ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0163

STATE OF MONTANA,

Plaintiff and Appellee,

v.

HOLLY ANNE MATHIS,

a.k.a HOLLY ANNE NORLING,

Defendant and Appellant.

NOTICE OF APPEAL

Notice is hereby given that Holly Anne Mathis, the Appellant above named and who is the Petitioner in the the cause of action filed in the Tenth Judicial District, in and for the County of Fergus, as Cause No. DV 2023-69, hearby appeals to the Supreme Court of the State of Montana from the final judgement or order enterd in such action on the 16th day of January, 2024.

THE APPELLANT FURTHER CERTIFIES:

1. **Montana Code Annotated 46-21-201 & 46-21-104**
2. **Title 25, Chapter 1, Section 4(b)**
3. **Title 18, Section 242**

Holly Anne Mathis was indicted on two counts of felony incest on August 24, 2018, under the accusation that she allegedly forced her stepson to touch her breasts on two separate occasions. She was tried on January 27, 2020; found guilty of Count I and not guilty of Count II. She was sentenced on June 5, 2020 to 100 years with 90 suspended, with a 10 year mandatory minimum. Her appeal was denied on September 6, 2022, on a 3/4 decision. Her postconviction was Dismissed with Predjudice on

January 16, 2024 in disregard to the fact that Petitioner's Motion to Seal CCJI was granted on September 17, 2023. The Court admits mistakes were made in the the adjudicary process of the Petitioner but failed to address her factual claims supported by new evidence. As a pro se litigant, Petitioner respectfully requests that the Montana Supreme Court review the District Court's ruling on her postconviction.

Petitioner was tried in the Tenth District Court of Fergus County, but the Tenth District Justice Oldenberg recused himself and Justice Olsen from the Ninth Circuit presided over her trial. Petitions for postconviction must be reviewed by the same court as the trial, i.e. the presiding judge. Did the District Court err in failing to forward petition to Justice Olsen? Instead newly appointed Hon. Heather Perry dismissed this petition.

State v. Marble, 2005 MT 208 and MCA 46-21-102(2) were used by the Court as standard of review for Petitioner's postconviction. The Court claims "Anything relevant to the jury trial would have been handled through witness testimony and exhibits." This opinion failed to address facts proved by the Petitioner on postconviction that many of the events leading up to the Petitioner's arrest were not made evident at trial, through witnesses or exhibits. The State further claimed that "nothing provided in this record is 'new' evidence discovered since trial" and that evidence did not "establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted." Petitioner was convicted on witness testimony alone. Even the State could not produce real or circumstantial evidence to prove Petitioner was guilty of the alleged crime, yet now insists Petitioner must produce evidence that proves her innocence, while at the same time denying Petitioner access to exculpatory interviews and reports. Did the Court err when it failed address the fact that the testimony which convinced the jury of Petitioner's alleged guilt was the result of retaliatory prosecution, perjury and witness tampering which caused a miscarriage of justice under color of law(*Title 18, subsection 242)*. While *Marble* may have merit in certain postconviction claims, Petitioner respectfully requests that the Supreme Court instead consider MCA 46-21-201 and MCA 41-21-104 with *Johnston v. State, 2023 MT 20N,* and *State v. Duncan, 2012, MT 241* for review of this case. "On appeal of district court denials of postconviction relief claims, the Montana Supreme Court reviews

supporting findings of fact only for clear error and supporting conclusions and applications of law de novo for correctness." *(Johnston)*. Petitioner respectfully requests that the Court determine the actual issue presented in the pcr under MCA 46-21-201(1)(a). "While society may pay a "high price" if a defendant's conviction is overturned on postconviction relief, society pays even more dearly when the prosecutor--an officer of the court who should be seeking justice, and not merely a conviction--refuses to scrupulously respect the accused's constitutional rights to the presumption of innocence and a fair trial." *(Duncan, par. 17)*.

Brief In Support of Appeal of Postconviction DA 20-0409

PROSECUTION SUPPRESSED EXCULPATORY EVIDENCE

Did the Court err in failing to address Petioner's claim under MCA 46-15-322, & MCA 46-15-327 that the Prosecution is guilty of a Brady violation, as set forth by *Strickler v. Greene, 527 US 263, 144 L Ed. 2d 286, 119 S. Ct. 1936((1999)*. "The suppression of evidence favorable to an accused is itself sufficient to amount to a denial of due process." *Brady v. Maryland, 373, U.S. 83 (1963)*.

On January 16, 2024 the Court denied Petitioner's Motion for Subpoena Duces Tecum For In Camera Inspection of the exculpatory DPHHS file, while admitting "Defendant had the benefit of arguing that T.N.'s April 2018 interview was exculpatory and T.N. was inconsistent with his reporting in a later interview." This proves the evidence is favorable to the Petitioner and is a direct violation of *Strickler*, Element One.

The Court's admission "it should be enough that the interview was deemed exculpatory" is the opposite opinion of that presented by the State on appeal, wherein they denied 16 specific times that Petitioner had no right to access to the interview, positing it did not pertain to her case, such as: "There was '*overlapping evidences* from two different cases,'" "Whether the State's failure to lodge with the District Court forensic interviews from a different case violated Mathis's right to a fair trial?," "On April 4, 2018, a forensic interview was conducted of T.N. in connection with Norling's case," "Petitioner's December 21, 2018 Motion was 'to obtain confidential criminal justice information (CCJI) from Norling's criminial case,'" and "T.N.'s interview was 'pursuant to the

State's investigation of Norling.'"

The two cases, that of the Petitioner and the Petitioner's ex-husband, did not "overlap." Petitioner's ex was arrested March 29, 2018. They were not co-defendants. A routine DPHHS Safety and Risk Investigation under MCA 41-3-202(1)(c) was conducted, and no allegations were made against the Petitioner at the time of his arrest. The Petitioner tape-recorded her interview conducted on March 30, 2018 by DPHHS(Exhibit D.) This new evidence proves false the State's claim that the interviews on the children did not pertain to Petitioner, and several of Petitioner's Exhibits B, T, Attachment NO. 2, stating Petitioner was being investigated after Norling's arrest were signed by prosecutor, Kent Sipe. This proves the State knew Petitioner was the subject of the children's March/April 2018 interviews. This is misconduct under Montana State Rules of Professional Conduct Rule 3.8(d) and MCA 46-15-327.

The DPHHS file denied for review in 2023 was diligently pursued in 2018 and 2019. The Court granted two of Defense's motions to have it inspected. The Prosecution and the DPHHS were twice ordered by the Court court to produce this DPHHS file, but never gave it to the court. Yet the Court did not hold the State or DPHHS in Contempt for failing to comply with its Order. Did the Court err in its departure from duty to review this file? These facts prove the evidence was suppressed, a failure of the second element of *Strickler.*

The exculpatory interview is not the only important document contained in the requested file. Prosecution used Petitioner's daughter, J.M., as an alleged witness. J.M. was interviewed by DPHHS on March 29, 2018, but made no disclosures of witnessing her mother sexually abuse her stepbrother during that interview. That interview is therefore also exculpatory. There can be no doubt that predjudice ensued.

Contrary to the Court's claim that Petitioner "never properly addressed how her right to prepare and defend her case outweighs the privacy rights of the all the other persons named," petitioner actually argued "Equally important to the defendant's right to discover exculpatory evidence is the victim's right to his/her confidential relations." *State v. Duffy, 200 MT 186.* The Petitioner asked only that the Court review the requested material to determine its exculpatory value, not that its

contents be made public. "Criminal defendants have a Due Process right to information that is favorable to their defense and material to guilt or punishment. In cases involving alleged sexual assault of a minor, this right extends to confidential files compiled by DPHHS." MCA 41-3-205(2). "When a defendant requests a crime victim's confidential records, the district court has a duty to conduct an in camera review to ascertain whether there is exculpatory evidence in the files. If the confidential information within the records is not exclupatory a defendant's right to review the information is outweighed by the victim's right to confidentiality." MCA 44-5-301(1) *State v. Twardoski, 2021 MT 179.* Until it is reviewed by the court, it cannot be assumed that the suppression of this material did not effect the outcome of the Petitioner's trial. *United States v. Bagley, 1985.*

Justice Shea dissented on appeal: "The majority opinion is based entirely on the presumption that forensic interviews that neither the trial court nor this court have ever seen would not have made any difference in a trial in which the jury heard testimony about a series of nearly identical incidents that were divided into two counts, and after considering all of this testimony, found Mathis not guilty on one of those counts. Yet, the majority feels confident in assessing the exculpatory value of this evidence sight unseen. More fundamentally troubling in that in reaching this holding, the majority departs from established precedent in which this court has consistently held we will not attempt to pass judgement on the exculpatory value of evidence we have not seen. State v. Johnston, 2014 MT 329, par.9, 377 Mont. 291, 339 P.3d 829; State v. Little, 260 MOnt. 460, 466, 861 P.2d 154, 158(1993)."

MALICIOUS/RETALIATORY PROSECUTION, CIVIL CONSPIRACY & PERJURY

The Court called the Petitioner's claim, supported by never-before-seen Exhibit A, "nonsensical" and claimed a "third party call to a 1-800 number" was inconsequential, positing, "the prosecutor did nothing wrong." The Court claimed the evidence was not new, even though it was not presented at trial or on appeal. The State failed to address that the Petitioner provided evidence that proves that Petitioner had no accuser before that call, and that call was not made by any old "third party" but the prosecutor, Jean Adams, herself. This is not nonsense or inconsequntial. It is illegal under Title 45 Crimes, Entrapment, MCA 45-2-213: a person is not guilty of an offense if the person's conduct is incited or induced

by a public servant or a public servant's agent for the purpose of obtaining evidence for the prosecution of the person. Entrapment occurs when the criminal intent or design originates in the mind of the police officer or informer and not with the accused. Petitioner was already interrogated by police and DPHHS subsequent to Norling's arrest. The Petitioner was told the children would be asked if she was abusing them (Ex. D) and all the children said no (March/April interviews). Petitioner was not charged with a crime or found accountable for Norling's actions in the course of this investigation. This proves the absence of criminal intent or design originating in the mind of the accused. *State v. Kelly, 2015 Mont. 417.*

To set forth to prove a claim for malicious prosecution it must be alleged that the prosecutor initiated or took active part in the the prosecution of a criminal action against the Defendant. Petitioner's new evidence, Exhibit A, sexual abuse report dated July 13, 2018, made by a call to DPHHS Centralized Intake, proves Jean Adams was the first to make accusations of a sex crime against Petitioner, therefore the prosecutor's 1-800 call was the *sine qua non* of the charges against the Petitioner. In this case, the State also fails all five factors under *Donahoe v. Arpaio, 986 F. Supp. 2d 1091, 1103 (D. Ariz. 2013)*. The U.S. Court of Appeals for the Sixth Circuit has adopted a two-step approach under *United States v. Carter, 236 F.3d 777* for determining when prosecutorial misconduct warrants a new trial. Under this approach, if the Court detemines the prosecutor's conduct or remarks were improper, the court must then consider four factors: (1)whether the conduct and remarks of the prosecutor tended to mislead the jury or prejudice the defendant; (2)whether the conduct or remarks were isolated or extensive; (3)whether the remarks were deliberately or accidentally made; and (4)whether the evidence against the defendant was strong.

The prosecution fails *Carter* factor (1) because Petitioner's jury was mislead about the origin of the charges against the Petitioner. The State led the defense, District and Supreme Courts to believe, at trial and on appeal, that the allegations against the Petitioner began with a client/counselor disclosure on July 16, 2018. That assertion is false. The State omitted Jean Adam's July 13th report in their claim that petitioner's daughter, J.M., made the first accusations on July 16. Timeline

is everything. In order that the Court should understand how this conviction was achieved without real evidence, it is important that the timeline and history of events be examined.

On March 29, 2018, Tim Norling, was arrested for molesting petitioner's two daughters. The DPHHS began a routine Safety and Risk Assessment Investigation under MCA 41-3-202 on the Norling/Mathis home, meaning both Mathis and Norling were scrutinized by the Lewistown DPHHS. The children were placed in alternative custody, Norling's son, T.N., with grandparents, Mathis's daughters, J.M. and N.M., with their birth father, Donald Mathis. Norling waived his Miranda rights and plead guilty. During his confession Norling made no claim that the Petitioner had ever molested his son, therefore his criminal complaint is exculpatory. When defense counsel attempted to use his criminal complaint to impeach this witness, the State objected and the Court sustained. Petitioner attached this document, never seen by the court, to her pcr, Attachment No. 1, which proves her innocence.

Ms. Adams used Norling, under immunity, transported from Montana State Prison, serving a 200-year sentence for molesting the Petitioner's daughters, to testify against Petitioner. Wearing civillian clothes, no cuffs or chains, he testified that a year prior to his arrest, Petitioner had told him "I let [T.N.] touch my breasts tonight" because "she didn't want [T.N.] to feel left out because [she] let the girls touch [her] breasts." If Norling's testimony was true, that his wife was also allegedly sexually abusing all three children, why did Norling NOT tell the police when he was under arrest? J.M. and T.N. also impeached his testimony:

DEFENSE: Have you ever touched your mom's breasts?

J.M.: No.

SAMMS: Did you ever see her having someone else touch her boobs besides you?

T.N.: No.

Norling displays his motive for lying, saying "... If I'm getting punished, I want her to be punished..." and agreed that he'd called Petitioner "demonic, satanic and witchy." About his own incarceration he said, "If I wouldn't have married her that wouldn't have happened." The fact that N.M. was *completely excluded* from the legal proceedings of Petitioner's case is suspect, since Norling said N.M. was a victim, the State has N.M. listed as an alleged witness in INFORMATION-DC 2018-56, and

J.M. disclosed in her forensic interview that N.M. witnessed the alleged crime against T.N.

On June 27, 2018, Donald Mathis reported accusations against Petitioner to Officer Honeycutt, but made no mention of T.N. allegedly touching Petitioner's breasts(Petioner's video Exhibit S, never viewed by the Court). Donald Mathis admits he has a history of making false police reports:

> DEFENSE: Okay. Mr. Mathis have you been untruthful with a law enforcement officer?
>
> DONALD: Yes.

After their 2015 separation Donald made several false police reports in attempts to get the Petitioner arrested. Donald also lied to the Court about the report he made on June 27, 2018:

> DEFENSE: "What was your impression of what J.M. told you in the car?
>
> DONALD: My impression? Well she told me that, she told me that her mother had allowed, had encouraged [T.N.] to touch her breasts."
>
> DEFENSE: "And that's when you went to law enforcement I assume?"
>
> DONALD: "Yes."

Three days before Donald testified Officer Honeycutt testified that he documented this same lie in his written report (Exhibit S2) summarizing Donald's video-recorded June 27 2018 report:

> PROSECUTOR SIPE : Approximately how long after your initial interview...with the girl's father did you prepare that report?
>
> OFFICER HONEYCUTT: That I can't answer...
>
> SIPE: Now in your report you reference that the disclosure included Holly allowing [T.N.] to see her boobs. Do you remember that in you report?
>
> HONEYCUTT.: I do.
>
> SIPE: Do you know how that got in your report?
>
> HONEYCUTT: I don't. I crossed up notes somewhere. I went back and...watched all the video...after that was pointed out. So that was my mistake...I could not find it anywhere in the actual video interview...with Mr. Mathis...

Defense Counsel's failure to impeach Donald when he commits perjury cannot be argued to be a strategy to help his client. Did Defense forget Honeycutt's testimony, three days before? Montana State Rules of Professional Conduct, Rule 1.1 Competence: "A lawyer shall provide competent representation which requires legal knowledge, skill, thoroughness and preparation reasonably necessary for the the representation." Donald Mathis's police report made on June 27, 2018, did not result in charges being filed against the Petitioner. **Donald**

Mathis then gained audience with Deputy County Attorney, Jean Adams. The fact that Donald made unrelated accusations and had been meeting with Jean Adams at the time she made her 1-800 call were withheld from the Defense for a full year after Petitioner's arrest.

The report below is part of NEVER-BEFORE-SEEN EVIDENCE: PETITIONER'S EXHIBIT A. It was printed on September 24, 2019, and sent to Petitioner from DPHHS, discovered in Petitioner's personal files on May 8, 2023. On July 13, 2018, three days before any disclosures were made by anyone else, County Attorney, Jean Adams, called Helena Centralized Intake Hotline (DPHHS) and filed the following report:

> **DAU JESSE(10) DAU NINA(13) REPORT TO BFR TIMOTHY NORLING SR THAT HOLLY MADE SON TIMOTHY JR(12) TOUCH AND FONDLE HER BREAST BEFORE SHE WOULD ALLOW HIM INTO BED FOR FAMILY MOVIE NIGHT**

Ms. Adams and Donald Mathis's hearsay reports failed to get the Petitioner arrested. Ms. Adams knew that while adult hearsay claims are mostly inadmissable, there was a loophole she could exploit:

> **46-16-220, MCA, Child Hearsay Exception- Criminal Proceedings**
>
> (1) Otherwise inadmissable hearsay may be admissable in evidence in a criminal proceeding as provided in subsection (2) if: (a) the declarant of the out-of-court statement is a child who is: (i) an alleged victim of a sexual offense (ii) a witness to an alleged sexual offense

Why was Ms. Adams trying to get Petitioner charged with a sex crime, just like Norling, whom Ms. Adams was currently prosecuting? Did Ms. Adams see an opportunity to produce a second conviction by lumping Mathis together with Norling, with the insinuation that because Mathis unwittingly married him and lived in the home while he molested her daughters, it would be believed, if not assumed, that Mathis was privy to or complicit with his actions?

The first 8 contentions of Petitioner's charging document, MOTION AND AFFIDAVIT IN SUPPORT FOR LEAVE TO FILE INFORMATION, dated August 24, 2018, indicating probable cause to arrest Petitioner, are a description of Norling's sexual abuse to the Petitioner's daughters. Someone else's crime does not constitute just cause to arrest another, unless applied *facinus quos inquinat aequat*. This is a manifest miscarriage of justice which leaves unsettled the question of the fundamental fairness of the

trial or proceedings under MCA 46-20-701(2), *State v. Stewart, 2000 MT 379.*

CTS intake worker, Daniel Laughlin, testified that he performed the first interview on the alleged victim on July 17, 2018, three days after Adams made her third-party report, and **the day before any other accusations of this alleged crime were reported to DPHHS.** He testified that he called Jean Adams that morning, before conducting the interview. It appears Adams sent him to do this interview, which is abuse of prosecutorial discretion.

Officer Honeycutt failed to mention Exhibit A and Exhibit T (a 4-page incomplete DPHHS investigative report on Jean Adam's 1-800 call, faxed to him by DPHHS head Elizabeth Bruchez, which lists Jean Adams as the first reporter on July 13, 2018, and lists Daniel Laughlin as "1st contact" on July 17, with Daniel Laughlin's interview notes) as a sources of information when Honeycutt testified how he "crossed up" his notes. It is also convenient to the prosecution that Donald Mathis commits perjury that matches Officer Honeycutt's "mistake."

There is a fundamental discrepancy which brings a question of what J.M.'s July 16th disclosure actually was. According to Page 4 of MOTION AND AFFIDAVIT IN SUPPORT FOR LEAVE TO FILE INFORMATION, dated 8/24/18, (Petitioner's Attachment NO. 3):

> CONTENTION NO. 10
>
> The Child Abuse Hotline/Centralized Intake of DPHHS CFS Division contacted Captain Jon Polich of the Lewistown Police Department on July 18, 2018, pursuant to the requirements set forth in 41-3-205(5). During that contact, DPHHS employee Amanda Morrison informed Capt. Polich that Berg had called in a referral that during counseling Girl-10 had disclosed that her mother had encouraged Norling to touch Girl-10's breasts, and that Norling did so.
>
> CONTENTION NO. 13
>
> The State sought and obtained an Investigative Subpoena in this matter. Upon receipt of the documents requested, Berg explained that there had been a misunderstanding when she made her report. Girl-10 reported to Berg that Holly had encouraged Holly's stepson, Boy-11, to touch Holly's breasts. Berg said Centralized Intake had misunderstood.

In other words, the report the State said counselor, Kelli Berg, made on July 18, 2018, wasn't actually the report made that day, and only after Jean Adams obtained the counseling records did

counselor change her report to mirror the 1-800 call made by Jean Adams. The revised allegations were backdated for July 18th. Police Chief, Capt. Polich, testified: "...how I became involved in this is back in July of, July 18th of 2018, my dispatch advised me that Montana Centralized Intake...had received a report of sexual assualt. It was my understanding of the call at the time that [J.M.] had disclosed to her counselor Kelli Berg that there was, that Holly Mathis...had encouraged Tim to touch her breasts and also it was disclosed that Tim had touched Holly's breasts. That was my understanding of the call at the time."

Ms. Adams: Was there some confusion with this call as to which [father or son?] was being talked about?

Capt. Polich: No, I didn't have any confusion about that.

State: You didn't have any confusion?

Capt. Polich: No.

Ms. Adams: So what did you do next?

Capt. Polich: So, I emailed you about obtained an investigative subpoena for [counselor's] medial record...I requested that the county attorney's office to help me obtain that so we could have those records as a part of the investigation.

Ms. Adams: Okay. And what happened next?

Capt. Polich: Then subsequently there was an investigative subpoena obtained through [counselor's] office and it was served...and...that information was sent to your office and in turn it was eventually turned over to me.

Ms. Adams.: And then once the investigative subpoena documents were received what happened after that?

Capt. Polich: Then it was, then as I mentioned I knew there was an ongoing investigation with the Norling family. So I requested Officer Honeycutt to follow up with this investigation into this matter.

Ms. Adams.: Okay. And it was after that point that the interview was scheduled with [T.N.] in Helena?

Capt. Polich: Yes. Arrangements were made with you to have the child interviewed up in Helena, Montana...and it was my understanding subsequently it was done.

Montana State Rules of Professional Conduct, Rule 3.4(b): "A lawyer shall not falsify evidence, counsel, or assist a witness to testify falsely." Yet Jean Adams has just committed subornation of perjury with Chief of Police, proven in cross-examination:

LECOUNT: Assisstant Chief Polich have you reviewed anything prior to testifying today?

POLICH: Yes, I've reviewed some reports, yes.

LECOUNT: ...can you specify which reports?

POLICH: Well there's three reports which would be Officer Honeycutt's report that he took from the initial disclosure from Donald Mathis. There was a report that I...spoke of earlier...then there was also reports that I reviewed involving Don Mathis's case.

LECOUNT: Don Mathis's case?

POLICH: Uh huh.

LECOUNT: Or...

POLICH: Or, no, I'm sorry...not Don Mathis, Tim Norling Jr.'s...my mistake.

LECOUNT: ...Tim Norling Jr.'s or...

POLICH: Senior, yes.

LECOUNT: So, you reviewed those three reports?

POLICH: Yes, ma'am.

LECOUNT: And just to clarify for the jury when you say Tim Norling Sr.'s report that would be the initial report that kind of jumpstarted all of these investigations and that was the allegations that he was sexually abusing [N.M.] and [J.M.].

POLICH: Yes, that's correct...

LECOUNT: And then Honeycutt's report...regarding his contact with Don Mathis.

POLICH: That's correct.

LECOUNT: Okay. Have you reviewed any videos or any of the interviews performed in this case?

POLICH: No, I have not.

LECOUNT: Okay. And you testified that you had those and then [T.N.] had his forensic interview after you received copies of those.

POLICH: Yes. Well, let me clarify, the dates that I received the...investigative subpoenas would have been August 3rd.

LECOUNT: So you didn't actually have those records when T.N. was interviewed in Helena?

POLICH: As I said, the interview was scheduled for the 26th of July and I received the records from the County Attorney's office on August 3rd.

This proves that Capt. Polich did not have information from both the original report and the revised version on the 18th of July, in violation of MCA 45-7-205 and 45-7-201(1)(2)&(6). Capt. Polich implied T.N.'s forensic interview was the alleged victim's first interview. This is misleading the Court. A

conspiracy claim under Common Law 1983 is "a combination of two or more persons acting in concert to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damages." *Estate of Bennet v. Wainwright, 548 F.3d.* The State and their co-conspirators violoated Mathis's Fourth Ammendment Right of an individual to be free from arrest without probable cause. This probable cause inquiry requires the Court to look to the totality of the circumstances, and assess what the officer objectively knew at the time of the arrest and immediately before it." *Guillen v. City of New York, 625 F. Supp. 3d 139 (2022).*

Capt. Polich testified that he called the alleged victim's two grandmas, M.J.M. and L.M., and both said their grandson never told them anything to support the abuse claims made against the Petitioner. The alleged victim's best friend, whom T.N. said he told, also denied that T.N. told him anything of the sort.

LECOUNT: Okay. Have you reviewed any videos or any of the interviews performed in this case?

POLICH: No, I have not.

Eight days before the police had any attributable or corroborative evidence that a crime had been committed, Jean Adams ordered a second interview on the alleged victim, conducted by Paula Samms on July 26, 2018. Until August 3, 2018, all they had was Jean Adams's report, which they failed to mention when testifying which reports they had on July 18, 2018. Probable cause to arrest exists when the officers have knowledge of, or reasonably trustworthy information as to facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that an offense has been committed or is being committed by the person to be arrested.

It is important to note that the DPHHS had not concluded their investigation on the Petitioner when she was indicted and arrested on August 24, 2018. Two DPHHS agents, G.H. and Y.K., witnessed the alleged victim's July 26, 2018 forensic interview, and the DPHHS did not recommend charges be filed against the Petitioner based on that interview. On September 29, 2018, DPHHS concluded their investigation of the report made by Jean Adams, which report considered the July 26, 2018 interview on the alleged victim, and determined, (Page 6) Exhibit A: **The reported**

information DOES NOT meet abuse/neglect standards. On October 24, 2018, DPHHS returned the Petitioner's daughters, then aged 9 and 13, to her custody. On that date DPHHS had no knowledge that the Petitioner had been indicted of two counts of felony incest with a minor two months previously. Not only is the outcome of this report exculpatory, it proves her prosecution of the Petitioner is unlawful. Officer Honeycutt chose to recommend charges be filed against Petioner based on 1)an *incomplete* DPHHS report investigating Jean Adams's third party 1-800 call(Exhibit T) which reports were concealed from the Courts, and are likely contained in the suppressed DPHHS file, 2)a mistake in a police report, and 3)T.N.'s Forensic interview conducted on July 26, 2018, which was contaminated by Daniel Laughlin's July 17 contact, which will be proved forthwith. Petitioner's Appeal says "Based on T.N.'s allegations (in his forensic interview), the State charged Mathis...with two counts of incest." The State made it appear to the jury that the alleged victim was interviewed by D.L. on July 17th a result of J.M.'s July 16th 8-word disclosure: "She told little Tim to touch her boobs." (exhibit L). J.M.'s involvement was withheld from the defense until December 2018, and copy of J.M.'s July 16th disclosure was not provided to defense for a full year. Prosecutors are required to turn over "the statements of all persons whom the Prosecution may call as witnesses in the case of chief." *State v. Stewart, 2000 M 139.*

The State's misconduct fails *Donahoe* factor (2) because it was not isolated, it was pervasive, under color of law (Title 18 U.S.C. Section 242). Petitioner was denied her 4th Ammendment right to be free from arrest without probable cause and, as a result of cummulative plain error, was deprived of Due Process Rights to a fair trial secured by the 6th and 14th Ammendments to the United States Constitution, Title 42 U.S.C. 1983. A prosecutor should refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. *Montana State Rules of Professional Conduct in effect as of October 29, 2019,* Rule 3.8(a): "The U.S. State Attorney is a representative whose interest in a crimnial prosecution is not that it shall win a case, but that justice shall be done. He may prosecute with earnestness and vigor, indeed he should so, but *while he may strike hard blows, he is not at liberty to strike foul ones.* It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use legitimate means to bring about a just one." *Berger v. United*

States, 295 U.S. 78 (1935).

The State fails *Carter* factor (3) because Jean Adams's 1-800 call was made in a deliberate attempt to have Petitioner convicted of a sex crime; and factor(4) because the evidence against Petitioner's was non-existent before the the State made accusations against Petitioner. The Supreme Court has stated that "[a] prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested." *Buckley v. Fitzsimmons, 509 U.S. 259, 274 1135 Ct. 2602, 125 L. Ed. 2d 209 (1993).*

Did the Court err in failing to address that prosecutorial retaliation was the but-for basis for instigating the prosecution, and prosecution would not have occurred without that retaliatory motive? The court has been unable to show that the action would have been taken anyway, independent of any retaliatory animus. In order for the State to disprove retaliatory prosecution, they must provide a distict body of highly valuable circumstantial evidence showing there was probable cause to bring the criminial charge. *Protection of Civil Rights, 42 U.S.C.S. Law, Section 1983 Actions(1)(3), Hartman v. Moore (2006) 547, Bill of Rights, Fundamental Freedoms.*

At the time of her own arrest, Petitioner was not interviewed nor allowed to write a statement. Petitioner did not know who was her accuser until she met her public defender, which is a violation of her rights under the 14th Ammendment of the United States Constitution. In 2023, Mathis opened law suits against the Lewistown police Department, requesting Norling's Criminal Complaint, Donald's false reports from 2015 and a copy of her own charging documents. On September 5, 2023, the court held a conference hearing. Theresa Diekhans, City Attorney, confirmed that it appeared no arrest interview was conducted on Petitioner. Diekhans said Jean Adams issued the warrant for Petitioner's arrest, so Adams should be asked why a customary interrogation wasn't done. The Court ordered the Police to provide Petitioner with these requested documents, but the Police failed to do so. Petitioner filed petitions for contempt. A Show Cause Hearing was scheduled for January 13, 2024. That morning the Court dismissed the petitions for contempt and vacated the hearing. The Court has allowed the Police to be in contempt of its September 5, 2023 Order and the accused is still

denied a copy of her own charging documents, which documents were made public the day of her arrest, in violation of Montana Code Annotated 41-3-205(1)(2). Subsections (9) and (10) are not exceptions that apply to justify the publication of the details of Petitioner's charging documents. Lewistown is a small town, yet this issue was not addressed *voir dire*. Defense counsel pointed out: "In [J.M.'s] forensic interview her disclosures closely mirror the details from Holly's charging document...how do two children have the same story line with different details? That story line was available in a very public document filed on August 24, 2018. It was easily accessable by a bitter ex-husband who was doing everything he could to maintain custody of his children." This is a violation of Montana State Rules of Professional Conduct Rule 3.6. "Prosecutorial Immmunity has been rejected in cases involving a statement to the public and press," *Buckley, 509 U.S. at 278*. Defammatory statements made in conjunction with an unconstitutional arrest found actionable under common law 1983 are not entitled to absolute or qualified immunity.

WITNESS TAMPERING

The Court claims "Petitioner alleges that because the prosecution followed the law as stated in the applicable statutes, the prosecutor engaged in witnesss tampering." Contrary to the Court's interpretation of this section, the Petitioner proved with abstract of record and cogent analysis of law and child interview procedure that the prosecution and the interviewers broke substantive law and disregarded applicable statutes. Daniel Laughlin testified that he conducted T.N.'s July 17, 2018 interview at the child's residence at 1*** Mustang Drive and spoke to T.N. "on the back patio," in disregard to APSAC Guidelines, page 8(4): "It is recommended the interview occur in a neutral environment whenever possible. The setting should be private, informal, and free from distractions. Children's Advocacy Centers and other specialized rooms are advantageous because they are child-friendly and allow for observers as well as audio and video recording." Page 10(8) says: "Completely unstructured interviews are not advised." Daniel Laughlin also disregarded APSAC page 9(c): "In general, parents (or other relatives and caregivers) should not be present during the interview." He testified that the boy's father, out on bond since June 3, his uncle, and grandparents were in the home when he interviewed T.N.

MCA 41-3-202(2)(3): If the initial investigation of alleged abuse conducted within 48 hours

results in the development of indicating that there exists a current risk of physical or phsychological harm to the child, the dept. then conducts a safety and risk assessment. After a full safety and risk assessment has been conducted, and based on that assessment, producing corroborating evidence and proof that the child is in imminent danger, is an interview deemed necessary. Yet Mr. Laughlin testified, "this all happened on July 17," speaking of his safety and risk assessment and the interview. He did not even take 24 hours to investigate. Laughlin: "The first thing I do is talk to the child, that's the very first thing I do. So, so, so, the first thing we do is talk to the target child and that was [T.N.]." According the the law, that is not protocol. What corroborative, and attributable information did Laughlin collect to deem an interview necessary? Daniel Laughlin says **all he learned** the morning of the 17th, was that the "target child" was safe, living with his grandma and not with the alleged perpetrator. The following testimony proves witness tampering through suggestive interview techniques:

MR. LARSEN: Did you inform [T.N.] the nature of the allegation?

MR. LAUGHLIN: Yes.

Redirect

MS. ADAMS: When you told [T.N.] the nature of the allegations, do you remember what words you used to tell him why you were there?

MR. LAUGHLIN: I was there to talk to [T.N.] about the incidents of allegations with [Petitioner] and there was allegations we discussed...there was allegations on drug use, alcohol use and sexual abuse.

MS. ADAMS: Did you tell him that?

MR. LAUGHLIN: Did I, we tell the children why we are there and then we get into the narrative of the exact of why we are meeting with them.

APSAC Guidelines: Page 5(3)(E): "Interviewers of children should avoid stereotype induction (negative or positive characterizations) of suspected abusers or the events disclosed." Page 7, III(1): "The interviewer should keep in mind that the background information may be incomplete and/or inaccurate. Rather than being used to confirm a particular hypothesis, the information should be used to encourage the child to provide as many details as possible in his/her own words." T.N. testified:

DEFENSE: Was [Daniel Laughlin] the one who first said anything about touching Holly's breasts, or you?

T.N.: Yes.

DEFENSE: He was.

T.N.: Yeah.

DEFENSE: And did [Laughlin] tell you why he was there?

T.N.: Yes.

DEFENSE: To talk to you about...

T.N.: And what happened, yeah.

DEFENSE: Okay. Did that make it easier for you to talk to him since he already knew what happened?

T.N.: No, because I've never, I've never, I've never had someone talk to me about that so it didn't ease me at all.

Daniel Laughlin told T.N. there were alcohol and drug allegations as well as sexual abuse allegations. He told T.N. precisely what the allegations were to confirm a hypothesis. There is no other way to interpret this testimony. Children's Suggestiblity Research, p. 4: "A false report that is the result of a child incorporating an interviewer's false suggestion is theoretically irremediable. Once the suggestion gets implanted in the memory trace, it is forever altered and no amount of remedial interviewing can undo the damage." "Many studies have also reported that children can incorporate suggestions about salient events after a single suggestive interview." (e.g., Ceci et al., 2007a). "Even one biased interviewer can taint a child's testimony."

Investigative Police testify about proper interviewing:

MR. SYPE: So, at any time did you ever speak with [T.N.?]

OFFICER HONEYCUTT: No, he had already lived in Helena so we requested the... Child Advocacy Center...in Helena to ask them to do that as so they would have a local law enforcement officer just like we do here...So, when they go into this room it would just be plain-clothed interviewer and the child in a separate room is a viewing T.V. with speakers...So, in there we would have two additional forensic interviewers observing that interview to make sure that the questions are being asked correctly...In this case we had one of their officers sit in and observe so they would provide a narrative and copy of the report. One of the things that was discussed was that you know having an additional team do it that is not associated with the first case get involved and do that so we could make sure it remained a neutral interview.

MR. SYPE: Okay. And why is that important?

OFFICER HONEYCUTT: Well we don't want leading questions. I mean that's something that you know, anything if we, if I know the answers that I'm looking for as the interviewer I could direct my questioning towards that child to get them to maybe try and tell me what I want. But in this type of interview setting we just let the child tell us what they want to tell us. We don't really ask any questions.

MR. SYPE: So, is the interview, interviewers somewhat blind as to what the situations or the dynamics are that they're asking about?

OFFICER HONEYCUTT: Yes.

MR. SYPE: Okay. And is that intentional in order to, as you say not steer the interview?

OFFICER HONEYCUTT: Correct.

ADAMS: Would the forensic interviewer have had access to the records from Kelli Berg, and the (J.M.'s) statement made to Kelli Berg?

POLICH: Well that I can't definitely answer that, but what I can say is they... shouldn't have that information because that would lead to the possibility of contaminating the interview.

Paula Samms who conducted T.N.'s July 26 Forensic Interview does not agree with this theory:

MS. LECOUNT: Would you agree that the risk of suggestion during an interview can be decreased the less information that the interviewer has?

MS. SAMMS: I would actually not agree with that.

MS. LECOUNT: Okay, can you explain?

MS. SAMMS: Yeah, there was a time when we thought being a blind interviewer was the way to go and what that meant is the interviewer would just go in and . know nothing about the allegation...but what really needs to happen is a person be an objective interviewer... So it's helpful for me to know as much information as I can...because I could waste a lot of time asking questions not relevant to what we're talking about.. I can find a way to ask a question to get there and maybe those questions. That's the point of having me do it.

MS. LECOUNT: And so, you go in with some of the information about maybe what the concern is for the child, but not all the details?

MS. SAMMS: If I have all the details, I'll look at them, but most of the time that's why they're there to see me because they don't have all the details right. That's why they're there to see me.

Once a person believes something happened it is not possible to stay objective. Ms. Samms did not go in there blind because she does not believe in the stringent safeguards police described. APSAC Guidelines p. 4:"Interviewers attempt to collect facts in a neutral and objective way while considering all reasonable explanations for the allegations." In disregard to this rule, Paula Samms says she will ask direct questions and then expect the child to deny it. Ms. Samms is more interested in being the first to get the disclosure rather than ensuring an accurate report. Children's Suggestibility Research: "If an interviwer enters a room, prepared to

question a child, and brings pre-established beliefs about the case...the interviewer may unintentionally put disproportional weight on some statements the child makes while ignoring others." (DePaulo et al., 2002; Wessel, Drevland, Eilrtsen & Magnussen, 2006). Bruck et al.(1999) suggests that the interviewer who had built up a certain expectation structured their interviews in such a way as to elicit claims consistent with their expectations. APSAC Guidelines advise ways to open the desired subject. Ideally, just talking about the alleged perpetrator will elicit the child to naturally disclose. Logically speaking, if T.N. had actually been "forced," as the State claims, to fondle his stepmother's bare breasts it would have been burned into his 10-11 year-old brain. Yet they talked for 10 pages about his stepmom and T.N. made no disclosure. Only when Ms. Samms reminds T.N. of Daniel Laughlin's visit did he "remember" the alleged abuse.

(Page 11)

A: Do you know about the situation?
Q: I don't know very much. You tell me about it.
A: He went to jail. I'm believing he's accused of it. I, we're praying. I don't really think about it a lot because I don't want to be reminded of it. So I try to block it out of my brain.
Q: Okay, okay. Well, did someone recently come talk with you about something with Holly?
A: Yeah, I forgot his name, but.
Q: Okay. Tell me about that.
A: He was just talking to me about what happened in the house and stuff with that, when Holly got drunk and stuff.
Q: Okay.
A: And did I ever like her and stuff like that.
Q: And did you ever like her?
A: No.
Q: No? Well, since I wasn't there and I think that somebody who's wanting to know a little more about that, tell me about what happened with Holly when she would get drunk.
A: On family movie night, she showed me her boobs once or twice or stuff.
Q: Okay.
A: I'm sorry.

T.N. used the phrase, "on family movie night," the excact words found in Exhibit A, Jean Adams's 1-800 call. This indicates the

"allegations" Daniel Laughlin delivered to T.N. were the ones first made by the prosecutor. T.N. did not add to the disclosure he made on page 11 until Samms brings it back up 9 pages later.

(Page 20)

Q: Okay. Okay. So when you first kind of telling me about Holly, you were saying that you, it was during your family movie night that she showed you her boobs?

A: Mm mmm(indicating yes).

(Page 21)

Q: Where do you remember being in the living room when she showed you her boobs?

A: Mmm, I don't know, maybe once was on the couch, that's what I said to the last person I–

APSAC, p.9(7): "Narrative promts should be used liberally, with the interviewer being careful not to interupt the child's responses." Yet Ms. Samms interupts him as he is trying keep his story straight.

Q: Okay. Where do you remember her being in the room when she showed you her boobs?

A: I don't know.

Q: Okay. Do you remember her saying anything when she's showing you her boobs?

A: No, I'm sorry, nothing comes to mind, but.

Q:Okay.

A: Probably did say something, but I don't remember it.

Q: Okay. And so she showed you her boobs. And what was the very next thing that happened?

A: I think she said, go ahead, you can touch them, or something like that, but.

Q: Okay. Okay. So she said go ahead and touch them;

A: I think so, I'm sorry. I'm pretty sure she did say that.

Q: Okay. And then what was the very next thing that happened?

A: Nothing really else I–that's it.

Ms. Samms pounded the phrase "showed you her boobs" seven times in two pages. APSAC page 11(III)(A): "Follow up questions should not quickly become narrow or stay extremely foscused. Once the child responds with some information, questioning should once again 'recycle' to the broad end of the funnel." APSAC page 13(7)(B): "Closed-ended questions that can easily be answered with one or two words are usually catagorized as 'recognition promts. When a majority of interview questions are closed or

recognition prompts, the interviewer talks more that the child...the child's response is limited and offers no information beyond that provided by the interviewer, closed questions rely on interviewer-supplied information which may be incorrect or biased."

Page 23 - Interviewer spoke 147 words and child spoke 21

Q: Okay. And then, did she go ahead and have you do that or make you do that?

A: I didn't, but.

Q: Okay.

A: I'm sorry.

Q: You don't need to say you're sorry. It's, no need to be sorry, Tim. Okay. Alright. So then you did that.

The child said "I didn't." The interviewer says "So you did that." Ms. Samms goes on to repeat the phrase: "you touched her boobs" **thirteen times** in the next 101 lines of the interview. This is T.N.'s seventh apology since the subject was opened. Is he afraid of disappointing an authority figure?." Children's Suggestibility Research: "There are many situations in which...a child gives the interviewer what they assume the latter wants to hear." The Court and jury never watched or read the transcripts of this interview and so could not decide the extent of persuasion this interview had on the alleged victim. Dr. Richard Warshak writes: "Through repeated and suggestive questioning, (children) are manipulated not only to make false allegations of physical or sexual abuse but actually believe they have been victims of abuse. In other words, they are not consciously lying. They believe their false stories." T.N. displayed a motive to punish his stepmom: Daniel Laughlin's report (Exhibit T) reads: T.N. told Mr. Laughlin that his family had to move to Helena "because everyone hates his dad." In contradiction, T.N.'s victim impact statement, submitted at Petitioner's Sentencing Hearing, blames the move on Petitioner: 1. How has this crime affected you and those close to you? "I had to leave my home and my home town and my close friends." 2. Has the crime affected your relationship with any family members, friends, coworkers and other people? "Yes it has because my family is now broken up and destroyed." T.N.'s counselor, Tami Darlow, also testified that she believed his move from Lewistown, breaking up of his family and the loss of his friends to be Petitioner's fault. Under cross-examination Ms. Darlow admitted confusion, saying she was led to believe "everything happened all at once," meaning she thought Norling and Petitioner were arrested together.

The Court argues that there is "no new evidence here," yet the

Petitioner's abstract of record proves that two suggestive interviews occurred. T.N.'s forensic interview with Paula Samms was contaminated by the suggestive interview conducted by Daniel Laughlin on July 17, 2018 and Paula Samms cemented the notion in this child that the alleged abuse actually occurred. Children's Suggestibility Research: "Research shows people are unable to distinguish false reports made by children from true reports. Children who have been interviewed suggestively and report false information are later rated as highly credible, even by trained professionals in child development, mental health, and forensic onterviews. (Leichtman & Ceci, 1995). T.N. was primed extensively by Ms. Adams in the days preceeding the trial. He testified: "I've met with her at her office across the street from the courthouse. We met twice or three times at my house...in Helena...without her I don't know how I would do this." He also said Jean had him watch his forensic interview as well. By the time he testified he was 13.5 years old. Why, if all he is there to do is tell the truth about events that really happened, the first sight and touch of a breast, which memory is vivid for men, does he need the prosecutor to spend approximately 10 hours to tell him "how to do this"?

MR. SIPE: At the time that the initial report came in did you do an interview of the girls?

OFFICER HONEYCUTT: Not right away because one had already been done.

Yet a forensic interview was not conducted on J.M. for 16 months, after her initial 8-word disclosure, which Ms. Berg testified was the ONLY time J.M. ever mentioned the alleged incident in almost a full year of subsequent counseling. APSAC guidelines, page 7: "The initial child interview should occur as close in time to the event in question as feasible." Dr. Warshak, author of Divorce Poison: "The more time that elapses between the original report and the professional examination...the more likely that the accuracy of the child's report will be suspect." The Court says "This claim has again to do with events in the DN cases(s) for children, who were, at the time, residing at least part time with the Petitioner." This is not true. The DPHHS placed the Petitioner's daughters in the care of their father, on March 29, 2018. The Petitioner had some supervised visits but never took even partial custody, even when it was given by DPHHS, because Petitioner followed her bond conditions. There is evidence of parental Alienation to produce the desired disclosure which ended up matching Jean Adam's 1-800 call. In the beginning of her therapy with Ms. Berg J.M. was asked to describe her mother as an animal J.M. said, "an elephant, because it's her favorite

animal, and because she would do anything to protect her babies." J.M.'s Counselor, testified that the child's attitude drastically changed in July and she began to blame her mom for Norling's abuse:

MR. LARSEN: Okay. So she's now experiencing frustration with her mother?

MS. BERG: Yes.

MR. LARSEN: And this was a big change from a month earlier when she had been excited and happy about visits with mom?

MS. BERG: Yes.

MR. LARSEN: Did it seem to you that she was beginning to struggle with this concept that her mother might have known that the abuse was occurring?

MS. BERG: Uh-huh.

MR. LARSEN: And not done something to stop it?

MS. BERG: Yes.

MR. LARSEN: Okay. And that thought kid of pervaded her sessions and was a big driver of her anger.

MS. BERG: Yep. I was consistently checking in on feelings towards mom and that consistently came up.

MR. LARSEN: Did something change in her emotions regarding her mother and visitation?

MS. BERG: Yes, it says when asked about her emotions associated with her decision not to have visitation with her mother. Client stated "I think it's the right decision not to have visits with mom."

At this time of her forensic interview on September 19, 2019, there had been over a year of almost total isolation from her mom. J.M. now displays a motive to punish her mother, claiming now that her mother is mean and also to blame for her parent's divorce. Dr. Warshak, author of Divorce Poison writes: "Where children are subjected to verbal bashing "...parents do not reject their children. Instead, children reject their parents...[I've heard] about children who lambaste their parents..about children who will have nothing to do with the parent...In most cases the rejection is not a reaction to gross mistreatment by the parent...After years of commitment-years of emotional and financial support- years of loving and worrying- parents find themselves reviled or ignored by their children."

The State's witness tampering created ficticious adverse childhood experiences for both T.N. and J.M., i.e. child abuse, which caused irreparable damage to them both.

VI. State Tampered With Public Record

Once again the Court repeats "Petitioner has not presented any new evidence...that would support any claim of actual innocence." The Petitioner did, however, present new evidence that the State broke MCA 45-7-201(3) and violated Rule 3.4(b) of Montana Rules of Professional Conduct by cutting and pasting a paragraph from *State v.Robert Ganzales, 2019,* into Petitioner's legal document RESPONSE TO DEFENDANT'S MOTION FOR ORDER TO ALLOW INTERVIEW OF CHILD WITNESS PURSUANT TO 66-15-320 REQUEST FOR HEARING, (Exhibit E) which led the Court to believe that the alleged child witness refused to be interviewed by the defense. The fact that this was brought up on appeal and failed to produce an effect does not mean that the State did not engage in illegal means to deny the defense pretrial interviews with key witnesses, while the State enjoyed unfettered access.

VII. State Used False Written Statements

Title 45 Crimes, 45-7-201, MCA dictates that falsification is material, regardless of the admissablity of the statement under rules of evidence, if it could have affected the outcome of the proceeding. Exhibit No. 3: MOTION AND AFFIDAVIT IN SUPPORT FOR LEAVE TO FILE INFORMATION, filed on August 24, 2018 : 15. As the interview progressed, Boy 11 recounted two times when Holly had sat in front of him topless, and encouraged him to touch her bare breasts...Boy-11 said he did touch Holly's bare breasts with his hands. In his forensic interview, T.N. never said anything like this. The actual words HE used were: "she showed me her boobs." Interviewer Paula Samms then repeats the phrase "showed you her boobs" 8 times in the next 33 lines of dialog, and variations of "you touched her boobs" 13 times in the next 103 lines of dialog. T.N. himself never said those words once. Recall when first asked if he touched her he said, "I didn't." APSAC page 13(7)(B): "Closed-ended questions that can easily be answered with one or two words are usually catagorized as 'recognition promts.' 'Yes/no' and multiple or forced choice questions are examples of common recognition prompts. On appeal the state says "T.N. disclosed that Mathis would frequently walk around the house half-naked." In his forensic interview, T.N. actually said that Petitioner would walk around in her "underwear and bra." He testified that he saw Mathis in her underwear and bra between 5 and 10 times in the 2.5 years they lived together. He never used the phrase "half naked." The term "topless" was only used by Donald Mathis. The police said they never watched any child interviews. Who, then, wrote these charging documents, if not the investigating officers?

"According to T.N.'s disclosure, the first instance of abuse occurred when he was ten years old, the second instance occurred more recently when he was eleven years old.

"Based on T.N.'s allegations, the State charged Mathis on August 24, 2018 with two counts of incest. Count I charged Mathis with incest between December 2016 and December 2017, the (year) when T.N. was 10 years old. Count II charged Mathis with incest between December 2017 and March 2018, the time period 3 months prior to T.N.'s removal from the home.

In forensic interview when asked when the alleged incident occurred T.N. said, "It was maybe like a year and a half or a year ago." On p. 24, line 21, when asked again how old he thought he was at the time he said: "Maybe ten. Maybe ten and a half, maybe 11, somewhere around there." He says nothing about it happening recently, within 3 months of of his removal. What grounds did the State have for charging Mathis with Count II, based on this disclosure? Appeal: "The first incident T.N. described occurred on a family movie night during which Mathis was wearing nothing but a robe. T.N. testified that Mathis opened the top part of her robe, reavealing her bare breasts and hugged T.N., purposefully pressing her bare breasts into his face. T.N. stated at the time of this incident, his 'private parts did get hard.'" He never made this claim in forensic interview.

T.N. said in forensic interview that Mathis "showed" him her boobs but never gives any details how this alleged "showing" occurred, such as the removal or lifting of shirt or bra. T.N. was very vaugue about how this showing happened. He says, "I don't know," "I don't remember." He NEVER said Mathis was wearing a robe on July 26, 2018. The sudden introduction of Petitioner in a robe in trial offers an easy explanation for this alleged "revealing" of the breasts. As for "pressing her bare breasts into his face," when Jean Adams specifically asked T.N. about this hug, what part of his body touched Mathis's breasts he said: "So since there was like, two or three years, it was a couple years so I'm not the height I was height of her shoulders so probably they were touching my torso part, from my torso up to my shoulders probably." I am now

MS. ADAMS: Did something happen to your body when she hugged you?

T.N.: No.

After Ms. Adams badgers T.N. by asking him five more times if something "happened to his body" the child suddenly changes his story. Now he says "not that time." Further badgering caused him to change his story, saying it was the "first time," even though they went through "the first time" in detail and he said, "No," to her question if something "happened to his body."

T.N. Forensic Interview: Paula Samms: Tell me about her hugs. T.N.: Just a regular hug like somebody would give you. "When inconsistent statements are made under oath, perjury may be assumed by setting forth the inconsistent statements in a single count alleging that one or the other was false. It is not necessary to prove which statement is false, but only that one or the other was false." Title 45 Crimes, MCA 41-7-201(6).

VIII. Right to Speedy Trial Violated

Again the Court asserts Petitioner's claim does not support a claim of innocence. Petitioner respectfully requests that the Supreme Court consider four factors under *Barker v. Wingo, 407 U.S. 514m 1972. 1)* length of delay; 2) the reason for the delay; 3) the defendant's assertion of his right, i.e. issues of evidence, witness reliability, and the accused's ability to present an effective defense; 4) and prejudice to the defendant. Failing factor One the threshold inquiry to trigger speedy trial analysis remains when the interval between the accusation and the scheduled trial dates is 200 days. By the time Petitioner was tried on January 27, 2020, 522 days had elapsed from the day of accusation. Failing factor Two, the State disregarded two Court Ordered Subpoenas to provide exculpatory evidence for inspection, which forced Petitioner's Defense to motion for a continuance from March 19, 2019 to October 29, 2019. The State tampered with public record by cutting and pasting part of another person's crime file into the Petitioner's case which caused the Court to believe the State's false claim that the child witness refused to be interviewed by the defense. This caused a Court ordered delay, from October 29, 2019 to January 27, 2020, while the State enjoyed unfettered access to both child witnesses. *Davis v. Singletary, 853 F. Supp. 1492.*

In *Barker*, the U.S. Supreme Court characterizedFactor Three as the most serious of the interests, because the inability of a defendant to adequately prepare his case skews the entire system. The State fails Factor Three by suppressing evidence and witness tampering made possible by delays. One of the concerns unser the Sixth Ammendment regarding trial delays is witness reliability. Classically, witness memories fade over time. Remarkably, in J.M. and T.N.'s case, their previously fuzzy recollections have new clarity and more detail. Lack of evidence, access to witnesses, and the State's control of witnesses denied Petitioner the ability to present a complete defense.

The Court claimed "The reason trials are scheduled out and continued is to ensure both parties are prepared to try the case on its merits and facts as they have been determined through

pretrial discovery process." This opinion contradicts the undeniable fact that the defense obtained none of the information it diligenty pursued in discovery and therefore did not benefit from these delays, thus the State fails Factor four, since the two trial delays were long enough to be "presumptively prejudicial" because the delays were bad-faith delays, and were a deliberate attempt to hamper the defense, which weighs heavily against the prosecution, and cumulatively designed to skew the system in the State's favor. *United States v. Muhtorov, 20 F. 4th 558.* The Sixth Ammendment's guarentee of a speedy trial "is an important safeguard to...minimize anxiety and concern accompanying public accusation and limit the possibilities that long delay will impair the ability of the accused to defend himself." *United States v. Loud Hawk, 474.*

"Every person who, under color of any statute causes to be subjected any citizen of the U.S. of the deprivation of any rights sucured by the constitution shall be liable to the party injured by an action at law." *Civil action for deprivation of rights under 42 USCS 1983, Part 1 of 16.*

XII. UNANIMITY CLAIM

The Court claimed "A split verdict generally confirms the process works." Contrary to this opinion, it could also mean the jury agreed to disagree and "cut the baby in half." The jury was not polled to find out what happened during deliberation of less than 3 hours. T.N. testified that all the alleged abuse incidents happened when he was 11 years old. Count I specified the time period when T.N. was 10 years old. The jury found Mathis guilty on that count. Count II specified the time period when T.N. was 11 years old. The jury found not guilty on that count. Their decision was even not based on testimony.

On Appeal the State claimed "We have also delineated an important exception to the necessity of a specific-act unanimity instruction--known as the 'continuous course of conduct' exception--which can be applied when a defendant's allegedly wrongful conduct under a single criminal count consists of several different acts." The State's claim makes no sense because the jury *was* given a clear unanimity instruction: "The law requires the jury verdict to this case to be unanimous, thus all twelve of you must agree that the defendant is either guilty or not guilty in order to reach a verdict." Petitioner's alleged offense was split into two counts, based on dates, both describing identical allegations of abuse. Count I alleged abuse between December 2016 and December 2017. Count between December

2017 and March 2018. Two specific dates were what the jury was given to determine, not a running offense of multiple acts over an extended period of time. The jury was not given the "continuous course of action" option, and Petitioner was charged with *two* counts, not one. Upon return the Court asked "All right, have you reached a verdict?"(page 67, line 24). **They were not asked if it was a unanimous verdict.**

If The State's "continuous course of conduct" argument is correct, then Petitioner's conviction, based on only one count, cannot be upheld. Only if each offense is considered separately can there be separate punishments for each. If the the jury was rolling both counts into one under a continuous course of conduct, they cannot also separate the verdict into 2 counts, finding not guilty on one and guilty on the other. "Where the same conduct violates two statutory provisions, the first step in the double jeopardy analysis is to determine whether the legislature intended that each violation be a separate offense.

Under the Blockburger test, two offenses are different for double jeopardy purposes if each requires proof of an additional fact which the other does not, the Court need look no further in determining that the prosecution of both offenses does not offend the Fifth Ammendment. The appellate court reviews a mutiplicity decision for an abuse of discretion, but review the appeallant's double jeopardy arguments de novo. *United States v. Davis, 854 F.3d 1276.*

An indictment is multiplicituous if it charges a single offense in more than one count. A multiplicitous indictment violates double jeopardy principles by giving the jury more than one opportunity to convict the defendant for the same offense. *United States v. Davis, 854 F.3d 1276.* If the State's continous course of conduct argument is to be accepted, Petitioner's conviction was based on a multiplicitous indictment.

XIII. INEFFECTIVE COUNSEL

The Court states that Petitioner failed to applaud her defense counsel for the not guilty verdict on Count II. The guilty verdict on Count I, however, carries an egregis sentence which will ruin the rest of the Petitioner's life, so this was not a victory. Vigorous representation is not necesarily effective representation. In Mr. Larsen's letter (Exhibit R) he admits he was "outmatched by an overzealous prosecutor."

Defense Counsel proved ineffective in the following ways:
1) Defense counsel did not call one single expert witness to the

trial or the sentencing hearing or Compel the court to enforce its orders to review exculpatory evidence, 2) At Sentencing, Defense argued MCA 46-18-222 while 46-18-225 may have provided better grounds for an exception to the statutory minimum, since legislature has revised 46-18-222 in such a way as to make it impossible to meet, and 3) Defense Counsel failed to ask further questions after, while questioning Daniel Laughlin, a revelation was made:

MR. LARSEN: So there was an attempt to speak with the initial reporter a woman named Jean Adams that actually just examined you. Is that correct?

MR. LAUGHLIN: Yes

Why did defense counsel not ask on what date was this report made, and what was the final outcome of the investigation on that report? Since Mr. Larsen failed to do this, the importance of this report was not made evident to the Court or the jury. What strategy could Mr. Larsen have failing to motion that Adams recuse herself as prosecutor, due to her *personal* role in seeing his client accused of a crime? This testimony proves that Jean Adams hearsay report, what she claimed Donald Mathis told her J.M. told him, was made before anyone else made an accusation against Petitioner. It proves the criminial design originated in the mind of the prosecutor. This is entrapment under 45-2-213(1), MCA, *State v. Reynolds, 2004 MT 364.* "We are presented with the complete failure of counsel to honor his duties to investigate the case." *State v. Benny 1993, 262.*

Respectfully submitted this 10th day of March, 2024.

Holly Mathis, AO#3028383
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By: _____
Holly A. Mathis, pro se litigant

Certificate Of Compliance

Pursuant to Title 25, Chapter 21(4)(b) of the Supreme Court Rules of Appellate Procedure, I certify that the text of this document does not exceed 10 characters per inch and that it does not exceed 30 monospaced pages, excluding the Motion to Seal, Affidavit and Order and Certificate of Compliance.

Holly A. Mathis

CERTIFICATE OF SERVICE

I, Holly A. Mathis, hereby certify that I have served true and accurate copies of the foregoing Petition - Appeal to the following on March 4, 2024:

Austin Knudson
715 N. Sanders
Helena, MT 59601

Fergus County Court
712 W. Main, Ste 303
Lewistown, MT 59457

Holly A. Mathis 3/4/2024