IN THE SUPREME COURT OF IOWA

MARTIN SHANE MOON, Applicant–Appellant, STATE OF IOWA, Respondent–Appellee.	Supreme Court No.: 15-1815 Clarke County Case No. PCCV011631

ORAL ARGUMENT REQUESTED

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY

Honorable Gary Kimes

APPELLANT'S FINAL BRIEF

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IN THIS CASE, BECAUSE THE DISTRICT COURT ADOPTED THE STATE'S FACTUAL FINDINGS AND LEGAL CONCLUSIONS VERBATIM, NO DEFERENTIAL STANDARD IS OWED TO THE DISTRICT COURT'S FINDINGS.

AUTHORITIES:

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ROUTING STATEMENT

This case should be *transferred to the court of appeals* because it presents a question regarding the application of existing legal principles. IA R. APP. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case:

Martin Moon (Moon) appeals the ruling of District Court Judge Gary Kimes granting the State's motion for summary disposition of Moon's application for post conviction relief. Moon raised grounds of fact or law sufficient to circumvent the three-year statute of limitations in Iowa Code section 822.3.

Procedural History:

On June 16, 2000, Moon was convicted of murder, nine years after the subject homicide. On appeal, his conviction was affirmed by a 5-4 divided *en banc* Iowa Court of Appeals. *State v. Moon*, No. 00-1128, 2002 Iowa App. LEXIS 409, at *19 (Iowa Ct. App. Apr. 24, 2002).

On October 31, 2002, Moon applied for postconviction relief alleging ineffective assistance of counsel and trial court error. The district court denied the application and the Iowa Court of Appeals affirmed. *Moon v. State*, No. 05-0816, 2007 Iowa App. LEXIS 562, at *27 (Iowa Ct. App. 2007).

On January 12, 2012, Moon filed his second postconviction application, in which Moon claimed:

1. The judgment and sentence were in violation of due process clauses in the United States and Iowa Constitutions
2. The judgment and sentence are subject to collateral attack as the trial information was insufficient and unconstitutional.

(Appx. at 23, 29.)

On March 15, 2015, Moon amended his application to allege that newly discovered material evidence requires vacation of his original sentence and judgment. (Appx. at 60.)

On May 7, 2015, the State moved for summary dismissal under Iowa Code section 822.6. (Appx. at 71.) Moon resisted. (Appx. at 75.) A hearing on the State's motion occurred on August 6, 2015. (Appx. at 82.) On October 16, 2015, the district court granted the State's motion for summary dismissal. (Appx. at 103.) Moon appealed on October 27, 2015. (Appx. at 109.)

Factual Background:

Moon's application alleges that newly discovered material evidence requires vacation of his original sentence and judgment. (Appx. at 23.) The newly discovered evidence includes: Brandon Lee Boone's admission that he provided false information to law enforcement; Boone's statements that other individuals

provided incentive to lie; and Boone's statement that, at the time he provided information implicating Moon, Boone believed that, in exchange for testimony against Moon, Boone would receive leniency from the State on a pending charge. (Appx. at 23, 69.) Specifically, Moon alleges that the State withheld exculpatory evidence in violation of *Brady v. Maryland*, including notes, statements, and reports of interviews of Brandon Lee Boone. (Appx. at 23.)

Moon provided a 2011 affidavit from Brandon Lee Boone to the district court in support of his postconviction application. (Appx. at 69.) In the affidavit, Boone avers that in 1998 and 1999, Boone was contacted multiple times by DCI regarding the death of Kevin Dickson. (Appx. at 69.) Boone avers that Casey Brodsack prepared Boone to lie to DCI and to implicate Moon in the death of Kevin Dickson. (Appx. at 69.) Boone avers that he gave false statements to law enforcement because of Casey Brodsack influence over Boone, and also because Boone was fearful of a pending charge against him. (Appx. at 69.) Boone averred that he later tried to tell law enforcement that his statements implicating Moon were false; but law enforcement ignored Boone's communication. (Appx. at 69.) Moon also submitted an affidavit averring that, during his original trial, he never received any police reports or investigation reports regarding Boone's original statements, or the later recanting of those statements to law enforcement. (Appx. at 67.)

On May 7, 2015, the State moved for summary dismissal under Iowa Code section 822.6. (Appx. at 71.) The State argued that Moon's application was untimely under Iowa Code section 822.3, which provides a three-year window after procedendo in which postconviction applications must be filed. (Appx. at 72-73.) The State also argued that the claims in Moon's postconviction application and his supplemental petition were without merit. (Appx. at 73.)

On July 30, 2015, Moon resisted the State's motion. (Appx. at 75.) Moon argues that the Boone affidavit constitutes new evidence that allows Moon to circumvent the three-year statute of limitation in Iowa Code section 822.3. (Appx. at 79.) Moon also argues that the Boone affidavit is sufficient to allow his *Brady* violation claim to proceed. (Appx. at 75.) Moon argues that the Boone affidavit, when considered with the allegations in his PCR applications, creates factual questions sufficient to defeat the State's motion. (Appx. at 79-80.)

The State's motion was heard on August 6, 2015. (Appx. at 82.) At hearing, Moon reasserted each argument in his brief, and emphasized that, because summary judgment rules apply to postconviction summary dismissal proceedings, all evidence must be taken in the light most favorable to Moon. (Appx. at 87.) Following the hearing, the district court ordered that the parties submit proposed rulings. (Appx. at 88, 90.) Each party submitted a proposed ruling. (Appx. at 92, 97.)

On October 16, 2015, the district court granted the State's motion for summary dismissal, through a ruling that mirrored exactly the State's proposed findings of fact and conclusions of law.[1] (Appx. at 92, 103.) The district court concluded that all of Moon's claims were untimely. (Appx. at 94, 104-05.) Regarding the Boone affidavit, the district court concluded that, because Boone's statements were never used and Boone never testified against Moon, the information in the affidavit was merely impeaching. (Appx. at 95, 106.) The district court concluded that Moon was not prejudiced. (Appx. at 96, 107.) The district court also concluded that this new evidence would not have changed the outcome of the trial. (Appx. at 96, 107.) The court concluded that Moon's

[1] This mirroring includes underlining and italics, incorrect and inconsistent citation formatting, and typographical errors. Incorrect and inconsistent citation formatting includes the citation to the court of appeals case *State v. Edman*, which errantly uses the parenthetical "(Iowa App. 1989)" instead of "(Iowa Ct. App. 1989)." (Appx. at 95, 106.) This mirroring also includes inconsistent citation format between the court of appeals decisions in Moon's previous cases on page one of the Order, and on page four and five of the Order. (Appx. at 92, 97, 103, 108-09.)

Typographical errors mirrored by the district court include the misspelling of Boone's last name ("Boon" instead of "Boone") on page four of the State's proposed findings and on page four of the district court's ruling. (Appx. at 95, 106.) In fact, the only change made by the district court to the body of the State's proposed findings was to change every instance of the word "postconviction" to "post-conviction", including the incorrect addition of a hyphen to the word in direct quotes from *State v. Rheuport*, 238 N.W.2d 770, 776 (Iowa 1976), and *State v. Edman*, 444 N.W.2d 103, 106 (Iowa Ct. App. 1989). (Appx. at 93, 94, 104, 105.)

postconviction application was untimely, and the newly discovered evidence did not fall within the exception in Iowa Code section 822.3. (Appx. at 98, 109.)

Moon appealed on October 27, 2015. (Appx. at 109.)

ARGUMENT

Iowa Code sections 822.2 and 822.3 provide the process by which an individual may apply for postconviction relief:

> Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief:
> a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
> . . . .
>
> d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
> . . . .
>
> g. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910.

Iowa Code § 822.2.

> A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 1, paragraph "f", the application shall be filed with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary

> decision is final. All other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period. . . .

Iowa Code § 822.3.

Iowa Code section 822.6 provides the methods by which a party may request summary dismissal or disposition in a postconviction case:

> The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Id. § 822.6. "Disposition under [this] paragraph . . . is analogous to the summary judgment procedure" in the Iowa Rules of Civil Procedure. *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002) (internal quotations omitted).

> When a motion for summary judgment seeks judgment on the basis that the plaintiff's claim does not provide relief as a matter of law, the plaintiff is only required to resist the motion by responding to those elements of the claim for relief under attack. Any other approach could deprive the nonmovant of the opportunity provided under the rules of summary judgment to address the actual grounds for summary judgment. Similarly, a party who has successfully moved for summary judgment may not raise different grounds on appeal to support summary judgment than those raised before the district court.

Castro v. State, 795 N.W.2d 789, 794 (Iowa 2011) (internal citations omitted).

I. THE DISTRICT COURT ERRED IN DISMISSING MOON'S CLAIMS

a. Preservation of Error

Moon argued before the district court that the court should overrule the State's motion for summary dismissal because newly discovered evidence existed, and because the State withheld exculpatory material. (Appx. at 23, 75, 97.) On October 20, 2015, the district court overruled all arguments in Moon's resistance, and dismissed Moon's postconviction applications. (Appx. at 103.) On October 27, 2015, Moon timely filed a notice of appeal. (Appx. at 109.) Moon properly preserved error on this issue.

b. Standard of Review

Decisions regarding the summary dismissal of postconviction applications are normally reviewed for corrections of errors of law. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011); *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). Postconviction proceedings that raise constitutional claims are reviewed de novo. *DeSimone v. State*, 803 N.W.2d 97, 102 (Iowa 2011); *Castro*, 795 N.W.2d at 792.

Appellate courts may "give[ ] deference to the factual findings of the district court . . . , but [are] not bound by such findings." *State v. Pals*, 805. N.W.2d 767, 771 (Iowa 2011) (internal quotation and brackets omitted).

However, as in this case, when a district court adopts the prevailing party's factual findings and legal conclusions verbatim, an appellate court's "ability to apply the usual deferential standard to the district court is undermined by the court's verbatim adoption of [a party's] proposed factual findings and legal conclusions", and "[t]he customary deference accorded trial courts cannot fairly be applied [because] the decision on review reflects the findings of the prevailing litigant rather than the court's own scrutiny of the evidence and articulation of controlling legal principles." *Gannon v. Rumbaugh*, 772 N.W.2d 258, 260 (Iowa Ct. App. 2009) (citing *Rubes v. Mega Life & Health Ins. Co., Inc.,* 642 N.W.2d 263, 266 (Iowa 2002)). Therefore, "[a] closer scrutiny of the record is required where the trial court adopts one party's proposed findings." *Id.*

c. **Analysis**

i. *No Deference is Owed to the District Court's Findings of Facts and Conclusions of Law*

In this case, the district court adopted the State's proposed findings of facts and conclusions of law verbatim. (Appx. at 92, 103.) As argued above, because the district court adopted the proposed ruling verbatim, the ruling should not receive the customary deference accorded trial courts.

ii. *Newly Discovered Evidence*

In this case, the district court erred in concluding that Moon's postconviction claim regarding newly discovered evidence was time-barred.

> To prevail on [a] newly discovered evidence claim, [Moon was] required to show:
>
> (1) that the evidence was discovered after the verdict; (2) that it could not have been discovered earlier in the exercise of due diligence; (3) that the evidence is material to the issues in the case and not merely cumulative or impeaching; and (4) that the evidence probably would have changed the result of the trial.

Harrington v. State, 659 N.W.2d 509, 516 (Iowa 2003).

Moon submitted sufficient evidence to create a fact question on each of the necessary elements for a newly discovered evidence claim.

First, the affidavits submitted by Moon create a fact question regarding the discovery of evidence after the verdict in Moon's criminal case. Moon submitted his own affidavit and one from Brandon Boone, a state witness. (Appx. at 67, 69.) Boone's 2011 affidavit acknowledges that he gave multiple false statements to law enforcement during the investigation. (Appx. at 69.) Boone's affidavit also provides that Boone made multiple retractions and recanted his statements, and that Boone informed law enforcement of the individual who attempted to influence Boone to lie in this matter. (Appx. at 69.) Moon's affidavit provides that he never received information about Boone's statements, about Boone's recantations of his statements, or about Casey Brodsack's influence on Boone's statements. (Appx. at

67.) Therefore, taken in the light most favorable to Moon, sufficient evidence exists to at least create a fact question regarding the first element for a newly discovered evidence claim. *Castro*, 795 N.W.2d at 792. The district court erred in concluding otherwise.

Second, the affidavits submitted by Moon establish that this new evidence could not have been discovered earlier in the exercise of due diligence. As indicated by Boone's affidavit, had Boone been called as a trial witness, he would have testified consistent with his statements implicating Moon. (Appx. at 69.) When analyzing whether due diligence was exercised, Iowa court's must be mindful that only reasonable efforts of investigation by counsel are required. *Zaabel v. State*, No. 03-2056, 2004 WL 1899837, at *6 (Iowa Ct. App. 2004) (citing *State v. Compiano*, 154 N.W.2d 845, 850 (Iowa 1967)). In addition, Moon's affidavit provides he received no information regarding Boone's statements to law enforcement. (Appx. at 67.) As Boone was not a witness at trial and his statements were not disclosed to Moon, the information in question could not have been found previously in the exercise of due diligence. Taken in the light most favorable to Moon, this new evidence presented by Moon is sufficient to create a fact question regarding the second requirement for a newly discovered evidence claim. *Castro*, 795 N.W.2d at 792.

Third, the affidavits submitted establish that this new evidence is material to the issues in this case and not merely cumulative or impeaching. Boone stated in his affidavit that an individual appeared to be attempting to "frame" Moon by influencing Boone to lie to law enforcement and falsely implicated Moon in the death of Kevin Dickson. (Appx. at 69.) This evidence is material to the central issue of the underlying criminal case against Moon. "Evidence is material when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." *Harrington*, 659 N.W.2d at 523 (internal quotations omitted). "[T]he question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* (internal quotations omitted). Here, evidence now provided by Boone, when taken in the light most favorable to Moon, raises a reasonable probability of a different outcome than that in the original criminal trial. *Castro*, 795 N.W.2d at 792. Moon has sufficient facts to create a fact question regarding the third requirement for a newly discovered evidence claim, and the district court erred when it concluded otherwise.

Fourth, the affidavits submitted establish that this new evidence probably would have changed the outcome of Moon's trial. The affidavits in this case establish that Casey Brodsack orchestrated presentation of false information implicating Moon in the murder. (Appx. at 69.) Had this evidence been available at

trial, it would have supported the assertion that Moon was innocent, as well as supported the assertion that Casey Brodsack was responsible for the death. Taken in the light most favorable to Moon, this evidence creates a factual question regarding the probability of changing the result of the trial in the underlying criminal matter. *Castro*, 795 N.W.2d at 792. The affidavits submitted create a fact question regarding the fourth requirement for a newly discovered evidence claim.

As discussed above, all inferences in this case should have been made in favor of Moon as the non-moving party. *See* Iowa Code § 822.6; *Castro*, 795 N.W.2d at 792; *Manning*, 654 N.W.2d at 559. Moon provided sufficient evidence to create factual questions regarding each of the elements of his newly discovered evidence claim. *See Castro*, 795 N.W.2d at 794 (reversing a grant of summary dismissal on a claim when a PCR applicant resisted the motion and provided a showing sufficient to create a fact question). (Appx. at 67, 69.) The district court erred in failing to take this evidence in the light most favorable to Moon, and erred in granting the State's summary dismissal motion. The district court's decision should be reversed and remanded.

iii. *Brady Violation*

The district court erred in concluding that Moon's due process postconviction claim regarding the *Brady* violation was time-barred.

A postconviction applicant may succeed on a due process *Brady* claim by establishing: "(1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and (3) the evidence was material to the issue of guilt." *Harrington v. State*, 659 N.W.2d 509, 516 (Iowa 2003).

> The prosecution has a duty to learn of any favorable evidence known to ... others acting on the government's behalf in the case, including the police. Nondisclosure of evidence is the touchstone for suppression; the good or bad faith of the prosecutor is not relevant. The prosecution has a duty to disclose regardless of whether the accused requests *Brady* material. Nonetheless, if the defendant either knew or should have known of the essential facts permitting him to take advantage of the evidence, the evidence is not considered suppressed. However, before holding a lack of diligence on the part of defense counsel, defense counsel must be aware of the potentially exculpatory nature of the evidence and its existence.

DeSimone, 803 N.W.2d at 103 (internal citations and quotations omitted).

"Impeachment evidence ... as well as exculpatory evidence, falls within the *Brady* rule. Such evidence is evidence favorable to an accused, so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." *Id.* at 105 (internal quotations omitted).

Finally,

> evidence is material when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

> The materiality inquiry is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions. Rather, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Thus, the materiality requirement requires the court to assess the possible effects nondisclosure had on trial preparation and strategy, not merely the weight of the evidence.

Id. (internal citations, quotations, and brackets omitted).

Here, again, the district court erred in summarily dismissing Moon's postconviction claim regarding due process *Brady* violations.

First, Moon, through his affidavit, states that he never received any information regarding Boone's statements (made at the behest of Casey Brodsack), or his later recanting of those statements. (Appx. at 67.) Boone's affidavit establishes that he spoke with law enforcement more than once and was a potential witness for the State and that he recanted statements to law enforcement. (Appx. at 69.) This information, when taken in the light most favorable to Moon, is sufficient to create a factual question for the first element of the *Brady* violation claim, and is sufficient to survive summary dismissal. *See Castro*, 795 N.W.2d at 792, 794.

Second, the information regarding Boone's recantation of a statement and Casey Brodsack's influence is material to the issue of guilt. Boone's affidavit provides that Boone initially stated Moon was responsible for the murder, but later recanted. (Appx. at 69.) Boone's affidavit also provides that Casey Brodsack

influenced Boone to make the false statements. (Appx. at 69.) Of note, Casey Brodsack was also a suspect in the murder. Taking this evidence in the light most favorable to Moon, this evidence is favorable to Moon and satisfies the second element of a *Brady* violation claim. *DeSimone*, N.W.2d at 105.

Third, taking the information in the light most favorable to Moon, the suppressed information was material to the issue of Moon's guilt. The suppressed evidence from Boone weighs heavily toward the guilt of Casey Brodsack for the murder, and could have been used to impeach, cross-examine, and otherwise call into question any testimony Brodsack provided at trial. (Appx. at 69.) Evidence that Brodsack influenced a witness to lie and that Brodsack attempted to inculpate Moon would weigh heavily on the credibility of any statements made by Brodsack, and could completely change the Moon's general trial strategy, as well as the specific cross-examination strategy for Brodsack. *See DeSimone*, N.W.2d at 105. This information could have influenced the decision by the State to call Brodsack as a witness, had the State been forced to disclose the evidence in Boone's affidavit. It is clear that, taken in the light most favorable to Moon, this evidence was material to the issue of guilt, and the district court erred in concluding otherwise. *See DeSimone*, N.W.2d at 105.

Moon provided sufficient evidence to create factual questions regarding his due process *Brady* claim.

CONCLUSION

The district court erred in failing to take the evidence submitted in the light most favorable to Moon, and in dismissing Moon's newly discovered evidence claim, and in dismissing Moon's due process *Brady* violation claim. The district court's order should be reversed and this matter should be remanded for further proceedings on the merits of Moon's claims.

REQUEST FOR ORAL ARGUMENT

Martin Moon requests oral argument.

CERTIFICATE OF PRODUCTION COSTS

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/s/ Christine E. Branstad April 13, 2017
Christine E. Branstad

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I, Christine Branstad, certify that I filed the Appellant's Final Brief with the Clerk of the Supreme Court. These copies were electronically filed on April 13, 2017 with Clerk of the Supreme Court.

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CERTIFICATE OF SERVICE:

I, Christine Branstad, certify that copies of the Appellant's Proof Brief were served on April 13, 2017:

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