

BOISE, WEDNESDAY, NOVEMBER 4, 2020 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DANIEL CHERNOBIEFF,

Petitioner-Appellant,

V.

STATE OF IDAHO,

Respondent.

Docket No. 47337

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Gerald F. Schroeder, District Judge.

Silvey Law Office, Ltd., Boise, for Appellant.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent.

In an appeal from Ada County district court, Daniel Chernobieff challenges the summary dismissal of his petition for post-conviction relief. Chernobieff alleges that he received ineffective assistance of counsel when his defense counsel objected to, and had struck, testimony which could have formed the basis of an argument that the State did not have good cause for its inability to obtain a warrant prior to drawing his blood.

Following his charge of misdemeanor DUI with an excessive blood alcohol content, Chernobieff moved to suppress the results of a warrantless blood draw taken the night of his arrest. At a hearing on this motion, Chernobieff’s counsel objected to testimony that the on-call magistrate did not have his phone ringer on the night of Chernobieff’s arrest and thus was unavailable to issue a warrant (“the ringer testimony”). The court sustained the objection, struck the testimony, and ultimately denied Chernobieff’s motion to suppress on the grounds that exigent circumstances justified the search. The Supreme Court of Idaho affirmed on direct appeal but expressed concern with the after-hours warrant procedures in Ada County at the time of

Chernobieff's arrest, holding that the State had the burden to demonstrate good cause for an on-call magistrate's unavailability.

Chernobieff's petition for post-conviction relief followed, alleging that his defense counsel's objection to the ringer testimony was unreasonable and prejudicial because it could have been used to demonstrate the State lacked good cause for failing to obtain a warrant. The magistrate court summarily dismissed Chernobieff's petition and the district court, acting in its appellate capacity, affirmed. Chernobieff timely appealed to this Court, asserting that the district court erred in determining that he had not raised a triable issue of material fact concerning his ineffective assistance of counsel claim.