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-- Attorneys for Defendant Missoula County

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CODY MARBLE,

Plaintiff,

v.

STATE OF MONTANA & MISSOULA
COUNTY,

Defendants.

Cause No. DV-32-2021-0001209-OC
Judge Shane Vannatta

AFFIDAVIT OF KIRSTEN PABST

STATE OF MONTANA)
 :ss
County of Missoula)

Kirsten Pabst, upon her oath, states the following:

1. I am the Missoula County Attorney. I served as a Missoula Deputy County Attorney from October, 1997, until March, 2012. On January 1, 2015, I was appointed as the Missoula County Attorney and remain in that position.

2. In 2011, as a Deputy County Attorney, I worked on the Marble case in the limited capacity of evaluating and responding to Marble's post-conviction petition claiming newly discovered evidence. The newly discovered evidence that Marble was relying on was a purported recantation of the victim, Robert Thomas, which was obtained and presented by the Innocence Project.

3. The recantation as presented seemed unusual and I wished to better understand the context of it to determine its veracity. I wanted to know the truth. Larry Mansch and Jessie McQuillan's version was that Robert was just ready to come forward with the truth -- that he had not been raped. Larry Mansch and Jessie McQuillan indicated that Robert was consistent with them when discussing this new truth. According to them, Robert's only hesitation was in whether he should sign or swear to the new statement -- not whether it was true.

4. In June of 2011, I formally interviewed Larry Mansch and Jessie McQuillan and they reiterated the same: that Robert wanted to come clean and that he was consistent with them saying he had not been raped.

5. In an attempt to better understand why Robert would want to change his trial testimony, I requested documents from the prisons where

Robert and Marble had been incarcerated, spoke to Department of Corrections employees, and sought permission, which was granted by the Missoula Board of County Commissioners, to hire an expert on rape recantations, to help fill in the missing pieces of the Innocence Project's puzzle. Despite those attempts, I was unable to learn much more about the context of the recantation, beyond what Larry Mansch and Jessie McQuillan said happened during their investigation.

6. When I interviewed Larry Mansch and Jessie McQuillan on June 10, 2011, they each agreed respectively that they were working for the Innocence Project in an investigatory capacity, not a legal one. They agreed to disclose Marble's initial questionnaire and application for Innocence Project Services, the Innocence Project's policy on dealing with victims, and a list of the names and contact information for all of the witnesses the Innocence Project had contacted.

7. 10 days later, I received a letter from Brett Schandelson, Jessie McQuillan's current husband, stating he is representing Robert Thomas and that Thomas does not want to offer any further information to any party.

8. On June 30, 2011, I followed up with a written request for that information and also asked for the activity log for Marble's case and copies

of all witness interview reports pertaining to the Marble file. That of course would have included the April 2, 2010, memorandum regarding the interview of Robert Thomas conducted by Larry Mansch and Jesse McQuillan. (See Exhibit 1)

9. The Innocence Project retracted its promise to provide Marble's initial questionnaire and application for Innocence Project Services, and retracted its promise to provide the list of the names and contact information of the witnesses they had contacted. Additionally, they refused to disclose the activity log and refused to disclose witness interview reports, including the April 2, 2010 report, claiming "attorney-client privilege and/or rules regarding work product."

10. The first time I saw the April 2, 2010 report written by Jessie McQuillan, detailing the Innocence Project's interactions with Robert Thomas was on January 6, 2024, more than 13 years after I requested it. That report -- which clearly shows that Robert told the Innocence Project he was in fact raped by Marble -- contradicts what Larry Mansch and Jessie McQuillan told me during our recorded interviews and contradicts their subsequent testimony.

11. The State prevailed on the post-conviction petition and Marble appealed Judge Harkin's order to the Montana Supreme Court. In 2015, after I had been sworn in as Missoula County Attorney, the Montana Supreme Court reversed Harkin's order and sent the case back to the District Court to apply a different legal standard to the recantation – that it should be viewed in light of the evidence as a whole. Based on the deaths and recantations of other witnesses by then, as well as the unavailability of victim Robert Thomas due to a tragic suicide, I ultimately filed a Motion to Dismiss the Judgment, concluding that the case, at that juncture, could never be retried.

12. Recently, I was provided a copy of Missoula County's Brief in Support of its Motion to Compel Production of the MTIP File Based on the Crime-Fraud Exception. I was shocked to read the information pertaining to Larry Mansch, Jesse McQuillan, and the Montana Innocence Project – especially the April 2, 2010 report. I asked to review my 2011 interviews of Mansch and McQuillan.

13. I believed and trusted Larry Mansch. I am deeply concerned that statements to me and later in sworn testimony are contradicted by the April 2, 2010, report. I am also deeply concerned that this information was concealed from me and I believe I was misled.

14. Based on the April 2, 2010, report which gives a much clearer picture into the mind of deceased victim Robert Thomas, at the time of the purported recantation, I do believe what Robert Thomas told the jury and what he told Larry Mansch and Jessie McQuillan in their April 2, 2010 interview – “[Y]eah, it happened.” Robert Thomas explained to Larry Mansch and Jessie McQuillan why he initially agreed to recant and why he did not want to continue with the recantation. In my analysis, this newly revealed information is directly relevant to and negates Marble’s current claim of “actual innocence.”

15. I have been provided a copy of Marble’s Response Brief to Missoula County’s recent Motion to Compel. Nothing in the response changes my conclusion.

16. I am beyond disappointed in learning about these developments, that cast doubt on other representations made by Larry Mansch, Jesse McQuillan, and the Innocence Project.

FURTHER AFFIANT SAYETH NAUGHT.

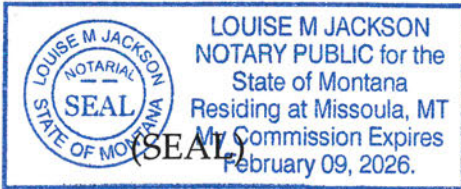
DATED this 2nd day of February, 2024.



Kirsten Pabst

STATE OF MONTANA)
 :SS.
County of Missoula)

SUBSCRIBED AND SWORN TO before me on the 2nd day of February,
2024, by Kirsten Pabst.





Notary Public for the State of Montana