

19-8697

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Shiran Davis — PETITIONER
(Your Name)

FILED
JUN 02 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

State of Oklahoma RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shiran D. Davis
(Your Name)

3200. S. Kings highway
(Address)

Cushing, Ok, 74023
(City, State, Zip Code)

918-225-3336

(Phone Number)

RECEIVED
JUN 10 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Can trial Court Determine Parent-Child relation with no genetic testing to Convict in Child Neglect Case after Dispute of Not Being Children Parent? 843.5 (c) "uniform parentage act"...
2. Can trial Court Ignore Statutory Right to multiple punishment limitations, Due to trial Counsel failing to object on Specific grounds in available Statute? "21.O.S. § 11".
3. Can OCCA Courts Deny proposition of "Insufficient evidence of Domestic a:b Resulting in great Bodily", when previously, they Ruled that identical facts in my Case was Insufficient in the Case of Marshall v. State, 1982.OK Cr. 76, 646.
4. Can Courts ignore legal rights : uphold Rulings due to trial attorney Waiving my legal rights without my Knowledge or Intelligence or without me Voluntarily waiving Rights.

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:

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A Decision of Direct Criminal appeals

APPENDIX B Decision of State trial Court

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES "Attached" Documents	Marshall v. State, 1982 OK Cr 76,646 Davis v. State, 1999 OK Cr 48 91 13,993 p.2d,124,126-27 Cox v. State, Okla. Crim. App., 152 p.3d 244 (2006) Gilson v. State Okla Crim App .8. p.3d 883 (2000)	PAGE NUMBER 8

"Attached essential Documents" ..

STATUTES AND RULES

210.S.2011 § 11. - Specific Statute - multiple punishment
limitations from Crimes arising out of a Single
Specific act...

Ok uniform parentage act - legally establishing Parent-
Child Relation after Dispute or Children born out
of wed-lock; absence of a legally established
parent prohibits any Judge from making Decision
Judicially or administratively without proper procedures
under above said parentage act. Reliable genetic test.

**PROPOSITION FOUR: THE APPELLANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF
COUNSEL.** 18

**PROPOSITION FIVE: THE TRIAL COURT ERRED IN GIVING A MODIFIED INSTRUCTION
NO. 4-37, OUJI-CR(2D)(SUPP.2015)(NEGLECT OF CHILD-ELEMENTS) TO THE JURY.**

22

CONCLUSION 25

CERTIFICATE OF MAILING 26

TABLE OF AUTHORITIES

Cases

<i>Ballard v. State</i> , 2001 OK CR 20, ¶ 5, 31 P.3d 390, 391	13
<i>Barnard v. State</i> , 2012 OK CR 15, ¶ 13, 290 P.3d 759, 764.....	25
<i>Beasley v. State</i> , 1982 OK CR 75, ¶ 3	16
<i>Black v. State</i> , 2001 OK CR 5, ¶ 65, 21 P.3d 1047, 1070	20
<i>Chapman v. California</i> , 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967).....	13
<i>Cipriano v. State</i> , 2001 OK CR 25, ¶ 14, 32 P.3d 869, 873	11, 22
<i>Davis v. State</i> , 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126-127.....	16, 17, 24

<i>Flores v. State</i> , 1995 OK CR 9, ¶ 5, 896 P.2d 558, 560 <i>cert. denied</i> 516 U.S. 1002, 116 S.Ct. 548, 133 L.Ed.2d 450 (1995)	10, 25
<i>Harris v. State</i> , 2007 OK CR 28, ¶ 6, 164 P.3d 1103, 1108	26
<i>Hogan v. State</i> , 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923	17, 19
<i>Kolberg v. State</i> , 1996 OK CR 41, ¶ 5, 925 P.2d 66, 68	16, 19
<i>McVicker v. State</i> , 1968 OK CR 21, § 4, 437 P.2d 457, 458	12, 15, 23
<i>Morris v. State</i> , 1985 OK CR 156, ¶ 4, 711 P.2d 109, 110	12, 15, 23
<i>O'Bryan v. State</i> , 1994 OK CR 28, ¶ 7, 876 P.2d 688, 689	13
<i>Revilla v. State</i> , 1994 OK CR 24, ¶ 16, 877 P.2d 1143	9, 24
<i>Romano v. State</i> , 1995 OK CR 74, ¶ 80, 909 P.2d 92, 120	24
<i>Shrum v. State</i> , 1999 OK CR 41, ¶ 10, 991 P.2d 1032, 1036	11, 22
<i>Simpson v. State</i> , 1994 OK CR 40, ¶ 28, 876 P.2d 690, 698	13
<i>Smith v. State</i> , 1973 OK CR 243, ¶ 25, 509 P.2d 1391, 1397	14
<i>Spuehler v. State</i> , 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203	14
<i>Stanley v. State</i> , 1988 OK CR 151, ¶ 14, 762 P.2d 946, 949	9, 24
<i>State v. Vincent</i> , 2016 OK CR 7, 371 P.3d 1127	26
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984)	20, 23

Statutes

12 O.S.2011, § 577.2	26, 27
20 O.S.2011, § 3001.1	10, 13, 25, 26
21 O.S.2011, § 11	16, 17, 19, 24
21 O.S.2011, § 11(A)	16, 19
21 O.S.2011, § 645	3

21 O.S.2011, § 646	12, 14, 15, 23
21 O.S.Supp.2012, § 1287	3
21 O.S.Supp.2012, § 741	3
21 O.S.Supp.2014, § 1283	3
21 O.S.Supp.2014, § 644(C).....	11, 13, 22, 23
21 O.S.Supp.2014, § 644(F)	3
21 O.S.Supp.2014, § 644(G)	3
21 O.S.Supp.2014, § 843.5(C).....	3, 25, 26
22 O.S.2011, § 60.6	3
22 O.S.2011, § 916	11, 13, 22

Other Authorities

Fourteenth Amendment to the United States Constitution	9, 24
Instruction No. 10-24, OUJI-CR(2d)(Supp.2003)	10, 21
Instruction No. 26 (OUJI-CR 10-15)	10, 21
Instruction No. 4-26A, OUJI-CR(2d)(Supp.2012)	10
Instruction No. 4-37, OUJI-CR(2d)(Supp.2015)	25, 26, 27
Section 20 of Article II of the Oklahoma Constitution	21
Sixth Amendment to the United States Constitution	21

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the O.C.C.A. court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 3/5/20. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

21.O.S. 2011 § 11 - Specific Statute - multiple punishment limitation from Crimes arising from Single Specific act (Specific Control the general). Appendix A

Sixth amendment - article 11 of section 20
Ineffective Counsel - united States : Oklahoma
Constitution guarantees effective Counsel in a
wide range. Appendix A

uniform parentage act - legally establishing
parent - child relation thru Reliable genetic
testing Appendix A

STATEMENT OF THE CASE - attached Statement.

In the Facts of my Case i was Convicted on several Counts, Dom a:b Resulting in great Bodily harm, Dom A:b in the presence of minor, V.P.O., Child Neglect, i was Convicted of these Counts & Sentenced Consecutively in violation of 21.O.S.11, these Crimes arose from a single Specific act, "Dom a:b in the presence of Minor Children, In the States alleged Information of V.P.C. It was a violation of attack Causing Injury to alleged Victim, the Dom a:b in the presence of a minor Merged with the Dom a:b Resulting in great Bodily harm, After trial attorney Filed a motion to Merge the Child Neglect into the Domestic a:b in the presence of a minor, the trial Judge Denied that specific request & my trial Counsel then asked that he merge the Dom a:b in the presence of minor with the Dom a:b Resulting in great Bodily harm, Jury found me guilty of a parent being Responsible for their health, wealth & exposing them to illegal activities, 3 Different elements that's Required to Convict, State presented no proof of me being a Parent after being alleged to be Father of 4 of Victims 5 Children after trial attorney objecting to parent Claims made by Victim, i was still Convicted for Child neglect under 1 of Neglect elements, "parent". Without being legally established by a Reliable genetic testing, State never presented any sufficient evidence, or any forms of acknowledgement of me me ever claiming any of victim's Children

In violation of the Oklahoma uniform parentage act, the victim was impeached during trial for being untruthful, the facts of this matter is, if a paternity test was ordered as the u.p.a requires ; Instructs a judicial or administrative law judge after a alleged father Disputes of being a parent, a Jury would of been able to determine realistic reliable scientific genetic test form's or a Judge would of been legally able to remove Child Neglect Jury Instructions from being Decided on by his finding of facts, in the absence of reliable evidence, the lower court should have never allowed me to face prosecution of the charge of Child Neglect after parent Dispute Claims without doing what the uniform parentage act requires. In the O.C.C.A opinion Summary, the Judge does not Disputed me being sentence wrong, they clearly state that my trial Counsel should have objected to the specific language in 21.O.S §11 on the specific grounds of multiple punishment limitations arising from a single act at trial or sentencing, Child Neglect ; U.P.O should have merged into Dom a:b Resulting in great Bodily harm just like the Dom a:b in the presence

of a minor as the State Conceded, but on factual Basis i would of never been Convicted of Child Neglect if the lower Courts would have followed the uniform Parentage Act procedures to legally establish Parent-Child Claims. The O.C.C.A summary opinion also stated that Chipped teeth was sufficient to Support Conviction of Dom & b Resulting in great bodily harm when the Injury in my Case that was alleged to be caused by me was identical in the Case of Marshall v State 1982 OK Cr. 76. 646 where the Same Courts Rejected that the Same Injury was insufficient to Convict for aggravated a&b. an furthermore It is required to prove parent-Child Relation to Convict In Child Neglect Claims It is also required that State prove that the Alleged parent is Responsible for the health, Safety, & welfare of alleged Children or a person Responsible period, So in absence of the U.p.a procedures Courts should have never allowed a Jury to Convict based Solely off of an oral testimony from victim After Dispute in earlier preliminary proceedings of objections of being a parent in the omission of a paternity test.

STATEMENT OF THE CASE

On June 22, 2016, a Felony Information was filed in Tulsa County District Court in Case No. CF-2016-3321 charging Appellant with commission of crimes in seven counts. Count 1 charged Appellant with committing the crime of Assault and Battery with a Dangerous Weapon in violation of 21 O.S.2011, § 645. Count 2 charged Appellant with committing the crime of Domestic Assault and Battery Resulting in Great Bodily Harm in violation of 21 O.S.Supp.2014, § 644(F). Count 3 charged Appellant with committing the crime of Kidnapping in violation of 21 O.S.Supp.2012, § 741. Count 4 charged Appellant with committing the crime of Child Neglect in violation of 21 O.S.Supp.2014, § 843.5(C). Count 5 charged Appellant with committing the crime of Possession of a Firearm AFCF in violation of 21 O.S.Supp.2014, § 1283. Count 6 charged Appellant with committing the crime of Domestic Assault and Battery in the Presence of a Minor Child, a misdemeanor, in violation of 21 O.S.Supp.2014, § 644(G). Count 7 charged Appellant with committing the crime of Violation of a Protective Order, a misdemeanor, in violation of 22 O.S.2011, § 60.6. The second page of the felony information charged Appellant with having four prior felony convictions. (O.R. 3, 24-29)

A preliminary hearing was held for Appellant on August 23, 2016. At the conclusion of the preliminary hearing, the Magistrate permitted the addition of Count 8 which charged Appellant with Possession of a Firearm in Commission of a Felony (Kidnapping) in violation of 21 O.S.Supp.2012, § 1287. Also, the Magistrate overruled Appellant's demurrer and bound Appellant over for District Court Arraignment. (O.R. 5) (Tr. Prel. Hrg., 32-39) An Amended Felony Information adding Count 8 was filed on August 29, 2016. (O.R. 5, 44-49)

On December 1, 2016, District Court arraignment was held before District Judge William D. LaFortune. Following denial of a motion to quash, the Appellant stood mute and the Court entered a not guilty plea on his behalf and set the matter for jury trial. (O.R. 7) (Tr. Hrg. on Motion to Quash on Dec. 1, 2016, 13-16, 22)

Jury Trial for Appellant began on September 17, 2018 and ended on September 21, 2018 before District Judge William LaFortune. (O.R. 15, 16) During the first stage of jury trial, the jury found Appellant not guilty of Assault and Battery with a Dangerous Weapon in Count 1 (Count A), found Appellant guilty of Domestic Assault and Battery Resulting in Great Bodily Harm in Count 2 (Count B), found Appellant not guilty of Kidnapping in Count 3 (Count C), found Appellant guilty of Child Neglect in Count 4 (Count D), found Appellant guilty of Domestic Assault and Battery in the Presence of a Minor Child in Count 6 (Count E), found Appellant guilty of Violation of Protective Order in Count 7 (Count F), and found Appellant not guilty of Possession of a Firearm While in Commission of a Felony in Count 8 (Count G). (O.R. 16) (Tr. Proceedings on Sept. 21, 2018, Vol. V, 90, 91) During the second state of jury trial, the jury found Appellant not guilty in Count 5 (Count H) of Possession of a Firearm After Former Conviction of a Felony. (O.R. 16) (Tr. Proceedings on Sept. 21, 2018, Vol. V, 116) During the third stage of jury trial, the jury found Appellant guilty in Count 2 (Count B) of Domestic Assault and Battery Resulting in Great Bodily Harm after two or more previous convictions and fixed punishment at four (4) years; found Appellant guilty in Count 4 (Count D) of Child Neglect after two or more previous convictions and fixed punishment at twenty-two (22) years; fixed punishment at one (1) year in Count 6 (Count E) for Domestic Assault and Battery in the

Presence of a Minor Child; and fixed punishment at one (1) year in Count 7 (Count F) for Violation of a Protective Order. (O.R. 16) (Tr. Proceedings on Sept. 21, 2018, Vol. V, 148, 149)

Sentencing for Appellant was held on September 28, 2018. At sentencing, District Judge LaFortune merged Count 6 into Count 2. On Count 2, Judge LaFortune sentenced Appellant to four (4) years in the Department of Corrections. On Count 4, Judge LaFortune sentenced Appellant to twenty-two (22) years in the Department of Corrections to run consecutive to Count 2. On Count 7, Judge LaFortune sentenced Appellant to one (1) year in the Tulsa County jail to run consecutive to Court 4. The sentencing court granted credit for time served and imposed a \$150 Victim's Compensation Assessment on each count. (O.R. 17, 18) (Tr. Sent. on Sept. 28, 2018, 11, 12) Post-imprisonment supervision was also imposed for a term of nine (9) months to one (1) year. (O.R. 18, 350-354)

Appellant timely filed his Notice of Intent to Appeal and Designation of Record on October 5, 2018. (O.R. 22, 355-363)

Appellant timely filed his Petition in Error on December 4, 2018.

STATEMENT OF THE FACTS

In the late afternoon on June 17, 2016, Brittany Sanders was at the pool of her apartment complex, Plaza Hills, located around East 129th Street and 21st Street in the city and county of Tulsa with her five children. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 101, 103-105) She has four boys ranging in age from 5 years to 12 years old. She has one three year old daughter. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 104) Upon hearing the voice of Shiron Davis nearby in the parking lot, she looked and saw her oldest son talking with Mr. Davis. (Tr.

Proceedings on Sept. 19, 2018, Vol. III, 108-110) Ms. Sanders had a protective order against Mr. Davis. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 106) At jury trial, Ms. Sanders identified State's Exhibit 12 as the protective order she had against Mr. Davis. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 107) Ms. Sanders described Mr. Davis as the father of four of her children, including her daughter, and that he was upset. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 102) Ms. Sanders with her kids following walked over to Mr. Davis's car in the parking lot to see what was going on. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 109, 118) He was sitting in the driver's seat of a Buick or Jeep SUV. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 112) Immediately a verbal argument began. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 113, 116) Ms. Sanders claimed that Mr. Davis, who she identified at trial as the Defendant, put a gun in his lap. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 102, 103, 114) Upon seeing the gun, she turned to run. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 114, 115) Before she could run, she claimed he knocked her down. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 116) Waking up, she remembered him yelling at her neighbors and making her kids get in his vehicle. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 116) While he was driving away, she looked in the mirror and saw what he did to her face. She said he told her he would take her to the hospital. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 119) Instead, she said he took her and the kids, who were in the back seat, to someone's house. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 119, 120) She said he brought her some ice and then he got back out of the car. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 120) Upon seeing he left the keys in the car and was a distance away, she got in the driver's seat and drove away with the kids. Taking some back streets, she stopped and called her mother, Michelle Jones. She told her mother where she was and her

mother came and picked she and her kids up. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 120, 122) Her mother drove her to the OSU hospital. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 123) There she was seen by a doctor. She was at the hospital for about two hours. She said the police were called but never came. She left the hospital and went to her mother's home. The next day the police came. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 124) She told them what happened and they took photographs of her. At jury trial, she identified State's Exhibit 1 as a photograph of her that next day when the police came. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 125, 126) She had lasting damage to her front teeth. After about a year, she obtained crowns on her front teeth. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 127)

Michelle Jones, the mother of Brittany Sanders, has known Shiron Davis for about fifteen years. Michelle said Brittany has four children by Mr. Davis. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 185, 186) On June 17, 2016, Ms. Jones received a phone call from Brittany. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 187, 188) The phone went dead and Ms. Jones knew something was wrong. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 188, 189) Ms. Jones got dressed and started driving towards Brittany's apartment. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 189-191) On the way, Brittany called her again upset. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 190) Brittany told her where she was. Upon getting to Brittany on a dead-in street near the Admiral traffic circle, Ms. Jones found Brittany and her five children in a car that wasn't Brittany's. Brittany was crying, her lip was bleeding, and her teeth were chipped. At jury trial, Ms. Jones identified State's Exhibit 1 as showing Brittany with the injuries she saw on Brittany on June 17, 2016. Upon getting Brittany and the children out of the car and into her car, Ms. Jones drove them to the hospital. After leaving the hospital, Ms. Jones took them to

her home. The next morning, Ms. Jones called the police and a police officer came. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 192-194)

Dr. Gavin Gardner, an emergency room physician at the OSU Medical Center, treated Brittany Sanders on June 17, 2016. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 231, 233) She reported to Dr. Gardner that shortly before her arrival she had been struck in the face by her boyfriend's fist. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 234, 243) She complained of facial pain. Dr. Gardner observed swelling and bruising around the right side of her face, two fractured teeth, and a laceration on the left upper lip. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 234, 235) Dr. Gardner repaired the laceration with stitches. Dr. Gardner described the injuries he observed as new and probably less than 24 hours old. At jury trial, Dr. Gardner identified State's Exhibit 1 as showing injuries consistent with what he observed. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 235, 236) Dr. Gardner stated the injuries were consistent with any kind of blunt force trauma, including an object such as a pistol. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 237)

In the evening hours of June 17, 2016, Steven Bartley, who lived at the Plaza Hills East apartments, looked out his kitchen window into the parking lot and saw a man, who at trial Mr. Bartley identified as the defendant, swinging in a violent motion downward at the back of his SUV. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 208-212) Mr. Bartley could not see the defendant's fists or what they were making contact with. Mr. Bartley ran outside to the vehicle. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 213) He observed the defendant holding a woman, his neighbor, by the clothing up against the SUV. The woman's eyes were rolled in the back of her head and blood was coming down her face. With the other arm, the defendant was

holding a child. Mr. Bartley saw other children standing in front of an apartment with a look of shock on their faces. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 214, 215) Mr. Bartley, from about four feet away, yelled at the defendant that he had seen what he did, that he better let her go, and that he was calling the police. Mr. Bartley said the defendant said this was his family and then the defendant lunged at him. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 215, 216) Mr. Bartley ran into his apartment, got his phone, and ran back outside. He again told the defendant to let her go that he was calling the police. Mr. Bartley said the defendant told him to mind his own business and that the defendant lunged at him again. Mr. Bartley then ran back into his apartment. As he did so, the defendant got into the driver's seat and took off. (Tr. Proceedings on Sept. 19, 2018, Vol. III, 216, 217)

PROPOSITION ONE: THE TRIAL COURT ERRED IN FAILING TO INSTRUCT, *SUA SPONTE*, ON THE LESSER INCLUDED OFFENSE WITHIN COUNT TWO (DOMESTIC ASSAULT AND BATTERY RESULTING IN GREAT BODILY INJURY) OF DOMESTIC ASSAULT AND BATTERY.

STANDARD OF REVIEW

Jury instructions taken as a whole should fairly state the applicable law so as not to deprive the appellant of a fair trial under the due process clause of the Fourteenth Amendment to the United States Constitution. *See Stanley v. State*, 1988 OK CR 151, ¶14, 762 P.2d 946, 949. The trial court, in its discretion, determines what jury instructions should be given. Absent an abuse of that discretion, this Court will not interfere with that judgment. *See Revilla v. State*, 1994 OK CR 24, ¶16, 877 P.2d 1143. Even when error is committed, reversal is not required unless such error results in a miscarriage of justice or constitutes a substantial

REASONS FOR GRANTING THE PETITION

My petition should be granted to maintain the uniformities of the Courts thru out the U.S. my petition should be granted so that it helps anyone with similar issues will not suffer for Crimes they should not be convicted of, if the evidence is not thorough or sufficient like the United States & states within requires their Courts to follow due to specific language in a Ruled upon Statute or Statutes agreed upon by a legislation or legislatures, i believe my issues should be granted Due to Justice that's Supported by law & Case law's that these higher Courts have Corrected to maintain the fairness, the laws & most important the United States Constitution, & vice versa if the evidence is thoroughly sufficient by Reliable evidence or available Case law & Statutes then that person should be held accountable, but in the absence of specific requirement of law, i believe all petitions should be granted to stay in tune with our U.S. Constitution that was Design to protect & serve & all the states within the State laws where Design to do the same, i believe

this Court should grant my petition due to the facts & available law that was argued by my appellant attorney in my State Direct appeal & myself in this specific petition. my petition should be granted due to me not being a legally established parent after Dispute of Parent Claims during preliminary Court proceedings, i should be granted ~~my~~ my petition due to the punishment limitation law 21.U.S.2011 § 11, Crimes arising from Specific Act Davis v. State (1999) & my petition should be granted due to available Case law that's identical to my Case that was ruled upon to be insufficient evidence to Convict aggravated Battery - marshall v. state 1982 OK Cr 76, 646, i pray that this Court grant my petition to reflect Justice & Consistent Integrity that the Supreme Courts Maintain..

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian S. Davis".

Date: 4/8/20