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6 **IN THE SUPREME COURT OF THE STATE OF MONTANA**

7 **BART J. CRABTREE,**
8
9 **Petitioner and appellant**

No. DA 21 – 0501

10 vs.

11 **STATE OF MONTANA,**
12
13 **Respondent and appellee**

14 **BRIEF OF APPELLANT**

15
16
17 **On Appeal from the Montana Eighth Judicial District Court,**
18 **Cascade County, Judge Elizabeth Best, Presiding.**

19 **APPEARANCES:**

20 **Bart J. Crabtree, Pro Se**
21 **507 5th Ave. Southwest**
22 **Great Falls, MT. 59404**
23 **Petitioner and Appellant, Pro Se**

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STATEMENT OF THE ISSUES FOR REVIEW

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- 1 1. Whether district court judge Elizabeth Best failed to recuse herself as
2 the criminal trial judge as required by Due Process, Montana State
3 laws, and Judicial Canon of Ethics to provide petitioner an impartial
4 judicial officer. Was jurisdiction lost as a result of this violation(s).
- 5 2. Whether there was: fraud upon the court induced by a Great Falls city
6 police detective; prosecutorial misconduct involved; as well as
7 collective counts of perjury executed by the State's main witness.
- 8 3. Whether appellate counsel failed to provide effective assistance of
9 counsel by failing to raise certain claims despite being pressed upon
10 by the defendant/petitioner.
- 11 4. Whether all facts supporting the grounds for relief are set forth in this
12 petition and that the records support the existence of these facts as
13 per MCA 46-21-104(1)(c). They are, and they do!

14 **STATEMENT OF THE CASE**

15
16 Petitioner, Pro Se, was convicted on June 13, 2017 of theft of \$2,560.38 in cause
17 number BDC-16-379, Judge Elizabeth Best, in the Eighth judicial district.
18

19 Petitioner moved to set aside the verdict on August 21, 2017, which was denied by
20 the District Court. Petitioner was sentenced on August 28, 2017 and was given a
21 5 year sentence, with 3 suspended, 2 with D.O.C. (Exh. M). On April 12, 2018.
22 Defendant filed a motion to set aside the verdict which was denied (Exh. N).
23 Defendant moved to stay the sentence pending the direct appeal to the MT.
24 Supreme Court which was denied by the district court (Exh. O).
25
26 Petitioner appealed his conviction which was affirmed on a legal basis by the
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1
2 Supreme Court, October 8, 2019. *See Crabtree v State, 2019 MT239.*

3 Thereafter, petitioner/appellant filed for Post-Conviction relief on January 4,
4 2021. The State, by and through the Cascade County Attorney's office, filed a
5 response in opposition on July 13, 2021, and a reply brief was filed on August 13,
6 2021. On August 16, 2021, the trial court (E. Best) denied the petition.
7

8 To petitioner's knowledge, due to absence of correspondence to petitioner, it
9 appears the Attorney General's office was never caused notice of the Post-
10 Conviction relief petition as mandated by MCA 46-21-201(1) "Proceeding on
11 petition". The Attorney General's office was to determine who would file the
12 responsive pleading. Rather, it appears the cascade county attorney's office
13 unilaterally chose to file the responsive pleading. Why?
14

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16
17 The petitioner/appellant seeks this court to reverse judge Best's denial of the
18 petition filed under the Montana Post Conviction Relief Act. The petitioner Bart J.
19 Crabtree hereby provides this court with his brief/memorandum in support of post-
20 conviction relief. Proffering this brief are all requisite supporting affidavits,
21 records, transcripts, and photos. For the reasons set forth below, this court must
22 grant petitioners petition, overturn petitioner's conviction, order a new trial be
23 held, or discharge the Petitioner from the conviction entirely.
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1 **STATEMENT OF THE FACTS**

2 After serving 2013 and 2014 as vice-president of the Great Falls Electric City
3 Heat girls softball organization, Petitioner Crabtree became president in 2015. The
4 previous president, Dawna Cox-Marez, encouraged Crabtree to assume the
5 position of president as she did not want one Marlee Sunchild taking over the
6 organization. Sunchild was rumored to be wanting to take over the organization.
7
8 After contemplation Crabtree elected to replace Cox-Marez as president. At the
9 very first board meeting in January of 2015, Crabtree met Sunchild personally for
10 the first time. She indicated a demand to serve on the board. Installation of board
11 members occurred per the by-laws. Crabtree was installed as president and Marlee
12 Sunchild as vice-president. During that very meeting Sunchild expressed a desire
13 to get bank records to review and made unwarranted and purely speculative
14 accusations that the previous president, Cox-Marez, had been stealing funds from
15 the organization. Sunchild proved to be a very pushy board member without
16 offering any help other than showing up for board meetings.
17

18
19 In July of 2015, at State softball championships in Billings, Marlee Sunchild took
20 her daughter's entire team, coaches and parents to Ol' Chicago restaurant in
21 Billings and purchased lunch, for all that attended, using organization funds
22 without Crabtree's authorization or knowledge. This amounted to approximately
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1 \$600.00. This was unacceptable to Crabtree as president, and he confronted her
2 about it when he discovered the charges. The head coach for Sunchilds daughter's
3 team is Travis Palmer, a Great Falls Police officer and close friend of Sunchilds.
4 Subsequent to this incident, a month later in August when Sunchilds daughter and
5 Travis Palmers team went to national championships in Oregon, she made another
6 unauthorized purchase of approximately \$700.00 for tournament passes for all the
7 parents of her daughter's team. This was after Crabtree had already given
8 Sunchild almost \$6,000.00 for their trip to nationals, an amount unheard of in Heat
9 history. Again, this unauthorized expenditure created friction between Crabtree
10 and Sunchild. His last warning ensued because of this incident. In January of 2016
11 Sunchild again made an unauthorized purchase. At this point, Crabtree did not
12 confront her, but rather prepared documents for her immediate dismissal from the
13 board for cause. Crabtree, per the bylaws, called a special board meeting for
14 February 29, 2016, specifically for the purpose of dismissing Sunchild. She was
15 officially dismissed at this meeting. It was several weeks prior to this point
16 Sunchild began to create problems and hurl false allegations against petitioner
17 Crabtree with the Great Falls police department. Crabtree and the board were
18 subsequently compelled to file a civil complaint against Sunchild in Cascade
19 County District Court due to her sheer unwillingness to leave the board. District
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1 Court Judge Elizabeth Best was appointed to the civil cause. Per a directive of the
2 court, Crabtree and the board were mandated to retain legal counsel to represent
3 them in the civil action. Crabtree and the board used their own personal funds to
4 retain counsel. Sunchild retained a local attorney to represent her. It is believed that
5 Sunchild eventually used Heat organization funds to pay her attorney. In May of
6 2016 a show-cause hearing was held (BDV-16-223 – Exh. A, transcripts). During
7 the months of February, March and April Sunchild worked closely with Great Falls
8 Police Detective Travis Burrows to create false criminal allegations against
9 Crabtree as the ensuing facts will disclose. Burrows had only one visit with
10 Crabtree in early March. Not one time thereafter did detective Burrows contact
11 Crabtree to ask questions or dispute the verity of any of Sunchilds claims. Also,
12 during the period prior to and after the show cause hearing detective Burrows was
13 in routine interaction with Marlee Sunchilds civil attorney Neil DuBois, but not
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19 one time did he bother to contact Crabtree’s civil attorney Gale Gustafson. During
20 the show cause hearing Sunchild testified falsely about numerous topics. To
21 petitioner’s surprise, Travis Burrows also attended to testify on behalf of Sunchild.
22 After remitting all the evidence of cash receipts to detective Burrows in March and
23 not hearing from him again, Crabtree reasonably presumed that the false reporting
24 by Sunchild was a closed issue. The false information and perjury uttered to the
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1 court that day by Sunchild, Janet Brown, and detective Burrows created undue
2 prejudice, animus, and bias in District Judge Elizabeth Best towards Crabtree.
3

4 There was not one scintilla of evidence presented to confirm Sunchild and Burrows
5 testimony and claims. Judge Best only took their testimony at face value.
6

7 Crabtree was removed from the board by Best, Sunchild was placed as president,
8 and Crabtree was subsequently criminally charged with theft by embezzlement of
9 \$2,560.38. Judge Best signed the warrant for arrest and inappropriately continued
10 as the judge in the criminal case, refusing to recuse, culminating in Crabtree's
11 conviction and sentence.
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14 **STANDARD OF REVIEW**

15 The standard of review this Supreme Court applies in appellate cases identifies the
16 level of deference the court must accord a district courts decision. This court, in
17 this case, should apply an abuse of discretion standard of review by treating the
18 courts decisions as an evidentiary issue. This court must pursue and review the
19 district courts factual findings to determine whether they are supported by
20 substantial credible evidence and whether they are clearly erroneous. The abuse of
21 discretion can be found if the district court acts arbitrarily and without the
22 employment of conscientious judgment or exceeds the bounds of reason resulting
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1 in substantial injustice. Failure of a district court to exercise discretion is itself an
2 abuse of discretion.
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4 Issue 1. Judge Best failure to recuse. In *Re Murchison*, 349 U.S. 133 (1955) 75 S.
5 Ct. 623 “Where a judge had determined in an earlier proceeding whether criminal
6 charges should be brought and then proceeded to try and convict the petitioner”,
7 holding that it violated due process for one adjudicator to act as grand jury and
8 judge for the same defendant. In *Mayberry v Pennsylvania*, 400 U.S. 455 (1971)
9 91 S. Ct. 499 “A defendant in criminal proceedings should be tried before a judge
10 other than the one reviled by the contemnor.” Due Process Clause of the 14th
11 Amendment to a trial before another judge. Montana Judicial Canon of Ethics and
12 MCA 3-1-804 & 805 mandated recusal.
13

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16 Issue 2. Prosecutorial misconduct. Perjury. In *Mooney v Holohan*, 294 U.S. 103
17 (1935) 55 S.Ct. 340 it was held that “Due Process prohibits prosecutions knowing
18 use of perjured testimony”. In *Pyle v Kansas*, 317 U.S. 213, 216 (1942) “relief
19 was granted to defendant who established that prosecution knowingly presented
20 perjured testimony & failed to correct the witness and suppressed favorable
21 evidence”. In *Giglio v U.S.*, 405 U.S. 150 (1970) “The governments failure to
22 correct false testimony violates due process”. In *Mesarosh v U.S.*, 352 U.S. 1
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1 (1956) “The court granted the defendant a new trial based on the fact that the
2 witness had been totally discredited”.

3
4 Issue 3. Ineffective assistance of appellate counsel. On direct appeal appellate
5 counsel refused to present several vital issues despite defendant’s insistence he do
6 so. Not to introduce the issues fell below an objective standard of reasonableness.
7
8 Smith v Robbins, 528 U.S. 259, 285 (2000).

9
10 **SUMMARY OF THE ARGUMENT**

11 Since the moment Petitioner was informed of him being charged with
12 embezzlement and turning himself in at the Cascade County Detention Facility,
13 Petitioner has maintained his innocence. Prior to, during, and since the underlying
14 trial many facts have been established and uncovered that seriously undermine the
15 confidence and trustworthiness of the verdict in this case. Most concerning, and
16
17 damning, is the extensive and habitual perjury committed by both Marlee Sunchild
18
19 and Great Falls Police Detective Travis Burrows during the criminal trial as well as
20 Sunchild giving false reports to law enforcement authorities leading up to the trial.
21
22 Collusion is evident between Sunchild and Burrows. Sunchild and detective
23 Burrows were the only two witnesses for the State. MCA 45-7-201 PERJURY: (1)
24
25 “A person commits the offense of perjury if in any legal proceeding the person
26 knowingly makes a false statement under oath...or affirms the truth of a statement
27

1 previously made when the statement is material”. Section (3) states distinctly that
2 “*FALSIFICATION IS MATERIAL*...if it could have affected the course or outcome
3 of the proceeding.” Also, evidence strongly indicates that detective Burrows
4 tampered with evidence. The following objective and factual evidence and records
5 clearly support Petitioner’s innocence, vitiates Burrows scurrilous investigation,
6 and further impeaches both witness’s testimony given under oath. There is
7 additional newly discovered facts that support Petitioners repeated and unwavering
8 claims of innocence and undermines the State’s case against Petitioner which are
9 discussed in detail below. The following facts tell a quite different story than the
10 one the jury heard during the trial. This case has been a pervasive pattern of
11 misconduct and an egregious display of an intentionally reckless and fraudulent
12 abuse of Montana’s criminal justice system targeting an innocent man. When
13 taken into account all the following evidence, there is little doubt that justice has
14 not been served in this case. It’s time to correct that. The documentation and
15 information evince the scheme and artifice that defrauded the court and attacked an
16 innocent man. It is transparent and the evidence is irrefutable. An uncorrected
17 false conviction is not simply in tension with the very essence of a courts
18 responsibility to do justice, it presents a greater threat to the public’s faith and trust
19 in our judiciary. This court has a duty to correct any injustice that has occurred. In
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1 State v Hall, 88 Mont. 297, 304, 292 P. 734,735 “...anything so connected with the
2 matter at issue and to have a legitimate tendency to prove or disprove some
3
4 material issue by giving weight or probability to, or detaching from, the testimony
5 of a witness *is material* and that, if evidence is circumstantially material, it is
6 sufficient to sustain a perjury charge.” The test for materiality as set forth by
7 statute is not particularly difficult to meet, it requires only that in the actual, factual
8 situation involved would it be reasonable to find that the witness false statements,
9 as believed, altered the course of the investigation. While it is true that a false
10 answer *to a trivial or irrelevant question* (singular) does not itself hamper the
11 functioning of the State, the Court, whose integrity depends on the truth, has a
12 special interest in seeing those who do not tell the truth, whether to a relevant or
13 irrelevant matter, do not go unpunished. In State v Buckles 98-253 it was the
14 opinion of the court that “There is significant probability the perjury and
15 inconsistent statements contributed to defendant’s conviction.” Perjury is a crime
16 against justice. Just one sworn statement has the power to tip the scales of justice
17 and dramatically alter someone’s life. In this case there were numerous instances
18 of perjury, designed to prejudice the jury, by both the states only two witnesses,
19 Sunchild and Burrows. The overwhelming and incontrovertible evidence is clear.
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1 Historically, the “Clark Test” has been applied in motions for new trials and
2 must satisfy a 5 part test if applied outside with an untimely petition for post-
3 conviction relief.
4

- 5 1) The evidence must have been discovered since the defendant’s trial. This is
6 evidenced by the perjury that occurred during the trial, and the consideration
7 of the evidence withheld at the trial as the following information will show.
8
- 9 2) The failure to discover the evidence sooner must not be the result of a lack
10 of diligence on defendant’s part.
11
- 12 3) The evidence must be material to the issues at trial.
13
- 14 4) The evidence must be neither cumulative nor merely impeaching.
15
- 16 5) The evidence must indicate that a new trial has a reasonable probability of
17 resulting in a different outcome.

18 In U.S. v Taglia, 922 F.201 413 it has been ruled that “evidence of perjury is
19 more than merely impeaching as it calls into question the integrity of the verdict”.
20 The Supreme Court has also ruled that newly discovered evidence can take varying
21 forms. All 5 parts of the Clark test here are fulfilled in this case. In addition to
22 Clark, Schlup expands and broadens the field in actual innocence standards. In
23 Schlup v Delo 513 U.S. 298 (1995) “*All evidence that has any bearing on a gross*
24 *miscarriage of justice or actual innocence must be considered*”.
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1 **FACTS & COURT RECORDS/EVIDENCE**

2 Ineffective Assistance of Appellate Counsel. Petitioner had appointed to him an
3 attorney from the State of Montana Appellate Division to file and proceed with his
4 direct appeal to the Montana Supreme Court regarding this case. The appellate
5 attorney of record was Gregory Hood. Despite defendant demanding that his
6 appellate attorney include in the brief argument that the district court judge in the
7 case was mandated by law, and ethics, to recuse herself, he failed to do so. This
8 case involves two cases: Civil Cause #BDV-16-1223 to which Petitioner filed
9 civilly against Marlee Sunchild, and criminal case #BDC-16-379. Both cases were
10 heard by Judge Elizabeth Best, and both involved Electric City Heat Softball. The
11 very heart of this issue is the undue prejudice and animus Judge Best displayed
12 towards defendant/petitioner Crabtree due to the collusion and lies instigated prior
13 to and during the civil cause by Sunchild and Burrows. Fraud upon the Court is
14 where material misrepresentations have been made to the court which distinctly
15 occurred. As such, the impartiality of the court was so disrupted and compromised
16 that it could not perform its task without bias and prejudice towards the
17 defendant/petitioner. MCA 3-1-805(1) secures the constitutional right to an
18 impartial trial judge. Elizabeth Best was mandated by law, and ethics, to recuse
19 herself. MCA 3-1-804(1)(b) allows for immediate substitution of District Judges.
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1 It clearly states that “Each adverse party is entitled to one substitution of a district
2 judge”. Petitioner sought this relief and filed his motion well within the 10-day
3
4 timeframe after his arraignment (Exh. Q). MCA 3-1-805 Disqualification for
5 Cause. Section 1 clearly states that “Whenever a party to any proceeding in any
6
7 court shall file and affidavit alleging facts showing personal bias or prejudice of
8 the presiding judge, *such judge shall proceed no further in the cause.*” Petitioner
9
10 did file a timely motion with the necessary affidavit showing burdening prejudice
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12 and bias towards the defendant/petitioner, manifested from false testimony during
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14 the show cause hearing. Defendant/Petitioner was representing himself pro se in
15
16 the criminal matter and therefore the affidavit could not be “accompanied by a
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18 certificate of counsel of record” as indicated in the code. In addition, the Supreme
19
20 Court has issued numerous rulings that Pro Se litigants are to be given latitude in
21
22 the courts. Furthermore, the code of Judicial Canon of Ethics mandated that Best
23
24 recuse herself from the criminal proceedings. Rule 2.12(A)-A judge shall
25
26 disqualify himself or herself in ANY proceeding in which the judge’s impartiality
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28 might reasonably be questioned, including but not limited to: 1) The judge has a
personal bias or prejudice concerning a party....., or personal “facts” that are in
dispute in the proceeding: (5)(d) the judge previously presided as a judge over the
matter in another court. “Under this rule a judge IS disqualified whenever the

1 judge's impartiality might reasonably be questioned regardless of whether any of
2 the specific provisions of paragraph A (1) through (5) apply". Also, "A judge's_
3 obligation not to hear or decide matters in which disqualification is required_
4 applies regardless of whether a motion to disqualify is filed". A judge is mandated
5 "to make reasonable efforts to transfer the matter to another judge as soon as
6 practicable"... "even if the judge believes there is no basis for disqualification".
7 Promoting public confidence in the judiciary is of utmost importance. Rule 2.2:
8 "To ensure impartiality and fairness to all parties, a judge must be objective and
9 openminded". "Any judge who manifests bias or prejudice in a proceeding impairs
10 the fairness of the proceeding". (Exh. B – Judicial Canon of Ethics). Judge
11 Elizabeth Best's unwavering prejudice and bias was/is clearly evident. At the
12 beginning of the criminal trial, she explicitly stated "The only issue *is what you*
13 *did*" (Crim. Trial p:11). In her ruling after the show cause hearing, removing

19 Petitioner from the organization, she said "Crabtree's testimony was not credible"
20 and that 'ECH presented credible evidence that Crabtree has already embezzled
21 money and property belonging to ECH, and that he intends to convert ECH
22 property to his own use". (Exh. C – p:9, BDV-16-0223 order). These statements
23 are clear indications of why there are laws and codes to be followed for the
24 protection of innocent people. These laws and codes of ethics were clearly
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1 usurped due to the gross and unwavering prejudice towards defendant. In
2 Goldberg v Kelly, 397 U.S. 254 (1970) it is held that a State must provide a
3 hearing before *an impartial judicial officer*. The 14th amendment, Due Process, is
4 a legal obligation of all States to provide a fair procedure. It promises that before
5 depriving a citizen of life, liberty, or property the government must follow fair
6 procedure. When due process is violated, jurisdiction is lost. Any proceeding of a
7 court without jurisdiction are a nullity, and its judgment without effect. Where the
8 court failed to observe safeguards it amounts to denial of Due Process of Law, and
9 the court is deprived of Juris. The departure by the lower court from these
10 recognized and established requirements of *both the law and ethics* which had the
11 gross effect of depriving Petitioner of his Constitutional right was an excess of
12 jurisdiction. The defense of lack of jurisdiction may be raised at any time, even on
13 appeal.
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19 Fraud upon the court; Mutual Perjury and Conspiracy.

- 20 1. Marlee Sunchild, witness for the state and primary accuser.
- 21 2. Detective Travis Burrows, witness for the state. G.F.P.D.

22 Although Ms. Sunchild was added to the organizations bank checking
23 account by Petitioner Crabtree in October of 2015, it wasn't until mid-February of
24 2016, when she was being removed from the board for cause, that Sunchild went to
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1 the Great Falls Police Department and started filing false reports against Crabtree
2 to authorities, namely detective Travis Burrows. MCA 45-7-205(1)(a). False
3 reports. “A person commits an offense under this section if the person knowingly
4 gives false information to any law enforcement peace officer with the purpose to
5 implicate another.” Initially, Sunchild accused Crabtree of stealing Raffle money
6 from the organization, first for a gun raffle and then for a buffalo meat raffle.

7 Burrows statement in his report says “the matter involving the raffle tickets did
8 not appear to criminal” (Case report Exh. D, p:13). It should be noted that during
9 this time Sunchild was scurrying around telling people that Petitioner had stolen
10 money from the organization. Subsequently, Sunchild now proceeded to tell
11 Burrows that Petitioner had stolen money by writing checks to himself. Sunchild
12 and other board members knew quite well that Petitioner reimbursed himself for
13 expenses which he paid out of his own pocket as they themselves were recipients

14 of cash reimbursements totaling \$455.26 for items they paid cash for. Previous
15 president of the organization, Dawna Cox-Marez, told detective Burrows during
16 his investigation in a phone interview (Case Report Exh. D, p:15) that “It was
17 common practice for the president to cash reimbursement checks”. Marlee
18 Sunchild falsely told Burrows she wasn’t aware Petitioner Crabtree was writing
19 checks to himself. Upon Travis Burrows request, Petitioner remitted a cash
20

1 expense ledger along with receipts for those cash purchases as Sunchild was now
2 accusing Petitioner of stealing "\$5,500.00". Sunchild and Janet Brown reviewed
3 the ledger and falsely claimed that "\$2,560.38 was unaccounted for" (Exh L). This
4 was the exact amount Burrows had Petitioner criminally charged with through
5 complete lack of investigative effort and by choosing to ignore other witness's (5)
6 testimony when he called them via phone. Of this \$2,560.38 which Sunchild and
7 Brown claimed were "unaccounted for", \$1,781.20 were for 4 of the larger
8 expenses itemized below and *evidenced* to be false allegations through false
9 reporting, perjured testimony, and conspiracy with detective Burrows. Sunchild's
10 numerous instances of perjury conveyed serious adverse impressions to the jury.
11 There is absolutely no underpinning of facts with Marlee Sunchild's claims and
12 testimony and detective Burrows, as well as the prosecutor's office, lacked any
13 substance of integrity or critical thinking to purposely gain a conviction.
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19 One of the items that Sunchild claimed to be "unaccounted for" was a
20 skid steer which Petitioner had rented for \$530.00 for use at the softball facilities to
21 spread gravel. During the investigation, Burrows wrote in his records that "Marlee
22 (Sunchild) indicated that *Bart had a skid steer at the softball complex to spread*
23 *gravel* around in May of 2015". Mark Jefferson, Kathy Young, and Michael
24 Stavelly all told detective Burrows (Case report Exh. D pages 29,26,32) that there
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1 was a skid steer at the complex that petitioner used. Burrows himself testified at
2 the trial that there was a skid steer there (Crim.Trial Exh. E, p:189). Janet Brown,
3 a board member who testified at the show cause hearing (Show Cause Exh. A
4 p:176), said there was a skid steer there. In attached affidavit (Exh. F, p:2),
5 Katherine Young states “that the skid steer was parked right at the front entrance of
6 the fields...and that Marlee Sunchild usually parked right next to the skid steer
7 when she came to her daughter’s practices.” However, during the criminal trial
8 Sunchild committed blatant perjury by testifying that there was never a skid steer
9 there.
10

11 Defendant Crabtree, while cross-examining Sunchilds previous testimony (Crim.
12 Trial Exh. E p:223), regarding a few receipts for diesel fuel that according to
13 Sunchild were not a legitimate expense even though the skid steer ran on diesel:
14

15 Crabtree: Quickly, I just want to go over a few notes that I jotted down as
16

17 you were talking to him. You brought up there was no reason to have diesel
18 receipts?
19

20 Sunchild: Correct.
21

22 Crabtree: We had a skid steer out there that we used to move the gravel,
23 didn’t we, that ran on diesel?
24

25 Sunchild: I NEVER SAW A SKID STEER.
26

1 Crabtree: You never saw a skid steer?

2 Sunchild: NO.

3
4 Crabtree: Out at the facilities in April or May?

5 Sunchild: I DID NOT.

6 Crabtree: Even when hundreds of people going to the scrimmages that we
7
8 had ---

9 Mr. Kitzmiller: (prosecutor) Objection your honor, argumentative.

10
11 At this very juncture, the prosecutor is actually & knowingly aiding the states
12 witness in perjury. Kitzmiller knew that Sunchild was perjuring herself and rather
13 than attempting to correct her lie he chose to cover it up through his argumentative
14 objection. In Hayes v Woodford, 301 F3d 1054 (9th Cir. 2002) “The prosecutor has
15 a Constitutional duty to correct evidence or testimony he knows to be false”. In
16 Hall v. Director of Corrections, 343 F3b 976 (9th Cir. 2003) “Denial of Due Process
17
18 occurs where state allows false evidence to go uncorrected”. Did the prosecutor(s)
19 and the County Attorney’s office also suborn perjury? Numerous times during the
20 trial the prosecutor’s, Kitzmiller and Bushnell, were fully aware that Sunchild was
21 lying yet did nothing to correct it. It was certainly not an isolated incident as the
22 records show. It is a statutory requirement for a state prosecutor to correct their
23 witness when the prosecutor knows they are lying under oath in a judicial
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1 proceeding. Copious case laws have reversed convictions because the prosecutors
2 failed to correct witnesses. In *Napue v Illinois* 360 U.S. 264 (1959), “If the
3 prosecution obtains a criminal conviction using evidence that it knows is false, the
4 conviction violates the defendants right to Due Process”. In *Alcorta v Texas* 355
5 U.S. 28 (1957), and *People v Savvides* 1 N.Y.2d 554 (1952) “Judgment was
6 reversed because the prosecutors failed to correct the witness and violated Due
7 Process grounds”.

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11 Clearly, there was a skid steer at the facilities that Petitioner used to spread gravel.
12 Despite Burrows knowing, and admitting, that a skid steer was at the fields he still
13 proceeded to include in the theft charges \$49.32 in diesel purchases by Petitioner.
14 Burrows deceitfully tried to tie the skid-steer to defendant’s construction business.
15 None of defendant’s equipment rental receipts from his construction business were
16 ever remitted to detective Burrows as claimed. In 2014 defendant had rented
17

18
19 construction equipment for one of his construction projects. It had NOTHING to
20 do with the Heat organization. Burrows testified: “Yes there were some purchases
21 for some diesel fuel and on one of those receipts Mr. Crabtree had written that it
22 was for a skid steer and those receipts were from April of 2015 so the skid steer
23 was rented in 2014. Here is the diesel receipt from 2015. It didn’t add up”! (Crim.
24 Trial Exh. E p: 134). Burrows testified there was a skid steer at the facilities in
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1 April of 2015 and was abundantly aware the diesel purchased in April was for the
2 skid steer at the facility. Michael Stavely told Burrows during his investigation
3 that the diesel was for the skid steer (Case Report Exh. D p: 32). Detective
4 Burrows was clearly ‘shading’ his report.
5

6 The second item Sunchild filed a false report and committed perjury about was that
7 of paint that Petitioner had purchased in April, 2015 for maintenance use at the
8 softball facilities. In March, 2016 Petitioner gave detective Burrows 2 receipts
9 totaling \$447.99 for special order paint specifically for the Heat softball fields. 3
10 five-gallon buckets of paint were specially mixed for the dark and light blue colors
11 of the softball organization. Both receipts have the same precise paint color code
12 mix. Petitioner Crabtree special ordered this paint from Bob Cummings who at the
13 time was working as a sales rep at Pro-Build (affidavit attached exhibit G). Bob
14 Cummings name is on the receipts as is the Heat organization (Exh. F) When
15

16 Burrows called witnesses Jennifer Mitchell and Kathy Young, they both told him
17 that “Bart bought the paint” and “the paint was in 5 gallon buckets” (Case Report
18 Exh. D p:25,26). Larry Lucero, Marlee Sunchilds own father, told Burrows that
19 “He thought the Heat (softball organization) may have given him the paint to use
20 in 2015”, (Case Report Exh. D p:37). Kathy Young, a witness for the Petitioner in
21 his criminal trial, testified that Marlee Sunchilds father “got the paint that was in
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1 the garage or shed” and that there wouldn’t be any need for Sunchild nor her father
2 to buy any paint because “there were 3 five-gallon buckets of paint” (Crim. Trial
3 Exh. E p:299-300). This was the very first evidence of collusion between detective
4 Burrows and Marlee Sunchild as Burrows cannot even claim “that it seems logical
5 that Sunchild bought paint”! Sunchild *simply told* Burrows that she or her father
6 bought the paint, yet they had NO receipts for any paint she claimed to have
7 purchased. If Sunchild or her father had bought any paint in 2015 they would have
8 been reimbursed by Petitioner Crabtree for the purchase, yet there are no records in
9 Petitioner’s cash expense ledger nor are there any cancelled checks showing any
10 reimbursements to either of them for paint. Individuals were always reimbursed by
11 Petitioner. Sunchild claimed to have painted the trim on the garage yet witnesses
12 that Burrows interviewed said Sunchild never painted anything. In Katherine
13 Youngs affidavit (Exh. F p:2(5)) she states “Marlee Sunchild never helped with
14 any painting on the garage” and that it was Katherine, Brooke Crabtree, Laurel
15 Neuman, Bart Crabtree, and Kelli Joe Carter that painted the garage and the trim,
16 NOT Sunchild. She also says that “Detective Burrows called her in early 2017 and
17 I told him all this”. On March 31, 2016 detective Burrows met with Sunchild at the
18 softball complex. She showed Burrows the garage and he, without doubt, saw all
19 the dugouts (8) with the 4 fields and the concession stand that were dark blue in
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1 color also, as well as the bleachers that were light blue, the same colors of paint
2 Crabtree purchased. In the “Affidavit, Motion, and Order for Leave to File
3 Information Direct”, prosecutors cite from Burrows report that “Sunchild indicated
4 that the defendant painted the body of the garage and not the trim. Also, the
5 *defendant provided the paint* for the body of the garage and Sunchild provided the
6 paint for the trim on the shed” (States Affidavit Exh. I p:9). Furthermore, he says
7 “Sunchild indicated that this is the only building that the *defendant supplied the*
8 *paint* for on the facility. Sunchild provided paint for the trim on the garage as well
9 as all the paint for the rest of the structures in the complex” (p:6). By Burrows own
10 statement and written narrative in his investigative report, defendant Crabtree DID
11 purchase the paint.

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18 During the civil show-cause hearing in May of 2016 Petitioner
19 Crabtree’s civil attorney, Gale Gustafson, pressed Sunchild on this issue because
20 he knew she was lying (perjury) about the paint issue. The transcript reflects
21 (Show Cause Exh. A p:97):

22 Question 1: And was the paint that Bart purchased at Pro-Build, is that
23 some of the paint that you used out at the bleachers?

24 Answer 1: No, it was not.

25 Q2: Where did you get the paint?
26
27

1 A2: My father.

2 Q3: What is your father's name?

3
4 A3: Larry Lucero.

5 Q4: And did he get reimbursed for the paint?

6
7 A4: No.

8 Q5: What other facilities out there, besides bleachers and the garage,
9 required painting?

10
11 A5: NOTHING.

12 Q6: How much paint did you use on the bleachers, you and your father?

13
14 A6: I HAVE NO IDEA.

15 Q7: Did you use 5 gallon or 1 gallon buckets?

16
17 A7: I HAVE NO IDEA.

18 In question/answer 5 above, Sunchild stated that "nothing" else

19 required painting. Yet on page 6 of the States affidavit she told Burrows that "She

20 (Sunchild) provided paint for the trim on the garage *as well as all the paint on the*

21 *rest of the structures in the complex*". If none of the other structures needed

22 painting, why would she then say she bought paint for the rest of the structures?

23
24 She never bought any paint! Detective Burrows stammering testimony (Crim.

25
26 Trial Exh. E p:175) "during the course of my investigation, I was, it would have---

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1 this 15 gallons of paint was for the garage and not the rest of the structures out
2 there”. He also claims that “someone else bought the paint.” This is pure fraud
3
4 upon the court and perjury/conspiracy by Travis Burrows and Marlee Sunchild.
5 Any rookie detective, or even a lay person, could recognize that Sunchild was
6
7 lying about this allegation, yet Burrows elected to charge Crabtree with \$447.99 in
8 theft for an “unaccounted” item *even though Crabtree gave Burrows the receipts*
9
10 (Exh. H). Clearly a big pat on the back for Sunchilds false report. To summarize:

- 11 1) Inconsistent statements by Sunchild.
- 12 2) Sunchild is the only person that told detective Burrows that she bought
13 paint. Nobody verified her story because Burrows never asked
14 anyone. He simply agreed to whatever Sunchild told him. Burrows
15 routinely failed to ferret out the facts.
16
17
- 18 3) No receipts for her claimed paint purchase.

- 19 4) Detective Burrows himself stated in his report that Crabtree bought the
20 paint.
- 21 5) Defendant Crabtree had receipts for the paint he purchased and gave to
22 Burrows. These receipts specifically were labeled for the Heat softball
23 organization.
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1 6) Sunchilds own father told Burrows the organization provided the paint
2 in 2015.

3
4 7) Kathy Young testified that Sunchilds father got the paint out of the
5 garage.

6
7 8) Several witness' told Burrows during his "investigation" that Crabtree
8 bought the paint and specifically they were using 5 gallon pails when
9 helping paint the facility.

10
11 9) Sunchild nor her dad are listed on the cash expense ledger, for paint,
12 petitioner gave Burrows, nor are there any cancelled checks written to
13 either one of them for paint reimbursement for any paint she claims to
14 have purchased.

15
16 10) When asked how much paint she bought/used, or did she buy them in
17 1 or 5 gallon containers she responded "I don't know". Who would
18 NOT know that?

19
20 11) Detective Burrows, on page 133 of the trial transcripts (Exh. E),
21 testifies that "You wouldn't need 15 gallons of paint to paint a 1,000
22 square foot garage". He purposely failed to acknowledge that there
23 were many other structures at the ball field that were painted as well as
24 the bleachers (light blue) that were painted using one of the 3 five
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1 gallon pails which was light blue paint. The other two pails were dark
2 blue. Again, several witnesses told Burrows this during his
3 “investigation”.
4

5 Fraud upon the Court vitiates everything. Burrows, who was clearly
6 compromised, chose to consciously ignore the complete lack of any evidence to
7 support Sunchilds false claim. He blatantly misrepresented the substantive
8 evidence that petitioner willingly gave him and shaded his reports. MCA 45-4-102.
9 Conspiracy. (1) “A person commits the offense of conspiracy when, with the
10 purpose that an offense be committed, the person agrees with another to the
11 commission of that offense.” Furthermore, the prosecutor’s office failed to perform
12 their ethical due diligence and, with a requisite discerning eye, failed to adequately
13 review detective Burrows “Request for warrant” as required. The unlawfulness of
14 using deliberately falsified allegations to establish probable cause cannot be clearer
15 than in this case.
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21 During detective Burrows investigation, Petitioner Crabtree remitted
22 the cash expense ledger (Exh. L) along with all the cash receipts in his possession
23 to verify the cash expenses and that the organization currently owed Crabtree \$920
24 in reimbursement as of March, 2016. All the expenses on the “cash expense
25 ledger” were just that, expenses paid in cash. During the trial Marlee Sunchild
26
27

1 purposely and extemporaneously lied to the court and jury again by claiming that
2 “a lot” of the expenses on the list were instead paid by check by Crabtree. This
3 false claim had not ever come up during the course of the investigation, and it
4 provoked and tainted the jury into believing Petitioner Crabtree made
5 reimbursements by check, not by cash, insinuating to the jury that defendant
6 Crabtree was writing checks for reimbursements, entering it on the cash expense
7 ledger, and pocketing the cash. This was blatant perjury and Sunchild knew it, as
8 did the prosecutors who never stopped or corrected it. In *Alcorta v Texas* the court
9 granted relief because “the witness conveyed a false impression.” Numerous false
10 statements were made by Sunchild with *deliberate intent to deceive the jury*. In
11 *U.S. v Foster* 874 F.2d 491 (8th Cir. 1988) and *U.S. v LaPage* 231 F.3d 488 (9th Cir.
12 2000) “If the prosecution knowingly presents false testimony about *significant*
13 issues and fails to correct it, it is conclusory that the prosecution has violated the
14 defendants Constitutional right to Due Process” and “..the government violated the
15 defendants right to due process where it is undisputed that prosecutors knowingly
16 presented false testimony from a witness and there was a reasonable likelihood that
17 the false testimony affected the jury’s verdict”. Did the prosecution again suborn
18 this perjury also? Beginning on page 241 of the transcripts (Exh. E) Crabtree
19 began to question Sunchild on the cash payments on the list. As previously stated,
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1 Marlee Sunchild and Janet Brown received a total of \$455.26 in cash
2 reimbursements while Crabtree was president in 2015. On page 243 Sunchild
3
4 extemporaneously perjures again by claiming that Crabtree wrote checks to both
5 Marlee Sunchild and Janet Brown for the \$455.26 rather than paying them cash.
6
7 (Crim. Trial Exh. E p:241, 243). This accusation or claim also had never come up
8 before nor is it anywhere in the investigation records. This was an impromptu,
9 intentional, and vicious act of lying to the court and jury, yet again, by Sunchild.
10
11 At this point Sunchild is now committing perjury with impunity and the
12 prosecutors are clearly allowing it to unfold. There are no canceled checks to back
13 up this lie to the court and jury. The prosecution had no such ‘cancelled checks’.
14
15 Sunchild expands on her perjury by answering and telling the jury that “a lot of the
16 reimbursement’s” defendant made were by check (Crim. Trial Exh. E p:243,244):
17

18 Q. And these were cash payments given to all these (people), correct?

19 A. NO. It was a check written by you to them with a receipt that was
20 provided.
21

22 Q. No, this is cash that was given to all of you.

23 Court interrupts.
24

25 Q. Isn’t it true that these were cash payments to you and Mike Hoey and
26 others?
27

1 A. No, that is not true. THEY WERE NOT CASH PAYMENTS. You
2 wrote a check to them to reimburse them for expenses. (etc.)
3

4 Q. The reimbursements that were paid to you specifically, those were
5 cash receipts, weren't they?
6

7 A. NO. You wrote us a check to reimburse for the materials that we gave
8 you the receipt for.
9

10 Once again, the prosecutors were abundantly aware of her perjury *as it was*
11 *occurring* and did nothing about it. In U.S. v Goodson, 165 F3d 610 (8th Cir. 1999)
12 “The prosecution may not use or solicit false evidence or allow it to go
13 uncorrected”. In U.S. v Haese, 162 F3d 359 (5th Cir. 1998) “Defendant’s
14 conviction must be reversed on due process grounds where the government
15 knowingly elicits, or fails to correct, materially false statements from its
16 witnesses.”
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19 This was perjured testimony directly by Marlee Sunchild, again, that
20 can and will be proven by bank records investigation. During the trial all the
21 defendant had were photocopies of bank records. Defendant had previously filed a
22 motion subpoena duces tecum for the organizations bank records for his defense
23 but was denied by the judge. The judge also would not allow defendant Crabtree
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1 to use photocopies of bank records to show the jury that Marlee Sunchild was lying
2 to the jury and that the prosecution was aware of it.
3

4 Detective Burrows claimed that little work at the softball fields and
5 facilities would be done in September or October because “the season would be
6 over” (Crim. Trial Exh. E p:134), again simply because Sunchild told him this.
7
8 Several witnesses, Mike Stavely and Mark Jefferson, told him precisely the
9 opposite during his investigation that Crabtree was routinely at the fields working
10 during those months (Case report Exh. D p:30 & 32). One of the bigger projects
11 Crabtree engaged in was to restore the 6 main sprinkler valves that fed water to
12 each of the 4 individual fields. Most were covered with dirt and weeds, and all had
13 to be located, dug out and cleaned by Crabtree. Housing units of different sizes
14 were built by Crabtree to place over each of the valves in the spring of 2016. The
15 cost of the materials Crabtree provided to build these was \$653.20 and Crabtree
16 provided a receipt to Burrows for this expense. This receipt, and others, were
17 ostensibly never given to the court for the trial in light of certain testimony by
18 Burrows. Photos of these boxes were in Crabtree’s motion to dismiss filed on
19 October 27, 2016. The county attorney’s office and prosecutors had these photos
20 as records. Detective Burrows claimed in his case report that “he observed that
21 only one bank of sprinkler valve boxes had been worked on”, a perjured statement.
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1 During the Trial he testified “it looked like only one of the banks (of 6) had been
2 worked on” (Crim. Trial Exh. E p:133). Then, when questioned later by Crabtree,
3
4 Burrows admitted that all the valves had been dug up (Crim. Trial Exh. E p: 177
5 20-22). Also, he finally admits that he spoke to witnesses Mark Jefferson and
6
7 Katherine Young that told him Crabtree had been working on the valves (Case
8 report Exh. D p:27, 29). Katherine Youngs affidavit (Exh. F p: 2(7)) states that
9
10 defendant Crabtree had worked extensively on the system and that boxes had been
11 built by Crabtree. As previously mentioned, detective Burrows was given a receipt
12 for the cost of the material to build these valve boxes. Detective Travis Burrows
13 testified specifically and claimed that Crabtree *never gave him a receipt for the*
14 *sprinkler valve boxes* when examined by the prosecutor (Crim. Trial Exh. E p:186).
15
16 On page 258 of the transcripts, however, Marlee Sunchild admits there was a
17
18 receipt for these boxes. As aforementioned, at the beginning of the investigation

19 Petitioner Crabtree gave Burrows his cash expense ledger and all his receipts.
20
21 These docs were then given to Marlee Sunchild and Janet Brown by detective
22 Burrows for review. Detective Burrows lied about this during the trial.

23
24 Defendant Crabtree provided approximately \$500 worth of siding for
25 a small shed on the east side of the main garage in 2015. Crabtree reimbursed
26 himself for this siding in the amount of \$150.00 in 2016. Sunchild claimed this
27

1 siding was never out there and detective Burrows claimed to never have saw it
2 when he was out at the fields investigating with Sunchild in March of 2016 despite
3 Burrows himself taking a picture of it. Also, during Burrows investigation and
4 phone interviews, Mark Jefferson told Burrows “There was siding there for the
5 little building off to the side of the garage that was being rebuilt” (Case report Exh.
6 D p:29-30). Again, Burrows chose to ignore the facts, simply listen to Sunchild,
7 and charge Crabtree with \$150.00 in part.

8 Tampered and suppressed evidence by Detective Travis Burrows, a
9 violation of MCA 45-7-207(a) and 45-7-401(1)(c). On March 17, 2016 defendant
10 Crabtree gave detective Burrows his cash expense and reimbursement ledger and
11 all accompanying cash receipts. At the beginning of the criminal trial on June 12,
12 2017, the State, through the prosecuting attorneys Eric Kitzmiller and Josh
13 Bushnell, gave the judge these documents (Crim.Trial Exh. E p:121-123) for trial.

14 It has been discovered that numerous receipts that defendant gave detective
15 Burrows are missing. This is derived through false testimony that Burrows gave
16 during the trial while being questioned by the prosecutors. Burrows purposely
17 withheld a receipt in the amount of \$653.20 for the sprinkler valve housing unit
18 boxes that defendant built for the facility. The prosecution asked detective Burrows
19 “Just quickly here, he brought up the sprinklers, in States exhibit 3, did Mr.

1 Crabtree provide you with any receipt or invoice for the purchase of sprinkler or
2 sprinkler related materials?”. Burrows answered “NO” (Crim. Trial Exh. E p:
3
4 186,13-17), a blatant lie and very indicative that he tampered with the evidence of
5 that receipt and suppressed the receipt from the court and jury. Clearly, either
6 Burrows 1) lied, or 2) withheld evidence. Included with this receipt was a photo of
7 the valves and a schematic drawing of all the valves defendant had dug up and
8 prepared for repair. On defendant’s cross-examination of Marlee Sunchild (Crim.
9 Trial Exh. E p:258-4,5) she testified that there WAS a receipt for these boxes
10 which she saw when reviewing the cash expense ledger and sifting through
11 receipts that Burrows gave Sunchild and Janet Brown the information to review on
12 March 30, 2016. In Burrows police case report #16-5331 he wrote “Marlee and
13 Janet met me at the GFPD. Marlee and Janet went through the copies of the
14 documents that Bart (defendant) provided me” (Case report Exh. D p:16).

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19 Burrows also testified that he gave Sunchild and Brown the information to review
20 (Crim. Trial Exh. E p:124). The United States Supreme Court has held that
21 “*Brady suppression occurs when the government fails to turn over even evidence*
22 *that is known only to the police investigators and not the prosecutors”*.
23
24

25 Burrows also withheld a receipt for \$150.00 for the siding
26 reimbursement. Burrows testified and claimed no receipt for this item (Crim. Trial
27

1 Exh. E p:186-187) nor for some other items listed here. He testified he didn't see
2 any siding at the ball fields when he went there on March 31st, 2016 (Crim. Trial
3
4 Exh E p:182, 133). His own photos he took while there clearly show the siding.
5 Burrows also withheld the following receipts prior to trial: United Material topsoil,
6 \$17.22; Jensen Poirier, \$100.00 (Sunchild had specifically called this individual to
7 verify); Eraser board, \$35.00; Larry Lewis, \$20.00; Secretary of State, \$20.00;
8 Kathy Young, \$10.00. The total receipts Burrows withheld from the trial was eight
9
10 for a total of \$1,005.42.
11

12 Lastly, the following incident is not directly related to the allegations
13 of embezzlement /theft by Petitioner. However, it is directly related to, and is more
14 prima facie evidence, of the relationship and collusion between Travis Burrows
15 and Marlee Sunchild. As indicated in the opening of this brief a special board
16 meeting was called by Petitioner for the sole purpose of ratifying the dismissal of
17
18 Marlee Sunchild for cause. The notice of the meeting specifically stated it was a
19 closed meeting. The board meeting was held on February 29, 2016 with 5 board
20 members present as well as one individual for recording the meeting. During this
21 meeting board member Dave Brown, and Janet Brown and Marlee Sunchild
22 targeted the meeting. Only Dave Brown was invited to attend as he was currently
23 a board member, although disgruntled due to his wife Janet resigning and being
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1 removed from the board a month earlier. At the beginning of this meeting Dave
2 Brown was absent. Approximately 15 minutes after the special board meeting
3 started Dave Brown and Janet Brown showed up hollering and disrupting the
4 meeting. Marlee was witnessed outside the room in the hall. Janet Brown was not
5 invited. They physically disrupted the meeting in the presence of 7 people, making
6 verbal threats and screaming in the faces of all attendees including two, 15 year old
7 girls, frightening many with physical threats by Dave Brown. The following day a
8 formal complaint was filed with the Great Falls Police Department by board
9 member Jennifer Mitchell, field case report #2016-6689 (Exh. J). Detective Travis
10 Burrows was the officer that ended up handling this report as well. Burrows did
11 absolutely nothing to investigate this case because Sunchild was involved.
12 Burrows never called any of the witnesses that were affected by this. Nothing was
13 ever done about the complaint and Burrows refused to investigate because he was
14 favoring and protecting Marlee Sunchild again due to her close relationship with
15 officer Travis Palmer, a Great Falls police officer, and the coach of Sunchilds
16 daughter's softball team. At the show cause hearing on May 3, 2016 Petitioner's
17 attorney Gale Gustafson asked Burrows why he had not investigated and if he
18 intended to investigate. Burrows said yes, he was going to investigate (Show cause
19 Exh. A p:50,51). He never intended to, he never did and no charges were brought
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1 against these people as Burrows swept it under rug. Charges of assault should
2 have been leveled at Dave Brown. MCA 45-5-201(1)(d) “A person commits the
3 offense of assault if the person: (d) purposely or knowingly causes reasonable
4 apprehension of bodily injury in another.” Several adults and two children were
5 clearly frightened with physical harm to the point of crying. Both Dave Brown and
6 Janet Brown violated MCA 45-8-101(c) and (f), Disorderly conduct by using
7 threatening, profane, or abusive language, and by disrupting any lawful assembly
8 or meeting. Janet Brown also violated MCA 45-6-201(1) by barging into the
9 meeting where she was not invited.
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12

13 Prosecutorial misconduct was evident during Petitioners criminal trial.

14
15 Prior to the trial it is indisputable that prosecutors Eric Kitzmiller and Josh
16 Bushnell had all documents pertaining to the charges against Petitioner for review,
17 including all investigative reports, pretrial motions, and photos. During the trial,
18
19 the issue about a skid steer rental was prevalent as previously disclosed (section b).
20 It is evidenced that Marlee Sunchild committed perjury by stating that there was
21 not a skid steer present at the ball fields in the spring of 2015. Through
22 investigative pretrial records it is clearly shown that a skid steer was indeed at the
23 ball fields, Sunchild stated it, and the prosecutors clearly were aware of this fact.
24
25 Despite Kitzmiller and Bushnell’s personal knowledge of this fact, and *knowing*
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1 their witness was lying to the court and jury, they not only refused to correct their
2 witness, but even objected to defendant Crabtree pushing the perjuring witness to
3 tell the truth claiming defendant's line of questioning was "argumentative".
4

5 Further, when Sunchild extemporaneously testified during the trial that defendant
6 had been paying reimbursements to many people by check rather than cash and
7 entering it in his cash expense ledger, the prosecutors again sat idly by knowing
8 she was committing perjury (section d). The prosecution *purposely used perjured*
9 *testimony to help secure a conviction of Petitioner.* In addition, during defendant's
10 examination of Kathy Young regarding the sprinkler valve boxes (section e) which
11 defendant built with a materials cost of \$653.20, defendant produced photos of
12 these specific valve boxes after Sunchild and Burrows claimed under oath that
13 "nothing had been built". These photos had been included in defendant's motion
14 to dismiss filed on October 27, 2016. During the trial the prosecutors objected to
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19 admission of these photos claiming they had never seen them before which was
20 completely untrue. When a conviction is obtained by the presentation of testimony
21 known to the prosecuting authorities to have been perjured, due process is violated.
22

23 In United State V. Agurs, if the prosecutor knew or should have known that
24 testimony given to the trial was perjured, the conviction must be set aside if there
25 is any reasonable likelihood that the false testimony could have affected the
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1 judgment of the jury. There were clearly numerous instances of perjury by the
2 States witnesses. It is not the jury's duty to play a game of hide and seek with the
3 witnesses. Numerous Supreme Court cases have shown that convictions obtained
4 through use of false evidence, including perjured testimony, must fall under the
5 Fourteenth Amendment of Due Process. This same result obtains when the State,
6 although not soliciting false evidence, allows it to go uncorrected. *Alcorta v Texas*
7 355 U.S. 28 (1957), *Thompson v Dye* 221 F.2d 763 (3rd Cir. 1955), *Almeida v*
8 *Baldi et al* 195 F.2d 815 (3rd Cir. 1955). A lie is a lie, no matter what the subject,
9 and, if it is in any way relevant to the case, the county attorney had the
10 responsibility and duty to correct what they knew to be false and elicit the truth.
11 Because the Petitioner/defendant chose to represent himself Pro Se in this criminal
12 complaint, it did not give the police investigator nor the prosecutors Carte Blanche.
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18 The American Bar Association Criminal Justice Standards has promulgated
19 standards for prosecutor's ethical rules. Standard 3-1.2 makes it clear that justice
20 within the bounds of the law, and not a conviction, is a prosecutor's ultimate goal,
21 and to respect the constitutional and legal rights of all persons including suspects
22 and defendants. Further, they are required to take remedial action to address
23 injustices. Petitioner filed a motion to dismiss (Exh. P) prior to the trial, pointing
24 out many discrepancies which they failed/ignored to follow up on and investigate.
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1 Standard 3-5.4 mandates that “after charges, if not before, the prosecutor should
2 diligently seek to identify all information...that tends to negate the guilt of the
3 accused, mitigate the offense charged, impeach the governments witnesses or
4 evidence...”. As well, ethical standards contain provisions *requiring* prosecutors
5 to act on post-conviction evidence of innocence. The model rule imposes a duty to
6 investigate new evidence of innocence and an additional duty to act to remedy the
7 conviction. ABA rule 3.8(G) states “When a prosecutor knows of new credible
8 and material evidence creating a likelihood that a convicted defendant did not
9 commit an offense of which the defendant was convicted, the prosecution shall (2)
10 (ii) undertake further investigation, or make reasonable efforts to cause an
11 investigation, to determine whether the defendant was convicted of the offense that
12 the defendant did not commit.” The Cascade County Attorneys has failed to do so.
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18 Despite Petitioners staunch claim to innocence in this case and sending a full

19 descriptive report to both the Great Falls Police Department and the County
20 Attorney’s office in September of 2018, they have failed and refused to investigate
21 the truth laid out before them (Certified letters Exh. K). Rule 3.8 stipulates that (g)
22 “When a prosecutor knows of new, credible and material evidence creating a
23 reasonable likelihood that a convicted defendant did not commit an offense of
24 which the defendant was convicted, the prosecutor shall...(2)(ii) undertake further
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1 investigation, or make reasonable efforts to cause an investigation, to determine
2 whether the defendant was convicted of an offence that the defendant did not
3 commit. The County Attorney's office has refused to remedy this conviction and
4 has indeed opposed this post-conviction relief petition in order to attempt to cover
5 criminal activity up.
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8 **CONCLUSION**

9 The foregoing is compelling and irrefutable evidence and facts. The
10 overwhelming evidence shows conclusively that Petitioner should never have
11 even been charged with this crime. The perjury and fabrication of a false
12 storyline was a criminal act by several actors involved, and a direct violation
13 of due process and a fair trial. Fraud upon the court has occurred as the
14 judicial machinery had been tainted in this case. In *Bulloch v U.S.*, 763
15 F.2d1115,1121 (10th cir. 1985) the court stated "fraud upon the court is fraud
16 which is directed to the judicial machinery itself.....it is where the court or a
17 member is corrupted or influenced....to where the impartial functions of the
18 court have been directly corrupted." Many material misrepresentations were
19 made to the lower court in this case. The impartiality of the lower court had
20 been disrupted so significantly that it could not perform its tasks without bias
21 or prejudice. Those that fight against this gross injustice will show
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1 themselves complicit in it. It is clear the jury and court were lied to,
2 deceived, and manipulated into a manifest unjust verdict not worthy of
3 confidence and deprived the Petitioner/defendant of his liberty and caused so
4 much loss to him and his family. It is also clear that Sunchild and Burrows
5 were intentional and nefarious in their efforts to obstruct the judicial process.
6 The absence of any evidence in some instances, clear evidence in others
7 where Burrows and Sunchild contradict themselves, and prosecutor's failure
8 to observe statutory and ethical requirements shows a premeditation to
9 fabricate a storyline. This case was clearly a significant departure from a fair,
10 honest, and unbiased trial. The sole basis for Petitioner's conviction was the
11 false reporting by Marlee Sunchild and perjured testimony by both Sunchild
12 and Burrows which was known by the prosecuting authorities in order to
13 obtain a conviction. The "knowing use" of perjured testimony to garner a
14 conviction constituted a denial of due process of law.

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16 For the reasons and facts set forth, this court must grant Petitioner's petition,
17 overturn Petitioner's conviction, order a new trial, or even discharge the
18 Petitioner from the conviction entirely.

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27 **APPENDIX**

- 1 Exhibit A – Show Cause Hearing Transcripts. BDV-16-223. Best.
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3 Exhibit B – Judicial Canon of Ethics.
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5 Exhibit C – Show Cause Hearing order.
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7 Exhibit D – Detective Travis Burrows Case Report.
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9 Exhibit E – Criminal Trial Transcripts BDC 16-379. Best.
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11 Exhibit F – Affidavit of Katherine Young.
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13 Exhibit G – Affidavit of Bob Cummings.
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15 Exhibit H – Paint receipts given to Detective Burrows by Bart Crabtree.
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17 Exhibit I – BDC 16-379. Affidavit, Motion, Order for Leave.
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19 Exhibit J – Report of assault to Great Falls P.D. & civil transcripts in part.
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21 Exhibit K – Certified letters to GFPD and Cascade county attorney.
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23 Exhibit L – Cash receipt ledger given to Det. Burrows by Bart Crabtree.
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25 Exhibit M – Sentencing order.
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- 19 Exhibit N – Motion to set aside verdict.
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21 Exhibit O – Motion to stay sentence.
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23 Exhibit P – Motion to Dismiss.
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25 Exhibit Q – Motion for Disqualification of Judge Best.
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26 **VERIFICATION**

1 I, petitioner, Bart J. Crabtree, have compiled the foregoing petition for post-
2 conviction relief and know intimately the contents thereof and the same is true of
3
4 my knowledge and information.

5 Dated this 28th day of December, 2021.

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8 _____
Bart J. Crabtree, Pro Se

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10 Subscribed, sworn to, and acknowledged before me by BART
11 CRABTREE this 28th day December, 2021

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13 _____
14 Notary Public for the state of Montana
15 Residing at Great Falls, Montana
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17 My commission expires: _____

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20 I hereby certify under penalty of perjury that I have sent this petition
21 to the individuals and their respective offices listed on page 1 of this document to
22 the addresses of record by depositing said document with the U.S.P.S. in a prepaid
23 envelope 1st class on this 28th day of December, 2021.

24
25 _____ Bart J. Crabtree
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