No. 18-7322

IN THE SUPREME COURT OF THE UNITED STATES

SPRING TERM 2019

Robert Roland Yerton, Jr.,
Petitioner,

v.

Jason Bryant, Warden
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

March 31, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MISCELLANEOUS

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Robert Roland Yerton, Petitioner, Pro se, respectfully petitions for rehearing of the Court's decision issued on March 15, 2019. Yerton v. Bryant, No. 18-7322, 2018 WL 1231843 (March 18, 2019). Mr. Yerton moves this court to grant this petition for rehearing and consider his case with merits briefing and oral arguments. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case[1] [2].

REASONS FOR GRANTING THE PETITION

This case is strictly a matter of hearsay. It is at its core the word of the Petitioner against the word of his anger filled, vengeful, vindictive and millennial entitled son. There is no DNA evidence, video recording, other physical evidence, or actual witness to any of the events the Petitioner has been accused of by his son. Much like the recent Jussee Smollett accusations in Chicago, the "victim" has made up a convenient lie to further his own cause and gain; in this instance the further endearment of his maternal grandmother and the hope that his parents would get a

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[1] The Petitioner received his official notice via the James Crabtree Correctional Center Legal mail clerk on Friday March 22, 2019 at 1:15pm

[2] The Petitioner is only allowed to type his appeal for one hour at a time each day and then must print what he has typed at the end of that hour. There is no opportunity for corrections, edits, or additions of new information in a manner that flows. The Petitioner asks this court for their indulgence and apologizes in advance for the haphazard way that the Petition may wind up being constructed. Per a conversation with Law Librarian Mrs. Gaskill on March 25, 2019 at 3:05 pm she is using her discretion per OP's not to save the Petitioners work product so that he may make insertions of case law and manipulate the text.

divorce so that his mother would turn her full attentions and affections upon himself.

In denying the Petitioner his Certiorari Appeal, you are supporting the Respondents' lies, abetting the trial court judge in his grievous errors and missteps, and endorsing the Tulsa County District Attorney's Office in their decade's long efforts to incarcerate those who they deem unfit for society by whatever means they can. In this case the suppression of evidence and lack of exonerative investigation by the lead Detective, Diana Baumann[3], and the manipulations, marionetting, and malfeasance of Assistant District Attorneys Jake Cain and Sarah McCamis.

In addition to the Questions presented in the original Direct Appeal and Certiorari this Petitioner feels that this Honorable Court should know of the egregious way that he was treated by the Tulsa County District Courts. His Due Process was violated many, many times from the time of his original arrest. His original Trial Court Judge, Thomas Glasco, had to be recused for having discussions in chambers with the Assistant District Attorney (ADA), Sarah McCamis, without him or his attorney being present. This resulted in ADA McCamis having to take the stand to testify against the Judge. This furthered the tension between her and the Petitioner's Attorney. After that it became a tit for tat game of one-upsmanship between the two attorneys.

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[3] see http://www.tulsaworld.com/news/courts/error-in-investigative-process-caused-delay-in-discovery-of -witness/article 5668c0f7-b222-5a4f-b1a6-ba2953bf4494.html Detective Dianna Baumann is currently under investigation for her tactics and judgment as a detective. In the referenced article/case she withheld evidence from the prosecution as well as the defense, failed to conduct follow up interviews and investigations, and committed other substantial errors.

At trial, in front of a jury full of Bible-belt straight-laced peers ADA McCamis made several direct inferences to her perception of the Petitioner's sexuality and sexual orientation in an effort to cast him in as bad a light as possible to the jury. She did this in her direct examination of him, of the computer forensic analyst, and again at closing. Her attacks were vicious and unwarranted, but had their effect. After a thirteen hours deliberation that ended at 2am, while the jury acquitted him of two counts associate with the original accusations raised by the teacher/counselor he was firing, the counts that were associated with the perjury statements from his son stood.

This Court Should Not Resolve the Substantial and Important Factual Issues in this Case Without Full Briefing and Argument.

I. The Petitioner never received a copy of the Reply from the Oklahoma Courts submitted to this Court, nor a copy of the wavier form that was mailed to the States Attorney General. If a Reply from the Oklahoma Courts was considered, the Petitioner never was given the opportunity to file a Response to that Reply.

II. Question number one presented in the Certiorari goes to the heart of the Petitioners defense. It deserves a full briefing with arguments. ADA McCamis was making claims that the Petitioners was homosexual and therefore a predator to the children that were in his school building. She was pandering to the Bible-belt born

and bred jurors who were selected to hear this case. Despite pre-trial hearings to limit this kind of character assassination, the ADA persisted in their usage. When the Petitioner attempted to put on an expert witness, Dr. Rick Kishner, to counter these claims, the trial court judge did not allow the expert to be heard claiming that, "I believe and I'll find for this record that it is a res gestae situation, that the evidence of computer homosexual pornography left in a position that could be viewed by Brandon Yerton is some circumstantial evidence of the commission of the crimes charged...(Tr. 208). The trial court's ruling was contradictory. It claims the evidence was res gestae because it was circumstantial evidence of the offense charged. These are two completely separate concepts. Res gestae evidence has been described as evidence of "maters incidental to the main fact and explanatory to it, including acts which are closely connected therewith as to constitute a part of the transaction and without knowledge of which the main fact might not be properly understood." **Dixon v. State**, 1977 OK CR 32, 560 P.2d 204, 206. Circumstantial evidence "is proof of facts or circumstances which give rise to a reasonable inference of other connected facts that tend to show the guilt or innocence of a defendant." OUIJ-CR-9-3.

Res gestae evidence must be closely connected with the offences, but need not prove a defendant's guilt, while circumstantial evidence must prove a defendant's guilt, but need not be closely connected to the offense. The ruling that the evidence was res gestae because it was circumstantial in thus not sound legal analysis. In the Court of Criminal Appeals of the State of Oklahoma (OCCA) Summary Opinion

Denying the Petitioner's Direct Appeal, Judge Lumpkin made a special note that the Trail Court's decision to admit the homosexual pornography found on the [Petitioner's] computer as res gestae evidence for an abuse of discretion. Because the OCCA found that evidence to be circumstantial, the Petitioner certainly should have ~~be~~ been allowed to be able to call his own defense expert witness to the stand.

As it was, the homosexual imagery in question was testified to by forensics detective Darren Gibson to be 6 pictures in "a temporary internet file or deleted, were not downloaded or saved, were associated with pop-up's or banners, and could have been placed in those folders with being viewed by the computer user even being aware of their presence" (Trial Transcript Volume V, p. 778-780).

In **Tobler v. State**, 1984 OK CR 90, 668 P. 2d 350, the OCCA reversed the defendant's conviction in part because of the introduction of the evidence regarding the defendant's homosexuality. The OCCA held, "The most damaging and prejudicial errors were the frequent allegations that [the] appellant ~~in~~ is homosexual, and testimony to that effect." The Petitioner would point out to this court that the OCCA is not making the same application in this case. By denying Certiorari you are agreeing with the OCCA that this issue is now anticipatorily procedurally barred and the Petitioner is no longer able to pursue these lines in an appeal back to the trial court.

In **Melendez v. Pliler**, 288 F3d 1120 (CA 9 2002) the courts upheld that a federal court ""should not insist upon a petitioner, as a federal procedural prerequisite to obtaining federal relief, complying with a rule the state itself does

not consistently enforce." **Siripongs v. Calderson**, 35 F.3d 1308, 1318 (9th Cir. 1994). cert denied, [omitted]." Nor should the federal court enforce a bar grounded on a rule which is unclear or uncertain. See Morales v. Caldreon, 85 F.3d 1387, 1390-92 (9th Cir. 1996), cert. denied [omitted.]" In Fama v. Comm. of Corr. Servs., 235 F.3d 804, 811 (2d Cir. 2000) "Reliance on an independent state procedural bar is not "clear from the face of the opinion' when a state appellate court dismisses a claim saying, "the defendant's remaining contentions are either unpreserved for appellate review or without merit."[1]

III. By denying the Certiorari you are upholding the OCCA position that the Petitioner cannot overcome the anticipatory procedural bar that they placed on many of the Direct Appeal arguments made by his Oklahoma Indigent Defense System (OIDS) counsel. These are substantive arguments that you are declaring to be dead issues because the OIDS attorney, Thomas Purcell, made stylistic choices in his presentation. In **Matchett V. Dretke**, 380 F.3d 844 (CA5 2004) the courts said that, "We have repeatedly held that ineffective assistance of state habeas or post-conviction counsel cannot serve as cause for a procedural default. In this instance, the anticipatory procedural bar issues are being raised because of the ineffective assistance of OIDS counsel, and therefore should not serve as cause for a procedural default by the denial of my certiorari. Maple v. Thomas, U.S., 132 S. Ct. 912, 922, 181 L.Ed 2d 807 (2012) points out that procedural bar should be waived in it was caused by the state actor. Valdez v. State 406 p. 3d (2002) establishes that there should be equity in procedural bar, where here there clearly is not.

When a claim is procedurally barred by the application of an anticipatory bar, it may not be considered for federal habeas review unless the Petitioner demonstrates causes for the default and actual prejudice, or that failure to consider the claim will result in a fundamental miscarriage of justice **Coleman**, 501 U.S. (1991). The Petitioner will attempt to show that a fundamental miscarriage of justice has occurred in his case that has resulted in his unjust, wrongful, and illegal incarceration due to the steadfast and persistent perjurous statement of his son.

One of the arguments has to do with the substantive facts that the Petitioner was **not** fired/terminated by Tulsa Public Schools[4] [5] as ADA Sarah McCamis continued to falsely assert in her prosecution statements to the jury. ADA McCamis used this one issue [redacted] to attempt to color all of the Petitioner's testimony as perjurous.

Another of the anticipatory procedural bar issues lays with the letter written by a former Tulsa Public Schools Campus Police officer used to call the Petitioner a predator. The Petitioner continues to claim that the evidence was inadmissible because its probative value was substantially outweighed by the danger of unfair prejudice, because it was improper opinion evidence, and because it was hearsay. 12 O.S. 2001, §§ 2701-03 and 2403 of the Evidence Code. **McCarty v. State**, 1988 OK CR 271, 765 P. 2d 1215,1218 In addition, the campus resource officer did not come to court for cross examination, although he was available to do so, and the trial court still allowed this letter to be read before the jury. It was blatant hearsay and a

[4] see www.tulsaschools.org/1 Administration/ board agendas/AgendaSp 100629.pdf
[5] see www.tulsaschools.org/1 Administration/ board agendas/Addendum 100706.pdf

violation of the right of confrontation. The Petitioner could not confront the school resource officer whose letter was being read to the jury. "In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." US Const. amends. XI, XIV; Okla. Const. art. II § 20. The purpose of the Confrontation Clause is to "constitutionalize a barrier against...absentee witnesses." Maryland v. Craig. 497 U.S. 836. 1100 S. Ct. 3157, 3166, 111.Ed.2d 666 (1990). Allowing the jury to be exposed to hearsay statements of a police officer who claimed that the Petitioner exhibited predatory behavior was extremely prejudicial. This prejudice was increased when the prosecutor discussed the letter during closing arguments. By denying Certiorari you are agreeing with the OCCA that this issue is now anticipatorily procedurally barred and the Petitioner is no longer able to pursue these lines in an appeal back to the trial court.

IV. By denying Certiorari you are allowing the state (Tulsa County) to continue to endorse Tulsa Police Detective Dianna Baumann's withholding of exculpatory evidence, as she deems fit and necessary, because it will not support her arrest nor the County's conviction. As previous referenced, Dianna Baumann was the lead detective in my case. In a subsequent case she[6] held back exculpatory evidence in her master file that was not turned over to the defense attorney [7] of William Bridges. Once this evidence was turned over, at retrial Mr. Bridges was acquitted by a jury in February of 2019. Similarly, Detective Baumann was subpoenaed duces tecum, yet did not bring her files, notes, paperwork etc. with her to trial. In Trial transcripts Volume X p. 1672-1760 the detective cannot, or will not, answer defense questions because she, "does not have her notes". The defense attorney objected during trial to the detective not honoring the subpoena: each objection was sustained and he was eventually told that this was a "housekeeping issue" by Judge Kellough. On page 1705 Det. Baumann could not answer, "without my reports". On page 1715 Det. Baumann said that, "she did not do follow up interviews to confirm the reliability of her complaining witness (Brandon Yerton, the Petitioner's son)". On page 1726 Det. Baumann replied that, "she could not answer the question without her reports". Again the defense attorney raised the issue with the courts that she was subpoenaed along with her notes.

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[6] see http://www.tulsaworld.com/nes/courts/error-in-investigation-process-caused-delay-in-discovery-of-witness/article 5668c07-b222-5a4f-b1a6-ba2953bf4494.html

[7] see Tulsa County cases CF-2017-1611, CF-2018-5720, and MI-19-48

On page 1729 the defense attorney noted that all favorable reports made by interviewing witnesses were withheld from the prosecution and defense. On page 1741 the Det. replies that she, "cannot answer without her notes". On pages 1742-45, when confronted with the fact that the Det. had interviewed one Sherry Wallace-Fernandez, and questioned as to why that report was not in the District Attorney's possession, nor the Defenses, the Detective could not provide an answer. We now know, 6+years later, that this was a pattern of behavior by Detective Baumann as evidenced in the trial and acquittal of William Bridges in Tulsa County case number CF-2018-5720.

This issue with Detective Baumann is a Brady issue. In **Scott v. Mullin,** 303 F3d 1222 (CA10 2002) the courts said that the state's failure to disclose information constitutes cause to excuse procedural default because the State's concealment of the evidence is an "objective factor external to the defense that impeded counsel's efforts to comply with the State's procedural rule. The court granted Scott habeas corpus relief based on a violation of Brady and ordered a new trial.

V. By denying Certiorari you are allowing the state (Tulsa County) to continue to endorse Tulsa County's ranking near the top for the nation's percentage of wrongful convictions[8] [9]. The database, maintained by the University of Michigan Law School, indicated Tulsa County had had 10 of the 31

[8] https://www.tulsaworld.com.news/courts/national-registry-tulsa-county-ranked-in-top-percent-for-number/article_b21bd26d-96ce-5c76-8357-f75f44f13419.html
[9] https://www.bur.org/hereandnow/2018/07/02/Oklahoma-highest-incarceration-rate

exonerations in the state of Oklahoma, tying it with five other counties or cities also with 10. According to the National Review Oklahoma has a wretched record of wrongful convictions[10]. According to the author, since 1993, 35+ wrongfully convicted Oklahomans have been officially exonerated, according to the National Registry of Exonerations; 17% for sexual assaults. Recently, 8 child sex abuse defendants were exonerated, seven after convictions involving perjury or false allegation, and only one of which were exonerated by DNA evidence [11].One of the referenced articles goes on to say that a toxic brew of perjury and official misconduct contributed to nearly two-thirds of 31 wrongful convictions reversed since 1989, according to the National Registry of Exonerations. Tulsa's frequent exonerations could be seen as a glass half full or a glass half empty. On the one hand, Oklahoma has demonstrated a capacity to identify and reverse some wrongful convictions. The abundance of wrongful convictions available to be reversed, however, could indicate a propensity for shoddy justice in Oklahoma's court system. The data indicated that lies and misconduct result in wrongful conviction more often than DNA evidence gets bad convictions reversed. Although DNA evidence contributed to some Oklahoma exonerations, nearly two-thirds were not the result of DNA evidence. Perjury and false allegations contributed to underlying convictions in more than three out of five cases.

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[10] https://www.natinalreview.com/2018/08/Oklahoma-wrongful-conviction-record-shameful/

[11] https://withlawoffice.com/Tulsa-attorney-blog/2016/05/database-ranks-tulsa-county-oklahoma-near-top-exonerations-list

VI. Perjury and false allegations are all of the evidence that the state has to offer in this case. By denying Certiorari you are allowing the state (Tulsa County) to continue to give a wink and a nod to those whom use false allegation of abuse for their own personal gain. Whether they be Jussie Smollett so that he can extend his contract with FOX-TV, with Dr. Kristine Blasey-Ford to discredit Brett Kavenaugh to block his nomination to the Supreme Court, or with my son in an effort to convince his grandmother to purchase him a new truck, allow him to drop out of school, and to hope that his mother and I would divorce so that she would turn her affections only towards himself.

The Petitioner cannot show or prove "factual innocence" anymore that ADA Sarah McAmis could prove "factual guilt" by the state. The prosecution asserted to the jurors that there is no physical evidence in this case (State's Ex. 14, Tr. III, p. 391) and that all they have "is a witness telling you and explaining to you" their version of what they allege happened (States Ex. 14, TR III, p. 391). In **Hayes v. Battaglia**, 403 F.3d 935 (CA 7 2005) the courts said that to demonstrate innocence so convincingly that no reasonable jury could convict, a prisoner must have documentary, biological, or other powerful evidence. The Petitioner asserts that the reverse should be true to demonstrate actual guilt. In this case, as testified to by the Prosecution and the State, there is no powerful evidence; it is a "Dad's says versus what the son says".

Even the State's Assistant Attorney General declares in her response to the Petitioner's appeal in the United States Federal Court to the North District of

Oklahoma that "it was essentially the Petitioner's word against the victims," (p. 31, par. 2). Furthermore, on p. 13 the state declares that the Petitioner has not alleged actual innocence of the charges. ***This Petitioner absolutely has declared his innocence, several times*** (State's Ex. 14, Tr. XI, p. 1927). The Petitioner's conviction is a fundamental miscarriage of justice resulting in his unjust conviction. He is innocent and this Honorable Court should consider these claims, and grant Certiorari, finding that the claims of anticipatory procedural bar (**Schlup v. Delo**, 513 U.S. 298, 321-322, 115 S. Ct. 851, 864, 130 L. Ed. 2d. 808-832 (1995) by the OCCA are incorrect[12], overturn his case, and use his case to shed light on the prejudicial, political and predetermined injustice sought by the

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[12] see **Melendez v. Pliler**, 288 F.3d 1120 (CA 9 2002) p. 1124 [...] Although a state procedural rule is sufficient to foreclose review of a federal question, an inquiry into the adequacy of such a rule to foreclose review 'is itself a federal question." **Douglas v. Alabama**, 380 U.S. 415, 422 85 S.Ct. 1074, 13 L.Ed 2d 934 (1965). To be adequate," the state procedural bar must be "clear, consistently applied, and well established at the time of the petitioner's purported default." **Calderon v. U.S. Dist. Court**, 96 F.3d at 1129, a federal court "should not insist upon a petitioner, as a federal procedural prerequisite to obtaining federal relief, complying with a rule the state itself does not consistently enforce." **Siripongs v. Calderon**, 35 F. 3d 1308, 1318 (9th Cir. 1994) nor should the courts enforce a bar grounded on a rule which is unclear or uncertain.

In this case, the OCCA has anticipatorily procedurally barred the Petitioner because of stylistic choices made by his OIDS counsel, an therefore his counsel should be help ineffective end the petitioner allowed to return to court to argue the issues that the OCCA has designated as barred. In **Matchett v. Dretke**, 380 F3d 844 (CA5 2004) the court said that it has repeatedly held that ineffective assistance of state habeas post-conviction counsel cannot serve as cause for a procedural default. In **Maple v. Thomas**, U.S. 132 S.Ct 912,922, 181 L.Ed 2d 807 (2012) the courts have said that procedural bar should be waived in it was caused by the state actor. In this present case that state actor was the OIDS attorney, Thomas Purcell.

prosecutors of the Tulsa County District Attorney's Office, the injustices adjudicated in Tulsa County Courtrooms, and injustices agreed to by well meaning, but maliciously maligned, manipulated, and marionetted Tulsa County jurors and set him free (**Jackson v. Virginia**, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d. 560 (1979).

These are precisely the type of issues that need to be resolved in full briefing and arguments and for this reason, rehearing is appropriate see **Schweiler v. Hansen**, 405 U.S. 785, 791 (1981) (Marshall, J., dissenting) (summary disposition only appropriate in cases where "law is settled and stable, the facts are not in dispute, and the decision below in clearly in error").

CONCLUSION

Mr. Yerton respectfully request that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Respectfully Submitted,

Robert R. Yerton, Jr.

March 31, 2019

No. 18-7322
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Robert Roland Yerton, Jr.
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RULE 44 CERTIFICATE

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented[1]," and that the Petition is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2019[2].

Robert R. Yerton Jr

Robert Roland Yerton, Jr.
Petitioner Pro se

[1] The Petitioner asks this Court to take judicial notice that the circumstances surrounding the withholding of exculpatory evidence in Tulsa County case # CF-2018-5720 (William Bridges) as declared on pages 2 and 9-10 of this petition, resulted in an acquittal by jury trial once the duplicity, unethical practices, and outright deception of the Tulsa Police Department's (ret.) detective Dianna Baumann was exposed and he was remanded for a re-trial. Mr. Bridges acquittal occurred on 3-22-2019.

[2] This Rule 44 Certificate is being sent to correct the errors pointed out to the Petitioner in the letter from Scott S. Harris (by Jacob Levitan) dated April 11, 2019. This certificate, along with the entire Motion for Rehearing, was placed back into the legal mail mail-box via the James Crabtree Correctional Center Law Librian Mrs. Melody Gaskill on Wednesday April 17, 2019 at 1:30 pm