convict Santa Lucia of extortion beyond a reasonable doubt, but to find the withholding of the Dozier report was a violation of the Appellant's rights under Federal and State constitutions and Idaho law, violating due process and preventing a fair trial. The evidence presented in the PCR to the magistrate and subsequent appeals clearly warrants the guilty verdict of violating the no contact order to be vacated. The court focused on the relationship between the Appellant and Santa Lucia and made numerous factual errors, formulating a flawed theory to find there was no extortion by Santa Lucia against the Appellant and thus no prejudice. This finding contradicted the preponderance of evidence that supports the third component of a *Brady* violation, that there was prejudice. In a PCR there only needs a preponderance of evidence, and evidence presented by Appellant clearly met that measure needed to vacate conviction.

A. Evidence Presented Shows Contact by Appellant Was Not Willful and There Was No Intent to Violate the Law Due to Extortion

Appellant presented argument in the PCR and in the appeals to district and Court of Appeals that supports that the withholding of the Dozier report did cause prejudice when Santa Lucia claimed fear of Appellant in the Dozier report, contradicting her trial testimony.

The magistrate court made several errors in assessing the relationship between Santa Lucia and Appellant. These errors were repeated by the district court and affirmed here by Court of Appeals, and resulted in the incorrect finding there was no extortion. But judicious examination of the circumstances in the relationship, with Appellant's and Santa Lucia's actions, clearly shows that allegation of extortion is credible.

Magistrate stated the following in its Order Denying Post-Conviction Relief. The factual errors made by the magistrate contradicts the evidence that was presented:

> After being released from custody on this charge on August 24th, 2018, Petitioner was walking home when Santa Lucia drove by him. She stopped her vehicle, and offered him ride home. In the ensuing months, despite the no-contact order, Petitioner and Santa Lucia frequently saw each other, but their relationship was not entirely stable. There were accusations of infidelity, and in September of 2018, Petitioner filed for, and received, civil protection order against Santa Lucia, based on an incident where Petitioner believed that Santa Lucia had vandalized his car. That order was later dismissed when Petitioner learned that Santa Lucia had not been involved in the incident. (R. p. 171, paragraphs 2).

There are numerous errors here. Appellant was released on August 15, 2018, not August 24th. There were no accusations of infidelity. They did not see each other frequently. And most importantly, Appellant (Petitioner) did *not* file for his civil protection order in September 2018, it was filed in April 2018, the significance of which is explained below.

The magistrate then made the erroneous conclusion there was no extortion. The first item is addressed below. The second item regarding the probation violation is addressed later in this brief on page 27, Part IV.

> This court finds that the lack of supporting evidence for the extortion defense is due to simple fact: that there is none because the allegation is not true. Two items lead the court to this conclusion. First, Petitioner claims that that he could not tell anyone about this extortion because it would lead to false accusations by Santa Lucia that would put him in legal jeopardy. But Petitioner was quick to file for civil protection order when he believed that Santa Lucia had damaged his windshield. He did not appear to seek the protection of the law when he thought that he had been wronged. If he was willing to do so over piece of broken glass, it would seem as if he would seek the legal protection to avoid going to jail.
>
> Second, his own words condemn him. As pointed out by the state at length, when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation. (R. p. 171, paragraphs 2 and 3)

The analysis of the correct *sequence* of events between Appellant and Santa Lucia in the nine months from April through December 2018 is paramount in determining the

plausibility of Appellant's assertion he was being extorted for payback for Santa Lucia's attorney's fees she incurred because of a civil protection order Appellant filed against her on April 6, 2018, after his vehicle was vandalized. Santa Lucia admitted under oath at trial she was "upset" at incurring her attorney's fees, which was her motive, first for filing her civil protection order against Appellant, and then the extortion. She had made that clear to Appellant when the extortion was ongoing. These events are described in detail in Appellant's declarations, Appellant's Brief and Reply Brief as well in his testimony at the evidentiary hearing held on January 7, 2021, and are uncontroverted by the State.

First, the finding by the magistrate court there was no extortion was based on its erroneous timing of when Appellant filed his civil protection order against Santa Lucia. The magistrate incorrectly stated Appellant filed for his civil protection order in September 2018 when the extortion was ongoing. However, his civil protection order was filed months before, in April 2018, precipitating the events *leading* to extortion. Appellant dismissed his protection order in late May 2018, and within five days Santa Lucia vindictively filed for a civil protection order against Appellant and made false allegations against him, which resulted Appellant being arrested with criminal charge of felony stalking, incarceration, and having to retain an attorney in June through August 2018. Appellant was simply attempting to avoid a repeat of this situation once again during the period of extortion which was August through December 2018. The magistrate court erroneously postulated if the Appellant was willing to seek legal protection (civil protection order) at time of being extorted, he should have also been willing to report the extortion as well if it was true. The filing date of his protection order was provided in Appellant's declaration and briefs. (R. p. 69-76, Declaration of Stephen Lundquist, record shows it reviewed by the magistrate). Appellant's testimony at evidentiary hearing also detailed

the filing if his and Santa Lucia's protection orders which the magistrate failed to consider. (See appeal exhibit, p.5, Evidentiary hearing transcript, January 7, 2021, at p. 17, l. 1-p. 20, l. 24). The magistrate court could have easily confirmed the filing date of his civil protection order as April 6, 2018, as well as hers as May 29, 2018, both being court records. This error was pointed out and the correct date was again stated in argument in the appeal to the district court. Nonetheless, the district court repeated the magistrate court's error of his filing date as September 2018 and again, the resulting erroneous logic that Appellant should have been willing to report the extortion and was affirmed by Court of Appeals. The correct date is relevant because it started the tumultuous conflict between the parties which led to Appellant's first arrest and criminal charges in June 2018, thereafter to the extortion and the coerced contact, finally Appellant's second arrest on December 31, 2018, for violating the no contact order. The opinion by Court of Appeals addressed this issue and continues citing the incorrect filing date of September 2018, but did cite the State's admission it was filed on March 6, 2018, (although incorrect). The Court of Appeals Opinion also addressed Appellant's motion to augment the record with a copy of both civil protection orders, but states the motion was denied because the issue was not presented to or considered by the magistrate or the district court. That is not correct. As stated, this error of timing of the civil protection order was presented and argued in the appeal to the district court, and even the State admitted in its Response that Appellant's civil protection order was indeed filed prior to September 2018. Respondent's brief in the district appeal erroneously states the date of filing as March 6, 2018, rather than the correct date of April 6, 2018. Either way, Appellant's civil protection order was *not* filed *while* being extorted months later, invalidating the court's logic that Appellant should have been willing to report the extortion during the same time-period he filed for a protection order.

The magistrate's conclusion Appellant did not want to report the extortion he was subjected to as, "defies logic". That conclusion itself defies reality. The hesitance by Appellant to report the extortion during the time frame of August through December 2018, and instead, just pay the relatively smaller amount of money demanded by Santa Lucia; when compared to being threatened with yet another arrest, incarceration, more attorney costs, and possible prison sentence imposed due to probation violation (which ultimately did happen) was simply a cost/benefit analysis at the time. As outlined above, Appellant was arrested on June 14, 2018, after Santa Lucia vindictively filed her own civil protection order on May 29, 2018, against Appellant only five days after he dismissed his on May 24, 2018, and made false allegations of stalking against Appellant. This also resulted in a charge of a probation violation from a previous case. Santa Lucia was aware of Appellant's probation which made her extortion even more effective. This was the first time she used the false fear factor when she filed for her civil protection order claiming she needed protection from Appellant. This resulted in Appellant being arrested, incarcerated for 64 days, and incurring $10,000.00 in attorney fees. The criminal charge of felony stalking in the June arrest was adjudicated with a plea agreement in early August and a no contact order was issued by the court. Bail had been denied due to the probation violation allegation. Even though Appellant believed he was innocent of the charges, but because he was experiencing severe pain and not receiving proper medical treatment while in jail for a past injury he received in the military and was not allowed to post bail, he accepted the plea deal rather than continue intense suffering in jail for several more months while waiting for the trial scheduled for late November 2018. Prior to this arrest he was being treated by the Veterans Administration Medical Center with prescription opiate pain medication which was denied to him by the jail. The denial of bail and lack of adequate medical care essentially

forced the acceptance of the plea agreement. Appellant's probation was reinstated as part of plea and was released from jail on August 15, 2018, and only twenty minutes later during heavy traffic, Santa Lucia offered Appellant a ride in her car as he was walking home causing him utter shock. (See appeal exhibit, p. 6, Evidentiary hearing transcript, January 7, 2021, at p. 21, l. 3-p. 22, l. 13). Her testimony at trial characterized it as coincidental and she was not stalking *him*. (R. p. 29, Trial Transcript of Santa Lucia at p. 8, ls. 8-20; March 28, 2019):

("[S]o I pulled over, and I told him, I said, it's okay. I'm not stalking you.").

She also testified that Appellant told her he could not be near her because of the no contact order (R. p.34, Trial Transcript of Santa Lucia at p.26, I. 24-p.27, l. 10; March 28, 2019). But why is she offering a ride to her stalker immediately after his release from jail? Obviously was no fear by her, instead she had used the judicial system to exact revenge for his civil protection order and her having to expend money to hire an attorney. Her behavior substantiates Appellant's belief he was innocent of the criminal charges he had just been prosecuted for.[1]

---

[1]Appellant initially filed a separate PCR on August 17, 2019, CV01-19-15333, (later dismissed) that was based on Santa Lucia's behavior to vacate the conviction in the plea agreement and dismiss the no contact order. The State responded two days thereafter on August 19, 2019, with a new felony charge of preparing forged or fraudulent evidence. This current PCR is based on receiving the Dozier report in late October 2019 in discovery of the new felony charge. Months earlier, Det. Dozier had been tasked on February 28, 2019, by the prosecutor to investigate Santa Lucia's allegation that Appellant had written her petition to dismiss the no contact order she filed on January 7, 2019. (Her petition is expounded upon below-p. 20). Dozier interviewed Santa Lucia four days later, on March 4, 2019. Of interest, is why Dozier's police report, titled as a "Supplemental" Report, numbered as DR#19-000676.***001*** (emphasis added) and dated June 12, 2019, is over three months after her interview. It is a "Supplemental" report apparently because Dozier came to the prison on June 12, 2019, to interview the Appellant, which he declined without his attorney present. A brief paragraph is at end of the police report recounts that. Complaint filed by State on August 19, 2019, on the new felony charge referenced DR# 19-000676 (the ".001" at end of number is absent). This is the only report Appellant received despite repeated requests to the State for a report dated March 4, 2019, day of interview. It is standard procedure for police to file a report the same day as the incident, in this case the interview. And presumably if tasked by the prosecutor's office, the police would return a report as quickly as possible. It certainly has the appearance that the State has suppressed the original police report of March 4, 2019.

Santa Lucia also testified that she was aware that day when she stopped, on August 15, 2018, that a No Contact Order was in place. (R. p. 30, Trial Transcript of Santa Lucia at p. 9, ls. 4-6; March 28, 2019). Over the next several months, August through December 2108, she used these past circumstances with now knowing she had a court-ordered no contact order against Appellant, to threaten him with more criminal charges if he did not give her the money she felt he owed her to reimburse her attorney fees. (See Idaho Code Section 18-2403(2)(e)(4)):

> 18-2403: THEFT. (2) Theft includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subsection (1) of this section, committed in any of the following ways: (e) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will: (4). Accuse some person of a crime or cause criminal charges to be instituted against him.

These events were detailed in Appellant's declarations, briefs, and in his testimony at the January 7, 2021, evidentiary hearing. Not reporting the extortion in this situation is akin to giving a false confession to end a long coercive interrogation by police, even in a murder case, resulting in a false conviction which is well documented. If false confessions can be recognized to have happened, hesitating to report being a victim of extortion, if the retribution by the perpetrator is a threat of more harm to victim (in this case more allegations), and that causes the victim more harm than the crime itself, is completely reasonable. Extortion is an insidious crime, especially in this case when threatening to use law enforcement and the judicial system as the power, or "muscle", to implement it. And based on Appellant's experience of the previous months, it was a no-win situation to report the extortion. Due to duress, it was a matter of choosing the lesser of two evils; (1) pay her the money, or (2), face another arrest, more criminal charges, more attorney fees, which would be much more than the amount she demanded, and revocation of probation resulting in imprisonment from her new allegations.

Furthermore, now Appellant was also on probation for the charge she made only a few months before. It was simply safer, easier, and cheaper to pay her the money. The forced contact was a side effect and only occurred because of the duress from extortion.

Opinion of Court of Appeals quoted the magistrate stating:

> "[T]he magistrate court best explained the relationship between the victim and Lundquist as follows:
>
> [T]he contents of the [Dozier report] do not prove that [Lundquist] and [the victim] were not in some kind of a relationship. While [the victim] did tell Det. Dozier that she didn't want the no-contact order terminated, and that she was fearful of him, she also told Det. Dozier that she felt sorry for [Lundquist] and that she enjoyed the security he provided. This up-and-down nature of their relationship came up during the trial when [the victim] testified about [Lundquist's] efforts to get a civil protection order against her when he believed that she had thrown a rock through his windshield. The victim also testified about discussions she and [Lundquist] had about false claims of infidelity. Her testimony showed that she and [Lundquist] had the typical highs and lows of many relationships, and Det. Dozier's report reinforced that. The court finds that [Lundquist] has not carried his burden of establishing prejudice on this issue."

There are factual errors in this description. First, there is nothing in the record that a rock was thrown through Appellant's windshield. Appellant's declaration stated only that his vehicle was "vandalized", and his testimony at evidentiary hearing windshield was "smashed". Nor did Santa Lucia give any testimony about a rock breaking the windshield. Secondly, there was no testimony by Santa Lucia that there were discussions about infidelity she and Appellant had. The characterization that the relationship "had the typical highs and lows of many relationships" is absurd. The filing of civil protection orders by each party, calling police, criminal charges, arrest, hiring attorneys, and incarceration are *not* the normal highs and lows of *any* relationship. These errors and lack of attention in the details about the events and minimizing the conflict all contributed to an erroneous conclusion there was no extortion and therefore no prejudice. The court gave no consideration to her motive - anger about her attorney fees to defend against Appellant's civil protection order, as well as her false claim of fear when she filed for her civil

protection order that clearly was not needed. (Her civil protection order was never finalized by the court and eventually dismissed because of the no contact order that was issued in August 2018).

Appellant's trial defense counsel provided an affidavit who averred that Appellant informed him in early January 2019 shortly after his December 31, 2018, arrest that Santa Lucia was extorting him, as well as there was no evidence to support a defense of duress at the time. The magistrate court erred in misplacing the significance of this affidavit because it said defense counsel did not state in his affidavit that the Dozier report would have provided evidence to the affirmative defense. This issue was affirmed by both the district and Court of Appeals. However, this defense counsel did not represent Appellant in this PCR, nor did he review the Dozier report. He was only asked to substantiate Appellant's assertion of extortion was made before the trial, and at the time there was not enough evidence to present the affirmative defense. (R. p. 121-123). As such, the significance of defense counsel's lack of opinion whether the Dozier report could have provided evidence is immaterial. What is material is the fact Appellant was asserting to his defense counsel he was a victim of extortion from the very beginning of this entire case and was not a "concocted" story that was made later by the Appellant as the State alleged to the magistrate court.

Significantly, defense counsel's questioning during direct examination of Santa Lucia at the March 28, 2019, trial, over the objection of the State, if she was angry about the $1,500.00 attorney cost, which she acknowledged as the specific cost and she was "upset". (R. p. 35, Trial Transcript of Santa Lucia at p. 30, l. 4-p. 33, l. 22; March 28, 2019). This shows there was an effort by defense in the trial to establish the motive for the extortion, but also shows Appellant had knowledge of her attorney fees that she had wanted him to repay. The knowledge of the exact cost of $1,500.00 would only be known if Santa Lucia had confronted the

Appellant concerning her attorney fees. This motive and the defense counsel knowing the exact amount of her attorney fees were completely disregarded or overlooked by the magistrate court in the PCR proceedings, as well as Appellant's claim of extortion from the very beginning. Santa Lucia confirmed her anger in her testimony at the preliminary hearing for Appellant's new felony charge of false evidence and provides more insight to her reaction to Appellant's civil protection order and her reasons of filing for her civil protection order. She made no claim of stalking and fear as she did to police and in her application for the civil protection order in May 2018 that resulted in Appellant being arrested in June 2018:

> Q. But you did have to hire a lawyer to represent you in that protection order case, correct?
> A. Yes.
> Q. And that was a retainer for John Alegria?
> A. Yeah.
> Q. And you had to miss time from work to deal with that as well?
> A. Yes.
> Q. And you weren't happy about having had done that, right?
> A. Correct. Yes.
> Q. And Stephen ultimately dismissed that no-contact order-or that protection order case, didn't he?
> A. Yes.
> Q. And then you filed a protection order the very next week?
> A. Yes. I was tired of putting up with all these motions and things that were going on in the court. It was exhausted.
> A. And your—your methodology of dealing with your exhaustion was to file for your own protection order?
> A. Yeah.
> (Aug. p.13, Preliminary hearing Transcript of Santa Lucia at p. 36, l. 13-p. 37, l. 13; October 18, 2019)

Then there is the irrelevant issue Santa Lucia had "financial dependence" on Appellant that the magistrate court created and focused on. Her testimony at trial shows she only received monetary benefits approximate to the cost of attorney fees she incurred disputing Appellant's civil protection order. Appellant's declaration listed the monetary benefits he paid her and were in line

with Santa Lucia's testimony at trial. The magistrate equated her statements in the report to her testimony, concluding withholding the Dozier report caused no prejudice on this issue. But financial dependence was never an issue argued by Appellant, and as such is immaterial. Of note, Santa Lucia did admit to receiving money because she was aware she could be accused of extortion by Appellant because he had told her in late December 2018, she was blackmailing him when she wanted more money to pay a change fee on an airline ticket for her daughter which he also had previously purchased for her. Appellant told her there was a paper trail of receipts for much of the money she had received, specifically a computer purchased online for her and delivered to her house, as well as the airline ticket, both bought with Appellant's debit card. This would have shown as indisputable she received money from Appellant. This was stated in one of Appellant's declarations (R. p. 72, para. 13) and at the evidentiary hearing. (See appeal exhibit, p. 6,7, Evidentiary hearing transcript, January 7, 2021, at p. 24, l. 18-p. 25, l. 1). She knew receiving money from Appellant could be proved. So, her testimony at trial there was a dating relationship, was not only to explain why she would receive money from Appellant and defuse an allegation of blackmailing, or extortion, but it was also needed at the trial to explain why she was at his home December 31, 2018. Additionally, she knew she had to admit receiving money to Det. Dozier. She testified she was in a dating relationship with Appellant from August through December 2018 and described getting money as "help". (R. p. 35, Trial Transcript of Santa Lucia at p.30, l. 8-15, p.31 ls. 23-25; p.32, ls. 13,14; p.32, ls. 16,17; March 28, 2019). But receiving "help" from someone when you are supposedly in fear of them, as she claimed in the Dozier report, is certainly suspicious. This situation to avoid an allegation of extortion and keep the no contact order while explaining her contact with Appellant put Santa Lucia in a messy predicament.

She acknowledged receiving the computer, airline ticket and other monies at trial during questioning in defense's direct examination, over the objection by the State to the relevance of violating the no contact order on December 31, 2018. This shows there was an effort by defense to at least confirm she received money from Appellant. The magistrate overruled the State's objection, stating it was giving "some leeway" to the defense as to her potential for bias. (R. 35, Trial Transcript of Santa Lucia at p.30, l. 20-p.33, l.22). At this point in the trial, having the Dozier report would have been indispensable as described below.

B. Contradictions of State's primary witness supports there was prejudice to Defendant

The witness, Santa Lucia, provides information seemingly convenient to the moment's justification, but amazingly inconsistent when under comprehensive review. The differing versions would have made for deliciously ripe cross or direct examination by any defense attorney. Given the crucial nature of Santa Lucia's role in this alleged crime and at the jury trial, the results of the proceedings would have been different if her interview and testimony were proven dishonest or inconsistent, and always evolving to meet her specific need depending on when and to whom she needed to provide the information to. But these inconsistencies and contradictions by her were not known at the trial due to the non-disclosure of the Dozier report.

The gravamen is the "fear" of Appellant Santa Lucia is claiming to Det. Dozier. But just 24 days later at trial her story changed. There was no testimony at trial she feared Appellant, rather she claimed there was a dating relationship, which she needed to justify getting money from Appellant, and for being in his home. But if the defense had the Dozier report and knowing she claimed fear as stated in the report, the first obvious question is why did Santa Lucia, the "victim",[2] come to Appellant's home December 31, 2018? Why go to the home of someone she had accused

[2] Court of Appeals used the word "victim" forty-nine times referring to Santa Lucia without ever using her name. Her behavior consistently contradicts one that is a victim.

of stalking her and still claimed she was in fear of, needing the protection of a no contact order? She also testified *she initiated* contact with Appellant numerous times from August 15, 2018, to December 31, 2108, when she knew there was a no contact order. Again, why? Why did she testify at trial there was a dating relationship during the time-period in question, August through December 2108 if she was in fear? This failure of disclosure of the Dozier report prevented the defense to have the information to challenge her testimony at the trial that there was a dating relationship. Therefore, if there was not a dating relationship, then why *did* she receive money from Appellant during that time-period of August through December? Furthermore, why would Appellant even *want* to give her any money after his experiences of being arrested a few months earlier in June, incarcerated for 64 days and incurring $10,000 attorney fees due to her accusations?

The contradictions of her statements would have substantiated Appellant's potential testimony he was being extorted if he had this report, otherwise it would have been only a 'she said, he said' situation if Appellant had testified, and the prosecution would certainly have argued that Appellant was only trying to shift all the blame on her for his violation of the no contact order with nothing to substantiate his claim. These questions would have shown Santa Lucia was not honest in her testimony and was hiding something nefarious. Not having the Dozier report prevented the Appellant to present an affirmative defense of duress and coercion from extortion and Appellant's contact with her was not willful. These questions had they been presented to the jury would give a logical conclusion she weaponized the no contact order to commit extortion. The contact Appellant had with her was due to duress and coercion, and there was no intent by Appellant to violate the no contact order. The jury would have been given Idaho Criminal Jury Instruction (ICJI) no. 305. The verdict of guilty beyond a reasonable doubt is gone.

Ironically the magistrate court made an issue in its decision why Appellant had not asked her about being in fear at trial. But why would the defense counsel have asked her about fear at the trial when there was no knowledge of her claim of fear that was in the Dozier report, and instead she was testifying there was a dating relationship. The court is making the argument for the Appellant that the report is indeed prejudicial.

C. Santa Lucia's False Claim of Fear to Withdraw Her Petition to Dismiss the No Contact Order Reveals Her Actual Motive to Have Contact with Appellant

One question to answer, then why did she make the false claim of fear *again*, now to Det. Dozier? Santa Lucia personally signed and filed a petition to dismiss the no contact order on January 7, 2019, just one week after she was found at Appellant's home. But at the hearing for the petition on January 17, 2019, she withdrew the petition after she learned she was not being prosecuted for a citation she received from police December 31, 2018, for being at Appellant's home, and then alleged Appellant had written her petition. She had been cited with Idaho Code Section 18-304, aiding in a misdemeanor. She was questioned at trial if she thought she was in trouble after the incident and for being cited at his home, which she admitted being so. (R. p. 33, Trial Transcript of Santa Lucia at p. 21, l. 1-p. 23, l. 6, March 28, 2019). Her petition was an obvious attempt to nullify her citation. Det. Dozier was investigating her allegation, and her claim of fear to Det. Dozier was to explain why she withdrew her petition and keep the no contact order in effect. Her claim of fear had worked before to obtain a civil protection order, so it should work again. In her interview to Det. Dozier the following are excerpts by her in the police report:

> The letter was written by Stephen on January 4, 2019. He wrote the letter at the Garden City Library, 6015 Glenwood St Garden City, ID 83714. Gena was not present at the time of the creation of the letter. She said he would write versions of the letter and present it to her. She would read the letter and tell Stephen what changes he had to make because she did not want to lie in court. She said she felt uncomfortable doing it in the first place but she felt pressured by Stephen (R. p. 19).

As previously noted, Appellant was charged later in August 2019 with preparing false evidence based on her allegation he wrote her petition. Her allegation was debunked by Officer Wiggins' testimony. That charge was subsequently dismissed[3].

Another question that would have substantiated Appellant's testimony he was being extorted. If there was a dating relationship during August through December 2108 as she claims, why didn't she file her petition to dismiss the no contact order then? She did not because the no contact order was used against Appellant to extort money. There was no dating relationship.

Santa Lucia's testimony at the preliminary hearing confirmed there was no dating relationship while she was receiving monetary benefits in August through December 2018:

> Q. Okay. And did Stephen buy a new laptop computer for your daughter?
> A. Yes.
> Q. And it was delivered to your house?
> A. Yes.
> Q. So that's true. And did he help you with some bills you couldn't pay?
> A. Yes.
> Q. And he also made—it says that, "This made us realize that, because of our beliefs, we had to totally reconcile." (This portion is reference to her statements in her petition to dismiss the no contact order that she accused Appellant as creating).
> Were you intending to reconcile with him?
> A. No. No.
> (Aug. p.17, Preliminary hearing Transcript of Santa Lucia at p. 50, l. 4-17; October 18, 2019).

---

[3] Officer Wiggins, Garden City Police Department had contact with Santa Lucia on January 14, 2019, doing a welfare check. Wiggins was questioned about Santa Lucia's statements in his report if she had contact with Appellant during those two weeks after December 31, 2018:

> Q. And did you ask Gina about seeing Stephen since his arrest on New Year's Eve—
> A. I did.
> Q. -December 31, 2018?
> A. Uh-huh.
> Q. And what was—did she tell you that she had seen Stephen Lundquist?
> A. She told me she had not seen him.
> Q. Not seen him?
> A. Right.
> Q. Not at all?
> A. If I remember correctly, yeah, she said not at all.
> (Aug. p. 24, Preliminary hearing Transcript of Officer Wiggins at p. 78, l. 24-p. 79, l. 11; October 23, 2019).

Her testimony also contradicts her statement she made to police at Appellant's home December 31, 2018, where she said she had "rekindled" the relationship. (R. p. 43, Garden City Police Report DR# 2018-03147). But most importantly, it contradicts her prior testimony at the March 28, 2019, trial there was a dating relationship. This is confirmation of the value the Dozier report could have provided to the affirmative defense.

At the preliminary hearing Det. Dozier was questioned about his interview of Santa Lucia. The following testimony by Dozier is about her letter attached to her petition to dismiss the no contact order (questions used the term protection order rather than no contact order):

> Q. Okay. She—she said that she never told him she wanted to cancel the protection order. Is that what she told you?
> A. That is what she told me.
> Q. What did she mean by that?
> A. So in the letter—the letter states that she said that she wanted the protection order canceled, and she says that's not something that she ever said. She said she never wanted—she said that she wanted the protection order to still be in place.
> Q. Despite the fact that she was continuing to have contact with him?
> A. That's correct.
> Q. Doesn't necessarily make sense, but you weren't asking any further questions?
> A. I wasn't asking about her thought process behind why.
> (Aug. p.31, Preliminary hearing Transcript of Det. Dozier at p. 107, l. 24-p. 108, l. 16; October 23, 2019).

> Q. And she, again, reiterated the fact that she never wanted the no contact order canceled, in her words?
> A. Uh-huh.
> Q. She said—
> THE COURT: Is that a yes?
> The Witness: That's a yes.
> (Aug. p.32, Preliminary hearing Transcript of Det. Dozier at p. 110, l. 18-24; October 23, 2019).

Citing *Brady* and similarly basing its decision on due process standards, the U.S. Supreme Court made clear: "[W]hen the 'reliability of given witness may well be determinative of guilt or

innocence,' nondisclosure of evidence affecting credibility falls within the general rule" set forth in *Brady*. (*Giglio v. United States*, 405 U.S at 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972)). Vacation of the conviction must result from a Brady Violation. (*Giglio*, 405 U.S. at 154). The Idaho Supreme Court has weighed in on Brady Violations in identical fashion and has further defined the standards of proof applicable to Brady claim. In *State v. Davis*, the Court held that "defendant's due process rights are violated when the prosecution fails to disclose exculpatory evidence that is 'material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*State v. Davis*, 2019 Ida. LEXIS 190, *11, 451 P.3d 422, 427 (2019) (citing *Dunlap v. State*, 141 Idaho 50, 64, 106 P.8d 376, 390 (2004) and *Brady*, supra)). The Court characterized the duty to disclose exculpatory evidence known to the State or within its possession as "a well-established constitutional tenet." Id. Notably, the Idaho Supreme Court confirmed that the *Brady* rule extends not only to exculpatory evidence but also impeachment evidence. (*State v. Lankford*, 162 Idaho 477, 503, 399 P.3d 804, 830 (2017) (citing *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 8'7 L.Ed.2d 481 (1985) (additional citations omitted)). Because there is, in fact, "any reasonable likelihood" that the evidence in question here would have impacted the jury's judgment, the *Brady* third element of prejudice/materiality is satisfied. See Lankford, supra. Appellant has demonstrated "a reasonable probability of different result" in that the government's evidentiary suppression, in the form of nondisclosure of the contents of the interview, "undermines confidence in the outcome of the trial." (See *Lankford,* 162 Idaho at 505-06; Kyles, 514 U.S. at 434; *Bagley*, 473 U.S. at 678). The Opinion of Court of Appeals here cites the credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the trial court. (*Dunlap*, 141 Idaho at 56, 106 P.3d at 382; *Larkin*, 115 Idaho at 73, 764 P.2d at 440). But here in this case, when all evidence is

not available at trial, and that evidence would show the primary witness is untruthful and lacks credibility, prior decisions require the conviction to be vacated. Here the Court of Appeals has contravened the decision of *Dunlap* and *Larkin*.

III. *Mens rea*

The general intent issue as stated by the Court of Appeals Opinion disregarded the requirement set forth in Idaho Code Section 18-114 and makes no mention whatsoever of this foundational statute as argued by Appellant from the beginning of this PCR.

> 18-114. Union of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

The statute is clear about intent, "every crime" and "must exist". The opinion given by Court of Appeals states Idaho Code Section 18-920 contains no wording to any specific mental state. Idaho Code Section 18-114 precedes all criminal statutes, almost all of which do not contain wording about mental state. Idaho Code Section 18-114 must be applied here as in any other crime. Even the State admitted in its Response here in the present appeal, the general criminal intent requirement to violate the no contact order is satisfied merely by it occurring "unless he was legally excused by duress" (State's Response Brief, p. 25). If there is duress, there is no intent. It is inconceivable to have both. If someone is being carjacked and carjacker orders the driver to drive at 100 mph, is the driver going to be prosecuted and convicted for speeding? The issue of intent and duress was clearly argued in Appellant's briefs and respectfully asks the court to consider. Appellant cited in the Reply brief that Idaho Criminal Jury Instruction (ICJI) no. 305 is applicable. This was argued in the original filings of the PCR. ICJI no. 305 states:

> In every crime or public offense there must exist a union or joint operation of act and [intent] [or] [criminal negligence].

Forcing contact while extorting money under the threat of more criminal charges invalidates intent to violate the no contact order. Because Idaho criminal law requires union of act and intent, a viable defense to the intent element would necessitate an acquittal. (Criminal negligence does not apply).

The Opinion by Court of Appeals cites *State v. Beeks*, 159 Idaho 223, 231, 358 P.3d 784, 792 (Ct App. 2015). There are several distinct differences in the circumstances of the contact and that case does not apply here as there was no assertion of duress and coercion as in this present case. There was an obvious arrangement for Beeks to have contact with his fiancé while he was in jail. Beeks' fiancé, the protected person of a no contact order, used the video phone system to call the jail using a false name to another inmate, also using a pseudonym, with Beeks present, who then took over the call. Beeks argued in his appeal that his request to the district court give Idaho Criminal Jury Instruction (ICJI) 1508 at close of evidence, which addresses crimes committed as a result of accident or misfortune, should have been granted. The Opinion also cites *State v. Fox*, 124 Idaho 924, 925-26, 866 P.2d 181, 182-83 (1993). That case states the general intent element is satisfied if the defendant knowingly performed the proscribed act regardless of whether the defendant intended to commit a crime. Here Fox was knowingly in possession of a controlled substance, a schedule II drug, but claimed he did not know it was illegal in Idaho to have it without a doctor's prescription. Other states do allow it. Fox argued that a mistake of fact was available to him, pursuant to I.C. 18-201 which provides a defense for persons who committed the act or made omission charges, under an ignorance or mistake of fact which disproves any criminal intent. However, his good faith mistake of the law did not excuse the fact that he was in possession of the drug. He would have had to prove the fact he did not know he was in possession of the drug rather than not knowing the law. The Court of Appeals uses a broad brush to equate this case to *Beeks* and *Fox*. In neither of these two cases was there a defense of duress and coercion by the defendants,

nor an argument of a *Brady* violation. Not having the Dozier report prevented Appellant the right to assert an affirmative defense against the charge and to a fair trial, and the general intent would have been challenged due to duress and coercion. Opinion citing above two case takes no consideration of the previous events prior to, and the circumstances of December 31, 2018, with the simplistic interpretation as stated in the Court of Appeals' Opinion here, "[T]he general intent element is satisfied if the defendant knowingly performed the proscribed act", *Fox* at 926, 866 P.2d at 183. However, other courts have examined intent when there is duress and coercion with more analysis:

> Duress negates an element of the crime charged-the intent or capacity to commit the crime-the defendant need raise only a reasonable doubt that he acted in the exercise of his free will. *People v. Graham*, 57 Cal.App.3d 238 (1976).
>
> While intent to participate in a crime may be proved in many ways, it cannot be based entirely upon circumstances, unless those circumstances exclude reasonable doubt engendered by defendant's explanation of his presence at time and place of the commission of crime. *Douglas v. State*, 214 So.2d 653 (1968).

The criminal charge of CR01-19-000061, violation of Idaho Code Section 18-920, violation of a no contact order, is the criminal charge this PCR is filed upon, occurred the evening of December 31, 2018, when Santa Lucia entered the Appellant's home uninvited. Appellant's probation officer testified he received an anonymous call that *same* day, telling him that Santa Lucia had been in contact with Appellant. (See appeal exhibit, p. 35, Evidentiary hearing transcript, January 7, 2021, at p.138, l.6-p.139, l.1). Probation Officer Daniluc accompanied by Garden City police then came to Appellant's home to investigate a possible violation and found Santa Lucia there. (R. p. 43, Garden City police report DR#18-3147). As noted earlier, Appellant told Santa Lucia only days earlier there was a paper trial of receipts of money given and warned her that she was blackmailing him.

When the protected person of a no contact order orchestrates a violation to get the respondent of the no contact order in trouble, justice demands the exoneration of the respondent.

> One who, under the pressure of an unlawful threat from another human being to harm him...,commits what would otherwise be a crime may, under some circumstances, be justified in doing what he did and thus not be guilty of the crime in question...The rationale of the duress defense is not that the defendant, faced with the unnerving threat of harm unless he does an act which violates the literal language of the criminal law, somehow loses his mental capacity to commit the crime in question. Nor is it that the defendant has not engaged in a voluntary act. Rather it is that, even though he has done the act the crime requires and has the mental state which the crime requires, his conduct which violates the literal language of the criminal law is justified because he has thereby avoided a harm of greater magnitude. *LaFave & Scott*, Substantive Criminal Law § 5.3 (1986) (footnotes omitted)

IV. Statements Made in Subsequent Proceedings is Inadmissible Evidence

The magistrate, district, and Court of Appeals brought into question why Appellant did not present the extortion defense at his probation violation hearings that were held after the trial, and this somehow proves there was no extortion. As noted earlier, the magistrate concluded the following:

> Second, his own words condemn him. As pointed out by the state <u>*at length*</u>, (emphasis added) when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation. (R. p. 171, paragraph 3)

This argument was raised by the Respondent to the magistrate court, who was the prosecutor for the probation violation but not at the trial for violation of the no contact order, and as stated by the magistrate, the argument was "at length". Of note, this Respondent was also the same prosecutor who tasked Det. Dozier to interview Santa Lucia. (See footnote #1, page 12).

This cannot be considered to determine post-conviction relief of the violation of the no contact order because what was said at the probation violation hearings were separate proceedings in a different case *after* the trial. The notion, that not presenting a defense later in

a different case when there is nothing to support it, is not evidence. Furthermore, certified transcripts of the probation hearings were never entered into evidence in this PCR and are not part of the record. Even if Appellant had claimed extortion at probation hearings, it would not have changed the verdict of the previous trial. The magistrate court accepted this illogical reasoning which contravenes both to justice and Idaho Rules of Evidence. But even if it is to be considered in any weight, it must be done in context.

The Appellant was convicted of the no contact violation on March 28, 2019, in the magistrate court; the admit/deny probation violation hearing was held April 9, 2019, in the district court, and the sentencing hearing April 26, 2019. First, the district court only asked Appellant if was willing to admit he violated *the law* by being convicted of violating the no contact order. An affirmative answer was the only answer since there was a conviction. There was no admission to willfully violating probation as the magistrate states. (See appeal exhibit, p. 32 Evidentiary hearing transcript, January 7, 2021, at p.125, l.12-p.126, l.20). This testimony by Appellant was uncontroverted by the State.

Then at the sentencing hearing Appellant was following his defense counsel's advice not to bring up the extortion because it was not presented at the trial and would only antagonize the court as it would appear Appellant was fabricating an excuse never heard before. And just like at the trial, the prosecution would certainly have argued that Appellant was only trying to shift all the blame on her for his violation of the no contact order with nothing to substantiate his claim. Appellant gave an unsworn statement in an altruistic fashion to minimize the offense, parroting the victim's characterization that he was only helping her, hoping for the court's mercy.

The following was in the Petitioner's Closing Argument following the Evidentiary Hearing of January 7, 2021:

> The Respondent attempted, on cross-examination of Mr. Lundquist, to make hay about his statement to Judge Medema prior to pronouncement of sentence on the probation violation. They attempted to paint Mr. Lundquist as "lying" to Judge Medema. It is true that Mr. Lundquist did not raise the potential defense of duress/coercion or discuss the extortion involving Ms. Santa Lucia at his sentencing on the probation violation. Mr. Lundquist testified that his attorney advised him against it, which was not controverted by the state. At that point, Mr. Lundquist had already been found in violation of his probation, so raising potential defenses and issues would not help him; it was simply too late in the game. Sentencing or disposition hearing is simply not the correct forum to air grievances about defects in the process, so Mr. Lundquist, on the advice of counsel, did not do so. Rather, Mr. Lundquist tried to make the best of the situation and express remorse for his actions. His statement was not made under oath. He told the Court that he was shocked to see Ms. Santa Lucia and frankly bit flattered that she came by. He discussed that his son was home on military leave and had friends who were coming and going (something Officer Daniluc apparently completely missed altogether). He confirmed that Ms. Santa Lucia wanted to use his four-wheel drive vehicle for winter driving. Mr. Lundquist asserts that these comments do not detract from his testimony that he felt coerced and under duress to allow the prohibited contact based on the potential and threat of reporting and arrest, which ultimately occurred.

Importantly, the Dozier report still had not been disclosed before these probation hearings as well. Appellant testified at the January 7, 2021, evidentiary hearing, if he had the Dozier report then, his allocution would have changed and would have had grounds to challenge the probation violation. (See appeal exhibit, p.32, Evidentiary hearing transcript, January 7, 2021, at p.127, l.4-p.128, l.16). And lastly, the charge of violating the no contact order, which was the basis for the probation violation, would have been an acquittal if the State had provided the Dozier report as required. The probation violation would have been dismissed. Withholding of the Dozier report harmed the defense in both the trial and the probation violation case.

CONCLUSION

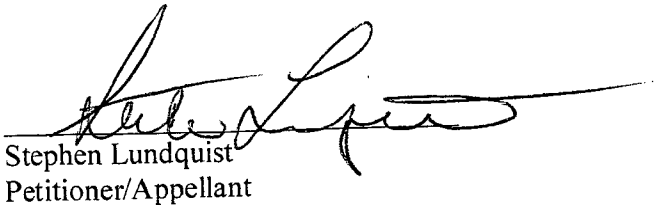
The Memorandum in Support of Petition for Post-Conviction Relief in the initial filings to the magistrate summed up the situation concisely:

> Mr. Lundquist suggests that common-sense review of the facts produces an inescapable conclusion: he was extorted. To Wit: he filed for protection order against Ms. Santa Lucia. She responded vindictively by filing one against him. He was arrested as result, spent 64 days in jail, almost had his felony sentence imposed (Which happened, just not until later),

> and paid $10,000 in legal fees to defend himself. Why then, after all that, would he voluntarily give her substantial sums of money? He either (a) is forgiving, generous and love-struck to an extreme degree, or (b) he felt pressured, coerced and extorted to give in to her monetary demands. Since option (a) is belied by Ms. Santa Lucia's statements in her March 4th interview, as discussed herein, the only remaining sensical explanation is he was being extorted. (R. p. 63)

The law is unequivocal that the Dozier report should have been disclosed to the defense. The information it contained would have provided the ammunition for a credible affirmative defense. Appellant has met the burden with preponderance of evidence that nondisclosure of the report caused prejudice and denied the Appellant his right to due process and a fair trial, a clear violation of his constitutional rights and violation of Idaho law. The Idaho Supreme Court boldly declared that the due process clauses of the Idaho Constitution (Art. 1, §13) and the United States Constitution (5th and 14th Amendments) do not guarantee errorless trials, but they do at minimum ensure that criminal trials must be fundamentally fair. *Schwartzmiller v. Winters*, 99 Idaho 18, 19, 576 P.2d 1052, 1053 (1978). Requiring criminally accused citizen to proceed to trial without all the evidence, and specifically crucial exculpatory and/or impeaching evidence and evidence to support viable defense, runs afoul of fundamental fairness and due process of law. Appellant's conviction was obtained in violation of the United States and Idaho Constitutions, Idaho Code §19-4901(a)(1), and the discovery laws set forth in Idaho Criminal Rule 16. His conviction must be vacated.

RESPECTFULLY SUBMITTED this 25th day of October 2023.



Stephen Lundquist
Petitioner/Appellant

Filed: 12/22/2021 08:15:51
Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Deputy Clerk - Holstine, Shannon

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STEPHEN LUNDQUIST, Petitioner-Appellant, vs. STATE OF IDAHO, Respondent.	Case No. CV01-20-7369 OPINION ON APPEAL

ATTORNEY FOR THE PETITIONER-APPELLANT: PAUL E. RIGGINS

ATTORNEY FOR THE RESPONDENT: DANIEL R. DINGER

I. NATURE OF THE CASE

Stephen Lundquist ("Appellant") appeals the Order Denying Post-Conviction Relief. He alleges the magistrate erred by denying his petition because he was prejudiced by the State's failure to disclose the content of a law enforcement interview with the victim which occurred prior to his trial for violating a no contact order. He alleges the content of the interview would have allowed him to impeach the victim's testimony at trial and present a defense of duress and coercion, thereby creating a reasonable probability that the outcome of the trial would have been different.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Appellant pled guilty to Second-Degree Stalking of Gena Santa Lucia on August 24, 2018. A no contact order was issued protecting her until August 23, 2022. The Appellant

was on felony probation for First-Degree Stalking of another woman at the time he was charged. He received misdemeanor probation in the Second-Degree Stalking case and was reinstated to felony probation in the First-Degree Stalking case with the condition that he have no contact with Santa Lucia.

In September 2018, the Appellant filed for and received a civil protection order against Santa Lucia because he believed she was involved in vandalizing his vehicle. He later dismissed the order after learning she was not involved. On December 31, 2018, the Appellant's probation officer located her with the Appellant at the Appellant's home.

On March 28, 2019, the Appellant was found guilty of violating the no contact order with Santa Lucia after a jury trial. The State also filed a probation violation against the Appellant. The Appellant admitted to willfully violating probation by having contact with Santa Lucia.

On May 4, 2020, the Appellant filed a petition for post-conviction relief, asserting a *Brady* violation by the State for failing to disclose an interview of Santa Lucia by Detective Dozier of the Garden City Police Department which occurred prior to trial for the no contact order violation. This interview pertained to a separate criminal case in which the Appellant was alleged to have been involved with filing a false document with the court. During discovery in that case the Appellant was provided with the June 12, 2019, police report of Detective Dozier which detailed the interview with Santa Lucia on March 4, 2019. In that report she discussed the December 31, 2018, incident which resulted in the no contact order violation, along with other interaction between her and the Appellant.

In his post-conviction petition, the Appellant alleged the report "reveals that Ms. Santa Lucia was not honest under oath at the March 28, 2019 jury trial," and the report "contains substantial specific and general impeachment information" which was "potentially exculpatory." He alleged the information would have supported a defense of duress and coercion that would have cast doubt on whether Santa Lucia's testimony could be believed, would have demonstrated her clear bias, and provided significant ammunition for the defense to effectively cross-examine the State's witness at jury trial. The Appellant filed a motion for summary disposition of his petition.

The State filed an answer, contending the petition was time barred, procedurally defaulted, unsubstantiated, and did not state a claim upon which relief could be granted. The magistrate issued a Notice of Intent to Dismiss, acknowledging the Appellant did not receive notice of the report until after the time for direct appeal of the no contact order violation had passed. The magistrate held that assuming a *Brady* violation took place, the Appellant had not made a showing of prejudice. The magistrate found that the result of the trial would have been the same, because the testimony of the Appellant's probation officer alone established the elements of the offense. The magistrate also found the Appellant did not dispute that Santa Lucia was in his home, nor did he dispute the validity of the no contact order or whether he was served. The magistrate gave the Appellant 20 days to respond to the proposed dismissal.

The Appellant filed a response, asserting that the *Brady* violation deprived him of the ability to offer a defense of duress and coercion on the part of Santa Lucia. He asserted that this defense, if believed by the jury, would have resulted in acquittal because he did not

willfully violate the no contact order. The State subsequently filed for summary dismissal which was denied. The petition was set for evidentiary hearing.

On March 1, 2021, the magistrate issued an Order Denying Post-Conviction Relief, and this appeal followed. The magistrate found the report was not disclosed to the Appellant prior to trial, but held the Appellant had failed to show prejudice by the non-disclosure.

The magistrate found that, according to Detective Dozier's report, Santa Lucia "enjoyed the security" the Appellant provided. He would pay her bills and take care of her, and he was paying her rent and providing her with "monetary benefits." The magistrate also found that at trial she was cross-examined vigorously on these issues, and she went into even greater detail about the "monetary benefits" she received from the Appellant. The magistrate concluded that nothing in the report established financial dependence on the part of Santa Lucia, or that the report contained different information not known or brought forward at trial.

Regarding whether Santa Lucia was afraid of the Appellant, the magistrate found she did not testify at trial about this issue, because neither party asked her about it. The magistrate concluded that although her testimony could have implied that she was not fearful of the Appellant, her statement in Detective Dozier's report that she was fearful had minimal impeachment value. There was also no evidence to show she was extorting the Appellant.

Regarding whether the Appellant could have presented a defense of duress or coercion, the magistrate found the Appellant brought the issue to his attorney prior to trial, but his attorney did not believe it was a viable defense based on the evidence at the time. The magistrate found the declaration from the Appellant's attorney did not state that

Detective Dozier's report would have changed his mind regarding the defense. The magistrate concluded the defense was considered and rejected due to lack of evidence.

The magistrate also found the Appellant's actions showed his allegation that Santa Lucia was extorting him was not true. The act of seeking a protection order undermined the Appellant's claim that he could not tell anyone about the extortion because it would result in legal problems. The magistrate also found that the Appellant's actions during his probation violation proceedings did not make sense, determining the Appellant admitted willfully violating probation, stated that he knew it was wrong to have contact with Santa Lucia, and declined the opportunity to have a hearing or explain that he was being extorted.

III. ISSUES ASSERTED ON APPEAL

The magistrate erred by denying the Appellant's petition for post-conviction relief.

IV. STANDARD OF REVIEW

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992).

> Post-conviction proceedings are civil in nature and therefore the applicant must prove the allegations by a preponderance of the evidence. On review, the appellate court will not disturb the lower court's factual findings unless the factual findings are clearly erroneous. The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the [lower] court... This Court exercises free review of the [lower] court's application of the relevant law to the facts.

Dunlap v. State, 141 Idaho 50, 56, 105 P.3d 376, 382 (2004) (internal citations omitted).

V. ANALYSIS

> Due process requires all material exculpatory evidence known to the State or in its possession be disclosed to the defendant. "[T]here is 'no constitutional requirement that the prosecutor make a complete and detailed accounting to defense of all police investigatory work on a case'." "There are three essential components of a true *Brady* violation: the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Impeachment evidence should be viewed in the same manner as exculpatory evidence.

Dunlap, 141 Idaho at 64, 106 P.3d at 390 (internal citations omitted).

The magistrate concluded the first two prongs of the *Brady* test were established. The parties agree that the issue is whether the Appellant was prejudiced by the non-disclosure. "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *U.S. v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.*

Lack of Intent and Duress

The Appellant asserts the magistrate erred by denying his petition for post-conviction relief because Detective Dozier's report would have enabled him to (1) show he did not intentionally violate the no contact order, and (2) present a defense of duress or coercion. He asserts the report could have been used to impeach Santa Lucia's contradictory statements at trial regarding her level of financial reliance on the Appellant and her fear of him.

Even if the Appellant established that Santa Lucia financially relied on the Appellant and she was not in fear of him, these facts are immaterial to whether the Appellant violated the no contact order. The State does not need to show that the Appellant "initiated the prohibited contact." The State needs to establish that the Appellant "had contact with the victim in violation of the valid no-contact order and with notice that the no-contact order was in effect." *State v. Beeks*, 159 Idaho 223, 231, 358 P.3d 784, 792 (Ct. App. 2015) (citing I.C. § 18–920(2); ICJI 1282). "Indeed, when a criminal statute does not set forth any specific mental state as an element of the crime, the intention with which the criminal act is done, or the lack of criminal intent, is immaterial." *Id.* (citing *State v. Fox*, 124 Idaho 924, 925–26, 866 P.2d 181, 182–83 (1993)). "Moreover, the general-intent element is satisfied if the defendant knowingly performed the interdicted act...regardless of whether the defendant intended to commit a crime." *Id.*

The Appellant's probation officer found Santa Lucia with the Appellant at the Appellant's home. There was a no contact order between Santa Lucia and the Appellant. The Appellant did not dispute the fact of the no contact order, whether he was served, or that he did not knowingly have contact with Santa Lucia.

If the Appellant established financial reliance or lack of fear, these facts do not show Santa Lucia was threatening him with additional legal charges if he did not support her financially. Idaho Code § 18-201(4) states that "[a]ll persons are capable of committing crimes," except "persons (unless the crime be punishable with death) who committed the act or made the omission charged, under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused."

In *State v. Canelo*, 129 Idaho 386, 390-91, 924 P.2d 1230, 1234-35 (Ct. App. 1996), the defendant claimed he was under duress when he delivered cocaine to another individual. The Court held the defendant did not meet his burden of showing the facts supported the defense, as "the record [was] devoid of any explanation as to how Alfaro pressured or 'obligated' Canelo to sell drugs to Ward." *Canelo*, 129 Idaho at 391, 924 P.2d at 1235.

In order to have presented a duress defense to a jury the Appellant would have been required to make a minimal factual showing that warranted presentation of evidence at trial and a jury instruction. The Appellant told his attorney that Santa Lucia was threatening him. The Appellant's attorney confirmed that he discussed the issue with the Appellant prior to trial, but there was not enough evidence to establish a defense. The statements Santa Lucia made to Detective Dozier do not establish she threatened the Appellant. Had Detective Dozier's report been disclosed, there is no reasonable probability the outcome of the trial would have been different.

Credibility of Santa Lucia

The Appellant asserts that contradictory statements made by Santa Lucia in Detective Dozier's report diminish her credibility such that the jury would have doubted her testimony at trial. The Respondent contends her statements in the report were not inconsistent with those at trial, and the statements do not support the Appellant's claim she was extorting him.

Santa Lucia's testimony was not necessary to establish a no contact order, regardless of whether she could have been impeached and not viewed as credible by the jury. The Appellant's probation officer testified regarding the events of December 31, 2018. As

previously set forth, the Appellant did not dispute the material facts of the violation. Any negative weight given to Santa Lucia's testimony would not create a reasonable probability that the outcome of the trial would have been different.

Magistrate's Conclusions of Law

The Appellant asserts the magistrate's four conclusions of law are in error, asserting (1) Ms. Santa Lucia could have been impeached regarding her relationship with the Appellant and her financial dependence on him, (2) whether she feared the Appellant was central to the no contact order violation, and (3) whether the Appellant could have succeeded on his affirmative defense does not matter to a *Brady* analysis. The Respondent contends the magistrate properly concluded the Appellant had not shown prejudice.

Even if Detective Dozier's report could have been used to impeach Santa Lucia's statements, the outcome of the trial would not have been different. Whether she feared the Appellant has no bearing on whether he violated the no contact order. The statements in Detective Dozier's report do not provide the Appellant with enough evidence for a defense of duress or coercion.

Waiver

The Appellant asserts in his reply brief that the magistrate erred by using events which occurred after trial to conclude the Appellant was not prejudiced by the *Brady* violation. "A reviewing court looks to the initial brief on appeal for the issues presented on appeal." *Monahan v. State*, 145 Idaho 872, 877, 187 P.3d 1247, 1252 (Ct. App. 2008) (citing *Hernandez v. State*, 127 Idaho 685, 687, 905 P.2d 86, 88 (1995); *Henman v. State*, 132 Idaho 49, 51, 966 P.2d 49, 51 (Ct.App.1998)). "Issues raised for the first time in a reply brief

will not be addressed on appeal." *Id.* (citing *Hernandez*, 127 Idaho at 687, 905 P.2d at 88; *Henman*, 132 Idaho at 51, 966 P.2d at 51). This issue was not raised in the opening brief.

Even if the issue were not waived, no prejudice has been shown. The magistrate concluded that the Appellant's claim of extortion was not true based on events which occurred after trial. Whether or not this is error, the Appellant could not have presented a defense of duress or coercion, as set forth above.

VI. CONCLUSION

The Order Denying Post-Conviction Relief is affirmed.

Dated this 10 day of December 2021.

Gerald F. Schroeder
Senior District Judge

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STEPHEN LUNDQUIST,

Petitioner,

Vs.

STATE OF IDAHO,

Defendant--Respondent

CASE NO. CV01-20-07369

ORDER DENYING

POST-CONVICTION RELIEF

INTRODUCTION

This matter came before the court on Petitioner's motion for post-conviction relief wherein he alleged that the state had committed a Brady violation by not disclosing the contents of an interview conducted by law enforcement. The court held an evidentiary hearing, and received written closing arguments from the parties, and took the matter under advisement. The court now announces its findings of facts and conclusions of law.

FINDINGS OF FACTS

This petition was filed after Petitioner had been convicted of violating a no-contact order, but in order to fully understand the petition, the inner workings of three other cases involving Petitioner must be explored. Petitioner was placed on felony probation in June of 2015 following

a conviction for First Degree Stalking. After a probation violation, he was reinstated on probation, but with an additional condition that he have no contact with a woman named Gena Santa Lucia. On August 24, 2018, Petitioner pled guilty to Second Degree Stalking of Santa Lucia, and as a result, a no-contact order was put in place to protect Santa Lucia. That order will not expire until August 23, 2022.

After being released from custody on this charge on August 24th, 2018, Petitioner was walking home when Santa Lucia drove by him. She stopped her vehicle, and offered him a ride home. In the ensuing months, despite the no-contact order, Petitioner and Santa Lucia frequently saw each other, but their relationship was not entirely stable. There were accusations of infidelity, and in September of 2018, Petitioner filed for, and received, a civil protection order against Santa Lucia, based on an incident where Petitioner believed that Santa Lucia had vandalized his car. That order was later dismissed when Petitioner learned that Santa Lucia had not been involved in the incident.

By December of 2018, Petitioner and Santa Lucia had resumed contact with each. On December 31st, Petitioner's felony probation officer, Adrian Daniluc, received a call from someone who reported that Petitioner and Santa Lucia had been contacting each other. Such conduct had been prohibited as a result of an earlier felony probation violation. As a result of this call, Daniluc went to investigate. He testified at trial that he had been watching Petitioner's residence for approximately 40-75 minutes, awaiting backup from the Garden City Police Department, and that while he was waiting, he did not see anyone enter or leave Petitioner's residence.

Once backup was on the scene, Daniluc went to Petitioner's front door and knocked. Petitioner opened the door, and Daniluc saw a female inside the residence. That female was later

identified as Santa Lucia. Petitioner was then placed under arrest for Violation of A No Contact Order, a violation of Idaho Code section 18-920.

Petitioner pled not guilty to the charge, and the case was scheduled for trial. Discovery took place between the parties, and the case went to trial on March 28th, 2019. However, law enforcement officers were also investigating another potential criminal law violation by Petitioner that involved the possible filing of a false document with the court. As a result of that investigation, Detective Dozier of the Garden City Police Department conducted an interview with Santa Lucia. This interview took place on March 4th, 2019, just over three weeks before Petitioner's trial for the alleged violation of the no-contact order. The information obtained from Santa Lucia included statements regarding the December 31st incident, and the events leading up to that date. However, this information was not disclosed to Petitioner prior to his trial. In fact, Det. Dozier did not make a report of this incident until June 12, 2019. Petitioner first learned of this report when it was disclosed in discovery in the case involving the alleged filing of false documents.

Petitioner went to trial on the underlying no-contact order violation on March 28, 2019, and he was found guilty. Petitioner did not testify at the trial. This court sentenced him that same day, and gave him credit for the time he had already served.

As a further result of Petitioner's contact with Santa Lucia on December 31st, the state filed another felony probation violation against Petitioner. On April 9th, 2019, Petitioner admitted to willfully violating the terms of his probation by having contact with Santa Lucia. On April 26th, 2019, Petitioner made his allocution to Judge Medema. In his allocution, Petitioner said that he was happy to see Santa Lucia on December 31st, and that she had been on her way to the airport to pick up her daughter, but stopped in to visit with Petitioner. She also asked him a favor – to borrow his four-wheel drive vehicle to drive on the snow. Petitioner said he was flattered by this request.

He then told Judge Medema that he knew it was wrong to have contact with Santa Lucia, and that it would not happen again. As a result of this probation violation, Petitioner was sentenced to prison.

Petitioner filed this petition for post-conviction relief after having seen the June 12, 2019 report from Det. Dozier. He claims that he had a viable defense to the no-contact order violation, one of duress or coercion. His petition claims that he was being extorted by Santa Lucia for money during the August—December period, and that any contact between the two of them was coerced. Petitioner claims that he was forced to have contact with Santa Lucia; that if he did not allow such contact that she would have made false claims to law enforcement that would lead to his arrest. His petition alleges that Det. Dozier's report provides evidence of this claim, and that it could have been used at his trial. However, since the report was not disclosed to him in a timely manner prior to the trial, his due process rights have been violated. He argues that if he had the report prior to trial, he would have been able to testify on his own behalf, and the result of the trial would likely have been different.

CONCLUSIONS OF LAW

A post-conviction relief proceeding is a civil action, and thus the "applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based." State v. Payne, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008); Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990); Idaho Code section 19-4907.

Due process requires all material exculpatory evidence known to the State or in its possession be disclosed to the defendant. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); Grube v. State, 134 Idaho 24, 27, 995 P.2d 794, 797 (2000). Proving a *Brady* violation requires a three-part showing: "The evidence at issue must be favorable to the accused,

either because it is exculpatory, or because it is impeaching; that the evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Stricker v. Greene, 527 U.S. 263, 281-82, 119 S.Ct 1936, 1948, 144 L.Ed.2d 286, 301-02 (1999). Prejudice is shown where the favorable evidence is material, and constitutional error results from its suppression by the government if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. Kyles v. Whitley, 514 U.S. 419, 433, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490, 505 (1995). A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." *Id.*

The "potentially exculpatory information" that Petitioner refers to is the Garden City police report, dated June 12, 2019. It is attached to this order as Exhibit 1. Petitioner argues that this report contains both exculpatory and impeaching information; that this report was not disclosed to him, and; had he been in possession of this information, the result of the trial likely would have been different.

Petitioner argues that he had a lawful defense to the charge of violating the no-contact order; that he had been coerced by Santa Lucia to maintain contact, and that he was being extorted by her with threats of turning him in to police for having contact with her. He claims that he and his trial attorney discussed this defense, but decided not to pursue it because they felt they didn't have the proof necessary to establish this defense. Petitioner argues that had the contents of the interview been disclosed to him prior to trial, that this interview provided the necessary evidence they would need to argue the coercion defense.

Petitioner argues that the contents of the interview would have helped him to establish three points. First, it would have clarified the nature of the relationship between Petitioner and Santa

Lucia, and establish that she was not being truthful when she testified that they had an on-going relationship during the relevant time. Second, it would have provided evidence of the degree financial dependence Santa Lucia had on Petitioner and her need to maintain a flow of income from him. Third, the report would have provided impeachment evidence about Santa Lucia's degree of fear of Petitioner, and support his theory that she was keeping the no-contact order in place to keep the money coming from Petitioner.

Petitioner further supports this claim by directing this court to a declaration filed by his trial attorney. On November 9th, 2020, Gabriel J. McCarthy, Petitioner's trial attorney, filed a declaration in which he asserts:

> Mr. Lundquist informed me shortly after being arrested on January 14, 2019 that Ms. Santa Lucia was threatening him with requesting more criminal charges if Mr. Lundquist did not pay her back for her attorney's fees she incurred to defend against a protection order Mr. Lundquist obtained against her.
>
> I met with Mr. Lundquist at the Ada County Jail to discuss evidence and trial strategy. I do not recall the exact date, but it occurred prior to Mr. Lundquist's jury trial in this case on March 28, 2019.
>
> We discussed a potential defense of duress, coercion and necessity based on the idea that the alleged victim, Ms. Santa Lucia may be extorting Mr. Lundquist for money, and therefore Mr. Lundquist's contact with Ms. Santa Lucia was not willful on his part. I have a specific recollection that we had this discussion.
>
> Based on the evidence at the time, I did not feel that this was a viable defense. I did not pursue this defense any further.

Assuming that Petitioner has established the first two prongs of the *Brady* test; that the information contained in the report is at least impeaching, and that it was not disclosed, the court will address the issue of prejudice for each of the three areas Petitioner has identified.

I. The Relationship, If Any, Between Petitioner and Santa Lucia.

Petitioner argues that it was necessary for Santa Lucia to claim that there was an ongoing relationship between the two of them in order to keep the no-contact order in place. He argues

that she testified untruthfully about such a relationship at trial, but contradicted herself by what she told Det. Dozier during their interview, and how she was in fact afraid of Petitioner.

Petitioner's argument is based upon a faulty premise. The no-contact order in effect on December 31st, 2018 was a result of Petitioner's conviction for Second Degree Stalking in Ada County Case No. CR01-18-30736, which entered on August 24th, 2018. That no contact order is *still* in effect, and will remain so until August 23, 2022. The nature of the on-going relationship between the two is immaterial. Santa Lucia would have no reason to maintain that they were still romantically involved for the order to remain in effect. Unless the judge who issued the no-contact order modified or dismiss it, it remains in full force.

In addition, the contents of the interview do not prove that Petitioner and Santa Lucia were not in some kind of a relationship. While Santa Lucia did tell Det. Dozier that she didn't want the no-contact order terminated, and that she was fearful of him, she also told Det. Dozier that she felt sorry for Petitioner and that she enjoyed the security he provided. This up-and-down nature of their relationship came up during the trial when Santa Lucia testified about Petitioner's efforts to get a civil protection order against her when he believed that she had thrown a rock through his windshield. Santa Lucia also testified about discussions she and Petitioner had about false claims of infidelity. Her testimony showed that she and Petitioner had the typical highs and lows of many relationships, and Det. Dozier's report reinforced that. The court finds that Petitioner has not carried his burden of establishing prejudice on this issue.

II. Santa Lucia's Financial Dependence on Petitioner.

Next, Petitioner argues that Det. Dozier's report reflects the true nature of Santa Lucia's financial dependence upon him, and demonstrates a motive for her to extort and coerce him. Det. Dozier's report states that Santa Lucia "enjoyed the security" that Petitioner provided, and that he

would pay her bills and generally take care of her. It also mentions that Petitioner had been paying Santa Lucia's rent and providing her with "monetary benefits."

However, this was not new information to Petitioner. At trial, Santa Lucia was cross-examined vigorously about these issues, and she went into even greater detail about these "monetary benefits." Santa Lucia testified that Petitioner had bought a plane ticket and computer for Santa Lucia's daughter, that he helped out with paying the bills, and that she had asked him to help pay a legal bill. Nothing Det. Dozier's report establishes a financial dependence by Santa Lucia on Petitioner to make ends meet, nor does it contain any information that was not known or explored at trial. The court finds that Petitioner has not met his burden in establishing prejudice on this issue.

III. Santa Lucia's Contradictory Statements About Being in Fear of Petitioner.

Petitioner's claim here is similar to his first argument, in that he claims that Santa Lucia needed to claim that she was still in fear of Petitioner so that the no contact order would remain in place. He claims that Santa Lucia testified at the trial that she was not in fear of Petitioner, but told Det. Dozier that she was. Had he been in possession of the information provided to Det. Dozier, Petitioner argues that he could have impeached Santa Lucia's trial testimony. The court finds two flaws to this argument.

First, as discussed above, Santa Lucia did not need to establish that she was still in fear of Petitioner in order for the no-contact order to remain in effect. Second, Santa Lucia did not testify at the trial that she was not in fear of Petitioner. The prosecuting attorney did not ask her whether she was afraid of Petitioner, and neither did Mr. McCarthy. That subject was never brought up. She was questioned about their relationship and its on-going nature from August to December of 2018, and their frequent contacts, but no one ever asked her about whether she was afraid of

Petitioner. While her testimony may have *implied* that she was not fearful of Petitioner, it is difficult to see how a single reference in her statement to Det. Dozier could have supported the theory that she was keeping the protection order in place to keep the money coming from Petitioner. Likewise, its impeachment value is minimal. Det. Dozier's report on this topic is contained in a single paragraph, and reads as follows:

> Gena said this was untrue [referring to a line in her letter to have the no contact order dismissed] and only inserted by Stephen. She explained she was still fearful of him but also felt sorry for him. She easily gave into the pressure he exerted on her to file the motion because he had been paying her rent and providing her with monetary benefits. She was not relieved, but scared of the order being cancelled.

This court does not see how this information supports the claim that Petitioner was being extorted by Santa Lucia, or that it provides any meaningful material for impeachment. Again, the court finds that Petitioner has not met his burden in establishing prejudice on this issue.

IV. The Duress/Coercion Defense.

Petitioner has claimed that the only reason that he had contact with Santa Lucia, in violation of the no-contact order, was because he was being extorted by her. He argues that he would have presented this defense at trial, but was precluded from doing so because of a lack of evidence to support this argument. But, the argument continues, had he been in possession of the information provided to Det. Dozier, he would have had the evidence he needed, and a viable defense could have been presented to the jury.

As reference above, Petitioner provided the declaration from his trial attorney in support of this claim. Mr. McCarthy provided a declaration in which he addressed the topic of the potential defense of duress or coercion. He stated that the topic was discussed, but was abandoned because "[b]ased on the evidence at the time, I did not feel that this was a viable defense. I did not pursue this defense any further."

What this court finds telling about this declaration is not so much what is says, but rather what it does not say. Mr. McCarthy does not assert in his declaration that having Santa Lucia's interview, as described in the June 12th, 2019 police report, would have changed his mind concerning the viability of the "extortion" defense. Petitioner has highlighted the phrase "based on the evidence at the time," as if to suggest that the police report is new evidence that makes the extortion defense viable. But Mr. McCarthy's declaration does not assert, or even imply, that such is the case. It only establishes that the defense was considered, but then rejected due to a lack of supporting evidence.

This court finds that the lack of supporting evidence for the extortion defense is due to a simple fact: that there is none because the allegation is not true. Two items lead the court to this conclusion. First, Petitioner claims that that he could not tell anyone about this extortion because it would lead to false accusations by Santa Lucia that would put him in legal jeopardy. But Petitioner was quick to file for a civil protection order when he believed that Santa Lucia had damaged his windshield. He did not appear to seek the protection of the law when he thought that he had been wronged. If he was willing to do so over a piece of broken glass, it would seem as if he would seek the legal protection to avoid going to jail.

Second, his own words condemn him. As pointed out by the state at length, when Petitioner admitted to his felony probation violation, a course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to a hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation.

But perhaps even more telling is his allocution to Judge Medema weeks later at the disposition of his probation violation. Knowing that this was his third violation, and that prison

was looming, he spoke to Judge Medema and described the events of December 31st as something he knew was wrong and that he shouldn't have had contact with Santa Lucia, and that he wouldn't do it again. Petitioner's explanation that he didn't tell Judge Medema about being extorted by Santa Lucia because he didn't want to anger or upset him defies logic. When one is staring at a lengthy prison sentence and that person is in possession of true mitigating information, why would you hide it from the one person to whom it would make a difference – the person who might make that prison sentence a reality? Petitioner's explanation is simply not credible.

Based on the above, the court finds that Petitioner has not met his burden to establish a Brady violation, and therefore Petitioner's request for post-conviction relief is hereby DENIED.

DATED this 28th day of February, 2021.

THOMAS P. WATKINS
Magistrate Judge