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16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
17 **IN AND FOR THE COUNTY OF MARICOPA**

18 STATE OF ARIZONA,

19 Plaintiff,

20 v.

21 MURRAY HOOPER,

22 Defendant.

CR 0000-121686

PETITION FOR POST-CONVICTION
RELIEF

(Evidentiary Hearing Requested)

(Honorable Howard Sukenic)

(Expedited Review Requested)

23
24 Murray Hooper, through undersigned counsel, files this Petition for Post-
25 Conviction Relief pursuant to Rule 32.1(e) of the Arizona Rules of Criminal Procedure.
26 Rule 32.1(e) provides for relief after “newly discovered material facts” are discovered.
27 Ariz. R. Crim. P. 32.1(e). As explained below, newly discovered material facts disclosed
28 by the Maricopa County Attorney’s Office on October 28, 2022, just several days ago,

1 revealed that the State suppressed material exculpatory evidence, and deliberately
2 deceived the trier of fact by failing to disclose that its sole testifying eyewitness Marilyn
3 Redmond, excluded Mr. Hooper as a perpetrator and was unable to identify him in a pre-
4 trial photo lineup. With the knowledge of prosecutors at the Maricopa County Attorney's
5 Office, Mrs. Redmond and law enforcement officers concealed the fact that such a photo
6 lineup had taken place and supplanted this collusion with false and perjured testimony
7 that a photo lineup had never occurred. In the process numerous state and federal judges
8 have been grievously misled and Mr. Hooper has been wrongfully convicted and
9 incarcerated on death row for some forty years. The newly disclosed evidence proves a
10 most serious violation of due process. Further, as explained below, the constitutional
11 violation requires a new trial because it is reasonably possible the withheld evidence
12 could have affected the judgment of the jury. *Napue v. Illinois*, 360 U.S. 264, 271
13 (1959); *United States v. Bagley*, 473 U.S. 667, 680 (1985); *see also Brady v. Maryland*,
14 373 U.S. 83 (1963). Mr. Hooper is entitled to a new, constitutional trial. U.S. Const.
15 amends. V, VIII, XIV; Arizona Const. art. 2, §§ 4, 15.

16 As noted, the State first asserted and disclosed there had been a photo lineup in
17 its October 28 letter. But when suddenly confronted with the coverup of this evidence
18 *without any warning* from Mr. Hooper's defense team, during Mr. Hooper's clemency
19 hearing on November 3, the author of the letter claimed her assertion that there had been
20 a secret photo lineup must have been a mistake. How could she possibly know it was a
21 mistake? The State's sudden claim at Mr. Hooper's clemency hearing, that this was a
22 mistake in their interpretation of their own records is insufficient to resolve this issue.
23 Not until Mr. Hooper's defense team has unfettered access to the identical records, from
24 which the County Attorney concluded there had been a paper lineup, can the issue be
25 settled. Particularly, given the undisputed evidence of substantial prior prosecutor
26 misconduct, including multiple failures to disclose exculpatory impeachment evidence,
27 and other erroneous representations, "oops I must have made a mistake" is simply
28 insufficient to resolve this matter. The state said to the clemency board, "...And defense

1 can point it [evidence of the paper lineup] out if they can find it.” No that is not correct.
2 The defense cannot identify evidence of the lineup, the existence of which was
3 unambiguously identified in the October 28 letter, until the Defense obtains unrestricted
4 access to the prosecution file. The circumstances give rise to the necessity of discovery
5 and an evidentiary hearing, as further demonstrated below. For now, until discovery and
6 a full airing of the issue can be completed, we take the Maricopa County Attorney at its
7 word: there was a paper lineup. (*See Exhibits U & V at 11*).

8 Mr. Hooper faces a November 16, 2022 execution date. Therefore, he requests
9 expedited briefing and review of this matter.

10 **I. Introduction**

11 For forty years, Murray Hooper has steadfastly maintained his innocence of
12 these offenses. For just as long, reviewing courts have relied on Marilyn Redmond’s
13 eyewitness identification testimony to sustain the conviction. But the tables have
14 finally turned. On October 28, 2022, the Maricopa County Attorney’s Office revealed
15 for the first-time what Mr. Hooper has long suspected and urged at trial—that Mrs.
16 Redmond’s identification was seriously mistaken, tainted and unreliable. Now, just
17 over two weeks before Mr. Hooper’s scheduled execution and forty years after trial, in
18 its submission to the Arizona Board of Executive Clemency, the Maricopa County
19 Attorney’s Office revealed that Marilyn Redmond was shown a photographic lineup
20 and she could not identify Mr. Hooper; thereby implicitly excluding him as a
21 perpetrator of the crime. (*See Exhibits U & V at 11.*) This puts the lie to pre-trial and
22 trial sworn testimony from multiple State witnesses that no such lineup had been
23 administered.

24 **II. PROCEDURAL HISTORY AND RELATED FACTS**

25 On December 31, 1980, William “Pat” Redmond and his mother-in-law, Helen
26 Phelps, were shot and killed by three home invaders. *State v. Bracy*, 145 Ariz. 520, 525,
27 703 P.2d 464, 469 (1985). Redmond’s wife, Marilyn, was shot in the head but survived.
28 *Id.* In what Mr. Hooper contends was a frameup by the actual perpetrators, the State

1 rapidly focused on him, as well as William Bracy, and Edward McCall. All three were
2 eventually convicted substantially based on Mrs. Redmond's eyewitness identification,
3 and the testimony of several paid government witnesses and co-conspirators, who (Mr.
4 Hooper contends) testified falsely in exchange for extraordinary consideration and
5 benefits from the State, including immunity from serious crimes, money, drugs, and
6 unsupervised trips away from jail for conjugal visits. (*See, e.g.*, 12/17/82 at 47; Tr.
7 12/20/82 at 25–26, 35–38, 54–55, 172; Tr. 7/21/83 at 63–68, 71–72, 83, 99–103; Tr.
8 12/16/82 16–19, 35–37, 40, 55–56; Tr. 11/29/82 a.m. at 24–26; Tr. 11/24/82 at 53–55;
9 ROA 1167; Trial Ex. 209.) Mr. Hooper presented alibi witnesses who testified he was
10 in Chicago at the time of the crimes.

11 Long before we arrived here with newly discovered evidence of gross State
12 misconduct, this case was branded as one bearing the earmarks of substantial
13 prosecution misconduct—including the failure to disclose material exculpatory
14 impeachment evidence regarding the enriched compensated witnesses—as the Arizona
15 Supreme Court earlier found. *State v. Hooper*, 145 Ariz. 538, 543–45, 703 P.2d 482,
16 487–89 (1985) (adopting the facts and reasoning of *State v. Bracy*, 145 Ariz. 520, 703
17 P.2d 464 (1985)). Mr. Hooper's conviction was not overturned then, only because Mrs.
18 Redmond's eyewitness identification was deemed sufficiently reliable. *Id.*; *State v.*
19 *Bracy*, 145 Ariz. 520, 529, 703 P.2d 464, 473 (1985). In light of the earlier documented
20 prejudicial misconduct, *id.*, the newly discovered evidence, revealing the perjury of
21 Mrs. Redmond and other law enforcement witnesses, takes on heightened resonance.

22 From the very beginning, Mrs. Redmond gave every indication that she could
23 not identify Mr. Hooper with a semblance of reliability. Early on, she had reported that
24 she had not looked at the faces of any of the intruders and that they were wearing masks,
25 so she would not have been able to see Mr. Hooper's face in the first instance. (Tr.
26 11/8/82 at 241, 272; Tr. 11/30/82 at 73.) Her original statements concerning the race of
27 the assailants did not match the races of the three persons actually charged. Eventually,
28 her statements changed to correspond to the races of those indicted. (*See, e.g.*, Tr.

1 11/3/1982 at 222; Tr. 11/8/1982 at 190; Tr. 11/10/1982 at 71.) What was unknown until
2 just a few days ago: the police and Mrs. Redmond knew but failed to disclose and then
3 testified falsely covering up the fact that she had failed to identify Mr. Hooper in a photo
4 lineup. (See Exhibits U & V at 11.) The results of the photo lineup should have ended
5 any law enforcement pressure on Mrs. Redmond to identify Mr. Hooper. But that is not
6 what happened.

7 Instead, some two months after the offense, and after the photo lineup, an in-
8 person lineup was arranged and administered by Chicago police detectives, where Mrs.
9 Redmond is said to have identified Mr. Hooper. (Tr. 12/20/82 at 65–70; Tr. 11/30/82
10 p.m. at 58–61.) The lineup identification is notable, if only for the level of Chicago
11 police corruption now known to have persisted at that time, in the early 1980s, including
12 torture induced false confessions and other misconduct used to obtain false witness
13 accusations and tainted, unreliable identifications by supposed eyewitnesses.¹

14 Mr. Hooper was indicted on one count of conspiracy to commit first-degree
15 murder; two counts of first-degree murder; one count of attempted first-degree murder;
16 three counts of kidnapping; three counts of armed robbery; and one count of first-degree
17 burglary. (ROA 1.) He was convicted and sentenced to death. (ROA 1116.) Mr.
18 Hooper’s federal appeals were exhausted on March 21, 2022, when the Supreme Court
19 denied certiorari. *Hooper v. Shinn*, 142 S. Ct. 1376 (2022) (mem.). The Arizona
20 Supreme Court issued a warrant for execution on October 12, 2022, setting the
21 execution for November 16, 2022. Warrant of Execution, *State v. Hooper*, No. CR-83-

22
23 ¹ This corruption, torture, and coercion practices are extensively documented and no
24 longer disputable, having resulted in dozens of exonerations and hundreds of millions
25 of dollars in civil lawsuit payouts to the victims. The Invisible Institute, a nonprofit
26 journalism production company in Chicago, has made information detailing the corrupt
27 and abusive practices publicly available via DropBox. See, e.g., *Summary of Judicial,*
28 *Executive, and Administrative Findings and Admissions Concerning Systemic Chicago*
Police Torture at Area 2 and 3, The Invisible Institute, available at:
https://www.dropbox.com/sh/ch5e6i674shwpr8/AAANdI2LMWfVsKJ-xB0pdtZDa/02.%20Torture.Findings.Admissions.Decisions.Docs.Opinions.Pleadings?dl=0&preview=8.10.06.Summary+of+Judicial%2C+Administrative+and+prosecutorial+Findings+and+Admissions.wpd&subfolder_nav_tracking=1 (last visited Sept. 9, 2022).

1 0044-AP (Ariz. Oct. 12, 2022).

2 **II. CLAIMS FOR RELIEF**

3 **A. Newly Discovered Material Facts**

4 Arizona Rule of Criminal Procedure 32.1(e) allows for relief when “newly
5 discovered material facts probably exist, and those facts probably would have changed
6 the judgment or sentence.” Under Arizona law, “the preclusion provisions in Rule
7 32.2(a) do not apply to claims based on newly discovered evidence under Rule
8 32.1(e)[.]” *State v. Gutierrez*, 229 Ariz. 573, 580 ¶ 35, 278 P.3d 1276, 1283 (2012).

9 On October 28, 2022, the Maricopa County Attorney’s Office presented a letter
10 to the Arizona Board of Executive Clemency opposing Mr. Hooper’s request for
11 clemency. (Exhibit U.) They revised that letter on November 1, 2022. (Exhibit V.) For
12 decades, the State’s gospel had been: Marilyn Redmond was not asked to identify Mr.
13 Hooper (by being shown his photograph) before viewing the lineup in Chicago. Mrs.
14 Redmond and law enforcement officers testified to this as a fact. (Tr. 11/30/82 p.m. at
15 71 (Marilyn Redmond testifying she did not view photographs before trial); Tr. 8/27/82
16 at 60 (Phoenix Police Detective Martinsen testified that he did not show Mrs. Redmond
17 a photograph of Mr. Hooper); Tr. 8/27/82 at 91 (Maricopa County Attorney’s Office
18 Investigator Dan Ryan testified that he did not show Mrs. Redmond a photograph of
19 Mr. Hooper and was not present if that ever did occur).) But their testimony is now
20 provably false. The Maricopa County Attorney’s Office finally revealed what Mr.
21 Hooper has long suspected: Marilyn Redmond was shown a “paper [photographic]
22 lineup” (before viewing a live lineup) where she implicitly excluded Mr. Hooper as a
23 perpetrator of this offense. (Exhibits U & V at 11.) Given this new evidence of
24 widespread collusion between the prosecutor, Mrs. Redmond, and law enforcement to
25 conceal the photo lineup, extending to multiple instances of perjury in order to hide the
26 truth, there is a compelling inference that the live-lineup identification itself was
27 probably tainted by suggestive police misconduct with or without Redmond’s
28 complicity.

1 Rule 32.1(e) provides for relief when:

2 newly discovered material facts probably exist and those facts probably
3 would have changed the judgment or sentence.

4 Newly discovered material facts exist if:

5 (1) the facts were discovered after the trial or sentencing;

6 (2) the defendant exercised due diligence in discovering these
7 facts; and

8 (3) the newly discovered facts are material and not merely
9 cumulative or used solely for impeachment, unless the
10 impeachment evidence substantially undermines testimony
11 that was of such critical significance that the impeachment
evidence probably would have changed the judgment or
sentence.

12 Mr. Hooper satisfies Rule 32.1(e). The facts upon which this Petition rests were
13 first included in a letter provided to the Arizona Board of Executive Clemency on
14 October 28, 2022, some 40 years after Mr. Hooper was convicted and sentenced.

15 Mr. Hooper exercised due diligence in discovering these facts. Despite Mr.
16 Hooper's explicit inquiries, the State, Mrs. Redmond, and law enforcement officers
17 repeatedly denied that she had viewed a photograph of Mr. Hooper prior to the in-person
18 lineup. *See Claim One, infra*. A rule declaring that a "'prosecutor may hide, defendant
19 must seek' is not tenable in a system constitutionally bound to accord defendants' due
20 process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

21 Finally, as discussed in more detail *infra*, the newly discovered facts are material,
22 not merely cumulative or impeaching, and where those facts are relevant to
23 impeachment, the evidence of impeachment is of such critical significance it probably
24 would have changed the judgment or sentence.

25 **B. Claim One: The State violated *Brady v. Maryland***

26 Marilyn Redmond's eyewitness identification was a hotly contested trial issue.
27 Her purported identification later served as the "key" evidence, relied on by state and
28 federal courts, to reject a host of errors that occurred at Mr. Hooper's trial, including

1 other documented instances of prosecutorial misconduct and *Brady* violations. *See*,
2 *e.g.*, Minute Entry at 4; *State v. Hooper*, No. CR 0000-121686 (Maricopa Cnty. Super.
3 Ct. Oct. 21, 2022); *Hooper v. Shinn*, 985 F.3d 594, 617 (9th Cir. 2022); *State v. Bracy*,
4 145 Ariz. 520, 529, 703 P.2d 464, 473 (1985). Only now have we discovered that all
5 of these courts were materially misled. The State’s failure to disclose the evidence of
6 Mrs. Redmond’s implicit exclusion of Mr. Hooper as a perpetrator—her failure to
7 identify him in a photographic lineup—and her uncorrected false testimony regarding
8 the same—violates *Brady v. Maryland*, 373 U.S. 83 (1963). These concealed
9 disclosures require relief from Mr. Hooper’s convictions and death sentence.

10 **1. The *Brady* standard**

11 “[T]he suppression by the prosecution of evidence favorable to an accused upon
12 request violates due process where the evidence is material either to guilt or to
13 punishment, irrespective of the good faith or bath faith of the prosecution.” *Brady*, 373
14 U.S at 87. A *Brady* claim has three elements: “[t]he evidence at issue must be favorable
15 to the accused, either because it is exculpatory, or because it is impeaching; that
16 evidence must have been suppressed by the State, either willfully or inadvertently; and
17 prejudice must have ensued.” *Banks v. Dretke*, 540 U.S. 668, 691 (2004) (internal
18 quotation omitted). Evidence is material “if there is a reasonable probability that, had
19 the evidence been disclosed to the defense, the result of the proceeding would have
20 been different.” *Kyles v. Whitley*, 514 U.S. 419, 433–34 (1995) (internal quotation
21 omitted). However, Arizona applies a considerably more favorable test under certain
22 circumstances. “[W]here a pretrial request has been made for specific evidence, the
23 judgment must be vacated if the suppressed evidence *might have affected the outcome*
24 *of the trial[.]*” *Bracy*, 145 Ariz. at 528, 703 P.3d at 472. Here, the *Bracy* standard
25 applies. As explained below, Mr. Hooper made inquiries pre-trial and during the trial
26 itself, to learn whether Mrs. Redmond had been shown a photo of Mr. Hooper before
27 the in-person lineup.

1 **a. The State suppressed evidence**

2 The trial court granted Mr. Hooper's pretrial motion to disclose impeaching
3 information and ordered a *Dessureault* Hearing on Mrs. Redmond's identification.
4 (ROA 329 at 1, 3.) *At the hearing, in response to Mr. Hooper's inquiry, Marilyn*
5 *Redmond denied being shown any photographs of Mr. Hooper before viewing the*
6 *live lineup in Chicago.* (Tr. 8/26/82 at 31, 43–44.) In furtherance of the coverup, the
7 prosecutor objected to defense counsel asking Detective Martinsen and Investigator
8 Ryan, if either had shown Mrs. Redmond a photograph of Mr. Hooper before the live
9 lineup in Chicago, but the trial court obviously allowed the defense inquiry. (Tr.
10 8/27/82 at 57–59.) Detective Martinsen testified that he did not show Marilyn
11 Redmond a photograph of Mr. Hooper. (Tr. 8/27/82 at 60.) Maricopa County
12 Investigator Dan Ryan testified, "Let me say this. I didn't [give Marilyn Redmond a
13 photographic display] and I was never present if that did occur." (Tr. 8/27/82 at 91.)

14 On September 22, 1982, the trial court found that Mrs. Redmond's pretrial
15 identification was not unduly suggestive and denied the motion to suppress her pretrial
16 identification. (ROA 748 at 2–3.)

17 Mr. Hooper is not at fault for failing to discover the concealed evidence. The
18 Supreme Court has confirmed the defendant's right to rely on the prosecution's
19 representation that all *Brady* material was provided. *Banks v. Dretke*, 540 U.S. 668,
20 693 (2004) (finding that defendant rightfully relied on prosecution's representations
21 that all *Brady* material was provided). The prosecution in *Banks* "asserted, on the eve
22 of trial, that it would disclose all *Brady* material." *Id.* The Court found no fault in
23 *Banks'* reliance on this representation. *Id.* (citing *Strickler v. Greene*, 527 U.S. 263,
24 283–84 (1999)); *see also Dobbs v. Zant*, 506 U.S. 357, 359 (1993) (per curiam)
25 (affirming defendant's right to rely on prosecution's representations regarding the
26 record). Here, the State lied. It told the defense the evidence they believed existed, did
27 not. Like *Banks*, Mr. Hooper could rely on the State's representation that no photo
28 lineup had occurred.

1 This evidence was suppressed.

2 **b. This evidence is favorable**

3 The second *Brady* prong, favorability, is straightforward. Evidence is favorable
4 to the accused because it is exculpatory or because it impeaches the prosecution's case.
5 *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Evidence is favorable if it: (a)
6 establishes a defense, *Cone v. Bell*, 556 U.S. 449, 451 (2009) (suppressed evidence
7 supported defendant's insanity defense and bolstered his mitigation case); (b)
8 impeaches the prosecution's case, *Banks*, 540 U.S. at 699–700 (suppressed evidence
9 impeached witness's penalty phase testimony); or (c) supports either a verdict of not
10 guilty, or imposing a lesser sentence, *Brady*, 373 U.S. at 87 (prosecution must disclose
11 favorable evidence material to guilt or punishment). Suppressed evidence is favorable
12 if a reasonable probability exists that it would have provided the defense with an
13 opportunity to challenge the thoroughness and good faith of the State's case. *See Kyles*,
14 514 U.S. at 445 (the effective impeachment of even one eyewitness can call for a new
15 trial because it lessens the strength of that witness' statements, and also raises questions
16 about other probative evidence and "even the good faith investigation" of the case).

17 Time and again, the State, its agents, and its witnesses proclaimed that Marilyn
18 Redmond's singular attempt to identify Murray Hooper occurred in February 1981 at
19 a Chicago police station and that it was during this singular attempt that Marilyn
20 Redmond definitively identified Mr. Hooper as one of the perpetrators of this offense.
21 These representations were false, and Mrs. Redmond's denial of the existence of the
22 photographic lineup amounted to perjury. The suppressed evidence completely guts
23 the credibility of the State's sole eyewitness identification.

24 During trial, the State took pains to establish the power of Marilyn Redmond's
25 exceptional memory. (*See* Tr. 11/30/82 p.m. at 7–8 ("Q. Were you kind of the visual
26 Rolodex of Bonanza Airlines? A. Yes, I was."; *see also* Tr. 12/20/82 at 220.) Dan Ryan

1 and Detective Martinsen² also testified that no photographs were shown to Mrs.
2 Redmond before she viewed the live lineups. (Tr. 11/9/82 at 203; Tr. 12/20/82 at 70.)
3 The entire case was built around a lie.

4 Mrs. Redmond's positive identification of Mr. Hooper was the key evidence
5 against Mr. Hooper; courts have repeatedly recognized this. The Arizona Supreme
6 Court rejected Mr. Hooper's and co-defendant Bracy's request for a new trial after
7 post-trial disclosure of material, exculpatory evidence that investigator Dan Ryan had
8 made car payments for a State's witness's wife and a variety of other undisclosed
9 benefits because: "the undisclosed information impeaching [alleged co-conspirator
10 Arnold Merrill] and Dan Ryan had no effect upon the key testimony of Marilyn
11 Redmond." *State v. Bracy*, 145 Ariz. 520, 529, 703 P.2d 464, 473 (1985); *see also id.*
12 ("we do not believe that three additional pieces of impeaching information regarding
13 Arnold Merrill might have affected the jury's belief in Mrs. Redmond").

14 The Ninth Circuit Court of Appeals accepted the Arizona Supreme Court's
15 assessment that Mrs. Redmond's identification was "crucial":

16 The Arizona Supreme Court properly found that Marilyn's testimony
17 was key. Marilyn was an eyewitness to the crimes and was certain in
18 her trial identifications of Hooper and Bracy. She had also identified
19 both in pretrial lineups.

19 *Hooper v. Shinn*, 985 F.3d 594, 617 (9th Cir. 2022).

20 In rejecting Mr. Hooper's recent requests for DNA and advanced forensic testing
21 of fingerprints (now subject to review on Special Action) the Maricopa Superior Court
22 relied on the Ninth Circuit's analysis of the significance of Mrs. Redmond's testimony.
23 Minute Entry at 4, *State v. Hooper*, No. CR 0000-121686 (Maricopa Cnty. Super. Ct.
24 Oct. 21, 2022) ("The victim who survived, Marilyn Redmond, "was the only one who
25 saw the intruders in her home," later identified Defendant, Bracy, and McCall as the

26
27
28 ² Detective Martinsen accompanied Mrs. Redmond and took notes during the lineups (Tr.
11/9/82 at 184-85), however, these notes were not disclosed, despite defense requests (Tr.
11/4/82 at 40-41).

1 murderers, and provided details of the incident.” (citing *Hooper*, 985 F.3d at 603).
2 The recently discovered perjury tainted identification not only affected Mr. Hooper’s
3 convictions, but it has also affected the decision of every court to subsequently review
4 his case for constitutional error.

5 The State’s eleventh-hour revelation that Mrs. Redmond could not identify Mr.
6 Hooper from a photographic lineup is of critical significance—particularly in light of
7 statements she made after the crime, that she did not see the faces off the perpetrators
8 because they wore masks. In *Smith v. Cain*, 565 U.S. 73 (2012), the United States
9 Supreme Court granted relief in similar circumstances. Post-trial, Smith discovered
10 evidence demonstrating that the State’s eyewitness could not identify the perpetrators
11 who committed a home invasion robbery that resulted in the death of five of the
12 eyewitness’s friends. *Id.* at 74–75. As in *Smith*, the newly discovered evidence directly
13 contradicts Marilyn Redmond’s eyewitness identification and was “plainly material.”
14 *Id.* at 76. It would have dramatically undermined the State’s key witness.

15 In addition to undermining Mrs. Redmond’s identification, this new evidence
16 would have bolstered Mr. Hooper’s misidentification defense. The trial court limited
17 Mr. Hooper’s eyewitness identification expert at trial; her testimony was restricted to
18 addressing cross-racial identification alone. *State v. Hooper*, 145 Ariz. 538, 546, 703
19 P.2d 482, 490 (1985). However, had the trial court been made aware that Mrs.
20 Redmond had failed to identify Mr. Hooper in a photographic lineup before viewing a
21 live lineup that included Mr. Hooper, the court would have had the necessary
22 foundation to allow additional expert testimony to include the implications and impact
23 of Mrs. Redmond having seen a picture of Mr. Hooper before the Chicago lineup. Dr.
24 Geoffrey Loftus explains in his report (updated on November 2, 2022 and November
25 4, 2022) that exposure to visual information in particular biases a lineup:

1 Prior to participating in the live lineup, Mrs. Redmond had participated
2 in the photo lineup and had failed to identify Mr. Hooper's picture from
3 it. Thus Mr. Hooper was the only live lineup member that Mrs.
4 Redmond had seen before and for that reason would have looked more
5 familiar than the fillers. *In other words, one cannot distinguish
whether Mrs. Redmond identified Mr. Hooper at the live lineup based
on her original memory of S2 or whether she identified Mr. Hooper
based on her memory of Mr. Hooper's picture in the photo lineup.*

6 (Exhibit W & X at 7–8.) (emphasis added).

7 The *Brady* element of favorability is clearly satisfied.

8 **c. The suppressed evidence was material**

9 The test for materiality under *Brady* was originally set forth in *Bagley*, 473 U.S.
10 at 678:

11 The adjective is important. The question is not whether the defendant
12 would more likely than not have received a different verdict with the
13 evidence, but whether in its absence he received a fair trial, understood
14 as a trial resulting in a verdict worthy of confidence. A “reasonable
15 probability” of a different result is accordingly shown when the
government’s evidentiary suppression “undermines confidence in the
verdict.”

16 *Kyles*, 514 U.S. at 434 (quoting *Bagley*); *Strickler*, 527 U.S. at 289 (quoting *Kyles*).
17 However, as explained above, Arizona applies a considerably more favorable test
18 under certain circumstances. Where a pretrial request has been made for specific
19 evidence, the judgment must be vacated if the suppressed evidence “*might have*
20 *affected the outcome of the trial.*” *Bracy*, 145 Ariz. at 528, 703 P.2d at 472 (emphasis
21 added). It is this latter more favorable test which applies here, since specific inquiry
22 was made as to the existence of the photo lineup during pre-trial hearings and at trial.
23 (ROA 260; Tr. 8/27/82 at 60 (Det. Martinsen testified that he did not show Mrs.
24 Redmond a photograph of Mr. Hooper); Tr. 8/27/82 at 91 (Investigator Ryan testified
25 that he did not show Mrs. Redmond a photograph of Mr. Hooper, and was not present
26 if that ever did occur); Tr. 11/4/82 at 40-41 (Grant Woods asks for any physical
27 evidence they have in their possession or that law enforcement have which is
28 contradictory to the departmental reports or other written material).)

1 When assessing materiality: (a) the defendant need not demonstrate that the
2 suppressed evidence would lead to his acquittal, (b) it is not a sufficiency of the
3 evidence test, (c) harmless error analysis is not to be conducted, and (d) the test focuses
4 on the cumulative impact of all suppressed evidence. *Kyles*, 514 U.S. at 434–36. The
5 suppressed evidence need not undercut every aspect of the prosecution’s case to be
6 material. *Id.* at 451 (it is unnecessary that “every item of the State’s case would have
7 been directly undercut if the *Brady* evidence had been disclosed”).

8 Marilyn Redmond’s implicit exclusion of Mr. Hooper as a perpetrator and her
9 failure to identify him in a photographic lineup *before* viewing him in a live lineup in
10 Chicago, satisfies the materiality requirement, especially in light of her perjured
11 testimony denying she had seen the photo array. When combined with her earlier
12 insistence that she never saw the offenders’ faces, the materiality of the new evidence
13 arises to the level of compelling.³ What is more, the discovery of the photo lineup
14 would have corrupted the testimony of the case-related law enforcement officers, who
15 would have also been caught-up in the big lie. At that point, the lavish benefits the
16 State had heaped on the other witnesses would have been seen in a harsher light.

17 This newly discovered suppressed evidence is material. Specific inquiries were
18 made for the suppressed evidence and therefore, Mr. Hooper readily satisfies the
19 showing that the evidence “*might have affected the outcome of the trial.*” *Bracy*, 145
20 Ariz. at 528, 703 P.2d at 472 (emphasis added). Indeed, once the jury learned that Mrs.
21 Redmond had continually lied about the absence of a photo lineup, it is irrefutable that
22 her deceit might have affected the verdict. *Id.* With the single eyewitness caught in an

23 ³ Redmond initially reported she could not identify the intruders, since she was too afraid to
24 look at them. (Tr. 11/30/82 p.m. at 73; Tr. 8/26/82 at 141–42.) She described the perpetrators
25 as three Black men, two of them wearing masks. (Tr. 11/8/82 p.m. at 73; Tr. 11/3/82 at 171,
26 180, 184, 221–22, 230–31, 237–38; Tr. 8/27/82 at 69–70.) Later, she changed her story to
27 conform to the charged suspects, claiming that two Black men and one white man committed
28 the crime. (Tr. 11/3/82 at 221, 231, 248.) Despite the fact that Redmond first reported that
two of the suspects were wearing masks—proving she could not identify them—she turned
the tables and described the suspects as clean-shaven. (Tr. 11/8/82 p.m. at 74–75.) Still, Mrs.
Redmond could not describe the assailants’ facial features. (Tr. 11/4/82 at 50; Tr. 11/3/82 at
221–22, 230.)

1 outright lie, it is obvious that at least a single juror's verdict might have been affected.
2 No forensic evidence tied Mr. Hooper to the crime. And at trial, Mr. Hooper presented
3 three eyewitnesses who testified he was in Chicago at the time of these offenses. (Tr.
4 12/8/82 a.m. at 73–74, 93, 95; Tr. 12/8/82 p.m. at 5, 33–37.) A disinterested air traveler,
5 on the flight that the State alleged Mr. Hooper took after the offense, affied that Mr.
6 Hooper was not on that flight. (ROA 1691, Ex. F.)

7 **C. Claim Two: The State knowingly presented false evidence**

8 False evidence was presented by the State, both in pre-trial proceedings and at
9 trial. During the *Dessureault* Hearing Detective Martinsen, Investigator Ryan, and
10 Marilyn Redmond all testified falsely that she did not view a photograph of Mr. Hooper
11 before she viewed the live lineup in Chicago. (Tr. 11/30/82 p.m. at 71 (Marilyn
12 Redmond testifying she did not view photographs before trial); Tr. 8/27/82 at 60
13 (Phoenix Police Detective Martinsen testified that he did not show Mrs. Redmond a
14 photograph of Mr. Hooper); Tr. 8/27/82 at 91 (Maricopa County Attorney's Office
15 Investigator Dan Ryan testified that he did not show Mrs. Redmond a photograph of
16 Mr. Hooper and was not present if that ever did occur).) At trial, this same false
17 testimony was presented to the jury.

18 **1. A conviction may not rest on known false evidence**

19 The courts have long recognized that a prosecutor cannot secure a conviction
20 through the presentation of false testimony. In *Mooney v. Holohan*, 294 U.S. 103, 112
21 (1935), the United States Supreme Court held that “deliberate deception of court and
22 jury by the presentation of testimony known to be perjured” violates the defendant's
23 due process rights. The Court expanded that notion in *Napue v. Illinois*, 360 U.S. 264
24 (1959), in which the Court said, “[t]he same result obtains when the State, although
25 not soliciting false evidence, allows it to go uncorrected when it appears.” *Id.* at 269.
26 Under the standard articulated in *Napue*, a new trial is required if the false testimony
27 could in any reasonable likelihood have affected the judgment of the jury. *Id.* at 271.
28 As applied, this means a new trial is required when it is reasonably possible the withheld

1 evidence could have affected the judgment of the jury. *United States v. Bagley*, 473 U.S.
2 667, 680 (1985); *United States v. Freeman*, 650 F.3d 673, 680–81 (7th Cir. 2011)
3 (finding reasonable possibility that perjured testimony affected jury decision). *See also*
4 *Bracy*, 145 Ariz. at 528, 703 P.2d at 472 (“In those cases in which the prosecution has
5 knowingly used perjured testimony, the conviction must be set aside if there exists a
6 reasonable likelihood that the false testimony *could have affected the jury’s verdict*[.]”)
7 (emphasis added)).

8 The elements of the claim require proof that “(1) the testimony (or evidence)
9 was actually false, (2) the prosecution knew or should have known that the testimony
10 was actually false, and (3) ... the false testimony was material.” *Hayes v. Brown*, 399
11 F.3d 972, 984 (9th Cir. 2005) (en banc) (internal quotation marks and citations
12 omitted).

13 **a. The evidence was false**

14 As discussed in an earlier section, Marilyn Redmond, Detective Martinsen, and
15 Investigator Ryan all testified that Mrs. Redmond did not view Mr. Hooper’s
16 photograph before viewing the live lineup in Chicago during pretrial proceedings and
17 at the trial itself. In two letters to the Arizona Board of Executive Clemency, the
18 Maricopa County Attorney’s Office stated, “Marilyn [Redmond] was flown out [to
19 Chicago] and participated in live line ups with [Murray Hooper and William Bracy].
20 She had previously been unable to pick them out of a paper lineup.” (Exhibits U & V
21 at 11.) This eleventh hour disclosure by the State demonstrates the falsity of these
22 testimony.

23 **b. The prosecutor knew or should have known that the**
24 **testimony was actually false**

25 A letter drafted by the Maricopa County Attorney’s Office is the source of Mr.
26 Hooper’s claim. (Exhibits U & V at 11.) Clearly, the prosecutor has evidence of the
27 photo lineup and knew this testimony was false.
28

1 **c. The false testimony was material**

2 In assessing materiality under *Napue*, the court determines whether there is a
3 “reasonable likelihood that the false testimony could have affected the judgment of the
4 jury[.]” *United States v. Agurs*, 427 U.S. 97, 103 (1976); *Bagley*, 473 U.S. at 680;
5 *Freeman*, 650 F.3d at 680–81; *Bracy*, 145 Ariz. at 528, 703 P.2d at 472. The question
6 is not whether the petitioner would have received a different verdict, “whether ... he
7 received a fair trial, understood as a trial resulting in a verdict worthy of confidence.”
8 *Kyles*, 514 U.S. at 434 490. For brevity and to avoid repetition, Mr. Hooper
9 incorporates his arguments in Section B.1.c., *supra*, regarding materiality. For the same
10 reasons the State’s failure to disclose Mrs. Redmond’s inability to identify Mr. Hooper
11 in a photo lineup was material under *Brady*, the State’s knowing presentation of false
12 evidence was material.

13 Multiple State’s actors and Redmond herself committed perjury testifying
14 falsely that Marilyn Redmond only identified Mr. Hooper in a single lineup, live in
15 Chicago, where she identified Mr. Hooper. Each witness lied when they insisted she
16 had not viewed a photograph of Mr. Hooper before the Chicago lineup. Each witness
17 lied when they failed to disclose that Redmond had previously excluded Mr. Hooper
18 as a perpetrator when viewing the photo lineup. The prosecutor’s actions in presenting
19 this false evidence, and failing to correct it, deprived Mr. Hooper of his due process
20 and equal protection rights. And it is inarguable that a jury learning that multiple
21 witnesses, including Redmond, had conspired to cover up of this evidence “could have
22 affected the verdict.” *Bracy* 145 Ariz. at 528, 703 P.2d at 529. The State’s knowing
23 presentation of perjured testimony demands a new trial, as well as appropriate
24 evidentiary hearings, discovery, and the appointment of counsel.

D. Claim Three: Marilyn Redmond's pretrial identification was unduly suggestive, inadmissible, and tainted her in court identification of Mr. Hooper such that it should have been precluded

The admission of pretrial identification testimony violates a defendant's rights to due process when "the circumstances surrounding the pretrial identification created a "substantial likelihood of irreparable misidentification," *Simmons v. United States*, 390 U.S. 377, 384 (1968), and when the government was sufficiently responsible for the suggestive pretrial identification to trigger due process protection. "It is the likelihood of misidentification which violates a defendant's right to due process. . . ." *Neil v. Biggers*, 409 U.S. 188, 198 (1972); *see also State v. Bracy*, 145 Ariz. 520, 530–31, 703 P.2d 464, 474–75 (1985).

The *Biggers* court laid out a totality of the circumstances test for determining the reliability of an identification, directing that the court consider the "likelihood of misidentification" based on "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *Id.* at 199-200. The Supreme Court has also previously held unreliable "pretrial confrontations . . . so arranged as to make the resulting identifications virtually inevitable." *Foster v. California*, 394 U.S. 440, 443 (1969) (finding that putting petitioner in a lineup with two shorter men, followed by a one-on-one meeting with eye witness, and a subsequent lineup where petitioner was the only person from the first lineup to appear again was an unfair lineup procedure).

"Making a defendant the only common person in both a photo spread and a live lineup can be unduly suggestive." *State v. Lehr*, 201 Ariz. 509, 520–21, 38 P.3d 1172, 1183 (2002), *supplemented*, 205 Ariz. 107, 67 P.3d 703 (2003) (citing *State v. Via*, 146 Ariz. 108, 119, 704 P.2d 238, 249 (1985)). As in *Lehr*, Mrs. Redmond viewed a paper lineup and did not identify Mr. Hooper, or presumably anyone. *See Lehr*, 201 Ariz. at

1 521, 38 P.3d at 1183. Subsequently, she identified Mr. Hooper in a live lineup. Because
2 the live lineup in Chicago otherwise comprised police officers, employees, and
3 arrestees present in the Chicago Police precinct on that date, Mr. Hooper would have
4 been the only person common to the paper lineup and the live lineup. *See id.* “This
5 arrangement was arguably unduly suggestive.” *Id.*

6 On direct appeal to the Arizona Supreme Court, it found that Mrs. Redmond’s
7 identification of Mr. Hooper was reliable:

8 In the instant case, in light of Mrs. Redmond’s ample opportunity to
9 observe defendant at the time of the crime, her high level of attention
10 at the time of the crime, and her good level of certainty at the lineup,
11 Mrs. Redmond’s identification of defendant fifty-three days after the
crime was not unreliable.

12 *Bracy*, 145 Ariz. at 532, 703 P.2d at 476. Minimally, the level of certainty upon which
13 Mrs. Redmond identified Mr. Hooper has come into question. As Dr. Geoffrey Loftus
14 explains in his report, exposure to visual information in particular biases a lineup.
15 (Exhibit W & X at 7–8.) The Court cannot know if Mrs. Redmond’s level of certainty
16 stems from her memory of the perpetrators or her memory of Mr. Hooper’s photograph
17 in the paper lineup. (*See* Exhibit W & X at 7–8.) Given Mrs. Redmond’s inconsistent
18 descriptions of her ability to identify the perpetrators, her different descriptions of the
19 perpetrators, and her inability to identify Mr. Hooper in a paper lineup undermines the
20 reliability of her determination. Further, that the State hid the paper lineup lends more
21 weight to Mr. Hooper’s position that Mrs. Redmond’s identification was unreliable.

22 Admission of Marilyn Redmond’s pretrial and in court identifications violated
23 Mr. Hooper’s due process rights. The admission of this evidence demands a new trial,
24 as well as appropriate evidentiary hearings, discovery, and the appointment of counsel.

25 **Conclusion**

26 In light of the arguments above and the exhibits filed with this Petition, Mr.
27 Hooper has demonstrated he is entitled to relief under Rule 32.1. The newly discovered
28 evidence under 32.1(e) offers sufficient evidence to raise colorable claims as to all claims

1 presented herein. The Court should order that the State, including the Maricopa County
2 Attorney's Office immediately provide the defense with unhindered access to the
3 entirety of its files, and grant such other discovery which becomes necessary, and finally,
4 grant an evidentiary hearing.

5 RESPECTFULLY SUBMITTED this 4th day of November, 2022.

6 JON M. SANDS
7 Federal Public Defender

8 Cary Sandman
9 Kelly L. Culshaw
10 Nathan Maxwell
11 Assistant Federal Public Defenders

12 s/Kelly L. Culshaw
13 Counsel for Murray Hooper
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Proof of Service

I hereby certify that on November 4, 2022, an original and copies of the foregoing
Petition for Post-Conviction Relief was electronically filed with:

Clerk of the Maricopa County Superior Court
Phoenix, Arizona 85003

And emailed to:

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