

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52324

|                        |   |                                 |
|------------------------|---|---------------------------------|
| PATRICK MICHAEL WHITE, | ) |                                 |
|                        | ) | <b>Filed: September 9, 2026</b> |
| Plaintiff-Respondent,  | ) |                                 |
|                        | ) | <b>Melanie Gagnepain, Clerk</b> |
| v.                     | ) |                                 |
|                        | ) | <b>THIS IS AN UNPUBLISHED</b>   |
| STATE OF IDAHO,        | ) | <b>OPINION AND SHALL NOT</b>    |
|                        | ) | <b>BE CITED AS AUTHORITY</b>    |
| Defendant-Appellant.   | ) |                                 |
|                        | ) |                                 |

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Nancy Baskin, District Judge.

Judgment summarily dismissing petition for post-conviction relief, affirmed.

Ferguson Durham, PLLC; Craig H. Durham, Boise, for appellant.

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

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LORELLO, Judge

Patrick Michael White appeals from the judgment summarily dismissing his petition for post-conviction relief. We affirm.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Late one evening, law enforcement responded to a 911 call from a convenience store. The caller, White, initially requested medical assistance. However, during the same call, White indicated he was feeling better and no longer required assistance. After White hung up, the 911 dispatcher called the store and spoke with an employee who said White was “walking away and appeared high on either alcohol or drugs.” When the first officer arrived, White was in the store’s parking lot. The officer asked White to “come over here” and “what’s going on.” Although the officer noted that White was slurring his words and appeared clammy, he indicated he was feeling

better and declined medical assistance. The officer asked White if he had identification, which he provided. White denied taking any drugs or alcohol but said he was taking medication to address addiction issues. A second officer arrived and discussed the situation with White. The second officer observed that White was sweating, which the officer thought was odd given the cold temperature. The second officer also observed White's "pupils were constricted" and that he had "a very slow, low-toned speech," which the officer indicated "were common with narcotic usage."

Thereafter, dispatch confirmed that White had an outstanding warrant. The second officer arrested White and conducted a search incident to the arrest that revealed "a syringe in his right pocket, suspected anabolic steroids in his left pocket, and multiple suspected items of THC." As White was being transported to jail, the second officer suspected White had additional contraband on his person. The second officer asked White whether he had "anything else on" him, informed him that he would be searched upon arriving at the jail, and warned that any contraband discovered during the search would result in additional charges. White responded that he did not have anything. Upon arriving at the jail, White was read his *Miranda*<sup>1</sup> rights for the first time and admitted he owned the syringe, anabolic steroids, and THC items. The second officer again asked White whether he had any other drugs on him, and he responded that he did not. White was booked into jail and strip searched. During the search, "a sandwich-sized yellow plastic bag fell out of" White's underwear. The second officer was informed of the plastic bag and, based on the "strong odor of vinegar and appearance of the substance," the second officer believed the bag contained heroin. The contents of the bag later tested positive for heroin. Following the strip search, the second officer told White: "What did I tell you on the way here? I told you it was an extra charge, didn't I?" White responded, "yeah, you totally did."

White was charged with trafficking in heroin, introduction of heroin into a correction facility, two counts of possession of a controlled substance, and possession of drug paraphernalia. The State also alleged White is a persistent violator of the law. White filed a motion to dismiss, contending Idaho's overdose immunity statute barred his prosecution, which the district court denied. Prior to trial, the State dismissed both counts of possession of a controlled substance as well as the drug paraphernalia charge. Thereafter, a jury found White guilty of trafficking in

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<sup>1</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

heroin, I.C. § 37-2732B(a)(6)(C), and introduction of heroin into a correctional facility, I.C. §§ 18-2510(3) and 19-2520F. Following the jury's verdict, the State dismissed the persistent violator enhancement. White appealed his judgment of conviction and sentences to this Court, which we affirmed in an unpublished opinion. *See State v. White*, Docket No. 49530 (Ct. App. Dec. 9, 2022). White filed a pro se petition for post-conviction relief. After being appointed counsel, White filed an amended petition raising a number of ineffective assistance of counsel claims. In response, the State filed a motion for summary dismissal. Ultimately, the district court granted the State's motion, finding that White failed to establish genuine issues of material fact pertaining to his claims of ineffective assistance of counsel. As a result, the district court summarily dismissed White's amended petition. White appeals.

## II.

### STANDARD OF REVIEW

On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief. *Ridgley v. State*, 148 Idaho 671, 675, 227 P.3d 925, 929 (2010); *Sheahan v. State*, 146 Idaho 101, 104, 190 P.3d 920, 923 (Ct. App. 2008). Over questions of law, we exercise free review. *Rhoades v. State*, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009); *Downing v. State*, 136 Idaho 367, 370, 33 P.3d 841, 844 (Ct. App. 2001).

## III.

### ANALYSIS

White argues the district court erred in summarily dismissing two of his ineffective assistance of counsel claims relating to trial counsel's failure to file a pretrial motion to suppress. The State responds that the record and applicable law support the district court's summary dismissal of White's petition. We hold that White has failed to show the district court erred in summarily dismissing his petition.

A petition for post-conviction relief initiates a proceeding that is civil in nature. I.C. § 19-4907; *Rhoades*, 148 Idaho at 249, 220 P.3d at 1068; *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). A post-conviction petitioner must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. *Goodwin v. State*, 138 Idaho 269, 271,

61 P.3d 626, 628 (Ct. App. 2002). A petition for post-conviction relief must be verified with respect to facts within the personal knowledge of the petitioner, and affidavits, records, or other evidence supporting its allegations must be attached or the petition must state why such supporting evidence is not included with the petition. I.C. § 19-4903. In other words, the petition must present or be accompanied by admissible evidence supporting its allegations or the petition will be subject to dismissal. *Wolf v. State*, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011).

Idaho Code Section 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to a motion by a party or upon the court's own initiative, if 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. When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986). Moreover, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather, the district court is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). Such inferences will not be disturbed on appeal if the uncontroverted evidence is sufficient to justify them. *Id.*

Claims may be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. *Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010); *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009). Thus, summary dismissal of a claim for post-conviction relief is appropriate when the court can conclude, as a matter of law, that the petitioner is not entitled to relief even with all disputed facts construed in the petitioner's favor. For this reason, summary dismissal of a post-conviction petition may be appropriate even when the State does not controvert the petitioner's evidence. *See Roman*, 125 Idaho at 647, 873 P.2d at 901. Conversely, if the petition, affidavits, and other evidence supporting the petition allege facts

that, if true, would entitle the petitioner to relief, the post-conviction claim may not be summarily dismissed. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004); *Sheahan*, 146 Idaho at 104, 190 P.3d at 923. If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Goodwin*, 138 Idaho at 272, 61 P.3d at 629.

A claim of ineffective assistance of counsel is cognizable under the Uniform Post-Conviction Procedure Act. *Barcella v. State*, 148 Idaho 469, 477, 224 P.3d 536, 544 (Ct. App. 2009). To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Self v. State*, 145 Idaho 578, 580, 181 P.3d 504, 506 (Ct. App. 2007). To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Knutsen v. State*, 144 Idaho 433, 442, 163 P.3d 222, 231 (Ct. App. 2007). To establish prejudice, the petitioner must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Aragon*, 114 Idaho at 761, 760 P.2d at 1177; *Knutsen*, 144 Idaho at 442, 163 P.3d at 231. This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011).

White argues the district court erred when it summarily dismissed two of his ineffective assistance of counsel claims because he "alleged facts that, if true, would entitle him to relief on his claims." We address each claim below.

#### **A. Alleged Unlawful Detention**

In his amended petition, White alleged his trial counsel was ineffective for failing to file a motion to suppress on the basis that White's detention was unlawful during his initial encounter with the officers. Specifically, White alleged that the first officer unlawfully detained White in violation of his Fourth Amendment rights by directing him to "come over here," asking "what's going on," and requesting his identification. The district court disagreed and indicated it was required to "first determine the probability of success had a motion to suppress been filed" based

on the first officer's bodycam footage and White's statements in his declaration. The district court concluded that, "even if a motion to suppress had been filed, it would not have been granted based on the application of Idaho law to the undisputed facts" related to White's detention.

The district court stated that "the context of this encounter [was] very important" and highlighted that law enforcement "was responding to an initial request for medical assistance by White." The district court also noted that, although White indicated he did not need assistance and "told dispatch not to send help," the store employee "informed dispatch that they believed [White] was under the influence of drugs or alcohol." The district court therefore determined that, when the first officer arrived, he was "performing [his] community caretaking function and doing a wellness check on the individual who had" called seeking help. The district court found that "this is exactly what the community wants law enforcement to do to avoid drug overdoses or to get a struggling person the medical care they need."

Additionally, the district court disagreed with White's assertion that the first officer's request "forced" White to comply. Even if the "request 'forced' White to come towards the [first] officer such that [White] did not feel free to leave," the district court found that the first officer "was performing a lawful duty of community caretaking to check on [White's] well-being in light of all the facts known to the officer at that time." The district court explained that "the area White was in was dark and away from the lighted area of the" store. Additionally, the first officer "did not shout in an angry tone or command [White] to come over" nor did "the officer draw his weapon forcing compliance." The district court therefore found that White "willingly and voluntarily came towards the officer to answer questions." Based on the totality of the circumstances presented, the district court concluded that "the initial conduct by law enforcement seeking to interact with [White] was a part of the wellness check on [him] to ensure he did not need assistance." The district court further found that, "based on the information the officers had and [White's] own answers and how he physically and cognitively presented, the officers each had a subjective reasonable belief [he] might need assistance." The district court therefore concluded that the officers were "performing a community care taking function" when they asked White "some questions to make sure [he] was okay."

Once the first officer confirmed that White did not need further assistance, the officer asked White for "his name and his identification which [he] freely" provided. The first officer

subsequently “called the information into dispatch and continued asking questions about transportation and where [White] lived while waiting for a response from dispatch.” The district court found that “this was not a continuation of the caretaking function, but the start of a consensual encounter” between the first officer and White. According to the district court, “at no time on the [first officer’s bodycam footage] did [White] state he was done and was going to leave or ask for his identification back.” Instead, White “chose not to remain silent” and “kept interacting with the officers,” despite having “the right to walk away or not answer any questions.” The district court acknowledged that White “gave his identification to [the first officer]” but noted White did so “without asking if he was free to leave.” According to the district court, it appeared White “wanted to cooperate” and that “neither of the two officers made a show of force or authority which forced [White] to respond.” The district court found that a reasonable person in White’s situation “would have felt free to leave” and determined “the interaction became a consensual interaction” during which he voluntarily continued to answer questions and “even voluntarily gave his identification to run a check.” As a result, the district court concluded that White failed to establish that he was unlawfully detained.

Even assuming White was unlawfully detained, the district court further found that the attenuation doctrine dissipated the taint of any unlawful conduct. Specifically, the district court determined that, “just like the facts in [*State v. Page*, 140 Idaho 841, 103 P.3d 454 (2004)], the time between the seizure of [White’s] license by [the first officer] and the search pursuant to a valid arrest warrant” where the contraband was discovered was “a minimal lapse of time.” The district court also found that “the valid arrest pursuant to an outstanding warrant was an intervening circumstance” and that the first officer’s conduct was “certainly not flagrant or for an improper purpose.” The district court indicated that, “prior to the consensual encounter naturally resolving, dispatch returned saying [White] had an outstanding warrant.” The district court found that, “at this point, [White] was lawfully placed under arrest and subject to search incident to his arrest where certain controlled substances and paraphernalia were discovered on his person.” The district court concluded:

In considering the totality of the circumstances as well as the attenuation doctrine, the court finds any seizure or detention of [White] was not in violation of the Fourth Amendment or the Idaho Constitution. Having determined the encounter between officers and [White] was a result of the reasonable application

of the community caretaking functions which then evolved to a consensual encounter with the officers, [White] was not seized until he was arrested for an outstanding warrant. That seizure was lawful under *Page* and the drugs discovered in [White's] belongings or later at the jail should not be suppressed.

Accordingly, the district court concluded that “a motion to suppress would not have been granted if one had been filed.” To the extent the district court was required to consider whether the decision to file a motion to suppress was tactical or strategic, the district court found “it was a strategic call on the part of an experienced criminal defense attorney.” As a result, the district court summarily dismissed White’s first claim of ineffective assistance of counsel.

White argues the district court erred in dismissing his claim because he “was seized at the beginning of his encounter with” the first officer. White maintains that “any reasonable person hearing a uniformed police officer say, ‘hang on,’ followed by ‘come over here,’ would not have felt free to ignore those commands and continue walking.” White also argues that, even if the first officer “was justified under the community caretaking doctrine to stop White initially to determine whether he needed medical assistance,” the district court erred in dismissing his claim because “that justification quickly ceased after it was clear that [he] was not in acute distress” and “declined medical help.” According to White, “even if [he] was mildly impaired, there is no evidence that [he] presented a hazard or danger.” As a result, White argues “the officers had no reasonable suspicion based on specific and articulable facts to support a continued detention.” We disagree.

In analyzing community caretaking function cases, Idaho has adopted a totality of the circumstances test. *State v. Wixom*, 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997). The constitutional standard is whether the intrusive action of the police was reasonable in view of all the surrounding circumstances. *Id.* Reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. *State v. Godwin*, 121 Idaho 491, 495, 826 P.2d 452, 456 (1992). For the community caretaking function analysis to apply, an officer must possess a subjective belief that an individual is in need of immediate assistance, although the officer may harbor at least an expectation of detecting or finding evidence of a crime. *State v. Deccio*, 136 Idaho 442, 445, 34 P.3d 1125, 1128 (Ct. App. 2001).

As noted by the district court, the context of the encounter was “very important” in that the officers were “responding to an initial request for medical assistance” by White. Based on this



context, the first officer “had a subjective reasonable belief” that White may need assistance, which was why the officer approached White and began asking questions. This reasonable belief was supported by White’s initial 911 call, the information provided by the store employee who reported that White appeared to be “under the influence of drugs or alcohol,” and his answers to the first officer’s questions regarding White’s condition. That White declined medical assistance does not negate the other information known to the first officer at the time of the initial encounter. The circumstances surrounding the continued interaction with White, including the officer’s request for identification, and White’s willingness to voluntarily engage with the officer supports the district court’s conclusion that the encounter was reasonable as part of law enforcement’s community caretaking function.

White also challenges the district court’s application of the attenuation doctrine. According to White, the facts of this case are similar to *State v. Hollist*, 170 Idaho 556, 513 P.3d 1176 (2022) and require a similar holding. Specifically, White contends that, because he “repeatedly told officers that he did not want any medical help,” the first officer “did not need to get White’s identification other than to fish for the possibility of warrants.” White’s arguments miss the mark.

The attenuation doctrine asks whether the causal chain has been sufficiently attenuated to dissipate the taint of unlawful conduct. *Page*, 140 Idaho at 846, 103 P.3d at 459. A court considers three factors when determining whether unlawful conduct has been adequately attenuated: (1) the elapsed time between the misconduct and the acquisition of the evidence; (2) the occurrence of intervening circumstances; and (3) the flagrancy and purpose of the improper law enforcement action. *Id.* White concedes that “there is no doubt that the second factor in the attenuation analysis--the arrest warrant as an intervening event--strongly favors the State.” White nevertheless contends that the “first and third factors strongly favor” his argument. White does not, however, dispute the district court’s finding that there was “a minimal lapse of time” between the alleged misconduct and the first officer’s seizure of the evidence, nor does White challenge the district court’s finding that the officer’s conduct “was certainly not flagrant or for an improper purpose.” On appeal, this Court will not presume error in any unchallenged findings of fact or conclusions of law.

Additionally, White’s reliance on *Hollist* is misplaced because it is distinguishable for at least three reasons. First, while the officer in *Hollist* indicated that he detained the defendant for

failing to identify himself, the officers in this case were seeking to interact with White as part of a wellness check to ensure he did not need medical assistance--medical assistance he himself initially requested. *See Hollist*, 170 Idaho at 562, 513 P.3d at 1182. Second, while the defendant in *Hollist* “attempted to leave at multiple points during the encounter,” prompting the officer to “repeatedly command” the defendant not to leave, the same cannot be said here. *Id.* Third, unlike the officers in this case, the officer in *Hollist* did not have any lawful basis to detain the defendant. *See id.* White has failed to establish a genuine issue of material fact pertaining to the district court’s application of the attenuation doctrine.

Finally, White argues the facts in the record do not support the district court’s finding that trial counsel’s decision to not file a motion to suppress was a “strategic call on the part of an experienced criminal defense attorney.” According to White, “the only reason that trial counsel offered to justify his failure to file a motion to suppress” was his belief that “the officers were acting in their ‘ongoing caretaking function’ during the encounter.” White asserts “this explanation makes little sense, and is frankly not credible, given the case law” relating to “officers stopping pedestrians who are not in acute distress and who decline any medical assistance before taking their identification for a warrant check.” However, as stated above, White has failed to show that he was prejudiced by trial counsel’s failure to file a motion to suppress because the district court concluded it would have denied any such motion had one been filed. As a result, we need not address White’s argument as to whether trial counsel was deficient in failing to file a motion to suppress.

White has failed to show the district court erred in summarily dismissing his first claim of ineffective assistance of counsel.

#### **B. White’s Statements During Transport and Subsequent Search**

At trial, the second officer testified that “he did not give [White] *Miranda* warnings until he got to the jail.” The second officer also testified about transporting White to jail:

|            |                                                                            |
|------------|----------------------------------------------------------------------------|
| [STATE]:   | [D]id you eventually transport [White] to the Ada County Jail for booking? |
| [OFFICER]: | I did, yes.                                                                |
| [STATE]:   | Okay. And how was he acting on the ride to the jail?                       |
| [OFFICER]: | So he was very fidgety, constantly moving around, and just very restless.  |
| [STATE]:   | What did that, I guess, indicate to you?                                   |

[OFFICER]: Based on my experience with transporting people to jail, usually if they are very fidgety like that and continue moving around, usually it's because they're trying to conceal something.

[STATE]: Okay. Did you ask [White] if he had anything on his person?

[OFFICER]: I did, yes.

[STATE]: What did he say?

[OFFICER]: He said he did not.

[STATE]: Okay. Did you warn [White] of the possible consequences of having something additional on his person?

[OFFICER]: Yes. I told him it would be an additional charge if he did.

[STATE]: Okay. And did you give him the opportunity to tell you if he had anything additional?

[OFFICER]: I did.

[STATE]: And did he say anything?

[OFFICER]: He said he didn't have anything on his person.

The State also introduced the second officer's bodycam footage at trial. The bodycam captured the events following White's strip search at the jail, including the second officer being notified that a sandwich bag of suspected drugs had fallen from White's underwear during the search. Thereafter, the second officer asked White "man, what did I tell you on the way here? I told you, I told you it was an extra charge, didn't I?" White responded, "yeah, you totally did."

White asserted his trial counsel was ineffective for failing to file a motion to suppress statements White made while being transported to the jail and before being advised of his *Miranda* warnings. White argued that, because he was detained and had not received *Miranda* warnings when the second officer asked whether White had any additional drugs on his person that could be discovered at the jail, the questioning violated his Fifth Amendment right. The district court disagreed and concluded that the second officer's advisement of "potential additional charges for contraband while driving to the jail was not an interrogation for purposes of *Miranda*." In reaching its conclusion, the district court relied on *State v. Gneiting*, 167 Idaho 133, 468 P.3d 263 (2020). The district court determined that an arrestee's denial of possessing additional contraband after being advised that contraband discovered at the jail could result in more charges is evidence that the arrestee intentionally and voluntarily chose to take contraband into the jail. Although the district court acknowledged that the defendant in *Gneiting* was detained, arrested, and advised of

her rights before the officer warned the defendant about the potential for other charges, it found the case was instructive because “the warning about contraband was given for the same purpose in this case.” According to the district court, the second officer’s “advisement of the potential additional consequences of [White’s] choices was so [he] could make an informed choice about whether he disclosed the additional drugs or made law enforcement find the additional drugs on his person at the jail.” The district court determined “there was no forced self-incrimination in violation of” White’s constitutional rights because White “was not forced to respond to [the second officer’s] statement of additional potential charges.” Instead, the district court found that White “elected to say he did not have anything else on him after having been warned.”

The district court also acknowledged that White “denied he had anything after being informed of the potential consequences of his actions.” According to the district court, “the result here would be no different if [the second officer’s] warning had been given prior to arrest and not for the purposes of self-incrimination without having been advised of [White’s] rights.” The district court determined that White’s “answer was arguably not to [the second officer’s] question of ‘Do you have any more drugs or other contraband on you?’” Rather, the district court found that White’s “response was more an acknowledgement of what the [second] officer had advised [White] could happen if he had any contraband” and brought it with him to jail. As a result, the district court found White’s statement “that he did not have any other drugs was not so much an answer to an interrogation question” but rather an “acknowledgment of the [second] officer’s warning that a person could be charged with another crime if they have drugs on them at jail.”

White also argued that the second officer’s questioning “what did I tell you on the way here? I told you, I told you it was an extra charge, didn’t I?” after the sandwich bag of suspected drugs was found at the jail also violated his Fifth Amendment right. According to White, the second officer’s statement “that he had previously advised [White] he could get another charge if he had contraband on him when searched at the jail” was erroneously “used against him at trial.” The district court disagreed and determined that “the trafficking quantity of drugs were independently discovered after [White] had been given his *Miranda* rights and was being processed by the jail.” According to the district court, White’s statement to the second officer “after the drugs were located was an admission of a party opponent and would have been admissible” because, after the search, White was “only admitting that he was told something by

[the second officer], not that the drugs found” belonged to White. The district court also noted that White was “fluent in and understands the English language” and found that the “discovery of the baggie of drugs and [the second officer’s] second statement about having warned [White] on the drive to the jail” did not violate his “*Miranda* rights regarding the charged crimes.” The district court concluded White “simply acknowledged on the [bodycam footage] that he had been told about the possibility of an additional charge.”

To the extent the second officer’s warning during White’s transport to the jail violated his *Miranda* rights, the district court further found “the error in allowing this portion of [the second officer’s] testimony as to [White’s] answers in the vehicle was harmless error based on the other uncontroverted testimony received at trial.” The district court explained that, “if anything, allowing such a statement would be harmless error based on the unrefuted testimony of” the officer who conducted the strip search and “found the drugs in [White’s] underwear and the context of [his] answer to [the second officer’s] question at the jail of having previously been warned about contraband.” The district court determined the second officer’s warning was relevant to whether White voluntarily brought contraband into the jail, which the State had the burden of proving. Additionally, White’s denial of having other contraband “was not offered for the truth, but merely to set forth why” the second officer suspected that White was concealing additional contraband “due to [his] fidgeting in the ride to the jail.” As a result, the district court found “any mention of the denial regarding additional drugs in the vehicle or [White’s] statement to [the second officer] after drugs were discovered” was “at most harmless.” The district court therefore concluded “no real prejudice [had] been established” and dismissed White’s second claim of ineffective assistance of counsel.

White contends the district court erred in dismissing his claim that counsel was ineffective for failing to file a motion to suppress his pre-*Miranda* statements, arguing there is “no dispute that [the second officer] did not warn White of his rights” until they arrived at the jail. White asserts the second officer’s “first series of questions” during his transport to jail “could have been excluded entirely as a straightforward application of *Miranda*.” We agree.

The requirement for *Miranda* warnings is triggered by custodial interrogation. *State v. Medrano*, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992). The United States Supreme Court has held that a person is in custody when authorities deprive him of his freedom in any

significant way. *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). This test has evolved to define custody as a situation where a person's freedom of action is curtailed to a degree associated with formal arrest. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); *State v. Myers*, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990). The initial determination of custody depends on the objective circumstances, not on the subjective views harbored by either the interrogating officers or the person being questioned. *Stansbury v. California*, 511 U.S. 318, 323 (1994). To determine if a suspect is in custody, the only relevant inquiry is how a reasonable person in the suspect's position would have understood his situation. *Berkemer*, 468 U.S. at 442; *Myers*, 118 Idaho at 611, 798 P.2d at 456. Interrogation for purposes of *Miranda* "extend[s] only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 301-02 (1980).

Applying these standards, we conclude the second officer's discussion of potential additional charges for drugs discovered at the jail was an interrogation for purposes of *Miranda*. It is undisputed that the second officer did not warn White of his *Miranda* rights until after they arrived at the jail. Prior to the warnings and during transport to the jail, White was in handcuffs and in the back of a patrol vehicle, i.e., White was in custody. White was also subject to interrogation. The second officer should have known his questioning about whether White had additional drugs was reasonably likely to elicit an incriminating response. Consequently, we disagree with the district court's determination that White was not subject to custodial interrogation when he was being transported to the jail and asked whether he had additional drugs in his possession.

The district court's reliance on *Gneiting* for a contrary conclusion was misplaced because the Court in *Gneiting* did not address or analyze the issue in this case--whether an arrestee was interrogated for purposes of *Miranda*. Instead, the question presented was "whether an arrestee who involuntarily enters a correctional facility has nonetheless voluntarily possessed contraband within the facility when" he or she "makes the decision to continue to conceal drugs on [his or her] person after being warned that doing so will constitute a separate offense." *Gneiting*, 167 Idaho at 137, 468 P.3d at 267. Although we agree with the district court that "the State had the burden of proving [White] actually knew he possessed contraband" when he entered the jail, that is not the issue he alleged in his petition. Moreover, the district court's reliance on *Gneiting* ignores that

the second officer asked White a question while he was in custody and prior to being advised of his *Miranda* rights. That the second officer presented his question as a “warning” about additional charges does not negate that his questioning sought an incriminating response while White was in custody. Moreover, that White denied he had any other drugs in his possession after being informed of the potential consequences of his actions does not change the analysis. The United States Supreme Court has held that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” *Miranda*, 384 U.S. at 444.

Although we conclude that White was subject to a custodial interrogation without *Miranda* warnings, and his statements in response to the interrogation were used against him at trial, White does not challenge the district court’s conclusion that any error in admitting the statements was harmless in light of the other uncontroverted evidence presented at trial. We therefore affirm the district court’s denial of relief on this aspect of White’s ineffective assistance of counsel claim on the unchallenged basis that any error was harmless. *See State v. Goodwin*, 131 Idaho 364, 366-67, 956 P.2d 1311, 1313-14 (Ct. App. 1998) (holding that an appellate court may affirm on unchallenged basis).

#### IV. CONCLUSION

White has failed to show the district court erred in summarily dismissing his claim that trial counsel was ineffective for failing to challenge the alleged unlawful detention during his initial encounter with the officers. Although White has shown that the district court erred in concluding that the second officer’s questioning during transport to the jail regarding additional drugs did not violate White’s Fifth Amendment right, we affirm because he does not challenge the district court’s determination that any error was harmless. Accordingly, the district court’s judgment dismissing White’s amended petition for post-conviction relief is affirmed.

Chief Judge TRIBE and Judge PETTY, **CONCUR.**