

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE LEROY DEAN DENNIS, *pro-se* – PETITIONER

vs.

STATE OF OKLAHOMA – RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C.A. § 2241 – BY A PRISONER IN STATE CUSTODY

AND SUPREME COURT RULE 22 TO
ASSOCIATE JUSTICE STEPHEN BREYER

ON APPEAL FROM OKLAHOMA COURT OF CRIMINAL APPEALS,

STATE OF OKLAHOMA

APPLICATION TO ASSOCIATE JUSTICE STEPHEN BREYER

Leroy Dean Dennis – *pro-se* 204490
Box 548 - J-D-154
Lexington, OK 73051

QUESTIONS PRESENTED

QUESTION #1

IN A CAPITAL CASE, IS A DEFENDANT'S CONSTITUTIONAL RIGHTS VIOLATED UNDER THE MANDATE OF THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20 WHICH IS IDENTICAL TO A FEDERAL LAW (TITLE 18, U.S.C.A., § 3432) REGARDING THE PROSECUTION'S ENDORSMENT OF TRIAL WITNESSES THAT WILL BE CALLED TO TESTIFY IN THE PROSECUTION'S CASE-IN-CHIEF?

QUESTION #2

UNDER THE UNITED STATES CONSTITUTION 14th AMENDMENT, SUPREME COURT OPINIONS AND THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20, DOES A DEFENDANT RECEIVE A FAIR TRIAL AND DUE PROCESS WHEN A PROSECUTION SURPRISE EYE-WITNESS, A FORENSIC EXPERT ARSON INVESTIGATOR AND A LAY PERSON GIVE FALSE TESTIMONY TO THE JURY?

- A. False Surprise Eye-Witness Testimony
- B. False Forensic Expert and Lay Person Arson Testimony

QUESTION #3

DOES A COUNTY DISTRICT COURT HAVE JURISDICTION UNDER THE UNITED STATES CONSTITUTION'S, 6TH AMENDMENT, TO INQUIRE INTO THE EVIDENTIARY FACTS, APPLY THE LAW, MAKE DECISIONS AND DECLARE JUDGMENT BY JURY TRIAL WHEN THERE IS ABSOLUTELY NOT A SCINTILLA OF EVIDENCE A CRIME WAS COMMITTED WITHIN THAT TRIAL COURT'S JURISDICTION?

QUESTION # 4

WILL THIS COURT ALLOW PETITIONER'S CONVICTION TO STAND WHEN THERE IS NO EVIDENCE PRESENTED, BEYOND A REASONABLE DOUBT, OF THE CRIME ELEMENTS AND WHEN THE CONVICTION IS BASED UPON CONJECTURE, SUPPOSITIONS, SPECULATION AND SURMISES?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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 is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF CASE.....	3
QUESTION #1.....	7

IN A CAPITAL CASE, IS A DEFENDANT'S CONSTITUTIONAL RIGHTS VIOLATED UNDER THE MANDATE OF THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20 WHICH IS IDENTICAL TO A FEDERAL LAW (TITLE 18, U.S.C.A., § 3432) REGARDING THE PROSECUTION'S ENDORSMENT OF TRIAL WITNESSES THAT WILL BE CALLED TO TESTIFY IN THE PROSECUTION'S CASE-IN-CHIEF?

QUESTION #2.....	10
-------------------------	-----------

UNDER THE UNITED STATES CONSTITUTION 14th AMENDMENT, SUPREME COURT OPINIONS AND THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20, DOES A DEFENDANT RECEIVE A FAIR TRIAL AND DUE PROCESS WHEN A PROSECUTION SURPRISE EYE-WITNESS, A FORENSIC EXPERT ARSON INVESTIGATOR AND A LAY PERSON GIVE FALSE TESTIMONY TO THE JURY?

A. False Surprise Eye-Witness Testimony.....	12
B. False Forensic Expert and Lay Person Arson Testimony.....	14
QUESTION #3.....	15

DOES A COUNTY DISTRICT COURT HAVE JURISDICTION UNDER THE UNITED STATES CONSTITUTION'S, 6TH AMENDMENT, TO INQUIRE INTO THE EVIDENTIARY FACTS, APPLY THE LAW, MAKE DECISIONS AND DECLARE JUDGMENT BY JURY TRIAL WHEN THERE IS ABSOLUTELY NOT A SCINTILLA OF EVIDENCE A CRIME WAS COMMITTED WITHIN THAT TRIAL COURT'S JURISDICTION?

QUESTION # 4 17

WILL THIS COURT ALLOW PETITIONER'S CONVICTION TO STAND WHEN THERE IS NO EVIDENCE PRESENTED, BEYOND A REASONABLE DOUBT, OF THE CRIME ELEMENTS AND WHEN THE CONVICTION IS BASED UPON CONJECTURE, SUPPOSITIONS, SPECULATION AND SURMISES?

REASONS FOR GRANTING THE WRIT 19

CONCLUSION 22

INDEX TO APPENDICES

APPENDIX A 1

APPENDIX B 1

INDEX TO EXHIBITS

EXHIBIT 1 7

EXHIBIT 2 8, 9, 20

EXHIBIT 3 9

EXHIBIT 4 12, 15, 19, 20, 21

EXHIBIT 5 11

EXHIBIT 6 11

EXHIBIT 7 12

EXHIBIT 8 13

EXHIBIT 9 14, 15

EXHIBIT 10 17

CONSTITUTIONAL AMENDMENTS

United States Constitution, Sixth Amendment.	2, 12, 15, 16
United States Constitution, Eighth Amendment.	2, 20
United States Constitution, Fourteenth Amendment.	2, 6, 7, 10, 12, 18
Oklahoma Constitution, Article 1 § 1.	2, 3, 22
Oklahoma Constitution, Article 2 § 7.	2, 6
Oklahoma Constitution, Article 2 § 20.	2, 7, 8, 9, 10, 16, 20

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Ake v. Oklahoma</u> , 470 U.S. 68, 74-5, 105 S. Ct. 1087, 84 LEd2d 53, 60-1 (1985).	5
<u>Allen v. District Court of Washington County</u> , 803 P2d 1164, 1167 (Okla. Cr. 1990).	9
<u>Cage v. Louisiana</u> , 498 U.S. 39, 111 S. Ct. 328, 112 LEd2d 339 (1990).	18
<u>Dennis v. State</u> , 879 P2d 1227 (Okla. Crim. App. 1994).	12, 20
<u>Douglas v. California</u> , 372 U.S. 353, 83 S. Ct. 814, 9 LEd2d 811 (1963).	6
<u>Giglio v. United States</u> , 405 U.S. 150, 153-54, 92 S. Ct. 763, 31 LEd2d 104, 108 (1972).	11
<u>Griffin v. Illinois</u> , 351 U.S. 12, 76 S. Ct. 585, 100 LEd 891 (1952).	6
<u>Haines v. Kerner</u> , 404 U.S. 519, 92 S. Ct. 594, 30 LEd2d 652 (1972).	3

<u>Hall v. Bellmon</u> ,	935 F2d 1106, 1109 (10 th Cir. 1991).....	3
<u>Harris v. Nelson</u> ,	394 U.S. 286, 89 S. Ct. 1082, 22 LEd 2d 281 (1969).....	4
<u>In re Winship</u> ,	397 U. S. 358, 364, 90 S. Ct. 1068, 25 LEd2d 560 (1970).....	18
<u>Jackson v. State</u> ,	811 P2d 614 (Okla. Cr. 1991).....	8, 9, 20
<u>Johnson v. State</u> ,	611 P2d 1137, 1145 (Okla. Cr. 1980).....	16
<u>Logan v. State</u> ,	293 P3d 969, 978 (2013 OK CR 2).....	7
<u>Lynch v. People of New York ex rel. Pierson</u> ,	293 U.S. 52, 54, 55 S. Ct. 16, 17, 79 LEd 191 (1934).....	15
<u>Moore v. Illinois</u> ,	408 U.S. 786, 92 St. Ct. 2564, 33 LEd2d 706 (1972).....	12
<u>Napue v. Illinois</u> ,	360 U.S. 264, 271, 790S. Ct. 1173, 3 LEd2d 1217 (1957).....	11, 12
<u>Smith v. Robbins</u> ,	528 U. S. 259, 120 S. Ct. 746, 145 LEd2d 756 (2000).....	6
<u>Thompson v. Louisville</u> ,	362 U.S. 199, 80 S. Ct. 624, 4 LEd2d 654 (1960).....	18
STATUTES AND RULES		
Title 18, U.S.C.A., § 3432.....	2, 7, 8, 20	
Title 28 U.S.C.A. § 2241.....	2, 21	
Title 28 U.S.C.A. § 2254.....	2, 4	
Title 21, O.S. § 693.....	2, 17	

Title 22, O.S. § 124.	2, 16
Title 22, O.S. § 134.	2, 16
Title 22, O.S. § 1080.	2, 4
Title 22, O.S. § 1083(b).	2, 7
Title 22, O.S. § 1083(c).	2, 7
Title 22, O.S. § 1084.	2, 5, 6
Title 22, O.S. § 1086.	2, 5
Rule 6.	4
Rule 7(b).	4
Rule 22.	2, 21
OTHER	
Federal Civil Judicial Procedure and Rules (FCJPR) (2009 Revised Edition)	
Rule 6 (Advisory Committee Notes) (394 U.S. at 301) n.7	
and in Title 28, U.S.C.A. § 2254; <u>Harris v. Nelson</u> , 394 U.S. 286, 89 S. Ct. 1082, 22 LEd 281 (1969).	4

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE LEROY DEAN DENNIS, *pro-se* – PETITIONER

vs.

STATE OF OKLAHOMA – RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO
28 U.S.C.A. § 2241 – BY A PRISONER IN STATE CUSTODY
AND SUPREME COURT RULE 22 TO
ASSOCIATE JUSTICE STEPHEN BREYER

OPINIONS BELOW

[] For cases from state courts:

The opinion of the highest state court (Oklahoma Court of Criminal Appeals) (OCCA) to review the merits appear at Appendix A to the Petition and is unpublished. Case #: PC-2017-816

The opinion of the Oklahoma County District Court appears at Appendix B to the Petition and is unpublished. Case #: 91-994.

JURISDICTION

[] For cases from state courts:

The date on which the highest state court (Oklahoma Court of Criminal Appeals) decided my case was May 7, 2018. A copy of that decision appears at Appendix A. Case #: PC-2017-816

[] A timely Petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA – No Petition for Rehearing was filed.

[] An extension of time to file the Writ of Habeas Corpus to Associate Supreme Court Justice, the Honorable Justice Stephen Breyer has not been filed.

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C.A., § 2241 – By a Prisoner in State Custody and Supreme Court Rule 22- Applications to Individual Justices.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

United States Constitution, Sixth Amendment

United States Constitution, Eighth Amendment

United States Constitution, Fourteenth Amendment

Oklahoma Constitution, Article 1 § 1

Oklahoma Constitution, Article 2 § 7

Oklahoma Constitution, Article 2 § 20

STATUTORY PROVISIONS

Title 18, U.S.C.A., § 3432

Title 28 U.S.C.A. § 2241

Title 28 U.S.C.A. § 2254

Title 21, O.S. § 693

Title 22, O.S. § 124

Title 22, O.S. § 134

Title 22, O.S. § 1080

Title 22, O.S. § 1083(b)

Title 22, O.S. § 1083(c)

Title 22, O.S. § 1084

Title 22, O.S. § 1086

STATEMENT OF CASE

OPENING STATEMENT

COMES NOW, Petitioner, Leroy Dean Dennis, acting *pro-se* and under the protections provided by the United States Supreme Court (SCOTUS) in Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 LEd2d 652 (1972) which states; "A pro-se litigant's complaints are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers..." Id. 520-21. This is interpreted to mean that if the court can reasonably read the pleading to state a claim on which the defendant/Petitioner could prevail, the court should do so despite the Petitioner's failure to cite proper legal authority, confusion of various legal theories, a poor syntax and sentence construction or the unfamiliarity with pleading requirements. See: Hall v. Bellmon, 935 F2d 1106, 1109 (10th Cir. 1991) which states; "A court reviewing the sufficiency of the complaint presumes all of defendant's factual allegations are true and construes them in the light most favorable to defendant." (Cite omitted).

The Oklahoma Constitution, Article 1, § 1 states:

"The State of Oklahoma is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land".

The term "law of the land" not only means the law of the state and the constitution of the state but, above all, the Constitution of the United States. Decisions from the United States Supreme Court are considered as the "law of the land" and are conclusive on state courts.

The Federal Civil Judicial Procedure and Rules (FCJPR) (2009 Revised Edition) Rule 6 (Advisory Committee Notes) (394 U.S. at 301 n.7) and in Title 28, U.S.C.A. § 2254, Writ of Habeas Corpus states,

“But where specific allegations before the court show reason to believe that Petitioner may, *if facts are fully developed*, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” (Emphasis added). Rule 7(b) states, “Affidavits may also be submitted and considered as part of the record.” Harris v. Nelson, 394 U.S. 286, 89 S. Ct. 1082, 22 LEd 281 (1969).

Oklahoma has a statutory Post-Conviction Procedures Act for anyone convicted of a crime to apply for relief when the conviction is in violation of the federal and/or state constitutions or the issues raised on direct appeal were inadequately raised, omitted or were not discovered due to ineffective assistance of counsel. This Act states:

Title 22, O.S. § 1080, Post-Conviction Procedures Act – Right to challenge conviction or sentence states:

Any person who has been convicted of, or sentenced for, a crime and who claims;

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(b) that the court was without jurisdiction to impose sentence;

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may initiate a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

Title 22, O.S., § 1084, Evidentiary Hearing – Finding of Fact and Conclusion of Law, states:

If the application cannot be disposed of on the pleadings and record, or there exists a **material issue of fact**, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. The court may receive proof by affidavit, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. A judge should not preside at such a hearing if his testimony is material. The court shall make specific findings of facts and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment. (Emphasis added).

Title 22, O.S., § 1086, Subsequent Application states;

All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised or knowingly, voluntarily or intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in a prior application.

Fundamental rights of a defendant cannot be waived or barred pursuant to Ake v. Oklahoma, 470 U.S.68, 74-5, 105 S. Ct.1087, 84 LEd2d 53, 60-1 (1985) states: “the Oklahoma waiver rule does not apply to fundamental trial errors.” Id. 1092, at [2a]. “Under Oklahoma law the state has conceded federal constitutional errors are “fundamental.”” (Cite omitted) (Violations of constitutional rights constitute fundamental error). (Cite omitted). Accordingly, constitutional/fundamental rights violations bar the waiver and res judicata doctrines. In order for the courts to use the procedural bar, res judicata, Petitioner asserts the court must conduct an evidentiary hearing to fully, fairly and factually litigate the material issues of fact under Oklahoma Statute, Title 22, O.S., § 1084.

Petitioner alleges and states the Oklahoma courts have denied Petitioner his due process rights that are guaranteed under the United States Constitution's Fourteenth Amendment and the Oklahoma Constitution's Article 2, § 7, due process rights in not allowing Petitioner an evidentiary hearing on the meritorious material issues of fact that have been presented in his Post-Conviction Application to the state district and appellate courts.

The SCOTUS opinion in Smith v. Robbins, 528 U. S. 259, 277, 120 S. Ct. 746, 759-60, 145 LEd2d 756 (2000) has stated,

"the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment converge to require that a state's procedure "afford[d] adequate and effective appellate review to indigent defendant's." Griffin, 351 U.S. at 20, 76 S. Ct. 585 (plurality opinion). A state's procedure must be "free of unreasonable distinction." [D]ue process . . . [requires] states . . . to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal. Griffin v. Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 LEd 891 (1952); Douglas v. California, 372 U.S. 353, 83 S. Ct. 814, 9 LEd2d 811 (1963).

Petitioner asserts the State has prohibited Petitioner from adjudicating his meritorious material issues of fact where the state appellate courts have relied upon and used procedural bars to prevent Petitioner access to the court. Petitioner respectfully requests this Court to consider and grant this Petition for a Writ due to the constitutional violations and the State denying Petitioner access to the courts to adjudicate the material issues of fact.

An evidentiary hearing is required under Title 22, O.S., § 1084 when there exists material issues of fact. The court is required, by this Act, to conduct a hearing and may receive proof by affidavit, depositions or oral testimony. The

court is required to make specific findings of fact and state expressly its conclusions of law relating to each issue presented. The Oklahoma Courts have denied or failed to afford Petitioner access to the court to litigate the material issues of fact or give Petitioner the opportunity to correct the false testimony from three prosecution witnesses that is in the court record. The OCCA in Logan v. State, 293 P3d 969, 978 (2013 OK CR 2) (Exhibit 1 at ¶ 21, ¶ 22, ¶ 23, & ¶ 24) has stated the guide for Post-Conviction relief when material issues of fact are raised for the court's consideration. See also: Title 22 O.S. 2011, § 1083(b) which states, "Disposition on the pleadings and record is not proper if there exists a material issue of fact." Title 22, O.S., § 1083(c) at ¶ 21 states; If the Post-Conviction Relief Application raises "a genuine issue of material fact," which prevents a finding that either party is entitled to judgment as a matter of law, the district court cannot summarily dispose of a (non-capital) application. According to this Opinion, Petitioner's Post-Conviction Application is within the **Rule of Law** this Court, (OCCA), has established. When a petitioner is granted relief or an evidentiary hearing on material issues of fact and other petitioners are denied access to the court to have their material issues of fact litigated is a due process and equal rights violation under the Fourteenth Amendment. Petitioner alleges and states:

QUESTION #1

IN A CAPITAL CASE, IS A DEFENDANT'S CONSTITUTIONAL RIGHTS VIOLATED UNDER THE MANDATE OF THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20 WHICH IS IDENTICAL TO A FEDERAL LAW (TITLE 18, U.S.C.A., § 3432) REGARDING THE PROSECUTION'S ENDORSMENT OF TRIAL WITNESSES THAT WILL BE CALLED TO TESTIFY IN THE PROSECUTION'S CASE-IN-CHIEF?

The Oklahoma Constitution, federal statute and SCOTUS opinion mandates the prosecutor give the defense a list of witnesses that will be called in-chief, at least two business days before the case is called for trial to prove the allegations in the indictment. Failure to comply will result in error. This error is a fundamental rights error. The Oklahoma Constitution and federal law that governs the witness list, in a capital case, are as follows.

The Oklahoma Constitution, Article 2, § 20, specifically states in part:

“... in capital cases, at least two days before the case is called for trial, he shall be furnished with a list of the witnesses that will be called-in-chief, to prove the allegations of the indictment or information, together with their post office addresses. (Emphasis added).

The prosecutor provided a list of witnesses (107 names) which the indictment was based upon on a Friday afternoon. This list would require defense counsel to spend the weekend trying to locate, interview and ascertain what their testimony would be. On Monday morning, prosecutors gave defense counsel a 40 plus name witness list they planned to call for the trial. This 40 plus name witness list does not comply with the Oklahoma Constitution, Article 2, § 20; the OCCA Opinion in Jackson v. State, 811 P2d 614 (Okl. Cr. 1991), (Exhibit 2); the SCOTUS Opinion that is quoted in Jackson, *supra*. or Title 18, U.S.C.A. § 3432.

The witness information was not given to the defense counsel two days prior to trial as required by the Oklahoma Constitution, (Article 2, § 20), or the Federal Statute, Title 18, U.S.C.A. § 3432 – Indictment and List of Jurors and Witnesses for Prisoner in A Capital Case states:

A person charged with treason or other capital offense shall, at least three entire days before commencement of trial, excluding intermediate weekends and holidays, be furnished with a copy of the indictment and a list of the venire men, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venire man and witnesses, except that such list of venire men and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.

See also the OCCA opinion in Jackson v. State, supra. (Exhibit 2).

The trial court held an in-camera hearing regarding the witness list that was given to defense counsel on Friday and the revised list that was handed to defense counsel on Monday morning, the day the trial began. (Tr. 855 – 859) (Exhibit 3). Petitioner asserts the prosecution has ignored the Oklahoma constitutional mandate, the SCOTUS and OCCA opinion and the federal statute regarding the endorsement of witnesses to be produced, to testify, at the trial. The trial court judge and the OCCA court relied on the case Allen v. District Court of Washington County, 803 P2d 1164, 1167 (Okl. Cr. 1990) in allowing the 107 name list notification requirement as constitutional. The Allen opinion cannot override the mandate of the Oklahoma Constitution, Article 2, § 20. The prosecution must provide a case-in-chief witness list at least 2 days before the trial starts, excluding weekends. In a capital case, defense counsel is not required to file any motion requesting a list of witnesses that would be presented in the prosecution's case-in-chief. A list of prosecution trial witnesses is mandated by law and the constitution that the prosecution provide such a list and defense counsel does not have to request it. If the law and constitution stated defense

counsel is required to file this motion and counsel fails to make the request, this is ineffective assistance of counsel. If counsel interpreted the constitutional mandate correctly and did not ask for a continuance to request the state comply with the mandates of the Oklahoma Constitution and Oklahoma case law; this is another instance of ineffective assistance of counsel due to counsel's failure to protect a client's constitutional rights.

Due process requires Petitioner's conviction be remanded back to the United States District Court of Oklahoma or the Oklahoma County District Court for an evidentiary hearing which requires the court to issue a finding of fact and conclusion of law on the constitutionality of Petitioner's defense attorney not being provided with a proper prosecution case-in-chief witness list, witness' address and statement that is consistent with the rule of law, the Oklahoma Constitution and the SCOTUS opinion regarding this Question. In the alternative, Petitioner requests this Court to order a new trial instructing the State to comply with the constitutional mandates of the federal and state constitutions regarding a proper witness list.

QUESTION #2

UNDER THE UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT, SUPREME COURT OPINIONS AND THE OKLAHOMA CONSTITUTION, ARTICLE 2, § 20, DOES A DEFENDANT RECEIVE A FAIR TRIAL AND DUE PROCESS WHEN A PROSECUTION SURPRISE EYE-WITNESS, A FORENSIC EXPERT ARSON INVESTIGATOR AND A LAY PERSON GIVE FALSE TESTIMONY TO THE JURY?

In Respondent's Response Brief (Oklahoma County Assistant District Attorney, **Aaron Etherington**) replies to Petitioner's Subsequent APCR at page 40; "*...is the presumption that prosecutors, as officers of the court do not suborn perjury or otherwise allow false testimony to go uncorrected.*" (Exhibit 5). Then on page 43, Respondent again states, "*Under the law it is presumed that prosecutors adhere to their ethical duty to not present perjured testimony or otherwise allow false testimony to go uncorrected.*" (Exhibit 6). Petitioner's Post-Conviction Application to the trial court and the appeal to the OCCA asked to have the false testimonies litigated and corrected. The district attorney's office, the trial court nor the OCCA court have made any attempt to examine Petitioner's affidavits that show these prosecution witnesses have testified falsely. The only avenue available to Petitioner, in state courts, to get this false eye-witness and false forensic expert arson testimony corrected is through an Application for Post-Conviction Relief, which was summarily denied applying the procedural bar res judicata. The only available avenue to Petitioner now is through a hearing in the federal court system by way of a Writ to conduct a hearing to correct the false testimonies.

The SCOTUS stated in: Giglio v. United States, 405 U.S. 150, 153-54, 92 S. Ct. 763, 31 LEd2d 104, 108 (1972), ("A new trial is required 'if the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . '") (quoting Napue v. Illinois, 360 U.S. 264, 271, 790S. Ct. 1173, 3 LEd2d 1217 (1957)). Not only did this false eye-witness testimony contribute to Petitioner being convicted, the OCCA quoted this false eye-witness testimony in

AFFIRMING Petitioner's Conviction. Dennis v. State, 879 P2d 1227, (Okla. Crim. App. 1994) (Exhibit 4, [10], Page 6 & 7). For the State to knowingly permit the false eye-witness testimony to remain uncorrected violates Napue v. Illinois, supra. See: Moore v. Illinois, 408 U.S. 786, 92 St. Ct. 2564, 33 LEd2d 706 (1972); which states "... the prosecutor has a duty to correct testimony he knows to be false even if its introduction was not knowing or intentional." When false testimony is discovered and the court fails to correct this false testimony; this is a due process violation and right to a fair trial under the Sixth and Fourteenth Amendments of the United States Constitution. Petitioner respectfully requests this Court, which has the authority, to issue a Writ to correct the false testimony.

A. False Surprise Eye-Witness Testimony

False surprise eye-witness testimony from a prosecution surprise eye-witness is a corruption of the trial process. The trial judge and prosecutors have stated, "This proposed eye-witness testimony would be very damaging to Petitioner". (Tr. 1223, 1224 & 1231) (Exhibit 7). Courts have conceded that false eye-witness testimony denies a defendant a fair trial and due process as required under the United States Constitution's Sixth and Fourteenth Amendments. The State has a duty to correct false prosecution eye-witness testimony when this false testimony is brought to light but the State has denied Petitioner a hearing to present evidence which brings to light the false prosecution eye-witness' testimony. The Oklahoma federal district court accepted the affidavit and program cover sheet and made it a part of the record. This affidavit and program

cover sheet contradicts the surprise eye-witness' testimony which indicates this witness testified falsely.

This surprise eye-witness' name was on the 107 name list prosecutor's gave defense counsel on Friday afternoon. The surprise eye-witness' name was not on the 40 plus name list prosecutors gave defense counsel on Monday morning, the day Petitioner's trial started. The prosecutor nor defense counsel made any attempt to verify the truthfulness of this proposed testimony before she testified. Petitioner alleges and states the false surprise eye-witness testimony the prosecution presented to the jury on the last day and hours of the prosecution's case-in-chief had a very profound effect on the jury in finding Petitioner guilty.

Petitioner's defense counsel made no attempt to investigate the surprise eye-witness' testimony prior to or after the prosecution rested their case-in-chief. Petitioner's defense counsel also acted as appellate counsel on direct appeal and did not investigate this issue or present the false testimony issue to the appellate court. This is ineffective assistance of trial and appellate counsel.

Petitioner's new attorney filed a Writ of Habeas Corpus in the Oklahoma federal district court alleging ineffective assistance of counsel regarding the false surprise eye-witness testimony when he discovered and obtained an affidavit from the school teacher who stated this eye-witness was mistaken regarding the day she observed Petitioner being in OKC. (Exhibit 8). The actual day the surprise eye-witness observed Petitioner in OKC was December 13, 1990, not December 7, 1990 as she testified which is six days after the State alleges the victim was killed.

Due to the Anti-Terrorism and Effective Death Penalty Act, this prevented Petitioner from having a full, fair and factual evidentiary hearing to fully and factually develop the ineffective assistance of counsel issue. Petitioner's Writ was denied without the federal court conducting a hearing to allow Petitioner to fully and factually develop the ineffective assistance of counsel issue.

B. False Forensic Expert and Lay Person Arson Testimony

Not only did the prosecution present false eye-witness testimony but also presented false forensic expert arson testimony and false lay person arson testimony to the jury when the forensic arson expert and lay person testified regarding the smoke coloration from a burning pile of cedar trees would be a grayish white color. Not only did the forensic arson expert testified falsely regarding the smoke coloration but also told the jury an accelerant was used which caused the smoke coloration to be black. (Exhibit 9). Testing for accelerants in the soil was negative.

These testimonies went unchallenged by Petitioner's defense attorney as Petitioner's trial attorney was not prepared to meet this arson testimony since he had no idea as to what their testimony would be as he was not furnished with a proper witness list at least two days prior to the start of Petitioner's trial.

In a Subsequent APCR, Petitioner new attorney discovered the testimony given by the forensic expert arson investigator and lay person was false when Petitioner's new attorney contacted an independent arson expert to review their trial testimonies. This independent arson expert submitted affidavits which

stated the testimony given by these two prosecution witnesses was false regarding the smoke coloration from a burning pile of cedar trees. These affidavits state cedar trees contain natural cedar oils and when cedar trees burn, the smoke coloration will be black. (Exhibit 9).

This false forensic arson testimony was quoted by the OCCA in AFFIRMING Petitioner's conviction. (Exhibit 4, [3], [4], & [5], Page 5 & 6). If this Court allows this false testimony to stand, it denies Petitioner due process and a fair trial. Petitioner respectfully asks this Court to grant Petitioner's Writ and remand this case for a hearing on the constitutionality of Petitioner's conviction.

QUESTION #3

DOES A COUNTY DISTRICT COURT HAVE JURISDICTION UNDER THE UNITED STATES CONSTITUTION'S, SIXTH AMENDMENT, TO INQUIRE INTO THE EVIDENTIARY FACTS, APPLY THE LAW, MAKE DECISIONS AND DECLARE JUDGMENT BY JURY TRIAL WHEN THERE IS ABSOLUTELY NOT A SCINTILLA OF EVIDENCE A CRIME WAS COMMITTED WITHIN THAT TRIAL COURT'S JURISDICTION?

For a district trial court to claim venue/jurisdiction of an alleged crime and file a criminal charge, statutory law requires there be some kind of a criminal act(s) be performed that is against statutory law or an overt act(s) committed in preparation to perform a criminal act. Jurisdiction/venue is proper in any district where any overt act(s) in furtherance of the crime is committed. The prosecuting attorney has produced absolutely no evidence of an overt act(s) being committed within the jurisdictional boundaries of the Oklahoma County District Court. "A court's jurisdiction cannot be founded upon surmises." Lynch v. People of New York ex rel. Pierson, 293 U.S. 52, 54, 55 S. Ct. 16, 17, 79 LEd 191 (1934). The

OCCA has ruled, "Lack of jurisdiction can be raised at any time." Johnson v. State, 611 P2d 1137, 1145 (Okl. Cr. 1980. "There are some constitutional rights which are never finally waived." Id. at 1145.

The United States Constitution, Sixth Amendment, Oklahoma Constitution, Article 2, § 20 and state statutes, Title 22, O. S. § 124 & § 134, specifically requires a defendant to be tried in the district where evidence indicates a crime has been or may have been committed, but there must be at least some evidence that a crime has been committed for the district court to have jurisdiction.

The prosecuting attorney told the potential jury members during voir dire, numerous times, that the State does not know *where, when or how* this crime was committed. The prosecutors did not offer or introduced any factual evidence a crime or criminal overt act(s) being committed by Petitioner in the jurisdictional boundaries of the Oklahoma County District Court except for the false testimony of the surprise eye-witness and the alleged murder victim lived in Oklahoma County. Three days after the alleged victim was reported missing, her vehicle was located at the Will Rogers Airport legally parked in the long term parking lot. There was absolutely **no evidence** retrieved by local law enforcement from her vehicle or her residence in Oklahoma County to show she was abducted, met with foul play or killed at that time in Oklahoma County. All indications are she went to the airport to meet with someone or a paramour.

Approximately three months after her reported disappearance, her incinerated remains were located in Dewey County which is over 100 miles from

Oklahoma County. According to law and statutes, Jurisdiction/venue would be proper in the Dewey County District Court if evidence was recovered to show a criminal act was committed, not Oklahoma County District Court where there is absolutely no evidence of a crime or criminal overt act(s) being performed. Homicide and missing person's detectives have testified in a Writ of Habeas Corpus and Preliminary hearing prior to Petitioner's trial that there is ***no evidence*** Petitioner committed any crime and these detectives have not recovered a scintilla of evidence to prove the victim was murdered or harmed in any way in Oklahoma County. (Exhibit 10); (Writ HC Tr. 6, 7, 19, 22 & 24) (Preliminary Tr. 82). A trial court cannot claim venue/jurisdiction upon speculation, supposition, surmises or conjecture. Being a resident of a specific county does not give a trial court jurisdiction unless there is some evidence of a crime or overt act(s) being committed by the defendant. These detectives did not testify at Petitioner's trial. The prosecution nor defense counsel called either of these detectives to testify before the jury about what their investigations uncovered.

QUESTION # 4

WILL THIS COURT ALLOW PETITIONER'S CONVICTION TO STAND WHEN THERE IS NO EVIDENCE PRESENTED, BEYOND A REASONABLE DOUBT, OF THE CRIME ELEMENTS AND WHEN THE CONVICTION IS BASED UPON CONJECTURE, SUPPOSITIONS, SPECULATION AND SURMISES?

Title 21, O.S. § 693, Proof of Murder states:

No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused are each established as independent facts beyond a reasonable doubt.

In Cage v. Louisiana, 498 U.S. 39, 111 S. Ct. 328, 112 LEd2d 339 (1990), the SCOTUS stated;

In state criminal trials, the Due Process Clause of the Fourteenth Amendment “protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” In re Winship, 397 U. S. 358,364, 90 S. Ct. 1068, 25 LEd2d 560 (1970).

“A conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally inform.” Thompson v. Louisville, 362 U.S. 199, 80 S. Ct. 624, 4 LEd2d 654 (1960). “The ‘no evidence’ doctrine thus secures to an accused the most elemental of due process rights: freedom from a wholly arbitrary deprivation of liberty.”

The trial record is totally silent of any evidentiary facts to support the second element, death is unlawful and the third element, the death was caused by Petitioner. Where there is no evidence, beyond a reasonable doubt, to support the second and third element of murder; there is no evidence to support the fourth element, malice aforethought. Evidence required to support a conviction must be presented by the prosecution to meet the standard of proof beyond a reasonable doubt for each element of the crime charged to meet the constitutional mandate of Thompson, *supra*. Failure by the prosecution to meet this standard violates Petitioner’s due process rights of the Fourteenth Amendment and the conviction must be reversed or remanded back to the lower courts to determine the constitutionality of the constitutional claim in regards to the conviction being defective. When there is no evidence of a crime being committed, a guilty verdict

cannot be based upon conjecture, surmises, supposition or speculation. The State has admitted numerous times they do not know *How, When or Where* the victim was killed and the detectives, to whom this case was assigned, have not recovered any evidence within the jurisdictional boundaries of Oklahoma County to inculpate Petitioner in the alleged crime.

REASONS FOR GRANTING THE WRIT

The following reasons Petitioner is requesting this Court to grant a Writ of Habeas Corpus is to have the record of false testimony removed to meet the constitutional mandates of the constitutions and abide by the rule of law. The Opinion issued by the OCCA in Petitioner's case was a published opinion in the Pacific Court Reporter 2d Series. Being a published opinion basically rewrites the law that mandates a required witness list in a capital case, the court's jurisdiction to try the case, the use of false testimony from prosecution witnesses and the use of evidence that is based upon surmises, conjecture, supposition and speculation.

The OCCA's published court opinion (Exhibit 4) could affect future cases where a person is charged with a capital crime. In a capital case, the district attorney can use the shotgun method of providing a witness list to a defense attorney that is based upon the indictment and not the list of witnesses that will be called in the prosecution's case-in-chief as mandated by the constitutions and statute. This causes the defense attorney to be ineffective and powerless in trying to prepare a defense during a weekend from all the witnesses the indictment is based upon. The opinions from SCOTUS and the constitution does not allow this

constitutional, fundamental rights, violation to stand; therefore, Petitioner respectfully asks this Court to grant relief through the issuance of a writ.

The United States Constitution and the rule of law this Country is based upon requires Petitioner receive due process, equal protection and equal access to the courts to litigate meritorious material issues of fact. The Eighth Amendment also prohibits cruel and unusual punishments. Keeping an innocent person incarcerated violates this Amendment. Petitioner further states reasons this Court should grant Petitioner's Petition for the Writ:

Reason # 1. Petitioner asserts the witness list that was provided to defense counsel did not comply with the Oklahoma Constitution, Article 2, § 20; the OCCA opinion in Jackson v. State, supra. (Exhibit 2) and the federal statute, Title 18, U.S.C.A., § 3432, which the United States has held that the two day endorsement requirement is an important right and failure for a trial court to comply with a fundamental right must result in error and a new trial granted or in the alternative the conviction overturned. Petitioner humbly requests this Court grant Petitioner's Petition for relief.

Reason # 2. Petitioner asserts the false testimony from a surprise eye-witness, a forensic expert arson investigator and a lay person had a profound effect on the jury which resulted in the jury finding Petitioner guilty. If there is any doubt about the effect this testimony had on the jury, Petitioner directs this Court's attention to the published court opinion in Dennis v. State, supra. (Exhibit 4).

Petitioner's new attorneys were able to investigate and discover new evidence that these three individuals' trial testimony was false. The new witnesses Petitioner's counsel located have signed affidavits contradicting the prosecution's false eye-witness and arson testimony. The SCOTUS has stated in regards to false testimony that, "**...if there is any likelihood the false testimony affected the trial's outcome, a new trial is required.**" If trial counsel would have done due diligence by performing the required investigations and interviews after the prosecution rested their case-in-chief, these prosecution trial witness' tainted testimony could have been refuted for the fact-finder's consideration. The false testimony from two of these prosecution witness' was quoted in the OCCA Opinion AFFIRMING Petitioner's conviction. (Exhibit 4, Page 5, 6 & 7). The only state avenue available to Petitioner, to correct false testimony, is through the Uniform Post-Conviction Procedures Act by way of an evidentiary hearing, which the Oklahoma County District Court and the OCCA have denied, with procedural bars. This Court has the authority, pursuant to Title 28 U.S.C.A. § 2241 and Rule 22, and must order a hearing in federal district court to correct this false testimony that has been placed before the jury by prosecution witnesses. Trial and appellate counsel's ineffective assistance and false testimony resulted in Petitioner being convicted. False testimony requires a new trial under SCOTUS opinion.

Reason # 3

The highest judiciary in the land must ensure that incarcerated indigent individual's constitutional rights are not infringed upon and must afford indigent

defendant's adequate and effective appellate review, be free from unreasonable distinction and require the state to offer each defendant a fair and equal opportunity to obtain an adjudication on the merits of material issues of fact brought forth in the appeal. A defendant being held to answer for a crime in a district court where there is absolutely no evidence of a crime or criminal (overt) act(s) strictly violates a defendant's constitutional and statutory rights. This Court must correct this fundamental miscarriage of inhumane justice.

Reason # 4

The United States Supreme Court and lower appellate courts have ruled a conviction cannot stand when the guilty verdict is based upon suppositions, surmises, speculation and conjecture. For this reason, this Court should remand this case back to the federal district court or the state district court to make a de-novo determination of the sufficiency of the evidence after the false testimony is removed from consideration.

CONCLUSION

The Petition for a Writ of Habeas Corpus should be granted for the constitutional and statutory violations Petitioner has been subjected to. This Court has the legal and constitutional authority to reverse Petitioner's conviction due to these constitutional violations and order a new trial or in the alternative order an evidentiary hearing in the federal district court or the Oklahoma County District Court. Under the Oklahoma Constitution, Article 1, § 1, the Oklahoma Courts are required to abide by the rulings of the United States Supreme Court

and federal law. When the rule of law established by the highest court in the land and when the lower courts ignore these rulings, this creates chaos and the conviction of the innocent.

Respectfully submitted,

Leroy Dean Dennis

Leroy Dean Dennis, pro-se, 204490
Box 548, J-D-154
Lexington, OK 73051

Date: July 20, 2018