IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0163

HOLLY ANNE MATHIS,

a.k.a HOLLY ANNE NORLING

Petitioner and Appellant

v.

STATE OF MONTANA,

Respondent and Appellee

APPELLANT'S REPLY TO APPELLEE'S RESPONSE

On Appeal from the Montana Tenth Judicial District Court,
Fergus County, the Honorable Heather Perry, Presiding

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Whether the State has proved that all the Appellant's the claims should be barred under Mont. Code Ann. 46-21-105(2).

New Evidence (Re. at 20-1; 40; Ex. A a 9; Br. at 10; 27) The State contends that Holly's claims based on new evidence, Ex. A, are barred under 46-21-105(2) because Ex. A was not "newly discovered." Yet the court's "examination" under the *Clark* test failed to produce any evidence to support this opinion. The State theorized that Ex. A was *"undoubtedly provided"* to the court in July of 2019, in the *"151 pages of information,"* and supports this claim with: *"Holly argued that Ex. A was printed on July 24, 2019, and that date coincides with the court's 2019 order."* The State misquoted Holly and has the date wrong. Holly showed the final date was Sept. 29, 2018. Holly was sent this document a month after her arrest, not a year later to "coincide" with the July 2019 order. The State opines that *"Mathis disingenuously argues 'that [Ex. A] was zealously hidden from the eyes of the court and is likely contained in the DPHHS file..."* If the district court had seen Ex. A in 2019, they would have made that fact clear in their dismissal of Holly's PCR. This proves it was hidden from the court. The DPHHS conducted the investigation, so it will be in their file. The State also suggests that Ex. A was *"provided to the defense,"* but Larsen still insisted on December 5, 2022, that "the initial allegations came from J.M." (Ex. R at 9, Re. at 29). This proves that this document was concealed from the defense, is not part of the case file, and so could

not be argued on appeal, which satisfies *Clark's* factor one. The State also claimed that Holly *"always had this document in her possession."* Holly didn't understand her case or the law (and therefore the importance of this document) until she began acting as her own counsel in 2022. Holly was imprisoned in June, 2020; Ex. A was in her storage until 2023, so it was not "always in her possession." This satisfies factor two. Examination of Ex. A satisfies factor three, and to satisfy four, it is neither cumulative or merely impeaching, it had the exculpatory conclusion: "The reported information DOES NOT meet abuse/neglect standards." (Ex. A at 6) *State v. Kelly 205 Mont. 417.* **Entrapment** (Br. at 9; 22-31; Re. at 2; 19-20) The existence of Ex. A is clear evidence that the prosecution committed a crime under color of law, but the State claims Holly insinuated it "proved that she did not engage in the criminal conduct and was innocent of the crime." It is the law, 45-2-213, MCA, which says a person is not guilty of an offense if the person's conduct is incited by a public servant. *State v. Kamrud, 188 Mont. 100.* Citizens are protected from entrapment under U.S.C.S. Amend. XIV; Mont. Const. Art. II Section 17.

While the Supreme court has not explicitly defined what evidence counts as new, this court has held that evidence is new for the purposes of the actual innocence inquiry so long as it was not presented at trial. Spectator Nancy Fry-Moline commented:

> "What I heard was a child talked to a counselor, that information was told/asked to another child and that child agreed to the story. Then that child got to spend time with the man who molested the first child. The second child's "memories" became more clear as he spent more time with his father." (Ex. F).

She did not say "the prosecutor made the first accusations" so it is clear entrapment was not evident at trial. "The court is allowed to weigh new evidence against old evidence, even old inadmissable evidence, because emphasis on actual innocence allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial." *Fratta v. Davis, 889 F.3d 225.* **Falsification** (PCR at 59-61; No. 3; 4; Br. at 46-7) Holly was charged with an Information which contained false "facts" which misled the Court to believe that the allegations started with J.M. on July 16, 2018. The existence of Ex. A proves this "fact" to be false. The Information says that T.N. was interviewed on July 26, as if that was his first and only interview. The Court was deceived because they weren't told T.N. was delivered the exact allegations by Laughlin on July 17, 2018, (1/29 Tr. at 11; 14; 1/28 Tr. at 103-5), the day before J.M.'s disclosure was reported on July 18. "Even if a statement is not false, it may be misleading if it omits material information." *Khoja, 899 F.3d at 1008-09.* (Ap. at 3; Br. 28-9; 31-8; 47; 57-8). "In child sex abuse cases, there are factors that courts consider in deciding whether a child victim's hearsay statement carries a gaurantee of trustworthiness to be is admissable under Fed. R Evid 807. These

include spontaneity, consistency of allegations, and lack of motive to fabricate." *United States v. McFadden, 2024 U.S. App. LEXIS 22094.* Laughlin's contact with contact with T.N. contaminated his July 26 forensic interview. "When a child is brought into a forensic interview knowing that the purpose of the interview is to discuss alleged abuse, those interview statements lack spontaneity." (*McFadden).* Marla Phillips, whose masters thesis was on the adverse effect of divorce on adolescent children, testified:

> "I have witnessed first hand that children quite often do not always tell the truth especially if it involves family members. And once the untruth has been blurted out, they cannot correct their words without fear of some type of retribution." (Sen. at 146).

The State claimed Holly's "theory" that Adams worked with Holly's ex-hubands to "manufacture the allegations against her" is "not supported by facts." (Re. at 8; 33). The State provided no evidence to support this opinion, but the following facts prove Holly's claim: **1)** Don is girls' "BFR", the source of Adams's hearsay July 13 report. (Ex. A at 2; 1/27 Tr. at 10; 249; Ex. S). **2)** Two pages of "probable cause" to arrest Holly were a description of Norling's crimes. Ironically Prosecutor Kent Sype testified that Norling's charges were not "appropriate" or "relevant" to be brought into Holly's case. (1/29 Tr. at 36; No. 3 at 2-4; Br. at 47-8). Falsification of the information is illegal under 45-7-201(1)(b) and 18 USCS Law 1001. Nancy Fry-Moline, who sat through the closing arguments at trial said: "I

believe Holly and her children have been victims of manipulation and hate from the men in their lives..." (Ex. F). Donald spoke bitterly at length about his and Holly's divorce, claiming he wanted to reconcile and she refused, and "she ended up taking my children away...putting [Norling's] name on them." He said he was "totally caught up on [child support payments]," which confirms Holly's claim that he was deliquent. Money is the motivator for many transgresssions. If Donald put Holly in prison he would get full custody, never have to pay child support again, and have his revenge for her leaving him and remarrying Norling. (FI at 17-29).

A Court could look beyond an indictment to protect the accused from harmful consequences when his constitutional rights were violated. The indictment is to be viewed *prima facie*- not conclusive- evidence of probable cause. The *prima facie* standard will stand until the introduction of sufficient evidence is shown to negate it. *Moore v. Hartman 1571 F.3d 62.* Witness Don Anderson noted:

> "[Holly] was very poor at picking a mate, but she is honest, hard working, loves her girls and believes in God. She isn't the kind of woman she is being accused of...don't just listen to her husbands that have grown to hate her and want to take her down. After 62 years of cutting hair and being around people I think I am a pretty good judge of people. Would those men be the kind to put in the children's heads the things they might say?" (Ex. F)

Fabricated Evidence (Br. a 46-51; Re. at 33) Honeycutt's summary of Donald's June 27, 2018 police report claimed that Donald reported the alleged abuse that

day. (S2) Both Donald and J.M. testified to the same false story. (1/27 Tr. at 240-1; 251-2; 1/28 Tr. at 213; 1/30 Tr. at 11). When compared to two connected persons' testimony this no longer looks like a "mistake," it looks like fabricated inclupatory evidence, to make it appear Donald made the allegations first. *United States v. Black, 707, F.3d 531, 2013 U.S. App. LEXIS 4251 (4th Cir. 2013).* Mont. Code Ann. 10-1-202, Oath of Office, dictates that every officer shall take and subscribe to defend the constitution of the United States and the constitution of the state of Montana, without any reservation or purpose of evasion. **Perjury** (Br. at 44-6; Re. at 24) (*See* Holly's Motion filed August 9, 2024). The State claims Holly *"attempts to reframe the officer's testimony into supporting a theory that J.M. never disclosed..."* Holly made no such claim. She pointed out that police had T.N. interviewed before they saw J.M.'s disclosure, which meant they had no justification to order that interview. (1/27 at 225; 1/28 Tr. at 10; 14; 17; 21; 1/29 Tr. at 225-7). Holly didn't "reframe" anything, she compared testimony; the contradictions indicate perjury, and the many versions of events revolving around J.M.'s disclosure, the cotter pin of the State's case, raise suspicion. In *United States v. Young (9th Cir. 1994) 17 F. 3d 1201, 1203-04* the testimony of one police officer...indicated that another police officer had testified falsely at trial; conviction reversed. Honeycutt also committed perjury when he misled the jury to believe that the allegations began with J.M.'s July 16, 2018 disclosure, when he

knew from Bruchez's fax (Ex. T) that Adams was "1st reporter." (Ex. T at 8; 1/27 Tr. at 239; 253; *Br.* at 43-4). To conceal entrapment is fraud on the court in violation of 45-7-201, which resulted in an actual deprivation of right secured by Fed. R of Evid. 803 & 106, under USCS Amend. 5. MCA. *Rivera v. Lynch 816 F. 3d. 1064; State v. Rowe 2024 MT 37.* Police officers can be held to account for the violation of citizen's civil rights by fabricating inculpatory evidence and obstruction of justice for covering up evidence of entrapment. *Tyree Nichols, 2024.*

The State claims *"The evidence against Mathis was strong, was established by multiple witnesses at trial and was not simply one person's word against the other." (Re.* at. 33). There was no "other." All the jury saw was what the State's witnesses wanted them to see. Nancy Raths watched much of the trial and said:

> "Some of the jury was not as attentive as they should have been." She recounted the trial of her murdered brother: "I did not see the jurors inattentive as I saw in [Holly's] case...it bothered me a lot...the jury's deliberation was very short." (Ex. F).

The fact that Holly was acquitted on one count may not prove her innocence, but does suggest that there was reasonable doubt. The two counts were identical, divided only by the specific dates. "The children's testimony failed to specify the calendar year during which the incidents occurred. (Re at 8). It remains suspect that the jury came to determine that Holly definitely committed this offense at one

time and definitely did not at another. The State's claim that the jury acted on a "continous course of conduct instruction" (Ap. at 32) is contrary to the instruction the jury was given: "Each count charges a distinct offense. You must decide each count separately." (1/30 Tr. at 32). The jury (half) believed the State's story. That does not mean that story has any bearing on reality. A guilty verdict is not a declaration that a defendant objectively committed a crime but rather that the government has provided evidence that she did so sufficiently to dispell all reasonable doubts. *Hubbord v. Rewarts, 98 F. 4th 736.* When it becomes apparent the court was deceived, the government's "ability to meet its burden of proof" is not a demonstration of justice, but an egregis miscarriage of justice.

> Spectator Sue Kalina said: "When I listened to some of the testimony...I couldn't put it together. Two and two didn't equal four." (Sen. at 109). Spectator Doug Welsh said : "is an upright, honest professional, a caring respectful individual. I believe too that there's some instance of maybe not all the truth has come out." (Sen. at 155-6)

The simple premise underlying actual innocence or factual innocence (they are equivalent) is that objective, historical events occur, regardless of a third party's ability to gather evidence of that occurrance after the fact. The government's "evidence" of that event in no way changes what actually occurred. Meg Richard knew Holly for 13 years, had a degree in behavioral science and once worked in a sex-offender unit: "I've never seen any kind of possibility that she would be a person that could commit this crime." (Sen. at 137-8). **History of Entrapment**

and Conspiracy (Br. at 30; 49-51; Re. at 19) The State did not acknowledge that *State v. Rowe, 2024 MT 37* is evidence that supports Holly's claim of entrapment by Lewistown prosecutors and conspiracy and perjury from officer Honeycutt. He ignored three witness statements to lend credibility to one angry child's statement. (1/27 Tr. at 256). In *Rowe,* the accused had many other charges in other counties. In Holly's case, she had no priors, no previous accusations, and the entire family had been interviewed just before Adams's report was made and not one person reported the alleged abuse. The State's refusal to address this issue lends it credibility. Evidence-backed claims which stand undisproved can be considered true and correct statements of fact. Until Ex. A was found, the officers' testimony and actions raised no red flags. Without the evidence of entrapment, it was not apparent that perjury and conspiracy took place in this case, therefore these claims could not have been raised on direct appeal.

A **Cumulation of errors** amassed in this case which rendered the process fundamentally unfair. "The court must first find errors, and if no single error justifies a reversal, all the errors must be assessed for their prejudicial effect. *Sanders v. Sullivan, 701 Supp. at 1013(S.D.N.Y 1988); Brumfield v. Stinson, 297 F. Supp. 2d at 621.* **Suppressed Evidence** (Re. at 11; Br. at 38-42; Ap at 6-7). The State contends that the exculpatory evidence was "not likely to affect the outcome," a determination they cannot confirm. The State did not acknowledge

that Lewistown prosecutors are in contempt of two court orders, in violation of 3-1-501, MCA. (Ap at 6-7). Suppression of evidence, regardless of the state's good or bad faith, violates the Due Process Clause of U.S.C.S Const. Amend. 14.1, Mont. Code Ann. 46-15-322, MCA. *Brady v. Maryland, 373 U.S. 83 (1963).* "A prosecutor that witholds evidence on demand of the accused casts the prosecutor in the role of an architect of the proceeding that does not comport with justice." *(Brady).* **Court failed to Conduct in Camera Review** (Re. at 36-9; Br. at 56). The does not address the district court's failure in 2019, to review on the exculpatory evidence, as is required under Montana Code Annotated 41-3-205(2) & MCA 46-15-106(1)(2), Rule 17(g) Fed. R. crim. P.; 2017 MT HB 303, Section Two(6)(a), ammending 41-3-205, MCA (1). **Defense Denied Access to Witnesses** (Re. at 22-3; 28, FN4; Br. at 40-42; Ap at 8; 18). The State claims the cut-and-paste only "looks like it was transcribed from...*Gonzales,*" yet the paragraph is *ver batim,* but is not in quotation marks, nor does it cite that it is sourced from *State v. Ganzales, 2019.* It is placed in the document as if it is T.N.'s refusal. This is falsification, in violation of 45-7-203(1)(b), MCA 1997, which makes clear that it is illegal to create a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading...there must be some sort of affirmative act by the prosecution which interfered with the defense's access to witnesses... characterized by the

prosecution taking action to "sequester [and] insulate witnesses from the defense on [the prosecution's] own initiative." *State v. Pecora, 190 Mont. 115, 121, 619 P.2d 173, 176 (1980)(State v. Smith, 235 Mont. 99, 103, 765 P.2d 742 (1988).*

Ineffective Counsel (Re. at 13; 16; 22; 28 Br. at 51-6) The State claims Holly contended that her "counsel's questioning of Don Mathis was deficient because they failed to expose Adams's 'entrapment' (Br. at 53)." The State is confused. Holly noted that the entrapment could have been exposed in examination of witness Laughlin, who said Adams was "first reporter," and counsel asked no further questions. The State also claims Holly's IAC claim fails the *Strickland* test because her defense succeeded in obtaining "the children's confidential counseling information and the protected DPHHS records." Her defense succeeded in getting one incriminatory session from one child. (Ex. L). They failed to get the "protected DPHHS records." Her attorneys didn't look up Gonzales, cited on the next page, or they would have noticed T.N. was referred to as "she." "The ineffective assistance of counsel is critical to our adversarial system of justice, a lack of effect. Counsel may impinge the fundamental fairness of the proceeding being challenged." *State v. Henderson, 20014 MT 173, pp4 322 Mont. pp4, 93 P. 3d 1231, pp4.* The State and the court "relied" on Larsen's refusal to admit he was ineffective to prove he was effective, but fails to comment on Larsen's prejudicial examination of witnesses, and Larsen's admission he was "outmatched by an overzealous

prosecutor" (Ex. R at 5). One who is outmatched can hardly be effective. The preponderance of evidence presented by Holly establishes both deficient performance and prejudice, which satisfies prong one of the *Strickland* test. "When evaluating prejudice, courts generally must take into consideration the 'totality of the evidence before the judge or jury.'" *Pough v. United States, 442 F3d 959, 964 (6th Cir. 2006).* The State claims Holly failed to meet prong two because Larsen argued the exception under 46-18-222(6), MCA. This exception does not apply in her case, (No. 4 at 2) but Larsen argued it anyway, at both the March Exceptions hearing and at Sentencing, instead of 46-15-225. (Br. at 51). "In the sentencing context, ineffective assistance 'can result in Strickland prejudice because any amount of additional jail time has Sixth Amendment significance." *Lafler v. Cooper, 556 U.S. 156, 132 S. Ct 1376, 1386, 182 L. ed. 2d 398 (2012).*

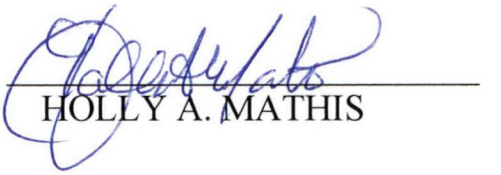
PCR decided by wrong judge Petitions for postconviction relief are sent to the original judge. *Saafir v. City of Las Vegas, 2023 U.S. Dist LEXIS 191286, par. 21.* Judge Olsen presided over Holly's trial and pretrial proceedings, yet Justice Perry, who saw none of these things, was allowedto judge Holly's PCR. In *Saafir* the Nevada court of Appeals reversed in part and remanded for lack of jurisdiction because a petition should be assigned to the original judge or court. It was determined that the municipal court could only determine postconviction for misdemeanor convictions. **CONCLUSION** The State does not claim that

Holly's claims do not have merit, only that multiple instances of evidence-backed malfeasance should be dismissed on a technicality. (Re. at 23-4). This is a case which involves grave misconduct of the prosecuting attorneys and police, where such conduct was pronounced and persisitent, with a probable cumulative effect upon the jury which could not be disregarded as inconsequential. *Berger v. United States, 295 U.S. 78.* Adams made the first allegations. Berg changed J.M.'s disclosure to mirror Adams's allegations after Adams had access to Berg's notes. (1/28 Tr. at 9-10; No. 3 at 4). Honeycutt "worked with Ms. Adams to have T.N. forensically interviewed." (1/27 Tr. at 252). Laughlin testified that he called Adams on the morning of July 17, before he met with T.N. (1/29 Tr. at 9). This proves Adams was actively involved in the alleged victim's interviews and the alleged witness's disclosure. Adams personally prepared T.N. for several days prior to the trial, calling into question the critical testimony of the minor victim at trial. (1/28 Tr. at 73-4). Adams also issued the warrant for Holly's arrest. A prosecutor "actively directing investigative, police-like actions" before preliminary hearing is not entitled to absolute immunity." *Genzler, 410 F. 3d at 641.* The Supreme Court can analyze a malicious prosecution claim under color of law under 42 USCS Law Section 1983, considering that the State has unlawfully interfered with Holly's protected liberty interest because the State's conduct was inherently impermissable, regardless of any protected of remedial procedures.

Injunctive relief should not be granted in Holly's case because a declatory decree was violated. *Ramos v. Gallo; 59 F. Supp. 833, 1984 U.S. Dist. LEXIS 22499 (D. Mass. 1984).* The sum of these actions amount to a general conspiratorial objective, a violation of 45-7-201, MCA; which resulted in an actual deprivation of right secured by Fed. R of Evid. 803 & 106, under USCS Amend. 5. *Rivera v. Lynch 816 F. 3d. 1064; State v. Rowe 2024 MT 37.* The Attorney General's office is under indictment for prosecutorial misconduct, and recommends that the Court overlook other prosecutor's misconduct and a repeated pattern of fabricating ficticious crimes of child sexual abuse. The appellate court's application of 28 USCS Law 2244(b)(2)(B)(ii) must consider all the evidence, old and new, incriminating and exculpatory. The court has repeatedly made clear that a defendant is actually innocent when, considering the evidence as a whole, no reasonable juror would have convicted her. A defendant who can dismantle the government's case against her could overcome the procedural bar of 28 USCS Law, Section 2244(b)(2)(B)(ii)-- by clearly and convincingly removing that certitude-- even if she cannot show that she is, in fact, innocent. Conclusive exoneration is not required to show actual innocence. *Keith v. Hill, 78 F. 4th 307.* If a defendant can instill reasonable doubt as to his guilt by impeaching the State's case against her, she has proven actual innocence. *Hubbord v. Rewarts, 98 F.4th 736.* Respectfully Submitted this 27th day of October, 2024. By Holly Mathis

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of appellate procedure, I certify that this reply is printed with a proportionately spaced roman text typeface of 14 pitch; is double-spaced except for quoted and indented material; and does not exceed 14 single-sided pages, excluding Table of Contents, Table of Authorities, Certificate of Compliance, and Appendices.



HOLLY A. MATHIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served upon the opposing party, on October 27, 2024 by U.S. Mail at the addresses indicated below:

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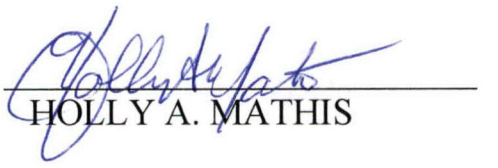

HOLLY A. MATHIS