No. 24-6105 ORIGINAL

In the Supreme Court of the United States

Ryan Lewis Hilyard,
Petitioner,

VS.

State of Wyoming et. al, & Warden Seth Norris
Wyoming Medium Correctional Institution.
Respondent,

ON WRIT OF CERTIORARI
FROM THE WYOMING SUPREME COURT

BREIF FOR PETITIONER

Ryan Lewis Hilyard, #34067 Pro-Se
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Pro-Se Petitioner

QUESTION(S) PRESENTED

I. DID THE WYOMING SUPREME COURT APPLY AND FOLLOW FEDERAL RULES OF EVIDENCE CORRECTLY?

II. WAS THE WYOMING SUPREME COURT'S DECISION ARBITRARY, CAPRICIOUS, OR OTHERWISE NOT IN ACCORDANCE WITH FEDERAL LAW?

III. WAS MR. HILYARD DENIED HIS FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL . . . NO STATE SHALL MAKE OF ENFORCE ANY LAW WHICH SHALL . . . DENY TO ANY PERSON WITHIN [ITS] JURISDICTION THE EQUAL PROTECTION OF THE LAWS?

IV. DOES *STRICKLAND V. WASHINGTON* REQUIRE FURTHER INTERPRETATION AS WYOMING HAS IMPLIED BY RELYING ON *SCHREIBVOGEL V. STATE,* A WYOMING DECISION AS OPPOSED TO A U.S.S.C. DECISION?

V. DO THE NATRONA COUNTY DISTRICT COURT AND/OR THE ATTORNEY GENERAL FOR THE STATE OF WYOMING HAVE THE AUTHORITY TO OVERTURN THE UNITED STATES SUPREME COURT PRECEDENT IN *BUCK V. DAVIS*, 137 S.CT. 759 (2017); *TREVINO V. THALER*, 133 S.CT. 1911 (2013); AND *MARTINEZ V. RYAN*, 566 U.S. 1 (2012); WHERE THE SUPREME COURT DECIDED THAT A PROCEDURAL DEFAULT WOULD NOT BAR A CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; WHEN COLLATERAL PROCEEDING WAS THE FIRST PLACE TO CHALLENGE A CONVICTION ON THE GROUND OF INEFFECTIVE ASSISTANCE?

PARTIES TO THE PROCEEDING

1. All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment(s) is the subject of this petition is as follows:
2. Petitioner Ryan Lewis Hilyard is the appellant in the court below. Respondents are Bridget Hill, in her official capacity for the Attorney General's office for the State of Wyoming, and Warden Seth Norris in his official capacity for the Wyoming Medium Correctional Institution.

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

I. OPINIONS BELOW

For cases from **State Courts:**

1.1 The Opinion of the highest state court to review the merits appears at **Appendix A** to the petition and is reported as *Hilyard v. State of Wyoming*, Case No. S-24-0193 Dismissed August 6th, 2024 on clerical error. The Supreme Court of Wyoming refused to review the meritorious claims submitted numerous times because Mr. Hilyard notified the State District Court of intent to appeal. Mr. Hilyard is not a trained attorney and was merely copying filings made to the Wyoming Supreme Court by a trained attorney.

1.2 The Findings of Fact, Conclusions of Law, and Order Dismissing Petition for Post-Conviction Relief in Case no. 22282-C, February 7th 2024, of the Seventh Judicial District Court appears as **Appendix B** to the District Court's Denial of Post-Conviction Relief.

1.3 The original Wyoming Supreme Court denial from February 6, 2023 is listed as **Appendix C**.

II. JURISDICTION

2.1 The Wyoming Supreme Court entered its judgment on August 6, 2024. This Court has jurisdiction under 28 U.S.C. § 1254 (1)(2). Deadline to file is November 4, 2024.

2.2 To review the Wyoming Supreme Court's decision to see if they applied and followed Federal Laws correctly. ***Furthermore,*** Petitioner Hilyard shows cause that Wyoming decisions were based on an *unconstitutional standard* used in the Trial Judge's collusion with the Attorney General to thwart the United States Constitution. Trial Court, Wyoming's Supreme Court and the Attorney General for Wyoming simply ignored the cases they could not circumvent with unconstitutional cases. Deputy Attorney General Jenny Craig used several statements to commit fraud on the court. This was simply ignored by the State Courts in Wyoming due to the legal fraternity of the state's refusal to investigate their own members even when heinous, egregious, and obvious misconduct has been committed.

RELIEF Mr. Hilyard timely filed that pointed out the discrepancies in the standard. **See Exhibit 1, Motion to Grant Post-Conviction Relief, ignored by District Court Judge Wilking.**

3.4 U.S. Const. Amend. IV (Protection from illegal search and seizure): The investigation and trial of Mr. Hilyard violated his IV Amendment Right as the Mills Police Department took property with no warrants and abused the warrants they did have by providing false certifications to the ordering Judge. Mills Police representatives took cellular phones and a belt without a warrant.

3.5 The police attempted to forge a warrant in October, 2020 for a belt actually taken August 6, 2020 by naming the belt as the primary item searched for but not listing it on the inventory lists of items taken in either August or October of 2020. The phones have never been on a warrant and Mr. Hilyard was threatened when asking for the warrant when Detective Terry Good attempted to force him to unlock the phones while ignoring the standards set forth in *Miranda v. Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 Ohio Misc. 9, 1966 U.S. LEXIS 2817 (1966), reh'g denied, 385 U.S. 890, 87 S. Ct. 11, 17 L. Ed. 2d 121 (1966); *United States v. Patane,* 542 U.S. 630, 124 S. Ct. 2620, 159 L. Ed. 2d 667, 2004 Fla. L. Weekly Fed. S 482, 2004 U.S. LEXIS 4577 (2004); *Vega v. Tekoh,* 142 S. Ct. 2095, 213 L. Ed. 2d 479, 29 Fla. L. Weekly Fed. S. 421, 2022 U.S. LEXIS 3053 (2022) by refusing to stop questioning *after* Mr. Hilyard *repeatedly* requested an attorney. This included the detective using verbal abuse to attempt to scare Mr. Hilyard into allowing violations of *Miranda*, rights he was ***not advised of*** while being detained against his will.

3.6 Despite being protected by Wyoming Rules of Procedure for Juvenile Courts Rule 9 that prohibited information sharing between criminal and juvenile cases, Mr. Hilyard was served a DNA warrant by police in October, 2020. The only reason police obtained Mr. Hilyard's DNA was in an attempt to help the juvenile workers decide paternity of Mr. Hilyard's children. Mr. Good as well conducted the entirety of his investigation with Ms. Tazia Morgart of the Department of Family Services despite knowledge that the pair were breaking Wyoming Court rules.

3.7 WYOMING COURT RULES, Rules of Procedure for Juvenile Courts, Rule 9. Inadmissibility of Certain Evidence.

> **(a)** *Agreements.* The State may enter into an agreement or plea bargain which provides that information derived directly from a parent during the multi-disciplinary or case planning process pursuant to a proceeding under Wyo. Stat. Ann. 14-3-401 et seq.,

or from a juvenile pursuant to proceedings under Wyo. Stat. Ann. 14-6-201 et seq., and Wyo. Stat. Ann. 14-6-401 et seq. will not be admissible in a subsequent criminal proceeding arising from the same episode. The provisions of this subsection shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

3.8 U.S. Const. Amend. V (Due Process) Mr. Hilyard has been deprived of due process at every turn of his case. Mr. Hilyard was handicapped with an attorney who acted more as an assistant prosecutor through his case, an appellate attorney who cared more about Wyoming's legal fraternity than her client, and a judge who has summarily dismissed and ignored any action Mr. Hilyard has brought forth to attempt to clear his name. Mr. Hilyard was never indicted by a grand jury or even a District Attorney, just a relatively new Assistant District Attorney attempting to prove himself.

3.9 U.S. Const. Amend. VI (Right to a Speedy Trial and Right to Assistance of Counsel) Mr. Hilyard clearly heard the District Court Judge Catherine E. Wilking tell his attorney on a telephonically held preliminary hearing to "get [his] client to waive his right for a speedy trial." Trial Counsel was happy to oblige. The attorney's conflict of interest with the court advised his client that in the best interests of the court and prosecution, that he wanted Mr. Hilyard to waive his right to a Rule 48(b) speedy trial. This not only unfairly took Mr. Hilyard's right to a speedy trial but is also a blatant violation of Mr. Hilyard's right to counsel. The Court(s) recognize that 'the right to counsel is the right to effective assistance of counsel,' *Strickland,* 466 U.S. at 686. See Fed. R. Crim. P. 44; 18 USCA § 3006A.

3.10 Wyo. Const. Art. I § 10 In recognition of the supreme law of the land, the United States supreme court decisions on speedy trials were accorded full credit in deciding the question presented to the state supreme court as to whether there was an unconstitutional delay in bringing defendants to trial. *Stuebgen v. State*, 548 P.2d 870, 1976 Wyo. LEXIS 181 (Wyo. 1976).

3.11 U.S. Const. Amend. XIV (Equal Protection Under the Law) Mr. Hilyard is male; therefore Wyoming Law is prejudiced against him. He automatically became a suspect in the child abuse case though it was clear that he was not present when the actual abuse took place. Police failed to determine a timeline because all ***treating physicians*** agreed the child's injuries occurred **three (3) to five (5) hours** prior to arrival in the Emergency Room. For this time frame, Mr. Hilyard had two witnesses and video surveillance that showed he was not present. Instead of using this information and prosecuting only the guilty, the state paid off witnesses to falsify

credentials and timelines. The only timeline presented was from the faulty testimony of Dr. Jeffrey Rhea (Dr. Rhea), who was improperly held as an expert witness. Dr. Rhea is a radiologist with no expertise in brain injuries (Trail Tr. Pp. 350-351). Dr. Rhea, as a radiologist, was not a treating physician in this case, though the prosecutor and the Attorney General's office claimed he was.

3.12 Wyoming code § 1-12-104. Husband and wife as witnesses in civil and criminal cases: No husband or wife shall be a witness against the other except in criminal proceedings for a crime committed by one against the other, or in a civil action or proceeding by one against the other. They may in all civil and criminal cases be witnesses for each other the same as though the marital relation did not exist.

3.13 Privilege does not apply where child of wife wronged: Cases in which there is a wrong against the child of the ***wife*** fall within this section's exception applicable to criminal proceedings for a crime committed by one [spouse] against the other, because the wrong affecting the ***wife*** is different from that suffered by the public in general, and it is not the policy of this state to encourage defendants to silence their spouses in child abuse or child homicide cases. *Seyle v. State*, 584 P.2d 1081, 1978 (Wyo. 1978) (emphasis added).

3.14 This is a violation of Mr. Hilyard's XIV Amendment right to equal protection under the laws. Wyoming state statues are biased against men as they offer protection only for children of women against male violence. Wyoming trained law enforcement are taught this bias and will therefore "railroad" an innocent father as they are [**programmed**] to believe any abusive act had to revolve around the man of a household, that the woman is an innocent bystander, a forced participant, or an additional victim; as Wyoming code implies.

3.15 Wyoming Constitution Article I § 37: "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land. **Interpretation by United States Supreme Court is controlling."** The most egregious of the offense of this is in Deputy Attorney General Jenny Craig's repeated claims that *Schreibvogel v. State* creates a "concrete standard" that interprets *Strickland v. Washington.* This claim is baseless, contradicts the U.S.S.C. standard set forth in *Strickland,* and shows a bias. *Strickland* became the IAC standard in 1984 yet somehow needed interpretation from the Union's smallest state 28 years later. This claim is nonsensical.

3.16 Additionally, Ms. Craig knowingly falsified Wyo. Stat. Ann. 7-14-103 by stating *Schreibvogel* "procedurally bars" IAC claims that "could have been raised on direct appeal but were not." The issue at hand in *Schreibvogel* was an attempt to bring IAC claims against the trial attorney in Post-Conviction actions after the Wyoming Supreme Court denied the same claims on merit in direct appeal. *Schreibvogel* has been fraudulently weaponized by the Wyoming Attorney General's Office to deny justice.

> It has been said that "fraud on the court" occurs "where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989). *Dollarhide v. Bancroft* ¶ 20, 239 P.3d 1168.

IV. STATEMENT OF THE CASE

4.1 Among Mr. Hilyard's claims, he used *Strickland v. Washington* showing eight **(8)**[1] unequivocal instances in which trial counsel was completely "*ineffective*."[2] The Wyoming Attorney General, represented by Jenny Craig (hereafter Ms. Craig), in her *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF,* claimed *Schreibvogel v. State,* 2012 WY 15, ¶ 12, 269 P.3d at 1102 bars the IAC claims under Wyo. Stat. Ann. § 7-14-103(a)(i)[3]. Ms.

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[1] Eight Instances of Ineffective Assistance of Counsel were: **(1)** Counsel's failure to demand a *Franks* hearing citing illegal activities and deliberate falsehood or of reckless disregard for the truth committed by law enforcement officials. **(2)** Counsel's unprofessional and racially charged bias for refusal to interview the **one** actual witness to any crimes. **(3)** Counsel's conflict of interest with the Court and Prosecuting attorney. **(4)** Counsel's refusal to agree that probable cause had **not** been met prior to arrest and arbitrate for his client; essentially turning trial counsel into an additional prosecutor. **(5)** Counsel's refusal to share any items in discovery and subsequent lie in sentencing hearing to cover it up. **(6)** Counsel's refusal to impeach state witnesses or offer any contrary testimony. Counsel allowed knowingly falsified testimony to stand without the slightest of a challenge. Mr. Hilyard was convicted on perjury with his lawyer assisting by placating Mr. Hilyard that he "would show them." **(7)** Counsel's refusal as the juvenile attorney to intervene in state sponsored child abuse of Mr. Hilyard's second child to force coerced testimony. **(8)** Counsel's decision to aid prosecutorial strategy of turning this case from the facts to jury passion when trial counsel played a video of Mrs. Hilyard committing the abuse of the victim.

[2] **(1)** Whether the lawyer had previously handled criminal cases; **(2)** whether strategic trial tactics were involved in the allegedly incompetent action; **(3)** whether, and to what extent, the defendant was prejudiced as a result of the lawyer's alleged ineffectiveness; and **(4)** whether the ineffectiveness was due to matters beyond the lawyer's control.

[3] Wyo. Stat. Ann. § 7-14-103, Claims Barred; applicability of act."

(a) A claim under this act is procedurally barred and no court has jurisdiction to decide the claim if the claim:

- **(i)** Could have been raised but was not raised in a direct appeal from the proceeding which resulted in the petitioner's conviction;
- **(ii)** Was not raised in the original or an amendment to the original petition under this act; or
- **(iii)** Was decided on its merits or on procedural grounds in any previous proceeding which has become final.

(b) Notwithstanding paragraph (a) (i) of this section, a court may hear a petition if:

Craig's argument fails as the constitutional standard is *Strickland,* not the state's decision in *Schreibvogel.*

4.2 Mr. Hilyard is aware that post-conviction is not a replacement for direct appeal,[4] however, he is also aware that according to Wyoming Law, the claim of ineffective assistance of appellate counsel opens the door to admit arguments not included in his direct appeal due to the ineffective assistance of appellate counsel.

4.3 Appellate counsel, Elizabeth Lance (hereafter Ms. Lance) was asked to bring Ineffective Assistance of Counsel (IAC) claims against trial counsel Robert Oldham (hereafter Mr. Oldham). Ms. Lance told Mr. Hilyard she would not bring IAC claims to the Wyoming Supreme Court, the court would refuse to hear them. Ms. Lance, in her first conversation with Mr. Hilyard said she did not know Mr. Oldham but less than a week later claimed that Mr. Oldham was "all defense." This shows her dedication to protect Wyoming's legal fraternity or her decision to stick with the Wyoming Attorney General, who rations funding for Court Appointed Attorneys.

4.4 Regardless of Ms. Lance's opinion of the court or rumors she may have heard about or from Mr. Oldham, she had the obligation to present Mr. Hilyard's claims and failed to do so. Ms. Lance provided ineffective assistance of appellate counsel. She acted in the best interests of the state Attorney General's Office by refusing to present meritorious arguments, thereby blocking them from consideration.

4.5 Ms. Craig would have the court believe that *Strickland* needs case law to interpret it and combine the IAC standards with a plain error standard of review for appellate counsel:

> "The Wyoming Supreme Court has established a strict test for reviewing ineffective assistance of appellate counsel claims. *Schreibvogel,* ¶ 12, 269 P.3d at 1102. The Court developed a 'concrete standard' to use in analyzing these claims so that courts 'will not in every instance proceed contrary to the waiver rule and will not in every instance simply address the matter in an ad hoc way which inevitable finds counsel's professional decisions tested by the collective determination' of how others would have handled a similar situation. *Cutbirth,* 751 P.2d at 1265-66. Thus the Court adopted a test that combined the plain error standard of review with the ineffective assistance of counsel

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(i) The petitioner sets forth facts supported by affidavits or other credible evidence which was not known or reasonably available to him at the time of a direct appeal; or

(ii) The court makes a finding that the petitioner was denied constitutionally effective assistance of counsel on his direct appeal. This finding may be reviewed by the petition."

[4] "Post-conviction is not a substitute for an appeal and the petition will not lie where the matters alleged as error could or should have been raised in an appeal or in some other alternative matter. Relief may be granted only in extraordinary circumstances which strongly suggest a miscarriage of justice." *Harlow v. State,* 105 P.3d 1049 (Wyo. 2005).

standard from *Strickland v. Washington,* 466 U.S. 668 (1984)." **See Exhibit 2 *MOTION TO DISMISS PETITON FOR POST-CONVICTION RELIEF* p. 8**

4.6 This assertion, however, is completely inappropriate. *Strickland v. Washington*, which is the precedent that is used in interpretation of the standards set out for Ineffective Assistance of Counsel demanded by the VI Amendment to the United States Constitution requires neither a "strict test" nor a "concrete standard."

> "I write to emphasize the relatively low burden that is 'materiality' for purposes of *Brady* and *Strickland v. Washington*, 466 U. S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prove prejudice under both *Brady* and *Strickland,* a defendant must show 'a reasonable probability' of a different outcome. *United States v. Dominguez Benitez*, 542 U. S. 74, 82, 124 S. Ct. 2333, 159 L. Ed. 2d 157 2004; *United States v. Bagley*, 473 U. S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985) (opinion of Blackmun, J.). We have repeatedly said that the 'reasonable probability' standard is not the same as the 'more likely than not' or 'preponderance of the evidence' standard; it is a qualitatively lesser standard. *Kyles v. Whitley*, 514 U. S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995) (collecting cases); see also *Dominguez Benitez*, 542 U. S., at 83, n. 9124 S. Ct. 2333, 159 L. Ed. 2d 157; *Strickler v. Greene*, 527 U. S. 263, 298, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (Souter, J., concurring in part and dissenting in part). In fact, it is 'contrary to' our precedent to equate the 'reasonable probability' materiality standard with the more-likely-than-not standard." *Williams v. Taylor*, 529 U. S. 362, 405-406, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (*Chinn v. Shoop,* 143 S. Ct. 28; 214 L Ed 2d 229214 L. Ed. 2d 229; 2022; Dissenting opinion Jackson).

4.7 Mr. Hilyard asserts that IAC of trail attorney number two (2) by itself requires immediate reversal. In this instance, Mr. Oldham refused to interview any witnesses to the crime. Mr. Hilyard has personal knowledge that due to Mr. Oldham's racist attitude toward the case's Guardian-Ad-Litem, he refused to interview KH, the one victim. Mr. Oldham did not interview Mrs. Hilyard, who admitted to committing the crimes herself, or any of the children who lived in the household. Mr. Oldham did not interview the paid off "expert witnesses" or non-present medical professionals. He as well did not interview the actual treatment team to prepare.

> *United States v. Gray,* 878 F.2d 702, 711 (3rd Cir. 1989) "[F]ailure to conduct any pretrial investigation generally constitutes a clear instance of ineffectiveness." *Hill v. Lockhart,* 474 U.S. 52, 59, 88 L.Ed.2d 203 (1985), prejudice surrounding an attorney's failure to investigate or discover exculpatory evidence depends on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea, [and] a prediction whether the evidence likely would have changed the outcome of the trial.

4.8 Mr. Hilyard is aware that KH has shared with anyone willing to listen that Mr. Hilyard was ***not*** the perpetrator of a crime against KH or any other person. Ms. Craig has claimed this information is invalid in another fraudulent statement. Ms. Craig made the claim that:

> "Wyoming Statute § 7-14-102(b) states that a petition for post-conviction relief 'shall be accompanied by affidavits, records or other evidence supporting the allegations or shall state why the same are not attached.'" **See Exhibit 2 *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF* p. 9**

4.9 Mr. Hilyard is incarcerated. Though KH, the child's adoptive parents, and the child's counselors have requested visitation, the Wyoming Department of Corrections has overridden professional recommendations and blocked access of Mr. Hilyard to KH. Without even access to speak to his son, Mr. Hilyard has no way to subpoena an affidavit from the child. This law is biased and is in contradiction with United States law. All the information KH provided was as well provided to prosecuting attorneys, their failure to disclose KH's testimony as well as the names of the real treating physicians was in direct violation of *Brady v. Maryland.*[5] The *Brady* violations as well, negate Wyoming Statute § 7-14-102 as stated by Ms. Craig.[6] **See Exhibit 3 denied requests for visitation with KH**

4.10 Ms. Craig seems to be in belief that the U.S. Supreme Court standard set forth in *Strickland* is not sufficient to decide ineffective assistance in Wyoming but has been deemed the standard to go on in the United States for forty years. She goes on to incorrectly state claims of the appellate attorney's responsibilities to their client:

> In submitting a claim of deficient representation by appellate counsel, the petitioner in the post-conviction proceeding must demonstrate to the district court, by reference to the record of the original trail without resort to speculation or equivocal inference, what occurred at that trial. *Schreibvogel,* ¶ 12, 269 P.3d at 1103 (quoting *Smizer v. State,* 835 P.2d 334, 337 (Wyo. 1992)); *see also Harlow,* ¶ 13, 105 P.3d at 1060-61.

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[5] Where Government failed to disclose expert witness who held opinion favorable to appellant service member, and defenses experts opinion had been disregarded as inconsistent and contradictory, withholding violated *Brady v. Maryland,* and R.C.M. 701, Manual Courts-Martial. *United States v. Mott,* 2009 CCA LEXIS 424 (N-M.C.C.A. Nov. 24, 2009), unpublished decision.

[6] *Fontenot v. Crow,* 4 F4th 9824 F.4th 982; (10th Cir. 2021) The Supreme Court has framed the prosecution's duty to disclose as "broad," *Strickler,* 527 U.S. at 281, and "has never required a defendant to exercise due diligence to obtain *Brady* material," *Lewis v. Conn. Comm'r of Corr.,* 790 F.3d 109, 121 (2d Cir. 2015). To the contrary, in *Banks v. Dretke,* while analyzing *Brady* as cause for excusing procedural default, the Court rejected a rule "declaring 'prosecutor may hide, defendant must seek'" as "not tenable in a system constitutionally bound to accord defendants due process."{2021 U.S. App. LEXIS 185} 540 U.S. 668, 696, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004). Following *Banks v. Dretke,* several circuits have held that a defendant's diligence in discovering evidence plays no role in a substantive *Brady* claim.

4.11 This statement is false, "Wyoming Law places upon the appellate counsel, the primary responsibility for investigating and raising constitutional issues. That responsibility is not limited to raising issues that are based on the trial record, but includes issues that are traditionally within the scope of post-conviction review, such as claims of ineffective assistance of counsel or other issues that require investigation beyond the four corners of the total record." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993). "Appellate counsel was ineffective in failing to raise arguable issues on appeal created presumption of prejudice in that defendant was essentially left without representation on appeal." *Delgado v. Lewis*, 181 F.3d 1087 (9th Cir. 1999).

4.12 The Merit in Mr. Hilyard's post-conviction appeal is self-evident.[7] Allowing this Court to correct these Constitutional issues between Mr. Hilyard and his Counsels'[8] actions or non-actions and conflicts of interest between Mr. Hilyard's attorneys[9] and the "state's attorney."

4.13 The state cannot tolerate a blatant denial of constitutional rights guaranteed to all people alike charged with a crime, legally convicted, or pled out to a lesser charge.

V. SUMMARY OF THE ARGUMENT

5.1 Mr. Hilyard showed that his ex-wife, Sarah Hilyard, conspired with her son, LT to commit the abuses against Mr. Hilyard's son, KH. ***Furthermore,*** Mr. Hilyard showed that the state of Wyoming represented by the Department of Family Services (DFS) allowed LT, who was an admitted perpetrator of the crime against KH to be placed for months with Mr. Hilyard's second child, KLH,[10] This allowed LT to help coerce stories his much smaller stepbrother, KLH, told authorities and the court. This is no more than state-sponsored child abuse.

5.2 Mr. Hilyard as well asserts that his children, KLH and LH, are special needs children. There are inconsistencies and fantastic claims within KLH's testimony that were never (impeached or objected to) by defense counsel. Mr. Oldham refused to motion for "Child witness

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[7] "Person, which confirmed that the rule of presumed prejudice in cases of actual or constructive denial of counsel applies to appellate counsel, compels the related conclusion that if a defendant tells his attorney to appeal and the lawyer fails to do so, a *per se* violation of the right to counsel occurs." See *Fern*, 99 F.3d at 257-58 (recognizing same). *Walker v. McCaughtry*, 72 F.Supp.2d 1025, (U.S. Dist. 1999).

[8] "The effective assistance of counsel in a state prosecution for a crime is a requirement of due process which no member of the Union may disregard." *Reece v, Georgia,* 350 U.S. 85, 76 S.Ct. 167.

[9] "Denial of the effective assistance of counsel to one charged with a crime violates due process." *Hawk v. Olsen,* 326 U.S. 271, 66 S.Ct. 116.

[10] This child has been inappropriately labeled by the court and Ms. Craig as "KLB" or "KB," the child's initials are KLPH, simplified to "KLH." "KB" and "KLB" are in reference to the child's first name and make him too easy to identify.

competency hearing. - A party's presentation to the court of evidence that a child witness is incompetent to testify triggers the requirement of a competency hearing, which includes consideration of whether child's memory was tainted by suggestive interview techniques."[11]

5.3 Mr. Hilyard asserts that LT should not have been allowed to testify. LT was an admitted conspirator to causing the injuries to KH. Allowing LT to testify was bootstrapping. No proof was offered in court to Mr. Hilyard's alleged involvement in this conspiracy other than LT's inadmissible out of court recorded statement inappropriately allowed in trial.

> Three elements must be demonstrated before a coconspirator's statement can be admitted as non hearsay under Wyo. R. Evid. 801(d)(2)(E)[12]. There must be evidence of a conspiracy; evidence that the declarant and the defendant both were involved in the conspiracy; and a showing that the proffered statements were made during the course of, and in furtherance of, the conspiracy. The first two requirements insure that the statements were in fact made by a co-conspirator, and the last introduces a measure of relevance and trustworthiness.
>
> Wyoming's rule for admission of statements requires proof of the first two elements independent of the co-conspirators' statements. The court does not permit "bootstrapping." Under the rule, the statements of the co-conspirators cannot be considered in determining whether the conspiracy existed or the defendant was a member.[13]

5.4 Mr. Hilyard's ex-wife Sarah Hilyard, told LT to beat Mr. Hilyard's son, KH only when Mr. Hilyard was at work and only where clothes could cover. This instruction was broken once. Mr. Hilyard was out of town on a week-long business trip and LT bruised KH in conspicuous areas, Sarah Hilyard called KH out sick from school and procured a bruise cream to make the marks vanish.[14]

5.5 *Brady* violations occurred in Mr. Hilyard's case. KH was interviewed by the prosecution. The information he provided was the prosecution's duty to disclose. However, it did not work with their narrative and was ignored and not disclosed. The same is true of the treating physicians in Denver and Colorado Springs. It is not Mr. Hilyard's responsibility to correct failures in the corrupt investigation practices used by Mills Police Department and the Natrona

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[11] *English v. State*, 982 P.2d 139 (Wyo. 1999).

[12] With respect to statements of co-conspirators, Wyo. R. Evid. 801(d)(2)(E), provides as follows: (d) Statements which are not hearsay. --A statement is not hearsay if: (2) Admission by Party-Opponent. --The statement is offered against a party and is (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

[13] *Jandro v. Wyoming,* 781 P.2d 512, (Wyo.1989).

[14] Bruise cream was identified through pictures shown of discarded tube in garbage by Mills Police Sergeant Matt Vincent (Trial Tr. Pg. 439). Statement of instruction provided by KH who was barred from providing testimony at trial by Prosecuting and Defense attorney collusion.

County District Attorney. As indicated, this would require a defendant to exercise due diligence in obtaining *Brady* material.

5.6 As Ms. Craig had no defense against the repeated violations of *Brady v. Maryland* committed by the police and prosecution, she simply tried to bar this claim by saying Mr. Hilyard had not previously brought *Brady* claims. Though not articulated well, the *Brady* violations have been a complaint of Mr. Hilyard's since the state-owned attorneys Mr. Oldham and Ms. Lance stopped making inaccurate filings. Ms. Craig was only undermining the liberal readings the court was required to use and failed to with Mr. Hilyard's appeals.

> The Court should liberally construe *pro se* filings. *Hall v. Bellmon,* 935 F.2d 1106, 1110 (10th Cir. 1991). However, "[t]he broad reading of the plaintiff's complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.*

5.7 Detective Terry Good of the Mills, WY Police Department and Ms. Morgart of DFS interviewed LT and KLH multiple times. "Repeated interviewing and discussions about the abuse undermine the credibility of witnesses. It can cause confusion in both adults and children. With children, it raises the additional concern of suggestibility. According to experts, children may interpret repeated interviews as demands for more or different information than they have already given."[15]

5.8 After his incarceration, Mr. Hilyard has been made aware that a treating physician in Colorado Springs, CO told KH's adoptive parents that the diagnosis of KH was **shaken baby syndrome or shaken impact syndrome.**[16] The syndrome was briefly touched on by Mr. Oldham with a perjured witness, Dr. Antonia Chiesa, on the stand. However, the actual diagnosing physician was unknown to Mr. Hilyard at trial and the actual treatment team was excluded from providing testimony due to prosecutorial misconduct in refusal to disclose. Actual physicians who treated KH would have corrected the timeline of KH's injuries away from the

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[15] Minnesota Attorney General's report on Scott County Investigation, February 12, 1985.

[16] {430 P.3d 745} Dr. Stephen Cina "The next portion of the head exam was whenever I see brain swelling and subdural hemorrhage I'm thinking of a closed head injury. And a closed head injury in a child is very often due to what's called the **shaken baby syndrome or shaken impact syndrome**." "[T]here was a kind of shaking episode where the head was violently whacked against a firm surface causing a rapid acceleration and deceleration. We have evidence of the impact, we have subdural hemorrhage indicating a sheering, tearing, and we have injury to the deep structures of the brain. So to me, this would be a so-called shaken impact case." *Nielsen v. State of Wyoming,* 430 P.3d 740; (Wyo. 2018) (emphasis added).

timeline fabricated by the prosecution with the sole purpose of false conviction. The corrected timeline would have exonerated Mr. Hilyard.

5.9 Ms. Craig's argument hinges on Wyo. Stat. Ann. § 7-14-102(b) and the unconstitutional *Schreibvogel* decision. It is unreasonable to expect Mr. Hilyard to have the ability to subpoena the treating physicians and KH while incarcerated.

5.10 Wyo. Stat. Ann. § 7-14-102(b) is in direct contradiction with the U.S. Supreme Court decision in *Brady v. Maryland. Schreibvogel v. State,* as Ms. Craig has manipulated it, is in direct contradiction with the *Strickland v. Washington* decision. This invalidates both the state statute and the state court decision.

> Primacy of the United States supreme court in constitutional areas is firmly embedded in the law by judicial decision and the state constitution. *Doe v. Burk*, 513 P.2d 643, 1973 Wyo. LEXIS 177 (Wyo. 1973).
>
> U.S. Const. Art. VI, Clause 2 makes the United States Constitution the supreme law of the land. The Constitution is the fundamental and paramount law of the nation. It is emphatically the province and duty of the judicial department to say what the law is. The *Marbury v. Madison* decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by the United States Supreme Court and the country as a permanent and indispensable feature of the federal constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by the Court is the supreme law of the land, and U.S. Const. art. VI makes it of binding effect on the states anything in the Constitution or laws of any state to the contrary notwithstanding. Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to U.S. Const. art. VI, to support the Constitution. This requirement reflects the framers' anxiety to preserve the Constitution in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a state. *Neely v. Wyoming Commission on Judicial Conduct and Ethics,* 2017 WY 25, 390 P.3d 728, (Wyo. 2017).

5.11 Mr. Hilyard was not allowed at KH's bedside by the Wyoming Department of Family Services and the Mills Police Department. As a result, the first person to make it to KH's bedside was Mr. Hilyard's brother, Paul Hilyard. Paul Hilyard was told by the treating physicians that it was "very unlikely" that injuries KH had suffered could have been survivable for more than a day, contrary to the timeline the state used to convict based on the purchased prejudicial testimony of radiologist Dr. Rhea.

5.12 Upon arrival, Paul Hilyard took at least one picture with his phone of KH's neck and shoulder area, showing the claw marks Sarah Hilyard left when she grabbed and slammed KH

into a hard surface. Mr. Hilyard has personal knowledge of the picture; Paul Hilyard has shown it to Mr. Hilyard and shared with Mr. Oldham to use during trial. Mr. Hilyard was present and saw the message sent from Paul Hilyard's phone and received on Mr. Oldham's.

5.13 Paul Hilyard could provide an affidavit, however, what Paul Hilyard could provide first-hand knowledge of only further proves the abandonment Mr. Hilyard suffered at the hands of Mr. Oldham, who took measures to intentionally lose Mr. Hilyard's trial in order to bolster the emerging career of Mr. Oldham's former mentee, ADA Jared Holbrook (hereafter Mr. Holbrook).

5.14 Mr. Hilyard has repeatedly proven that Mr. Oldham functioned not as a defense attorney but as an additional prosecutor in this case.

> "Counsel's actions during trial were the same as a second prosecutor." *Jones v. Gomez,* 66 F.3d 199, 204 (9th Cir. 1995) (citation omitted), rather than that of a defense attorney. In *Rickman* 131 F.3d at 1157, the Sixth Circuit recounted a truly shocking deprivation of the defendant's VI Amendment right to counsel, and in so doing referred {2001 U.S. Dist. Lexis 31} to the defense attorney as a "second prosecutor."(See *Rickman v. Bell*, 131 F.3d 1150; 1997 U.S. App. LEXIS 33861; 1997 FED App. 0352P (6th Cir. 1997)).

5.15 Ms. Craig seemed to have no rational argument defending Mr. Oldham's over-the-top misconduct and didn't really try to defame Mr. Hilyard's claims against the trial attorney. Instead she turned to the *unconstitutional standard* she claimed are set forth by *Schreibvogel.* Ms. Craig blamed Mr. Hilyard for Ms. Lance's ignorance, incompetence, or disloyalty in claiming: "Each of these claims could have been raised on direct appeal but were not."

> The courts recognize that "'the right to counsel is the right to effective assistance of counsel.'" *Strickland,* 466 U.S. at 684. quoting *McMann v. Richardson,* 397 U.S. 759, 771 n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (Wyo. 1970), *See also Calene v. State;* 846 P.2d 679, 694 (Wyo.1993); *Duffy v. State,* 837 P.2d 1047, (Wyo. 1992); *Engberg v. Meyer,* 820 P.2d 70 (Wyo. 1991); *Laing v. State,* 746 P.2d 1247, (Wyo.1987).

5.16 Mr. Oldham was Mr. Hilyard's counsel in both the criminal case (Natrona County 22282-C) and the corresponding juvenile case (Natrona County 12422-B). As such, he was made aware of transgressions in real-time. He knew that police had stolen private items belonging to the Hilyards by abusing and not obtaining warrants within hours. Any competent attorney would immediately file *Franks* motions to stop the Fourth Amendment violations Mills Police committed.

5.17 Mr. Oldham, in the probable cause hearing, questioned Detective Good, it was discovered the Detective had not established ***any*** timeline of KH's injuries prior to arresting Mr. Hilyard. Instead of arbitrating on behalf of his client he stopped and agreed that there was probable cause for the arrest. This was complete abandonment of his client. This shows law enforcement did not perform the very basic MOM (Motive, Opportunity, Method) test that is taught in Junior High.

5.18 As the only claims tying Mr. Hilyard to any crime were from children who were inconsistent and improperly assisted, Mr. Oldham should have requested a "Rule 29 motion for acquittal" he refused to do so without consulting or even explaining the action to Mr. Hilyard (Trial Tr. Pp. 672-673).

5.19 Mr. Hilyard has filed a formal complaint outlining Judge Wilking's bias. Mr. Oldham knew or reasonably should have known of those occurring before and during trial, Mr. Oldham was told of Mr. Hilyard's ex-girlfriend working at the courthouse and witnessed the other transgressions with the exceptions of Judge Wilking's collusion with Ms. Craig. Despite the fact that Trial Judge Wilking and her staff most likely influenced the jury illegally, Mr. Oldham refused to poll the jury after the verdict was read (Trial Tr. P. 847). **See Exhibit 4, formal complaint filed by Mr. Hilyard against Hon. Catherine Wilking.**

5.20 Counsel did not share discovery. Mr. Hilyard still has not seen discovery in this case. Mr. Hilyard has had to use an attorney retained for a separate matter to get *any* needed documentation of this case. That attorney provided Mr. Hilyard with trial transcript(s) only. Again, Mr. Oldham's and Mr. Holbrook's refusal to share information *would not* be evidenced in trial records. To expect that would be unreasonable.

5.21 Mr. Hilyard has learned that the first physician who confirmed the **"shaken baby syndrome or shaken impact syndrome"** diagnosis was Dr. Saiad,[17] who spoke with KH's adoptive father in Colorado Springs, CO and that the diagnosis was universally agreed to by everyone consulting on the case. Mr. Hilyard still has **[no access]** to any discovery information nor any way to contact and interview treating physicians. There is no way for him to gather statements needed to prove the timeline used by the state was purchased for the purposes of concealing malicious prosecution.

[17] This is merely a guess at the spelling of the name. As Mr. Hilyard is not privy to any medical records or discovery, he is relying on verbal accounts told entirely from memory.

5.22 Had Mr. Oldham at a minimum consulted with ***any qualified medical professional*** he would have been prepared to impeach the state's purchased witnesses and/or offer testimonials from *actual treating physicians* to show the state to be lying only for the corrupt purpose of false conviction.

> "A reasonably competent attorney may use an expert witness in a variety of ways, including as a consultant in areas of specialized knowledge, for review of the facts of a case, to formulate trial strategy, to develop questions for cross examination of the State's witnesses, as an expert witness at court hearings or trial, etc. An attorney is not necessarily ineffective because he decides that an expert's assistance in trial preparation is sufficient and that the expert's testimony at trial is not necessary. Other courts have specifically rejected ineffective assistance of counsel claims where defense counsel reasonably chose to use an expert to prepare to cross examine the government's witnesses rather than having the defense expert testify at trial." See, e.g., *Rice v. State*, 292 Ga. 191, 733 S.E.2d 755, 772 (2012); *Brown v. United States*, 384 A.2d 647, 649 (D.C.Ct.App.1978) (consultation with expert for cross examination in lieu of calling expert to testify was not ineffective assistance of counsel). The task of the court in reviewing the adequacy of defense counsel's representation will be to determine whether defense counsel reasonably analyzed the options and decided on an appropriate course of action. See, e.g., [*Cooper v. State*, 2014 WY 36, 391 P.3d 914 (Wyo. 2014)], supra; *Lopez v. State*, 2004 WY 28, 86 P.3d 851 (Wyo. 2004).*Griggs*, ¶ 39, 367 P.3d at 1125.

5.23 In reference to the above stipulated case law, Mr. Oldham was ineffective because he refused ***any assistance*** of medical experts or treating physicians.

5.24 Mr. Oldham used a video of Sarah Hilyard abusing KH to prejudice the jury against his client.

> "An attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition" *Osborn v. Shillinger*, 861 F.2d 612, 629 (10th Cir. 1989); CF. *Houchin v. Zavaras,* 107 F.3d 1465, 1471 (10th Cir. 1997).

5.25 Ms. Craig claimed Mr. Hilyard's accusations of *Police Perjury* and failure to preserve evidence was not in the trial record. That is false.

5.26 Lieutenant Jerry Rodgers of the Mills Police Department told falsehoods under oath. He stated he had left the residence in which he'd encountered Mr. Hilyard twice to respond to other calls and had not come back after the second call, "I came back after responding to an assault call. My chief was there. I had to leave again to go to another call, and that was the last time I had any dealings with that residence." (Trial Tr. p.381). This is false; Lieutenant Rodgers was the one who ordered Mr. Hilyard to the Mills Police Department without bothering to read his

rights. Footage of the chief of the Mills Police Department screaming accusations into Mr. Hilyard's face was either deleted or the body camera turned off, as Lieutenant Rodgers pretended not to have any knowledge of his chief screaming (Trial Tr. pp. 381-382). Lieutenant Rodgers as well, made statements in cross-examination that he had no idea what it meant to "put a subject on ice" as he had intentionally done to Mr. Hilyard on August 6, 2020, by leaving Mr. Hilyard in an interrogation room alone for hours (Trial Tr. Pp. 383-384). Disregarding the unlikely statement of ignorance, Lieutenant Rodgers admitted to leading Mr. Hilyard from his residence to the police department and putting him in the interrogation room in contradiction to his statement of not having had further dealings with the residence.

5.27 Mr. Hilyard was never allowed to see any of the discovery, this includes being able to review and have body camera footage verified. An analysis would show segments either cut out or the camera power cycled to avoid incriminating evidence being gathered against a Lieutenant and the Chief of Mills Police.

5.28 Mills Police Sergeant Matt Vincent testified about evidence gathered from the Hilyards' residence, he verified pictures of a large diaper in and out of the trash can (Trial Tr. Pp. 437-438). Sergeant Vincent also verified pictures showing a bruise cream package in and out of the same trash can (Trial Tr. Pg. 439).

5.29 Upon cross-examination, Sergeant Vincent claimed to have found vomit in a bag and on a light fixture. He, claimed to be a specially trained evidence technician, but said he did not remember having the bag tested to discover if it was indeed vomit. He also admitted he did not scrape the light fixture to have it tested (Trial Tr. Pp. 444-445). Sergeant Vincent did not share any DNA results to find the source of alleged vomit and/or urine he testified to finding. He as well did not mention if Mr. Hilyard's fingerprints were on the discarded bruise cream package. Both prosecution and defense counsels failed to ask him any questions relating to these issues. Both counsels neglected to provide surveillance evidence showing Sarah Hilyard purchasing the bruise cream outside Mr. Hilyard's presence. The picture was shown by law enforcement to Sarah Hilyard, Mr. Hilyard can verify its existence even with the prosecution failing to disclose this exculpatory evidence.

> In *Arizona v. Youngblood*, the Supreme Court explained that a defendant could set forth a due process violation by showing police acted in bad faith in failing "to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant."

In criminal cases, convictions may be reversed when exculpatory evidence is suppressed by agents of the state, whether innocently or in bad faith, depending on the circumstances. See *Arizona v. Youngblood,* 488 U.S. 51, 58, 109 S. Ct. 333, 337, 102 L. Ed. 2d 281 (1988); 9A Federal Procedure, L. Ed. 22:1246, 22:1248 (2005 & Supp. 2012).

5.30 Mr. Hilyard was left in an interrogation room by Lieutenant Rodgers, who told Mr. Hilyard that the room was "a clean room" therefore Mr. Hilyard could not have his phones. After four hours, Mr. Hilyard encountered Detective Good and Ms. Morgart. Detective Good started to interview Mr. Hilyard, within the first few minutes; Detective Good became aggressive and abusive to Mr. Hilyard. Mr. Hilyard requested a lawyer; Detective Good refused and continued questioning and screaming at Mr. Hilyard. Mr. Hilyard made repeated requests for a lawyer before Detective Good became agitated and left the room with Ms. Morgart who ordered Mr. Hilyard to stay to talk about KH.

5.31 Mr. Hilyard was left alone in the interrogation room for another 45 minutes. After which, Ms. Morgart returned with Detective Good who had Mr. Hilyard's phones and demanded he unlock them. Mr. Hilyard refused without a warrant, to which Detective Good became even more verbally abusive and refused to return the stolen phones.

5.32 After another brief stint alone in the room, Mr. Hilyard was brought what Ms. Morgart called a "safety plan" that stated Mr. Hilyard could not see his children. Afterwards, Mr. Hilyard was allowed to leave the Police Department, ending his unlawful detainment.

5.33 Consulting with his then wife, Mr. Hilyard discovered Sarah Hilyard had made statements to Detective Good and Ms. Morgart under distress; neither Mr. Hilyard nor his then wife was informed of *Miranda* rights and Sarah Hilyard was unaware of her rights.

5.34 For the three months between the investigation's beginning and the Hilyards' arrests, Detective Good could best be described as stalking the Hilyards. He would regularly show up before appointments made with lawyers, stake the Hilyards out with no reason and even forced someone to break HIPPAA: 42 USCS § 1320 as he knew the exact date Mr. Hilyard had surgery, (October 1, 2020) and went to Mr. Hilyard's workplace to interview Mr. Hilyard's employees knowing Mr. Hilyard would not be there.

VI. ARGUMENT

I. DID THE WYOMING SUPREME COURT APPLY AND FOLLOW FEDERAL RULES OF EVIDENCE CORRECTLY?

When presenting Evidence Issues on Appeal does the Wyoming Supreme Court find Wyoming Courts immune of Federal rulings on all their Issues? This came before them on appeal this issue stands out in this case, causing hesitation for any other cases that present similar evidence issues on appeal. Is it right for the Wyoming Supreme Court to state inflammatory accusations as fact without allowing the opportunity to litigate?

The question asked was:

DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN IT ADMITTED INTO EVIDENCE LT'S OUT-OF-COURT STATEMENT IN VIOLATION OF THE RULES OF EVIDENCE?

A. Standard of Review in Wyoming:

This Court reviews rulings on the admissibility of evidence for abuse of discretion. *Jones v. State*, 2019 WY 45, ¶ 13, 439 P.3d 753, 757 (Wyo. 2019) (citing *Marquess v. State*, 2011 WY 95, ¶ 12, 256 P.3d 506, 510 (Wyo. 2011)). In determining whether there has been an abuse of discretion, the issue is whether the district court could reasonably conclude as it did. *Id.* at ¶ 14.

B. Argument:

> **This Courts standard on review**: On certiorari, the United States Supreme Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings. In an opinion by Ginsburg, J., joined by Stevens, O'Connor, Scalia, Kennedy, Souter, and Breyer, JJ., it was held that the state court's determination whether the accused was in custody for *Miranda* purposes **(1)** involved a mixed question of law and fact, **(2)** was not entitled to the presumption of correctness accorded-in federal habeas corpus proceedings instituted by persons in custody pursuant to state court judgments-by § 2254(d) to state court determinations of factual issues, and **(3)** warranted independent review by a federal habeas corpus court. *Thompson v. Keohane,* 516 US 99, 133 L Ed 2d 383, 116 S.Ct 457.

Mr. Hilyard asserted that the audio recording of LT's prior out-of-court statement should not have been played for the jury. (Trial Tr. p. 653). "In the matter of confessions, a hybrid situation exists. It is the duty of the Court to determine from the proof, usually taken out of the presence of the jury, if they were freely and voluntarily made, etc., and admissible. If admitted, the jury is entitled to hear and consider proof of the circumstances surrounding their ostentation, the better to determine their weight and sufficiency. The fact that the Court admits them covers them with no presumption for the jury's purpose that they are either true or were freely and voluntarily made. However, after a confession has been admitted and read to the jury the judge may change his mind and strike it out of the record. Does he strike it out of the jury's mind?" *Dennis, Maryland's Antique Constitutional Thorn*, 92 U of Pa L Rev 34, 39. See also *Bell v. State*, *supra*

(57 Md at 120); *Vogel v. State*, (163 Md at 272). Md Const, Art 23; *Home Utilities Co. v. Revere Copper & Brass, Inc.* 209 Md 610, 122 A2d 109; *Raymond v. State*, 192 Md 602, 65 A2d 285; *County Comrs. of Anne Arundel County v. English*, 182 Md 514, 35 A2d 135, 150 ALR 842; *Oursler v. Tawes*, 178 Md 471, 13 A2d 763.

Mr. Hilyard as well contends that as LT is an admitted abuser of KH and KH has provided statements regarding the planning between Sarah Hilyard and LT to injure KH. Allowing LT's testimony to stand is bootstrapping and cannot be allowed for this reason as well as its violation of the hearsay rule. LT's testimony ***was not*** consistent with the out of court statement admitted to as exhibit 201 into Mr. Hilyard's trial. Prosecution and defense attorneys were both aware of the inconsistencies or should reasonably have been. The District Court held no analysis to make its own finding of the consistency of statements.

> In *Radeker*, the Tenth Circuit held that it was per se reversible error for a trial court to admit a co-conspirator statement without making express findings that the statements fall within F.R.E. 801(d)(2)(E), even if the defendant did not request such findings. *Radeker*, 664 F.2d at 243-44.

II. IS THE WYOMING SUPREME COURT'S DECISION ARBITRARY, CAPRICIOUS, OR OTHERWISE NOT IN ACCORDANCE WITH FEDERAL LAW?

Innocence:

In 1886, The Supreme Court wrote:

> "It is the birthright of every American citizen when charged with a crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great the offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law, human rights are secured, withdraw that protection, and they are at the mercy of wicked rulers, or the clamors of an excited people."[18]

Standard of review:

A. Admissibility Under Hearsay Rule

The State used out of court **hearsay statements,** and presented them in trial to bolster LT's inaccurate testimony that was proven to be false and misled by the DA to prove that Mr. Hilyard was guilty of Child Abuse. This violates his right to a fair and impartial trial.

[18] *Ex Pate Milligan*, 71 U.S. (4 Wall.) 2, 118-19, 8 L.Ed.281 (1866). More than 100 years later, the court explained the "constitutional rights of criminal defendants are granted to the innocent and guilty alike." *Kimmelman v. Morrison*, 477 U.S. 356, 380, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." W.R.E. 801(c). "Hearsay statements are generally inadmissible because they are made outside of court and, therefore, presumed to be unreliable."[19] A hearsay statement is admissible, however, if it fits a recognized exception to the hearsay rule. *Id.* We review a district court's ruling on the admissibility of evidence, including hearsay, for an abuse of discretion." *Id.*

"Determining whether the trial court abused its discretion involves the consideration of whether the court could reasonably conclude as it did, and whether it acted in an arbitrary and capricious manner."[20]

"The district court found Mr. Linklater's testimony to be admissible under two exceptions to the hearsay rule, Rules 804(b)(3) and (b)(6), and also under the exclusion from the definition of hearsay found at Rule 801(d)(2)(D). With respect to the two exceptions under Rule 804, both required a finding that the witness was unavailable to testify in person. Because that finding is a threshold requirement of Rule 804, we will begin our review there. See *Young v. HAC, LLC*, ¶ 9, 24 P.3d 1142, 1145 (Wyo. 2001) ("We will not determine if the substantive requirements of W.R.E. 804(b) were met, unless the turn to the admissibility of the testimony under the rules on which the court based its determination, and Plaintiffs' claim that the admission of Mr. Linklater's testimony violated their due process rights because they had no opportunity to cross-examine him" *Id.*

Further, on the audio recording LT states that it looked like KH had no bones. (State's Exhibit 201). However, at trial the Mr. Holbrook asks LT the leading question "[d]o you remember saying that it looked like he had no bones?" and LT responded, "uh-huh." (Trial Tr. p. 543). Mr. Holbrook later sought admission of the audio recording through State's Exhibit 201 to impermissibly bolster not only the consistent statements made by LT, but also **[the prosecutor's own testimony]** to the jury. (*Id.* At 543, 653). In *Jones v. State*, 2019 WY 45, 439 P.3d 753 (Wyo. 2019), the Court explained, "[c]onsequently, we have found reversible error where prior consistent statements were used 'simply to enable the parties to bolster testimony by their witnesses by piling on their prior statements.'" *Jones*, ¶¶ 15-17, 439 P.3d at 758 (quoting *Wilde v. State*, 2003 WY 93, ¶ 14, 74 P.3d 699, 708 (Wyo. 2003) (quoting *4 Christopher B. Mueller & Laird C. Kirkpatrick*, Federal Evidence § 405 (2nd ed. 1994 and Supp. 2002)).

Lastly, the fourth element requires that the prior statement must be offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or

[19] *Bruce v. State*, 2015 WY 46, ¶ 40, 346 P.3d 909, 923 (Wyo. 2015) (quoting *Moore v. State*, 2013 WY 146, ¶ 11, 313 P.3d 505, 508 (Wyo. 2013)).

[20] *Moser v. State*, 2018 WY 12, ¶ 40, 409 P.3d 1236, 1248 (Wyo. 2018) (quoting *Triplett v. State*, 2017 WY 148, ¶ 23, 406 P.3d 1257, 1262 (Wyo. 2017)). *Matter of LDB*, 2019 WY 127, ¶ 43, 454 P.3d 908, 921 (Wyo. 2019) (quoting *Sparks v. State*, 2019 WY 50, ¶ 34, 440 P.3d 1095, 1106 (Wyo.2019)).

motive. *Id.* It is unclear ***when*** the State alleges LT's motive to fabricate arose. According to the United States Supreme Court prior consistent statements are not admissible under Federal Rule of Evidence 801(d)(1)(B) to rebut an express or implied charge of recent fabrication or improper influence when made *after* the alleged improper motive arose. *Tome v. United States*, 513 U.S. 150, 156, 115 S.Ct. 696, 700 (1995). The district court found at trial that the cross-examination of LT was in regards to him lying or telling the truth. (Trial Tr. p. 649-50). Specifically, the district court found:

> However, particularly with [LT], the cross-examination of him with regard to lying about things of telling the truth, and the cross-examination of his counselor, and the cross-examination of his foster parent do show an express and implied charge of potential fabrication or improper influence or motive on [LT]'s part.

(*Id.*). The district court failed to make any findings as to how the cross-examinations showed potential fabrication or improper influence or motive. The district court also never indicated ***when*** the fabrication occurred. To that extent, the cross-examination showed that LT had the potential to fabricate however there is no analysis or indication concerning what or when the district court found he was potentially fabricating, but that it was further indicated in the cross-examination of his counselor, and the cross-examination of his foster parent (Trial Tr. 650, R.A., p. 429). Additionally, the district court did not know the contents of the prior out-of-court statement before it was played in open court (Trial Tr. p. 643). As such, the district court did not make an independent determination as to whether the statement was consistent. Wherefore, the prior statement was not admissible because it was hearsay. *Tome*, 513 U.S. at 156, 115 S.Ct. at 700.

It was an abuse of discretion for the district court to admit LT's prior out-of-court statement. *Jones*, ¶¶ 15-17, 439 P.3d at 758 (quoting *Wilde v. State*, 2003 WY 93, ¶ 14, 74 P.3d 699, 708 (Wyo. 2003) (quoting 4 Christopher B. Mueller & Laird C. Kirkpatrick, Federal Evidence § 405 (2nd ed. 1994 and sup. 2002). This abuse of discretion prejudiced Mr. Hilyard and denied him a fair trial. Mr. Hilyard was not implicated during LT's trial testimony of making LT push KH (Trial Tr. p. 541). It was clear that was LT's mom, Sarah Hilyard. (*Id.*). However, by playing State's Exhibit 201, the prior statement, Mr. Hilyard was indirectly implicated and was denied any opportunity to cross-examine LT regarding that statement. (*Id.* At 653). The admission of this out-of-court statement was highly prejudicial to Mr. Hilyard as Count II was child abuse against LT. The prosecutor argued that the abuse against LT was making LT participate in

hurting KH and the "PTSD" he suffered as a result (*Id.* at 819). In closing argument the prosecutor argued to the jury that "his parents" told him to help (State's Exhibit 201; Trail Tr. at 653, 819). Without the inappropriate entry of the State's Exhibit 201, the prosecutor would not have been able to argue this to the jury. As a result, but for the admission of State's Exhibit 201, Mr. Hilyard would have been acquitted on Count II.

Additionally, to the extent the prior statement was consistent with LT's trail testimony, it was hearsay and was used only to bolster what LT and the prosecutor said during trial. The district court did not provide a complete analysis as to when any improper influence or motive arose (*Id.* at 649-50). Further, the district court did not provide clear explanation of the timing or source of any recent fabrication with which to find an exception to the hearsay rule under W.R.E. 801(d)(1)(B). (*Id.*). For these reasons, Mr. Hilyard's judgment should be reversed.

Wyoming Supreme Court Decision was over-reaching and abusing discretion:

The Wyoming State Supreme court used an [**inconsistent hearsay**] statement as fact: "LT was afraid Mr. Hilyard would hurt him if he did not lie because Mr. Hilyard picked the children up by their throats a lot and sometimes hit them with a leather belt."(Wyo. Sup. Court Dec. Pg. 2 ¶ 8).This may be based off LT's trial statements but is lacking in that LT only mentioned anything about a belt as a [threat]. LT as well stated, "Once, I remember him picking one of us by the throat. I don't remember which." (Trial Tr. p. 546). Conversely, KLH makes no corroboration, stating nothing about a belt and that he believed choking had happened a few times, but had no recollection of victim(s) or perpetrator(s). (Trial Tr. p. 497). The Court's statements are vastly over the top from what was said at trial and warrant new allegation(s) that Mr. Hilyard has been denied his Fifth Amendment right to face his accuser as it seems to be only Justice Boomgaarden who is making the accusation(s).

Justice Boomgaarden of the Wyoming Supreme Court seems to argue Wyoming is superior to federal precedents. Asserting part of the decision on *Tome v. United States*, 513 U.S. 15, 115S.Ct. 696, 130 L.Ed.2d 574 (1995) showing "prior consistent statements are not admissible under Federal Rule of Evidence 801(d)(1)(B) to rebut an express or implied charge of recent fabrication or improper influence when made after the alleged improper motive arose." Boomgaarden states: "That may be true, but **the federal rule does not apply here**, and *Tome* is not the law in Wyoming." (Wyo. Sup. Court Dec. Pg. 9 ¶ 34) (emphasis added).

This decision totally contradicts what the state is obligated to do. What is stated by the Wyoming Supreme Court's decision is a refusal to follow Federal Court rulings and governance over the law. This violates Mr. Hilyard's Constitutional Right requiring Wyoming to follow U.S. Constitutional Article VI Supremacy clause applied to judgments from the United States Supreme Court.

III. WAS MR. HILYARD DENIED HIS FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL . . . NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL . . . DENY TO ANY PERSON WITHIN IS JURISDICTION THE EQUAL PROTECTION OF THE LAWS?

1. Relevant Law

a. Standing Pursuant to the Wyo. Stat. Ann. § 7-14-103:

"Wyo. Stat. Ann. § 7-14-103, Claims Barred; Applicability of Act." (b)(ii).

This Court has Jurisdiction as Mr. Hilyard, is appealing a Wyoming conviction, with claims of Exculpatory Evidence that was withheld, Actual Innocence, New Evidence, and deliberate Ineffective Assistance of Trial and Appellate counsels.[21] Each of these has individually created due process violations in both his trial and appeals, warranting review.[22] Mr. Hilyard now looks to this court to correct those violations. Ms. Lance had the [**obligation**] to present Mr. Hilyard's meritorious arguments in the direct appeal provided. Ms. Lance refused to present these claims in direct appeal, her refusal created a procedural default of the claims[23] that can only be overcome with the argument of ineffective assistance of appellate counsel, contained herein.

Ms. Lance had a conflict of interest that caused her to side with trial counsel as well as making the attorney general's job easier upon direct appeal. Ms. Lance did the minimum to seem as though she was doing her job but lied to Mr. Hilyard in saying the Wyoming Supreme Court would not listen to IAC arguments hoping to bar arguments of IAC from further appeals. She did this to protect the "good ol' boys club" or corrupt fraternity of lawyers and judges in Wyoming.

b. The Right to Effective Appellate Counsel:

Standard of Review:

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[21] "Denial of the effective assistance of counsel to one charged with a crime violates due process." *Hawk v. Olsen,* 326 U.S. 271, 66 S.Ct. 116.

[22] "The effective assistance of counsel in a state prosecution for a crime is a requirement of due process which no member of the Union may disregard." *Reece v, Georgia,* 350 U.S. 85, 76 S.Ct. 167.

[23] "Procedural default in an appeal can constitute ineffective assistance of post-trial counsel." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993); *Harvey v. State*, 835 P.2d 1074 (Wyo. 1992); *Coleman v. Thompson*, 501 U.S. 722 (Wyo. 1991); *Star v. Lockhart*, 23 F.3d 1280 (8th Cir. 1994).

"Petitioner was denied his right to constitutionally effective assistance of counsel on his first appeal of right (direct appeal from conviction)."[24] ("Right to effective assistance of counsel . . . may in a particular case be violated by even an isolated error if that error . . . is sufficiently egregious and prejudicial.")[25]

"Appellate counsel's failure to challenge ineffectiveness of trial counsel ("amount[ed] to constitutionally ineffective assistance" on appeal and furnished cause for default in failing "to raise ineffectiveness of trial counsel on appeal");[26] ("Cause" existed for failure to appeal denial of post-trial motion to challenge trial counsel's effectiveness because "post-trial counsel either failed to recognize or did not adequately assist [prisoner] in pursuing this claim and thus failed to preserve it on appeal.")[27]

Appellate counsel's underlying defectiveness

As well as the instances of IAC of trial counsel, the Appellate Counsel's actions previously mentioned so stymied Mr. Hilyard's claim that his appellate counsel was ineffective serves three functions. First, "Appellate counsel's failure to conduct a reasonable investigation and present meritorious claims raises the substantive issue of whether Mr. Hilyard was deprived of his Fourteenth Amendment right to competent representation on appeal." *Calene v. State; Evitts v. Lucey.*[28] Second, "Appellate counsel's ineffectiveness provides "cause and prejudice" for reaching the merits of the underlying constitutional claims that . . . **[Mr. Hilyard]** is presenting to this Court." Third, it shows a substantial denial of due process. The doctrines of procedural bar and exhaustion do not impede this court's review of these issues." *Calene v. State; Harvey v. State; Coleman v. Thompson; Star v. Lockhart."*[29] This demonstrates that the U.S. Constitution was violated as Mr. Hilyard had constitutionally ineffective assistance of counsel throughout his case.

Mr. Hilyard asked Ms. Lance to bring fourth the following issues:

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[24] *Douglas v. California*, 372 U.S. 353 (1963), *Strickland v. Washington*, 466, U.S. 668 (1984), *Evitts v. Lucey*, 469 U.S. 387 (1985), *Cutbirth v. State*, 751 P.2d 1257 (1988).
[25] *Smith v. Murray*, 477 U.S. at 535; *Kimmelman v. Morrison*, 477 U.S. 365, 383-84 & n.8 (1986); *United States v. Cronic*, 466 U.S. 648, 657 n.20 (1984).
[26] *United States v. Conley*, 349 F.3d 837, 841 (5th Cir. 2003).
[27] *Quintero v. Bell*, 256 F.3d 409, 413-14 & n.2 (6th Cir. 2001), vac'd, 535 U.S. 1109 (2002).
[28] *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993); *Evitts v. Lucey*, 469 U.S. 387, 396-97 (Wyo. 1985).
[29] *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993); *Harvey v. State*, 835 P.2d 1074; (Wyo. 1992); *Coleman v. Thompson*, 501 U.S. 722 (Wyo. 1991); *Star v. Lockhart*, 23 F.3d 1280 (8th Cir. 1994).

(1) Ineffective assistance of trial counsel, addressing all the above-indicated information.[30] **(2)** Actual Innocence, with evidence verifying that he was not the perpetrator of the accused crimes. **(3)** Prosecutorial misconduct, addressing the issue Ms. Lance actually presented the Court. **(4)** The potential testimony of KH and actual treating physicians left out for Mr. Oldham's failure to investigate and prosecutorial failure to disclose.

> "An attorney's errors during an appeal on direct review may provide cause to excuse a procedural default; for if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures and obtain an adjudication on the merits of his claims. When the issue cannot be raised on direct review, a prisoner asserting an ineffective assistance of trial counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney. The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding." (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Alito, Sotomayor, and Kagan, JJ.)[31]

IV. DOES *STRICKLAND V. WASHINGTON* REQUIRE FURTHER INTERPRETATION AS WYOMING HAS IMPLIED BY RELYING ON *SCHREIBVOGEL V. STATE,* A WYOMING DECISION AS OPPOSED TO A U.S.S.C. DECISION?

1. Relevant Law

The Right to Effective Counsel:

Criminal defendants have the right to counsel as guaranteed by the VI Amendment of the United States Constitution. This right is made applicable through the XIV Amendment of the Wyoming Constitution, and by the Wyoming Constitution art I § 10. The United States Supreme Court has held that the right to counsel means the right to effective assistance of counsel. *McMann v. Richardson,* 397 U.S. 759, 771, n.14, 90 S.Ct. 1441, 1449, n.14 (1970).

IAC claims are reviewed under the well-known standard set forth in *Strickland v. Washington,* 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80L.Ed.2d 674 (1984):

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[30] "The right to counsel is the right to effective counsel." *Harlow v. State,* 105 P.3d 1049 (Wyo. 2005); (on page 26); *Calene v. State,* 846 P.2d 679, 694 (Wyo. 1993); *Cutbirth v. State,* 751 P.2d 1257 (Wyo. 1988); *Evitts v. Lucey,* 469 U.S. 387, 396-396 (Wyo. 1985); *United States v. Cronic,* 466 U.S. 654; *Cuyler v. Sullivan,* 446 U.S. 335, 344 (1980); *McMannon v. Richardson,* 397 U.S. 759, 771 (1970). "Denial of the effective assistance of counsel to one charged with a crime violates due process." *Hawk v. Olsen,* 326 U.S. 271, 66 S.Ct. 116. "The effective assistance of counsel is established, then the decision to overturn the conviction goes to the prejudice prong of Strickland, but if the defendant was actively or constructively denied assistance of counsel, **[as in this case]** the prejudice prong of Strickland is not required to be shown and the conviction must be set aside." *Woodard v. Collins,* 892 F.2d 1027 (5th Cir. 1990).

[31] *Martinez v. Ryan,* 566 US 1, 132 S Ct 1309, 182 L Ed 2d 272, (2012).

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was no longer functioning as the "counsel" guaranteed to the defendant by the VI Amendment of the U.S. Constitution.

Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

"When reviewing a claim for IAC, the paramount determination is whether, in light of all circumstances, trial counsel's acts or omissions were outside the wide range of professionally competent assistance."[32] Counsel is deficient when he "fail[s] to render such assistance as would have been offered by a reasonably competent attorney."[33] Furthermore, prejudice in this context "occurs when there is a reasonable probability that, absent counsel's deficient assistance, the outcome of [appellant's] trial would have been different."[34] "Therefore, two prongs exist when examining IAC and the failure to establish one of the two prongs dooms such a claim."[35]

2. SUMMARY OF THE ARGUMENT

Mr. Hilyard has detailed eight **(8)** specific areas of IAC at issue in this matter. Each relates to conflicts of interest, non-objections, and overall conduct of defense counsel. The instances of IAC against Mr. Oldham have been detailed previously and will not be repeated here.

Trial Court, at the demand of Ms. Craig, found that *Strickland* requires interpretation. Thus, the Court adopted a test that combined the plain error standard of review with the ineffective assistance of counsel standard from *Strickland v. Washington,* 466 U.S. 668 (1984)." (**Appendix B, p. 5**). Claiming:

> "In submitting a claim of deficient representation by appellate counsel, the petitioner in the post-conviction proceeding must demonstrate to the district court, by reference to the record of the original trial without resort to speculation or equivocal inference, what occurred at that trial." *Schreibvogel,* ¶ 12, 269 P.3d at 1103 (quoting *Smizer v. State,* 835 P.2d 334, 337 (Wyo. 1992)); *see also Harlow v. State,* 2005 WY 12, ¶ 13, 105 P.3d 1049, 1060-61 (Wyo. 2005).

[32] *Herdt v State*, 891 P.2d. 793, 796 (Wyo. 1995); *Frias v State*, 722 P.2d. 135, 145 (Wyo.1986).
[33] *Winters v. State,* ¶ 11, 446 P.3d 191,198 (Wyo. 2019) (citing *Galbreath v. State,* 346 P.3d 16, 18 (Wyo. 2010)).
[34] *Winters v. State,* at ¶ 11, 446 P.3d at 198.
[35] *Dettloff v. State,* ¶ 19, 152 P.3d 376, 382 (Wyo. 2007).

The District Court seems to say that all instances of IAC must be in the original record. That is not possible. Ms. Lance refused to bring IAC claims against Mr. Oldham, which is clear in appellate records. However, all of Mr. Oldham's unprofessional and IAC are not clear in the record as Mr. Oldham represented Mr. Hilyard for approximately one year but trial was only four days of that year. Many of Mr. Oldham's refusals to perform were not during trial and would not be reflected on any official records.

> "Wyoming Law places upon the appellate counsel, the primary responsibility for investigating and raising constitutional issues. That responsibility is not limited to raising issues that are based on the trial record, but includes issues that are traditionally within the scope of post-conviction review, such as claims of ineffective assistance of counsel or other issues that require investigation beyond the four corners of the total record." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993).

Natrona County's decision claimed that Mr. Hilyard was using ineffective assistance of appellate counsel as a "stand alone claim" as is prohibited in *Schreibvogel,* ¶ 17, 269 P.3d at 1104 in attempting to use ineffective assistance of appellate counsel as a "portal" through which the Court could consider an otherwise barred claim. *Schreibvogel,* ¶ 12, 269 P.3d at 1102 (Appendix B, p. 5, ¶ 8). The decision goes on to contradict itself arguing other points Mr. Hilyard brought in, including that there were four questions posed.

What is left out of the decision is the "procedural bar" that is referenced by *Schreibvogel* is inaccurate. Mr. Hilyard's appellate attorney, Ms. Lance refused to bring IAC claims against trial attorney, Mr. Oldham due to her conflicts of interest. In the case of *Schreibvogel,* the appellate process was quite different:

> "The State responded to the petition by filing a Motion to Dismiss Petition for Post-Conviction Relief. The State cited Wyo. Stat. Ann. § 7-14-103(a)(iii) for the proposition that the appellant's claim of ineffective assistance of trial counsel was procedurally barred because it had been determined on the merits in the direct appeal. The district court heard the motion to dismiss and subsequently issued a lengthy decision letter and order dismissing the petition. The district court's conclusion was as follows:
>
> The State's Motion to Dismiss Petition for Post-Conviction Relief is GRANTED. Mr. Schreibvogel's post-conviction claim of ineffective assistance of trial counsel is procedurally barred by Wyoming Statute § 7-14-103(a)(iii) because he raised a claim of ineffective assistance of trial counsel in his direct appeal, which was decided on the merits." *Schreibvogel,* ¶ 5, 269 P.3d at 1098 (Wyo. 2012).

In Mr. Hilyard's case, the claims of ineffective assistance of trial and appellate counsels has not been decided on merit, instead the issues have been hidden from. *Schreibvogel* does not

apply as the procedural bar was caused by the Wyoming Supreme Court decision against his claims of IAC by merit. Mr. Hilyard has been denied the opportunity because of *irrelevant* and *unconstitutional* case law to have his conviction overturned by the abundant evidence of IAC against both Ms. Lance and Mr. Oldham and collusion between courts and attorneys to maintain the conviction of one who is actually innocent of the crime(s) charged.

V. DO THE NATRONA COUNTY DISTRICT COURT AND/OR THE ATTORNEY GENERAL FOR THE STATE OF WYOMING HAVE THE AUTHORITY TO OVERTURN THE UNITED STATES SUPREME COURT PRECEDENT IN *BUCK V. DAVIS*, 137 S.CT. 759 (2017); *TREVINO V. THALER*, 133 S.CT. 1911 (2013); AND *MARTINEZ V. RYAN*, 566 U.S. 1 (2012); WHERE THE SUPREME COURT DECIDED THAT A PROCEDURAL DEFAULT WOULD NOT BAR A CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; WHEN COLLATERAL PROCEEDING WAS THE FIRST PLACE TO CHALLENGE A CONVICTION ON THE GROUND OF INEFFECTIVE ASSISTANCE?

The Natrona County District Court and/or the Attorney General invoked the privilege set out set out in the "procedurally barred clause," because Mr. Hilyard could have raised the claims in his direct appeal but did not do so. See Wyo. Stat. Ann. § 7-14-103(a)(i). Therefore procedurally barring Mr. Hilyard's post-conviction petition from review.

However, Mr. Hilyard should be allowed to present his petition in this Court under the same post-conviction act See Wyo. Stat. Ann. § 7-14-103 (b)(ii).

This decision disregards what the Supreme Court said in *Buck, Martinez*, 566 U.S., at 9, 132 S.Ct. 1309, 182 L.Ed. 2d 272. "We held that when a state formally limits the adjudication of claims of ineffective assistance of trial counsel to collateral review, a prisoner may establish cause for procedural default if **(1)** 'the State Courts did not appoint counsel in the initial-review collateral proceeding,' or 'appointed counsel in [that] proceeding . . . was ineffective under the standards of *Strickland v. Washington,*' 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 272.

The Merit in Mr. Hilyard's post-conviction appeal is self-evident. Allowing this Court to correct these Constitutional issues at hand, between Mr. Hilyard and his Counsels' actions or non-actions and conflicts of interest between attorneys and the "state's attorney."

The state cannot tolerate a blatant denial of constitutional rights guaranteed to all people alike charged with a crime, legally convicted, or pled out to a lesser charge.

The Supreme Court has addressed the issue of whether the lack of counsel after the initial review collateral to a post-conviction proceeding can qualify as cause for procedural default, in the case of a state prisoner; concerning the claim of ineffective assistance of counsel.

Under the "procedural default doctrine," if a state prisoner "defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claim is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal . . ." *Coleman v. Thompson*, 501 U.S. 722, 750, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). In general, lack of attorney and attorney error in state post-conviction proceedings do not establish cause to excuse a procedural default. *Coleman v. Thompson*, 501 U.S.757, 111 S.Ct. at 2568.

In *Martinez,* the Supreme Court announced a narrow, equitable, and non-Constitutional exception to Coleman's holding (that ineffective assistance of collateral counsel cannot serve as cause to excuse a procedural default) in the limited circumstances where **(1)** a state requires a prisoner to raise ineffective-trial-counsel claims at an initial–review collateral proceeding; **(2)** the prisoner failed properly to raise ineffective-trial-counsel claims in his state initial-review collateral proceedings; **(3)** the prisoner did not have collateral counsel or his counsel was ineffective; and **(4)** failing to excuse the prisoner's procedural default would cause the prisoner to lose a "substantial" ineffective-trial-counsel claim. In such a case, The Supreme Court explained that there may be "cause" to excuse the procedural default of the ineffective-trial-counsel claim. *Martinez,* 132 S.Ct., at 1319. Subsequently, The Supreme Court extended *Martinez's* rule to cases where state law technically permits ineffective trial counsel claims on direct appeal but state procedures make it "virtually impossible" to actually raise ineffective trial counsel claims on direct appeal, See *Trevino*, 133 S.Ct., at 1915, 1918 21.

There can be no question whether the State criminal court system requires that (IAC) claims be brought in collateral proceedings, and not on direct appeal. Such claims brought on direct appeal are presumptively dismissible and virtually all will be dismissed. The reasons for this rule are self-evident. A factual record must be developed in, and addressed by, the district court in the first instance of effective review. Even if evidence is not necessary, at the very least counsel accused of deficient performance can explain their reasoning and actions, and the district court can render its opinion on the merits of the claim. An opinion by a district court is a valuable aid to appellate review for many reasons, not the least of which is that in most cases the district court is familiar with the proceeding and had observed counsel's performance, in context, first hand. Thus, even if the record appears to need no further development; the claim will still be presented first to the district court in collateral proceedings, which should be instituted without delay so the

reviewing court can have the benefit of the district court's views. Therefore, the statutory right to appeal that is a part of current due process in the state's system, has been reduced to a right that no longer includes a right to appeal from sixth amendment violations, (IAC) claims.

Indigent defendants pursuing first tier review in a Post-Conviction and/or § 2254 proceedings are generally ill equipped to represent themselves for **(a)** first tier review application, forced to act in *Pro Se*, would face a record un-reviewed by appellate counsel; and **(b)** without guides keyed to a court of review. A *Pro Se* movant's entitlement to seek relief from ineffective assistance of trial counsel might be more a formality than a right, because navigating the criminal appeal, and collateral process without a lawyer's assistance is a perilous endeavor for a layperson, and well beyond the competence of individuals afforded only 12 months to learn the federal process involved. Moreover, due process requires the appointment of counsel for state and federal defendants alike on direct appeal. In the average case, however, the most common claim of constitutional error is Ineffective-Assistance-of-Counsel. In Mr. Hilyard's case it is Natrona County District Court, and not the United States Congress, that elected to change the reach of the United States law that granted a defendant the right to appeal his sentence when the sentence is in violation of the law, See U.S.C. § 3006A.

There have been several structural errors in Mr. Hilyard's trial and subsequent appeals. Each has served only to prejudice the proceedings against Mr. Hilyard to keep the innocent incarcerated.

> "'Structural error' is essentially an error so grave that it is grounds for reversal without any showing of prejudice. It is a fundamental constitutional error 'so intrinsically harmful as to require automatic reversal (i.e., 'affect substantial rights') without regard to their effect on the outcome.'" *Yazzie v. State*, 2021 WY 72, ¶ 13, 487 P.3d 555, 560 (Wyo. 2021) (quoting *Neder v. United States*, 527 U.S. 1, 7, 119 S. Ct. 1827, 1833, 144 L.Ed.2d 35 (1999)).
>
> The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it 'affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.' *Yazzie,* 2021 WY 72, ¶ 14, 487 P.3d at 560 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S. Ct. 1246, 1265 (1991)).
>
> The United States Supreme Court has recognized three bases for finding structural error: (1) 'if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest'; (2) 'if the effects of the error are simply too hard to measure'; or (3) 'if the error always results in fundamental unfairness.'

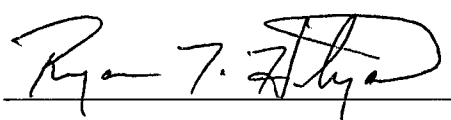
VII. CONCLUSION

In conclusion, Mr. Hilyard's "trial, if allowed to stand would simply mock fundamental Constitutional guarantees of 'vital importance.'" *Strickland.*[36] The courts recognize that "'the right to counsel is the right to effective assistance of counsel,'" *Id.* At 686 (quoting *McMann v. Richardson,* 397 U.S. 759, 771 n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (Wyo. 1970)), See also *Calene v. State; Duffy v. State; Engberg v. Meyer; Laing v. State,*[37] "would be devoid of meaning were counsel like [**Mr. Oldham**] deemed effective." *Rickman v. Bell.* Mr. Hilyard was entitled to the effective assistance of counsel **both** at trial and on appeal. U.S. Const. Amends. V, VI, XIV; Wyo. Const. Art. 1, § 10. Yet, he was denied the constitutionally required effective assistance by either counsel.[38]

Mr. Hilyard's appellant efforts have been met with fraud. Ms. Craig has extensively and repeatedly used *Schreibvogel* to circumvent *Strickland.* This has been done to hold the innocent in prison while protecting the corrupt legal fraternity that is running the Wyoming state government.

WHEREFORE, Mr. Hilyard prays this Court will grant his Petition for Writ of Certiorari and address the issues contained in his Petition, as he believes this would result in his conviction being overturned based upon actual innocence and ineffective assistance of both trial counsel and appellate counsel. Mr. Hilyard also prays the Court will recognize that this is not merely a case of manifest injustice, and his counsels ignored their Constit-utional mandate to protect the rights of their client; they not only ignored but denied him his constitutionally mandated Rights, necessitating a reversal of his conviction, or at least a remand for a new trial, in a different jurisdiction.

Respectfully Submitted,



Ryan L. Hilyard #34067 *Pro Se*

December 2, 2024

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[36] *Strickland,* 466 U.S. at 684.

[37] *Calene v. State,* 846 P.2d 679, 694 (Wyo.1993); *Duffy v. State,* 837 P.2d 1047, (Wyo. 1992); *Engberg v. Meyer,* 820 P.2d 70 (Wyo. 1991); *Laing v. State,* 746 P.2d 1247, (Wyo.1987).

[38] "Where the state obtains a criminal conviction in a trial in which the defendant is deprived of the effective assistance of counsel, the state unconstitutionally deprives the defendant of his liberty, and the defendant is thus in custody in violation of the Federal Constitution." *Kimmelman v. Morrison* 477 U.S. 365, 106 S.Ct. 2574.