

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO 05-2015-CF-039871-AXXX-XX

DANA LYNN LOYD,  
Defendant,

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MOTION FOR POST-CONVICTION RELIEF

COMES NOW Defendant, DANA LYNN LOYD, acting Pro Se, files this Motion for Post Conviction Relief pursuant to Florida Rules of Criminal Procedure 3.850 and as grounds would show

1. The judgment and sentence under attack were entered in the Eighteenth Judicial Circuit in and for Brevard County, Florida
2. The judgment of conviction was entered on April 6, 2017
3. The Defendant appealed her conviction to the 5<sup>th</sup> DCA, with the Court filing a PCA ruling in December 2017
4. Based on the Defendant's appeal, her sentence did not become final until January 12, 2018 (as noted by Judge Reinman – Docket # 318)
5. The Defendant was sentenced to two (2) years of community control, followed by three (3) years of probation, with **special conditions**

6. The Defendant was charged and prosecuted with making a false report to the Florida Abuse Hot-line. (F.S. 39.205(9))

7. A “false abuse report” is defined within F.S. 39.01(27)

*F.S. 39.01(27) (2015) - ““False report” means a report of abuse, neglect, or abandonment of a child to the central abuse hot-line, which report is maliciously made for the purpose of:*

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.”

8. The Defendant was arrested based on a criminal investigation by Brevard County Sheriff’s Office, Agent Robert Fischer. Agent Fischer secured an arrest warrant from Judge Jeffrey Mahl, under the affirmation, that Agent Fischer had the evidence and the legal investigative authority, to make the investigative determination that the Defendant’s abuse call met the legal definition of a “false call”.

9. Per Chapter 39 of Florida Statutes, the Florida Department of Children and Families has the **sole** authority, and responsibility, to investigate and determine whether a report of abuse meets the statutory definition of a “false report”. This **sole** authority is further memorialized within Florida case law (*2th DCA, 2D03-775 State of Florida v. Antonia White*) (**EXHIBIT “D”**)

10. In 2015, the year of the Defendant’s arrest, **ONLY** six (6) Florida Sheriff’s Offices had a contractual relationship with DCF in order to independently conduct child protective investigations under Chapter 39 of Florida Statutes. In 2015, Brevard County Sheriff’s Office (BCSO) was **NOT** one of these six sheriff’s offices

11. During the Defendant 2017 trial, no then (2017) employed DCF employee(s) testified that DCF held the position, that the Defendant's 2015 abuse report was in fact, by legal definition, a "false abuse report"

12. During a 2016 pre-trial deposition, DCF Investigator O'Neil Brooks testified that he has never determine any report of abuse, as a false report. Brooks further testified that he never reviewed / listened to the recording of the Defendant's call to the Florida Abuse Hot-line.

13. During the Defendant's 2017 trial, former DCF Investigator Brooks testified as a State witness. Under cross examination, Brooks was questioned whether he had determined that the Defendant's report of abuse, was indeed a "false report". Judge Lemonidis sustained an objection by the State, that answering the Defense's question, would require Brooks to make a legal conclusion. Judge Lemonidis stated that the question whether the subject abuse report was a "false report", was strictly the "*province of the jury*".

14. The Defendant entered a plea of not guilty

15. The Defendant was tried by a jury, and found guilty as charged

16. The Defendant did testify during the trial proceedings

17. The Defendant has no other pending petition, application, appeal or motion in either state or federal court as to this judgment and sentence under attack

18. Several of the ISSUES argued within this motion were **not** addressed within the 5<sup>th</sup> DCA appeal, because these issues were still unknown to the Defendant

19. At all stages of the trial proceeding, the Defendant was represented by Jessica Burgess and Paul Bross

20. The Defendant was represented on direct appeal to the Fifth District Court of Appeal by Alexander Strassman.

21. During trial, the trial judge (Lemonidis) assured the Defendant's attorney(s) that she would "*do anything and everything*" in preventing the Defendant from filing an ineffective counsel claim. The trial judge's overly restrictive special conditions of probation appears to have hampered, and delayed, the Defendant's request for Post Conviction Relief.

22. During trial, the trial judge noted that one of her attorneys, was not handling himself in a professional manner, in short, engaging in misconduct, and being ineffective. Unknown to the Defendant at the time of trial, her attorney was facing Florida Bar / Florida Supreme Court disciplinary action for similar misconduct. The Florida Supreme Court has since disbarred this attorney from the practice of law.

23. The trial judge's intemperate statements, both pre-trial and trial, regarding the Defendant brings into question the judge's judicial neutrality and impartiality.

24. Further judicial neutrality and impartiality concerns are attached to a post trial VOP proceeding, The Defendant has secured the testimony of a probation officer, that supports that the trial judge ordered the probation office to submit a falsified Affidavit of Probation Violation.

25. The trial judge is currently facing disciplinary action from the Florida Supreme Court for similar intemperate conduct within other proceedings. The trial judge offered as a mitigating factor for her intemperate conduct, the alleged fact that she was suffering from external stressors. The Defendant's court proceedings transpired during the same time frame, as the court proceedings that have been targeted by the Florida Supreme Court.

26. Due to restrictive **special conditions** of the Defendant's probation, the Defendant was limited with whom she could discuss the particulars of this court proceeding. During a sentence modification hearing, Judge Lemonidis stated that she could ONLY speak of these matters with her spouse, her doctor, and her attorney of record. Judge Lemonidis specifically instructed the Defendant not to "attorney shop". While Judge Reinman did somewhat modified those restrictive condition in November 2018, the history, nature and usual conditions of this proceeding has hampered the Defendant's ability in securing the representation of counsel. The Defendant is therefore obligated to seek the Court's consideration for post conviction relief as a Pro Se litigant.

### STATEMENT OF FACTS

On August 28, 2015, the Defendant was arrested by the Brevard County Sheriff's Office (BCSO) under the criminal charges of making a false report to the Florida Abuse Hotline (F.S. 39.205(9)) and for cyber-stalking (F.S. 784.048(2)). *(The Defendant will prove, to the Court, that the BCSO did NOT have the statutory authority to make the investigative*

*determination whether the Defendant's abuse report met the statutory definition (F.S. 39.01(27)) of a false abuse report. According to Chapter 39 of Florida Statutes, and supported by case law, ONLY the Department of Children and Families (DCF) has the authority to determine whether an abuse report meets the statutory definition of a false call.*

*The Defendant will prove to the Court, that trial Judge Lemonidis, refused to allow DCF Child Protective Investigator, O'Neil Brooks to testify during trial, on whether he had determined whether the Defendant's abuse report was indeed a false report. The Defendant will provide the Court evidence, that during an April 2016 deposition, CPI Brooks verified that he has never determined the Defendant's abuse report to be a false report. The Defendant now argues that if this information would have been available to the jury, that she would have been acquitted) (EXHIBIT "G " page 608 of trial transcripts)*

In August 2015, Circuit Judge Jeffrey Mahl signed an arrest warrant (EXHIBIT "A") in support of BCSO Agent Robert Fischer's sworn affidavit for arrest warrant (EXHIBIT "B"), in which Fischer affirmed that **his** criminal investigation determined probable cause existed that the Defendant had violated F.S. 39.205(9), the filing of a false abuse report, and F.S. 784.048(2), cyber-stalking. *(The Defendant will prove to the Court, that due to BCSO Agent Robert Fischer's lack of legal authority in making a determination whether the Defendant's report of abuse was indeed a false report, as defined within F.S. 39.01(27), effectively fatally flawed Fischer's "Affidavit For Arrest Warrant". Furthermore, the Defendant argues, that all evidence collected within the BCSO investigative process is also fatally flawed. During trial, this flawed evidence was presented to the Defendant's jury. The Defendant now argues, that absent this flawed evidence being presented to the jury, she would have been acquitted.)*

In September 2015, upon the completion of their intake review, the State Attorney's office only filed, and prosecuted, the Defendant on the charge of making a false report to the Florida Abuse Hot-line. **(F.S. 39.205(9))**

The Defendant initially secured the legal representation of attorney Jessica Burgess. Prior to her March 2017 trial, the Defendant additionally secured the legal representation of attorney Paul Bross. During trial, the Defendant was represented by both Burgess and Bross. *(The Defendant will prove to this the Court that neither Attorney Burgess, or Paul Bross provided her with effective counsel. The Defendant will support her argument, with trial Judge Lemonidis' own on the record statements, whereas, Lemonidis voiced her concerns that the Defendant may have viable ineffective counsel concerns. Conversely, Lemonidis also stated, to defense attorney Burgess, that she (Lemonidis) would "do anything and everything necessary to ward off that (ineffective counsel claim) for you (Burgess)"* **(EXHIBIT "M" pages 114-115 trial transcript)**

On July 26, 2016, eight (8) months prior to trial, Attorney Burgess filed a motion with the Court, requesting that Judge Robin Lemonidis recuse herself **(EXHIBIT "C")**, due to some intemperate statements that Lemonidis made in open court during a May 23, 2016 hearing. The May 23, 2016 hearing centered on a defense motion to find the State in contempt for violating the Court's Confidentiality Order. Judge Lemonidis stated that she had worked with the State every day for the last year, and the State consists of people with ethics and candor, and she did not believe that this was an intentional

violation of the Court's order. Judge Lemonidis further stated that both Attorney Burgess and the Defendant were attempting to passively aggressively harass the victim. *(The Defendant alleges, and will prove to the Court, that Judge Lemonidis' pre-trial statement regarding the Defendant's, and her attorney's alleged "passive aggressive harassment" of the victim documents the trial judge's bias against the Defendant and her attorney, especially given the fact, that "harassment" is one of the four supportive pillars in the statutory definition (F.S. 39.01(27)) of a "false abuse report".*

*The Defendant also alleges, and will prove to the Court, that it was improper for Judge Lemonidis to instill "ethics and candor" to the representatives of the State Attorney's office simply because she had worked daily with them for over a year. The Defendant argues that Judge Lemonidis surrendered her judicial neutrality and impartiality within those intemperate comments.*

Based on Judge Lemonidis' pre-trial intemperate statements, the Defendant had a reasonable fear, that Judge Lemonidis could not maintain her judicial neutrality or impartiality. The July 26, 2016 recuse motion also documented the Defendant's concerns that Judge Lemonidis intemperate statements rose to the level of being judicial misconduct, in violation of Florida's Code of Judicial Conduct. Judge Lemonidis denied the Defendant's recuse motion.

During trial, the State did not present any testimony from any (then) currently employed DCF representatives, who could have attested to whether DCF had actually made a determination regarding whether the Defendant had filed a false abuse report.



The State did call, and presented the testimony of **former** DCF Supervisor Debra Christiansen, and **former** DCF Child Protective Investigator O' Neil Brooks.

Upon cross examination by the Defense, CPI Brooks was questioned on whether his investigation had determined whether the Defendant's abuse report was indeed a fraudulent report. (Exhibit "G" - page 608 of trial transcript) Prior to Brooks being able to answer, the State raised an objection, alleging that Mr. Brooks would have to make a legal conclusion. Judge Lemonidis sustained the objection, while adding her own judiciary commentary, that such a legal conclusion was an "*invasion of the province of the jury*". (EXHIBIT "G" page 608 of trial transcript)

During an April 13, 2016 pre-trial deposition, CPI Brooks testified that he has "*never determined any (abuse) report to be false*". Further, CPI Brooks stated that he had **not** personally heard the recording of the Defendant's alleged false call to the Florida Abuse Hot-line. (Exhibit "E" - pages 17-18 of deposition transcript) *(The Defendant will prove to the Court, that CPI Brooks was the ONLY person statutorily qualified to determine whether the Defendant's abuse report met the legal definition of a false abuse report (F.S. 39.01(27)). The Defendant alleges, and will prove to the Court, that trial Judge Lemonidis' decision not to allow CPI Brooks to testify whether he had or had not concluded whether the Defendant's abuse report was indeed a false abuse report, denied the Defendant a fair and impartial trial.*

*The Defendant alleges, and will prove to the Court, that Judge Lemonidis' judicial ruling that it was the "province of the jury" to determine whether the Defendant's abuse call met the legal definition of a false report (F.S. 39.01(27), was an improper jury instruction. Further, this improper jury instruction instilled into the jury, the belief that they has the responsibility, and the statutory authority, to determine whether the Defendant's abuse report was by legal definition, a false report. The jury had no such authority. The Defendant now argues that her attorneys provided her with ineffective counsel for failing to argue that only DCF had the statutory authority to determine whether an abuse report is a false report, as defined within F.S 39.01(27)).*

The Florida Legislature, through Florida Statutes, Chapter 39, has designated the Department Of Children and Families (DCF) as the determining authority, on what is, and what is **not**, a false report of abuse. DCF's determining authority was further memorialized within *Florida 2th DCA, State of Florida v. Antonia White 2D03-775 (2004)* ... "significantly, the statute places the burden on the Department (DCF) to determine if a false report has been made. See F.S. 39.205(4), (5). If the Department determines that a report is false, then it shall refer the report to law enforcement. F.S. 39.205(5)" (**EXHIBIT "D"**).

Between the 2004 White decision, and the 2015 arrest of Loyd criminal, F.S. Chapter 39.205 was slightly re-indexed.

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**FLORIDA STATUES 2004 (State of Florida v. Antonia White)**

**39.204 (4) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.**

**(5) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01(27). During the pend-ency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must assure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.**

**FLORIDA STATUES 2015 (State of Florida v. Dana Loyd (Defendant))**

**39.205(7) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.**

**(8) If the department or its authorized agent has determined during the course of its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pend-ency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution**

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Under the authority of both, DCF procedures, and Florida Statutes (Chapter 39), specially trained “Child Protective Investigators” (CPI's) determine through an detailed investigative process what reaches the statutory definition of a false abuse report.

Florida Statute 39.01 (27) states : “*“False report” means a report of abuse, neglect, or abandonment of a child to the central abuse hot-line, which report is maliciously made for the purpose of:*

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.”

In 2015, the year of the Defendant’s arrest, DCF internally employed children protective investigators (CPI's) within sixty-one (61) of Florida’s sixty-seven counties. Within the other six (6) counties of Broward, Hillborough, Manatee, Pasco, Pinellas, and Seminole, DCF **contracted** CPI responsibilities with those counties’ sheriff’s offices.

In 2015, the Brevard County Sheriff’s Office (BCSO) did **NOT** have a CPI contract with DCF authorizing BCSO to conduct child protective investigations.

Since her criminal conviction, the Defendant has become aware of a July 8, 2019 on-line media article by the publication *VolusiaExposed.Com*. Within this media article, there is an April 7<sup>th</sup>, 2016 email communication between the publication, and DCF’s Communication Director, Kristi Gray. This communication clearly notes DCF’s position that they never conducted an investigation determining whether the Defendant’s call to the Florida Abuse Hot-line met the statutory requirements of being labeled a false abuse report. **(EXHIBIT “F” April 7, 2016 email correspondence )**

On March 27, 2017, during jury voir dire, Judge Lemonidis engaged in what best can be described as a “judicial rant” focusing on two media representatives. Judge Lemonidis chastised these two media representatives for taking handwritten press notes. These press notes apparently contained the names, and some biographical information regarding members of the jury pool.

Judge Lemonidis confiscated the press notes, while advising the media representatives that any further documentation of the the jurors’ names, would result in the Court finding the media representatives in direct contempt of Court.

Judge Lemonidis' judicial rant included a judicial proclamation that if the potential jurors' names were posted to the public, that the jurors could be intimidated, thus **“thwarting”** the judicial process. (EXHIBIT “N” - page 71-80 of trial transcript)

Within hours of her judicial proclamation, the Clerk of the Court posted the names of the potential jurors to their website of BrevardClerk.us, under the Defendant's case docket. (EXHIBIT “T” - Court / Clerk minutes) **(The Defendant argues that given Judge Lemonidis' judicial proclamation that the judicial process would be “thwarted” if the potential jurors' names were publicly posted, and given that the Clerk of the Court published those names within hours of the judicial proclamation, the Defendant argues that her due process was “thwarted”, thus denying her a fair and impartial trial. Furthermore, her attorneys provided her ineffective counsel by not addressing this issue with the Court.)**

During trial Judge Lemonidis made mention of some concerns she had regarding Defense Attorney Paul Bross. (EXHIBIT “P” page 19-23 if trial transcript)

Unknown to the Defendant at the time, due to the fact, that she was **NOT** present within the courtroom, due to illness. Judge Lemonidis engaged defense Attorney Jessica Burgess, and both prosecutors, in a conversation focused on whether allegations of misconduct had been filed against Attorney Paul Bross.

While these allegations were not directly attached to the Defendant's prosecution, Judge Lemonidis did note that she was experiencing some similar concerns regarding Attorney Bross' conduct within the Defendant's prosecution. Judge Lemonidis' stated on the record that she would first attempt to manage Attorney Bross' misconduct through *“mom talk”*. (EXHIBIT “P”, page 21, lines 6-8)

The Defendant has since discovered that shortly after her criminal conviction, Attorney Bross was suspended from the practice of law by the Florida Supreme Court (FSC). (EXHIBITS “Q” & “R” - FSC records of disciplinary action) **(Attorney Bross' representation was secured to manage the deficit of Attorney Burgess' limited legal and trial experience. The Defendant argues, that Bross' pending disciplinary action with the Florida Bar hampered his abilities to properly and fully represent her interests. It is of significance, that while Judge Lemonidis was noting concerns regarding Bross' courtroom conduct, she was also assuring the defense team that she would “do anything and everything necessary to ward off that (ineffective counsel claim) for you (Burgess)” The Defendant argues that not only is there clear evidence that the Defendant's counsel was ineffective, the evidence, also supports the Court's knowledge of it, and the Court's willingness “do anything and everything necessary to ward off that (ineffective counsel claim) for you”.**

During trial, and some time after Judge Lemonidis had **denied** CPI O'neil Brooks testimony on whether his investigation had determined whether the Defendant's abuse

report had met the legal definition of a false report (F.S 39.01(27)). And after advising the jury, that it was their “province” to define whether the Defendant’s abuse report was a false abuse report, Judge Lemonidis engaged in further judicial commentary, which poisoned the well of truth of whether the Defendant’s beliefs or motivations of making the abuse report were relevant to whether her abuse report met the legal definition of a false report. (EXHIBIT “J” - pages 844-849 of trial transcript) *(The Defendant argues that this is just further evidence that Judge Lemonidis’ was placing her thumb on the scales of justice, by negating the statutory definition (F.S. 39.01(27) of what equates to a false abuse report, with DCF having the determining authority. The Defendant argues that Judge Lemonidis’ inappropriate comments effectively caused the Defendant’s conviction, based solely on the jury’s belief that the Defendant’s abuse report met THEIR qualifications of a “false report”, and not because the jury determined that the Defendant MADE a false report. Obviously, heard and unheard evidence clearly supports that DCF never conducted an investigation into whether the Defendant’s abuse report was fraudulent, AND CPI O’Neil Brooks was denied the opportunity to testify at trial, to the facts laid out within his April 2016 deposition, that he never has heard the Defendant’s alleged false call to the Florida Abuse Hot-line, and he has never determine an abuse report, to be a false report. Given, the above, the Defendant would argue that she was denied a fair and impartial trial, due to having ineffective counsel, and a trial judge that had surrendered her neutrality and impartiality.)*

On April 6, 2017, just prior to the Defendant’s sentencing, the Defendant’s attorneys filed a MOTION FOR JUDGMENT OF ACQUITTAL. The Defendant’s attorneys argued that the Defendant should be acquitted due to the facts of improper jury instructions, and under a legal argument disagreement, of whether there were two, or merely one element of the crime, that needed to be proven by the prosecutors. (EXHIBIT “I” pages 23-25 of sentencing transcript)

Judge Lemonidis denied the acquittal motion, in part using the rational that the Defendant’s jury instructions incorporated both the wordage of the criminal statute (F.S. 39.205(9), as well as the statutory definition of a “false abuse report (F.S. 39.01(27)). (EXHIBIT “I” pages 23-25 of sentencing transcript)

Judge Lemonidis goes on to state that, “....and that’s that, *The reason a person makes a false report is not germane to the fact of whether or not it was false, and it was proven to be false in a number of ways*” (EXHIBIT “” pages 24 lines 24-25 & page 25 lines 1-2 - of sentencing transcript)

**(The Defendant will prove to this Court, that trial Judge Lemonidis is incorrect in two important ways. First, Florida Statutes 39.01(27) requires one of four criteria to exist, prior to an abuse report to meet the definition of a false call . These criteria are, that the abuse report was filed for harassment, that the the report was filed for personal financial gain, that the abuse report was filed to acquire custody of the child, and that the abuse report was filed for a personal benefit.**

Florida Statute 39.01 (27) states : ““False report” means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) **Harassing**, embarrassing, or harming another person;

- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.”

**Second, regardless of Judge Lemonidis judicial assurance that the Defendant’s report of abuse was “*proven to be false in a number of ways*”, the Defendant will prove to this Court, that per Chapter 39 of Florida Statutes, and backed by Florida case law, the Department of Children and Families is the ONLY determining authority of whether an abuse report meets the statutory definition of a false report.**

**The Defendant will prove to this Court, that Judge Lemonidis’ refusal to allow DCF’s Child Protective Investigator, O’Neil Brooks to testify whether his investigation determine whether the Defendant’s abuse report meet the legal definition of a false report, effectively denied the Defendant a fair and impartial trial.**

During the Defendant’s sentencing, Judge Lemonidis engaged in inappropriate comments regarding the Defendant. Judge Lemonidis has a documented judicial history of engaging in inappropriate sentencing comments, as was documented within a recent Judicial Qualifications Commission filing / report. (EXHIBIT “L” page 5-7)

Within Judge Lemonidis’ sentencing colloquy, she referred to the Defendant as a “*yellow journalist*”, going on to state that, “*...people, who are actually trained to report facts and pursue honest corroborated stories, who are under attack today because of people like you, who are out there pushing what can only be called in the common vernacular “fake new.”*” (EXHIBIT “O” pages 78-79 sentencing transcript)

In making these statements Judge Lemonidis **AGAIN** surrendered the impartiality and integrity of the Court to cast scorn and vitriol upon the Defendant.

As a special condition of the Defendant’s probation, Judge Lemonidis ordered the Defendant to destroy any records she had on her victim(s). Further, the Defendant was ordered not mention the victim(s)’ names, or to possess any records that incorporated the victim(s)’ name(s). This order included, in the particular, a restriction that the Defendant could not speak about her criminal case to anyone. (EXHIBIT “O” pages 83-85 sentencing transcript)

Upon a sentence appeal, handled by the law firm of Gray Robinson, Judge Lemonidis clarified that the Defendant could speak to **only** her spouse, mental health provider, and her then **current** attorney of record. Also, due to a recent U.S. Supreme Court ruling, Judge Lemonidis removed the social media ban from the Defendant’s conditions of probation.

As a condition of her two (2) years of community control sentence, the Defendant was incarcerated within the Orange County jail from April to December 2017.

On December 5, 2017, the Defendant was released from the Orange County jail. Shortly after sentencing, Brevard County had transferred custody of the Defendant to Orange County due to a conflict of interest. The Defendant's husband had been employed as a Brevard County deputy, and the Defendant had written articles critical of the Brevard County Sheriff's Office, that she published to her website of *BrevardsBestNews.Com*.

On December 29, 2017, the Florida Department of Corrections filed a violation of probation (VOP) affidavit against the Defendant. This VOP charge is actively being processed by this Court.

Regarding the VOP filing, the Defendant is represented by Attorney Michael Bross. Michael Bross is the father of Attorney Paul Bross, one of the Defendant's trial attorneys.

In March 2018, Judge Lemonidis Sue *Sponte* signed an Order recusing herself from the proceeding against the Defendant. The Defendant is of the belief, that Judge Lemonidis recused herself from the VOP proceedings, because she knew she had engaged in inappropriate communications with the probation office, and that these inappropriate communication would eventually be exposed. Given her then pending Judicial Qualifications Commission (JQC) complaint, involving two other court proceedings, she wanted to limit her exposure to other allegations of judicial misconduct.

Upon Judge Lemonidis' recusal, Judge Morgan Reinman was assigned to the Defendant's proceedings.

In November 2018, the Defendant **successfully** argued to Judge Reinman, the need for the Defendant's special conditions of probation to be modified so that she could be able file this post conviction appeal. The Defendant need access to the court files, the ability to speak to attorneys, in order to seek representation and legal advice, that were restricted under Judge Lemonidis' special conditions of probation.

Judge Lemonidis' special conditions appeared to be honoring her commitment to the trial defense team "*to do anything and everything necessary to ward off that (ineffective counsel) for you*" (**EXHIBIT "M" pages 114-115 trial transcript**)

In February 2019, the Defendant filed a Motion For Enlargement Of Time Post Conviction Relief (**EXHIBIT "X"**)

On March 13, 2019, Judge Reinman issued her Order denying the Defendant's enlargement of time. Judge Reinman's rationale was that the Defendant's sentence did



not become final until January 12, 2018, therefore per Rule 3.850(b) of Florida Rules of Criminal Procedure, the Defendant has two years from January 12, 2018 to file a timely post conviction appeal motion, and that the Defendant ***“failed to demonstrate good cause for an enlargement of time”***. (EXHIBIT “Y”)

On October 18, 2019, Probation Officer (PO) Margo Sloan gave her sworn deposition in the VOP matter. (EXHIBIT “” pages 58-63, 75)

According to PO Sloan’s testimony, she sent a December 21, 2017 letter to Judge Lemonidis addressing some concerns of the victim, that the Defendant was no in compliance with some of the special conditions of her probation. Sloan’s letter also documented her (Sloan) belief that the Defendant was in compliance with the terms of her probation. (EXHIBIT “S”)

Sloan further testified, that Judge Lemonidis contacted her through her (Lemonidis) judicial assistant, ordering her (Sloan) to file the probation violation affidavit. Sloan stated that she filed the VOP violation, using the alleged probation violations as provided by the victim, even though she (Sloan) did not honestly see them as probation violations. (EXHIBIT “U” pages 58-63, 75)

PO Sloan testified that absent Judge Lemonidis’ office order entering the VOP affidavit filing, she would have never filed the VOP affidavit.

PO Sloan’s entire deposition transcript has been made apart of the Clerk of the Court’s docket. (Docket entry # 335)

Based on PO Sloan’s **falsified** VOP affidavit, Judge Lemonidis issued an January 2, 2019 **ORDER DIRECTING CLERK TO ISSUE NOTICE TO APPEAR FOR VIOLATION OF PROBATION/COMMUNITY CONTROL ARRAIGNMENT AND TOLLING PROBATION**. (EXHIBIT “”)

This VOP matter is pending a November 12, 2019 hearing in front of this Court.

*(The Defendant is confident that her legal team will successfully argue during this November 12, 2019 hearing, that Judge Lemonidis corruptly caused the filing of a falsified VOP affidavit against her.*

*The Defendant argues that Judge Lemonidis was aware through PO Sloan’s December 21, 2017 letter, that she (Sloan) did NOT support a probation violation. However, even with this knowledge, evidence supports that Lemonidis advised PO Sloan to submit the VOP affidavit, attesting to alleged probation violations that PO Sloan did not believed existed.*

*The Defendant will prove to this Court, that Judge Lemonidis held at least two hearings, based solely on PO Sloan's VOP affidavit, an affidavit that Judge Lemonidis apparently knew was fraudulent.*

*The Defendant argues that Judge Lemonidis' inappropriate involvement in ordering PO Sloan to submit a falsified VOP affidavit, provides further supportive evidence that Judge Lemonidis abandoned her judicial neutrality and impartiality. The Defendant argues that this judicial bias / misconduct, not only infected the on going VOP proceeding, but it also infected her criminal trial and sentencing, thus denying her a fair trial.)*

## ISSUE I

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DUE TO COUNSEL'S FAILURE TO EFFECTIVELY ARGUE THAT THE DEFENDANT WAS DENIED DUE PROCESS OF LAW, AS COUNSEL FAILED TO ARGUE

THE BREVARD COUNTY SHERIFF'S OFFICE (BCSO), DID **NOT** HAVE STATUTORY AUTHORITY TO MAKE THE INVESTIGATIVE CONCLUSION THAT THE PROSECUTED CRIME TRANSPIRED, THAT AUTHORITY IS THE STATUTORY RESPONSIBILITY OF THE DEPARTMENT OF CHILDREN AND FAMILIES (DCF). EVIDENCE SUPPORTS THAT DCF NEVER CONCLUDED THAT THE DEFENDANT'S ABUSE REPORT WAS A FALSE REPORT.

The Defendant argues that the **Florida Legislature**, through Chapter 39 of Florida Statutes has empowered the Department of Children and Families (DCF) with the **sole** authority and responsibility in determining whether an abuse report meets the statutory definition of a "false report" (*F.S. 39.01 (27)*)

Florida Statute 39.01 (27) states : *"False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hot-line, which report is maliciously made for the purpose of:*

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child."

According to statutes, **once** DCF determines through their Child Protective Services investigative process, that a false report was made, DCF shall report the false report to law enforcement. (*F.S. 39.205(7) & (8)*) (2015)

These DCF procedures, and the statutory authority, are also documented within Florida case law, *Florida 2th DCA, State of Florida v. Antonia White 2D03-775 (2004)* ... “significantly, the statute places the burden on the Department (DCF) to determine if a false report has been made. See F.S. 39.205(4), (5). If the Department determines that a report is false, then it shall refer the report to law enforcement. F.S. 39.205(5) (2004)” (**EXHIBIT “D”**).

DCF Child Protective Investigator O’Neil Brooks was the assigned CPI in the Defendant’s case. Mr. Brooks gave pre-trial deposition testimony that he has “*never determined any (abuse) report to be false*” . CPI Brooks also stated during this pre-trial disposition that he has never heard the Defendant’s alleged false call to the Florida Abuse Hot-line. (**EXHIBIT “E” pages 17-18 of CPI Brook’s April 13, 2016 deposition**)

Additional evidence is now available to the Defendant, in the particular, an April 7, 2016 email communication between a local media organization, and the Communications Director of DCF, which documents the apparent fact that DCF never conducted an investigation regarding, or determining, the **validity** of the Defendant’s abuse report. (**EXHIBIT “F” - April 7, 2017 email between media and DCF**)

During trial, and upon cross examination, the Defense attempted to question CPI Brooks on whether he had made an investigative determination whether the Defendant had made a false abuse report. The State objected to this line of questioning, arguing that CPI Brooks would have to made a legal conclusion. Judge Lemonidis sustained the objection, adding in her judicial commentary, in earshot of the jury, that such a legal conclusion by CPI Brooks was an “*invasion of the province of the jury*” (**Exhibit “G” - page 608 of trial transcript**).

Without having the legal authority to determine whether the Defendant’s abuse report was a false abuse report, BCSO Agent Robert Fischer was allowed to secure an arrest warrant on the Defendant, and to testify during the Defendant trial that his investigation determine that the Defendant had filed a false abuse report. (**EXHIBIT “A”**)

In 2015, the year of the Defendant’s arrest, the Brevard County Sheriff’s Office (BCSO) was **NOT** one of the six (6) Florida sheriff’s offices, that had a contractual relationship with DCF in order to conduct investigations under Chapter 39 of Florida Statutes. (**EXHIBIT “H” - page 3 of a 2014 DCF annual report titled - “Child Protective Investigator And**

## **Child Protective Supervisor Educational Qualifications, Turnover, And Working Conditions Status Report”**

The Defendant alleges that due to the fact, that the BCSO did **NOT** have a contractual relationship with DCF in 2015, that **WOULD HAVE** allowed BCSO personnel to conduct child protective investigations, that BCSO Agent Fischer’s Affidavit For Arrest was fatally flawed, thus making Judge Mahl’s Arrest Warrant legally invalid.

Further, the Defendant argues, that since the Brevard County Sheriff’s Office (BCSO) had no statutory law enforcement authority to investigate, that any and all legal and law enforcement processes that BCSO engaged in, including, but not limited to, the securing of records or evidence, securing telephone records, conducting law enforcement interviews, including the recorded interview of the Defendant, are also legally fatally flawed, and are fruits from the poisonous tree

The Defendant alleges that her trial attorneys failed to provide her with effective counsel on this issue. The Defendant attorneys should have been aware of both the statutory, and case law authority of DCF, and their (DCF) **sole** responsibility to determine whether a report of abuse is fraudulent. . This legal awareness would have allowed any effective counsel to argue at trial, that CPI Brooks was in fact the **ONLY** legal authority on whether the Defendant’s abuse report was, or was not, a fraudulent report.

### ISSUE II

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DUE TO COUNSEL’S FAILURE TO OBJECT AGAINST JURY INSTRUCTIONS AND FAILED TO REQUEST CERTAIN JURY INSTRUCTIONS. COUNSEL FAILED TO ARGUE THAT THE TRIAL JUDGE PROVIDED THE JURY WITH UNTIMELY, AND ERRONEOUS, JURY INSTRUCTIONS, INSTILLING WITHIN THE JURY, THE FALSE BELIEF THAT THEY HAD A LEGAL AUTHORITY, AND AN ADMINISTRATIVE RESPONSIBILITY, THAT ARE NOT SUPPORTED BY FLORIDA STATUTES

As was earlier argued in ISSUE I, during trial, Judge Lemonidis, within earshot of the jury, stated that in would be an *“invasion of the province of the jury”* in allowing DCF CPI O’Neil Brooks to testify whether his investigation determined if the Defendant’s

call to the Florida Abuse Hot-line, met the statutory definition of a false abuse report. (as defined in F.S. 39.01(27)) (*Exhibit “” - page 608 of trial transcript*).

*Court transcript Page 608 – Defense -”Okay. And isn’t it true that you have never made a determination as to whether or not the report made in this case was false?”*

*CPI Brooks – “I’m not – can you repeat that question?”*

*Defense - “Sure. Isn’t it true that you never made a determination as to whether or not the report made in this case is false?”*

*ASA Sendra - “I’m going to object, it call for a legal conclusion.”*

*The COURT (Judge Lemonidis)- “Sustained. Invasion of the province of the jury.”*

Further, during a pre-sentence Motion For Acquittal hearing, Judge Lemonidis stated her position that the Defendant’s report of report had been **“proven to be false in a number of ways”**

*Judge Lemonidis - “And that’s that. The reason a person make a false report is not germane to the fact of whether or not it was false, and it was proven to be false in a number of ways.” (EXHIBIT “I” page 24 – line 24 and 25, and page 25 lines 1-2)*

The Defendant argues that F.S. 39.01(27) defines the term “false report” as it is attached to the crime of “filing a false report (F.S. 39.205(9)).

Clearly, per F.S. 39.01(27) a false report exists **ONLY**, if it is filed for one of four **purposes** (reasons).

Florida Statute 39.01 (27) states : *““False report” means a report of abuse, neglect, or abandonment of a child to the central abuse hot-line, which report is maliciously made for the purpose of:*

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.”

The Defendant has argued within ISSUE I, and now, repeats a particular argument, that Florida Statutes (Chapter 39), and Florida case law, supports that CPI Brooks was actually the **only** individual that could have legally concluded whether the Defendant report of abuse was in fact, by legal definition, a false abuse report.

Judge Lemonidis was just plain wrong in her statement, that the Defendant's abuse report could be "*proven wrong in a number of ways*". Factually, the ONLY way, that state prosecutors had to prove that the Defendant's report of abuse was "false report", was to have allow DCF CPI Brooks to testify that his investigation had supported that "legal conclusion".

During trial, and once again in earshot of the jury, Judge Lemonidis engaged in judicial commentary that rational for the Defendant filing the abuse report did not matter. Judge Lemonidis stated:

*"Mr. Bross, that does not go to any material allegation in the case. This is not a case of whether or not your client believed that there was some form of injustice occurring or some bad act occurring. The question for the jury is whether or not there was a false allegation of child abuse made; period, end of story....."* (EXHIBIT "J" page 844, lines 25 and page 845, lines 1-7)

Obviously, the statutory definition of a "false report" **DOES** attached **FOUR** reasons or purposes, one of which must exist, in order for there to be a "false report".

In response, to the above judicial commentary, the Defendant's attorney did argue, at side bar, for a mistrial. Judge Lemonidis denied the mistrial request. The Defendant was not made ware of this request for mistrial, until approximately a year later, after her securing and reviewing the trial transcripts.

=====  
CPI Brooks had the legal **responsibility** to determine whether the Defendant's abuse report **WAS or WAS NOT** a false report, as per the legal definition of F.S. 39.01(27) . The jury's province was to determine if the Defendant was guilty of violating the criminal statute 39.205(9), the **filing of a false abuse report**.

It is clear from page 608 of the trial transcript, that the defense attorney questioned CPI Brooks on whether the abuse **report was determined to be a false report** (as defined within F.S. 39.01(27)), rather than inquiring whether CPI Brooks had made a legal determined whether the **Defendant had filed a false abuse report**, as governed by Florida criminal statute 39.205(9).

The Defendant argues that Judge Lemonidis instilled into the jury an authority, that the Florida Legislature has granted **solely** to DCF.

Such erroneous judicial jury instructions instilled the belief within the jury that they had the statutory authority to determine whether the Defendant's call met the legal definition of a false abuse report, as defined within F.S. 39.01(27).

The Defendant argues, that given Judge Lemonidis' confusing de facto jury instruction, that it was "*the province of the jury*" to determine the legal definition of a false abuse report (F.S. 39.01(27)), that Judge Lemonidis allowed the jury to convict the Defendant for a statutory "legal definition", rather than for a violation of a criminal statute (F.S. 39.205(9)) - **making a false abuse report**.

In a post trial, pre-sentencing **MOTION FOR JUDGEMENT OF ACQUITTAL**, the Defendant's attorney's argued that the Defendant should be acquitted because the State did not prove all the elements of the crime, and that the Defendant's rationale for making the abuse report was not taken into proper consideration. (**EXHIBIT "I" pages 23-25 sentencing transcript**)

During the short hearing on the Motion For Judgment Of Acquittal, Judge Lemonidis stated; "...*My job is not to legislate from the bench, My job is to follow the law that the legislature has set forth...* (page 23 lines 15-17 sentencing transcript)

Judge Lemonidis goes on to state; "*.....the Defense is correct, that there's not a standard jury instruction for the particular offense with which Ms. Loyd has been charged, the instructions that was used was crafted and taken directly from the statute itself, which included the statutory definition of child, false allegations, abuse, abandonment and neglect.....and that's that. The reason a person makes a false report is not germane to the fact of whether or not it was false, and it was proven to be false in a number of ways.*" (page page 23 line 25 – page 24 lines 1-7 & page 24 lines 24-25 & page 25 lines 1-2 sentencing transcript)

The Defendant would argue that that Judge Lemonidis is incorrect on two important facts.

First, the legal definition of a false abuse report (F.S. 39.01(27)) clearly states that one of four rationales (*harassment, financial gain, acquiring custody, personal benefit*) for making the false report, must exist for the report to meet the definition of being a false abuse report.

*F.S. 39.01(27) - "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hot-line, which report is maliciously made for the purpose of:*

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child."

Second, while Judge Lemonidis stated that the Defendant's abuse report was "*proven to be false in a number of ways*", factually, and as it has been argued within the motion, and as memorializes within both Chapter 39 of Florida Statutes, and Florida case law, **ONLY** the Department of Children and Families (DCF) are authorized to make the legal

determination of whether a received abuse report meets that legal definition of a “false abuse report”.

So, not only was Judge Lemonidis “legislating from the bench”, she was also providing untimely and erroneous jury instructions. Both of which denied the Defendant a fair and impartial trial.

The Defendant’s counsel were ineffective by not arguing that CPI Brooks had the **sole** statutory authority in making the legal conclusion, whether the Defendant’s call met the statutory definition of a fraudulent abuse report.

### ISSUE III

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DUE TO COUNSEL’S FAILURE TO TIMELY AND PROPERLY ADDRESS THE COURT’S MISCONDUCT

DUE TO INTEMPERATE JUDICIAL CONDUCT OF JUDGE ROBIN LEMONIDIS, THE DEFENDANT WAS DENIED A NEUTRAL AND IMPARTIAL JUDGE, THEREBY DENYING THE DEFENDANT A FAIR TRIAL

Shortly after the Defendant’s arrest, she was assigned to Judge Robin Lemonidis’ court docket.

Throughout the entire judicial process of the Defendant’s prosecution, Judge Lemonidis routinely displayed intemperate conduct.

During a May 23, 2016 hearing, the Defense alleged that the State had engaged in contempt regarding the Court’s Confidentiality Order.

Judge Lemonidis, **without allowing for the introduction of evidence**, stated that she (Lemonidis) has worked with the State every day for the last year, and the State consists of people with ethics and candor, and she did not believe that this was an intentional violation of the Court’s Order. Judge Lemonidis went on to allege that the Defendant, and her counsel were passive aggressively harassing the alleged victim.



It is of legal significance, that “harassment” of the alleged victim is one of four necessary criteria necessary to meet the statutory definition of a false abuse report (F.S. 39.01(27)).

## FLORIDA STATUTES 2015

**39.01 (27)** “**False report**” means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

- (a) **Harassing**, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.

**39.205 (9)** A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. **Anyone making a report who is acting in good faith is immune from any liability under this subsection.**

On July 26, 2016, eight months prior to trial, and in response to Judge Lemonidis’ intemperate comments during the May 23, 2016 hearing, coupled with the Defendant’s concerns that Judge Lemonidis had abandoned her judicial neutrality and impartiality, the Defendant’s attorney filed a “Motion To Disqualify Judge Due To Bias Or Prejudice”. (EXHIBIT “C”)

Judge Lemonidis denied the recusal motion, stating that the Defendant’s Motion for Recusal was “legally insufficient”. (EXHIBIT “K”)

The Defendant argues that Judge Lemonidis ruled the July 2016 recusal motion “legally insufficient” due to the Defendant’s attorney not filing the motion in a timely fashion. This being yet another example of the Defendant not having an effective assistance of counsel.

The Defendant has recently become aware of the **Florida Judicial Qualifications Commission’s** (JQC) docketed cases 2019-101 and 2019-175 regarding sustained acts of judicial misconduct by Judge Robin Lemonidis. These two JNC cases caused the opening of Florida Supreme Court case # SC19-1302, whereas Judge Lemonidis has pending disciplinary action in front of the Court.

The JQC’s findings determined that Judge Lemonidis’ judicial misconduct “*permeated the entirety of the trial*” (*State of Florida v. Skyler Francis 2016-CF-12745*)

Within the JQC's **FINDINGS AND RECOMMENDATION OF DISCIPLINE** filing with the Florida Supreme Court, **Judge Lemonidis admitted to acts of judicial misconduct**, including "*overreactions and intemperate conduct*", similar in nature to, the acts of judicial misconduct that this Defendant now alleges occurred within her criminal prosecution. (EXHIBIT "L")

Within the JQC cases, **Judge Lemonidis mitigates her judicial misconduct** by stating that "*stress from factors outside of her judicial duties contributed to her overreactions and intemperate conduct*". (EXHIBIT "L" page 7-8)

The Defendant's case, was active during the same time frames of the listed JQC cases (*State of Florida v. Skyler Francis 2016- CF-12745 & State v. Anthony Welch 2000-CF-44961 (re-trial March 2019)*) Therefore, it is reasonable to conclude, the Judge Lemonidis suffered from these same external stressors, which affected her judicial conduct within the Defendant prosecution.

The Defendant has a U.S. Constitutional right to fair and impartial due process of law. The Defendant's right to a neutral and impartial trial judge, far exceeds any embarrassment the judicial circuit, or trial judge may suffer, should the Court find it necessary to award new trials to ANY criminal defendants that were denied fair and impartial due process, due to Judge Lemonidis' external stressors.

#### ISSUE IV

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, AS HER TRIAL COUNSEL AND TRIAL JUDGE HELD A BENCH CONFERENCE WHERE MY ATTORNEY AND THE COURT DISCUSSED HOW THE COURT WOULD "WARD OFF" AND INAFFECTIVE ASSISTANCE CLAIM.

During trial (jury voir dire), the Defendant's counsel and Judge Lemonidis engaged in a conversation that was recorded within the trial transcripts. Attorney Burgess and Judge Lemonidis engaged in the following conversation. (EXHIBIT "M" page 114-115 trial transcripts)

*(Burgess) "Even if she were to make a decision, there could be an ineffective Counsel, just like you said, which is something that I --"*

*(Lemonidis) "And I don't know, I don't even --- no."*

*(Burgess) “Yeah, Either way we’ll proceeding forward for a trial.”*

*(Lemonidis) “Well, it won’t – and we’re – I’m going to do anything and everything necessary to ward off that for you”*

*(Burgess) “Right”*

*(Lemonidis) “So, because I’ve been where you are, I guess. Okay, thank you”*

During the above conversation, the Defendant was outside of the courtroom, in the bathroom, recovering from a medical episode.

The Defendant now argues that the above conversation is a “blue print” of why her counsel failed to provide her effective counsel. Prior to the first witness taking the stand, the Defense counsel had gained an assurance the Judge Lemonidis would “*do anything and everything necessary to ward off*” the Defendant filing an ineffective counsel motion. This is just another example of Judge Lemonidis abandoning her neutrality and impartiality.

Florida Rules of Criminal Procedures grants the Defendant the right to file a post conviction appeal. The Defendant has the right to be granted such relief of the Court, should that Defendant have reasonable, and articulable circumstances supporting the post conviction relief. Finally, the Defendant has the right to be represented by competent counsel, while counsel is being governed under the mandates of Florida Law, and Florida Bar standards.

The Defendant argues that during the her trial, her counsel advocacy was both crippled and biased against her best interests, due to their (defense team) understanding of Judge Lemonidis’ willingness to do “*anything and everything necessary to ward off*” a post conviction filing by the Defendant.

## ISSUE V

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE TO COUNSEL’S FAILURE TO OBJECT AND REQUEST A NEW JURY POOL, UPON THE NAMES OF THE JURY POOL BEING POSTED TO THE CLERK OF THE COURT’S WEBSITE PRIOR TO THE START OF THE TRIAL. EVEN THE COURT STATED JUSTICE WOULD BE THWARTED WITH THE PUBLICITY.

THE DEFENDANT WAS DENIED A FAIR AND IMPARTIAL JURY AND TRIAL, BECAUSE, PER JUDGE LEMONIDIS' JUDICIAL STATEMENT, JUSTICE ITSELF WAS "THWARTED" WITH THE PUBLIC POSTING OF THE NAMES OF THE JURY POOL

During the jury voir dire of the Defendant's trial, Judge Lemonidis chastised two members of the media for taking press notes. Judge Lemonidis displayed intemperate conduct by ordering the court bailiff to confiscate the media representative press notes. **(EXHIBIT "N" pages 71-80 of trial transcript)**

During what can best be described as a "judicial rant", Judge Lemonidis stated her concerns that the media representatives were documenting that names of the individuals on the jury pool.

Judge Lemonidis threatened both media representatives with summary judgment, and six (6) month jail sentences, for direct contempt of Court.

Most importantly, Judge Lemonidis gave judicial notice, that if the names of these jurors were made public, that the jurors may feel intimidated, and that justice itself would be "thwarted" **(EXHIBIT "N" pages 74, 76, 79 of trial transcript)**.

Within hours of Judge Lemonidis' "judicial rant", the Clerk of the Court posted the names of the complete jury pool to their public website of BrevardClerk.Us. **(EXHIBIT "T" Clerk of the Court minutes)**

Based on Judge Lemonidis' judicial proclamation that the justice system itself would be "thwarted" if these potential jurors names were posted to any media (**social media, news media, or public media, etc.**), the Defendant fears that members of her jury may have felt intimidated by the posting of their names to the Clerk of the Court's website.

The Defendant was also denied effective counsel, in that her counsel did not either, seek to question the jury pool on whether the posting of their names to the Clerk's website caused them to feel intimidated, or request that the Court assign a new jury pool.

If safeguarding the sanctity of the judicial process, includes threatening to summarily incarcerate two members of the news media, for simply taking press notes, then surely given the fact that the Court itself, through it's Clerk, publicly published the names of

the jury pool, the Defendant was not granted an impartial jury, to hear and determine the evidence against her.

## ISSUE VI

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE TO COUNSEL'S FAILURE TO REQUEST A MISTRIAL, IN RESPONSE TO JUDGE LEMONIDIS' INTEMPERATE CONDUCT.

THE DEFENDANT WAS DENIED A NEUTRAL AND IMPARTIAL TRIAL JUDGE, BASED ON JUDGE LEMONIDIS' VITRIOLIC COMMENTS REGARDING MEMBERS OF THE MEDIA. THE DEFENDANT IS ALSO A MEMBER OF THE MEDIA, AND DURING CRIMINAL SENTENCING JUDGE LEMONIDIS AGAIN ENGAGED IN VITRIOLIC COMMENTS REGARDING THE DEFENDANT'S JOURNALISTIC STYLE.

As outlined within ISSUE V of this motion, Judge Lemonidis' vitriolic comments towards the news media has caused the Defendant to develop concerns that Judge Lemonidis allowed her concerns regarding these news media representatives to negate her judicial neutrality and impartiality during her trial.

First, the Defendant argues that during trial, it was improper for Judge Lemonidis to have the Defendant's attorneys act as the Court's go between with the media representatives. **(EXHIBIT "N" pages 78-79 of trial transcript)**

Second, during the Defendant's sentencing, Judge Lemonidis also made vitriolic and intemperate statements regarding the Defendant's media outlet of *BrevardsBestNews.Com*.

Within Judge Lemonidis' sentencing colloquy, she referred to the Defendant as a **"yellow journalist"**, going on to state that, ***"...people, who are actually trained to report facts and pursue honest corroborated stories, who are under attack today because of people like you, who are out there pushing what can only be called in the common vernacular "fake new."***" **(EXHIBIT "O" pages 78-79 sentencing transcript)**

## ISSUE VII

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS HER TRIAL COUNSEL WAS PROFESSIONAL IMPAIRED DUE TO HIS THEN ONGOING PROFESSIONAL MISCONDUCT

Unknown to the Defendant at the time of her trial, Defense Attorney Paul Bross had ongoing Florida Bar actions over allegations of misconduct. While these allegations were made part of the Defendant's trial record (transcripts), these references were made either at side bar, out of earshot of the Defendant, or while the Defendant was not present within the courtroom due to illness. (EXHIBITS P, Q, R)

While the Defendant was aware that her co-counsel Jessica Burgess, being only one year out of law school, had limited legal and trial experience, the Defendant was **not** aware that Bross had several open Florida Bar complaints against him, that would eventually lead to his disbarment. The Defendant sought Bross' representation as a counter balance to Burgess' limited legal experience.

As was highlighted within :”ISSUE IV” of this motion, even Judge Lemonidis noted her concern to Attorney Burgess, that the Defendant may have viable ineffective counsel arguments, while the same time, Judge Lemonidis was willing to “ *do anything and everything necessary to ward off that (ineffective counsel argument) for you*”.

## ISSUE VIII

JUDICIAL INTEMPERATE CONDUCT (STATEMENTS) CREATED A MISTRIAL EVENT, THAT WAS IMPROPERLY ADDRESSED BY THE COURT, WHEN RAISED BY THE DEFENSE.

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUE TO COUNSEL'S FAILURE TO ADVISE THE DEFENDANT OF THE REQUESTED MOTION FOR MISTRIAL.

As was mentioned within ISSUE II of this motion, during trial, Judge Lemonidis' judicial commentary regarding the legal definition of a “false abuse” report, lead to the Defendant's attorney requesting at side bar, a judicial declaration of a mistrial.

The Defendant states that her attorney never advised her of the mistrial request, or that Judge Lemonidis had denied the mistrial request.

Coupling the above, with the matters covered within ISSUE IV of this motion, that Judge Lemonidis would “*do anything and everything necessary to ward off*” in assisting the defense team in avoiding the filing of an ineffective counsel claim against them, and the the Defendant argues that her counsel were ineffective in not only her defense, but also in keeping her aware of developments within her trial. **(EXHIBIT “J”)**

### ISSUE IX

**JUDGE LEMONIDIS’ POST TRIAL INTEMPERATE CONDUCT, FURTHER SUPPORTS THE DEFENDANT’S ARGUMENT THAT SHE WAS DENIED A NEUTRAL AND IMPARTIAL TRIAL JUDGE**

The Defendant was released from jail on December 5, 2017. The Defendant made a timely report to her assigned probation officer.

Shortly thereafter, her probation officer advised her that the “victim” of her crime was alleging that she was in violation of her probation, and he was demanding that her probation be violated.

Due to the victim’s numerous phone calls, demanding that the Defendant’s probation be violated, the probation officer wrote Judge Lemonidis a December 21, 2017 letter. Within this letter, the probation officer advised Judge Lemonidis of the situation, and of the victim’s allegations. The probation officer further documented her position that she did not believe that the Defendant was in violation of her probation. **(EXHIBIT “S” - Dec. 21, 2017 letter)**

On December 29, 2017, Probation Officer Margo Sloan filed an Affidavit of Probation Violation against the Defendant. This sworn affidavit alleged that the victim’s concerns equated to a violation of Defendant’s probation. **(EXHIBIT “V”)**

On January 2, 2018, Judge Lemonidis filed an “ORDER DIRECTING CLERK TO ISSUE NOTICE TO APPEAR FOR VIOLATION OF PROBATION/COMMUNITY CONTROL ARRAIGNMENT AND TOLLING PROBATION” **(EXHIBIT “W”)**

On October 18, 2019, Probation Officer (PO) Sloan provided a sworn deposition in which she stated that she was advised that Judge Lemonidis ordered that the Defendant’s probation be violated. PO Sloan further testified that she would have not filed the sworn

VOP affidavit, if she had not been ordered to file it. (EXHIBIT “U” pages 58-63, 75 of deposition transcript)

PAGE 75, lines 2-8

**Q. (defense attorney) -And you didn’t violate her for all those things. The only reason you violated her was the JA (judicial assistant) told you to process that, right?**

**A. (Sloan) – yes**

**Q. Otherwise, you wouldn’t have violated her at all?**

**A. No. We were going with the letter, (Dec 21, 2017), originally.**

The Defendant argues that Judge Lemonidis was aware, given the December 21, 2017 letter, that PO Sloan did not believe that the victim’s allegations against the Defendant rose to a violation of her probation. The December 29, 2017 sworn VOP affidavit uses **ONLY** the victim’s allegations as the rationale for violating the Defendant’s probation. Therefore, the Defendant argues that Judge Lemonidis forwarded a VOP prosecution against her, with the knowledge that the sworn VOP affidavit against her was fraudulent, and that she (Lemonidis) had ordered the filing of the fraudulent affidavit.

The Defendant argues that Judge Lemonidis held two hearings, forwarding this VOP proceeding, with the knowledge, that the VOP affidavit had been fraudulently filed, under her instructions.

## ISSUE X

### CUMULATIVE PROCEDURAL AND SUBSTANTIVE ERRORS DEPRIVED THE DEFENDANT OF A FAIR TRIAL

The Defendant was denied a fundamentally fair trial due to the cumulative effect of errors that occurred during her trial proceeding. The cumulative errors committed by both the defense and trial judge are such that this is a reasonable probability that these errors would affect the outcome of the trial See Strickland v Washington, 466 US 668 (1984) and Robinson v State, 770 So 2d 1167 (Fla 2000).



The Defendant argues that in the nearly 250 years of American jurisprudence, that very few criminal prosecutions have been some crippled by legal errors. The Defendant's prosecution contained at the minimum the following fatal errors:

1. The arresting agency, the Brevard County Sheriff's Office, did **not** have the statutory authority to determine whether the **existence of a false abuse report**. Without such a determination, the arresting agency did not have the statutory law enforcement authority to investigate, collect evidence, request judicial warrants, or make an arrest of the Defendant under the charge of **filing** a false report.

Absent the testimony of BCSO Agent Robert Fischer, the Defendant holds the reasonable belief that she would have been acquitted. Absent the evidence collected during BCSO Agent Robert Fischer's investigation, the Defendant holds the reasonable belief that she would have been acquitted.

2. Regarding two unrelated criminal prosecutions, the trial judge (Lemonidis) has admitted to the Florida Judicial Qualifications Commission, of engaging in over-reactive and intemperate behaviors. These unrelated cases were prosecuted during the approximate same time frame as the Defendant's prosecution. The trial judge has alleged that her over-reactive and intemperate behaviors were influenced by personal stressors, unrelated to the two criminal prosecutions.

Early on, in her prosecution (July 2016), the Defendant documented her concerns that trial Judge Lemonidis was engaging in over-reactive and intemperate behaviors, that

rose to the level of judicial misconduct. The Defendant's documented concerns, predated the concerns of the Florida Judicial Qualifications Commission.

The Defendant holds the reasonable belief, and has provided this Court evidence in support, that Judge Lemonidis also engage in over reactive and intemperate behaviors during her trial, and that such behaviors denied her a neutral and impartial Court, thus assisting in denying her a fair and impartial trial.

3. Trial Judge Lemonidis effectively engaged in "legislating from the bench" when she denied the Defendant the right to cross examiner DCF CPI O'Neil Brooks on whether he had determined her abuse report, to be false abuse report. Judge Lemonidis's judicial error stating that it was the "province of the jury" to determine whether the Defendant abuse report was by statutory definition a false report (F.S. 39.01(27)), denied the Defendant a fair and impartial trial. In truth, Florida law supports that it is the province of DCF to determine whether the Defendant's abuse report **was a false report**, and it's the province of the jury, to determine whether the Defendant **committed the felony of making a false report**, under the statutory guidelines of F.S. 39.205(9).

4. As detailed within Defense Attorney Paul Bross' verbal Motion for Mistrial, trial Judge Lemonidis' made a fatal error in advising that jury that they only need to determine whether the Defendant's abuse report was in fact a false report, in order to

convict her of the criminal of **filing** a false abuse report. This fatal error was aggravated, and justice was denied, when Judge Lemonidis' refusal to allow DCF CPI Brooks to testify whether his investigation supported that the Defendant's report abuse was indeed a "false report".

5. Judge Lemonidis' statements to the defense attorney(s) to "do anything and everything" she could to assist them (defense attorneys) in warding off an "ineffective counsel" claim was not only inappropriate, but causes this Defendant pause, wondering if her defense team felt as though they did not have to present their best defense, because the Defendant was never going to be able to successful mount an ineffective counsel claim within this Court.

Interestingly, while Judge Lemonidis was promising the defense attorneys some judicial coverage on any ineffective counsel claim, she was memorializing the defense teams' ineffectiveness, stating that she would address it with "*mom talk*".

6. Judge Lemonidis' vitriolic sentencing statements against the Defendant only supports the Defendant argument that Judge Lemonidis had long before trial, abandoned her judicial neutrality and impartiality regarding the Defendant's proceeding. Judge Lemonidis' involvement in the filing of the fraudulent VOP affidavit, only goes to firm up the Defendant's argument, that she was denied a fair and impartial judge.

## CONCLUSION

Petitioner's allegations must be accepted as true to the extent that they are not conclusively refuted by the record and these facts bind the trial court to hold an evidentiary hearing on a facially sufficient claim, see Hamilton v State, 860 So 2d 1028 (Fla 5<sup>th</sup> DCA 2003)

WHEREFORE, Defendant, DANA LYNN LOYD, respectfully requests that this Honorable Court grant the Motion for Post Conviction Relief by setting an evidentiary hearing on the above framed issues and granting a new trial.

Under penalties of perjury, I declare that I have read/written the foregoing and the facts stated are true on this 10<sup>th</sup> day of December 2019.

*Dana Delaney Loyd, pro SE*

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