No. 22-6500
CAPITAL CASE

IN THE
Supreme Court of the United States

RICHARD EUGENE GLOSSIP,
Petitioner,
v.

STATE OF OKLAHOMA,
Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

BRIEF OF OKLAHOMA STATE REPRESENTATIVE KEVIN MCDUGLE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Kevin McDugle (R-Broken Arrow) is a member of the Oklahoma House of Representatives.

[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or their counsel made a monetary contribution to its preparation or submission. Counsel for amicus notified the parties via e-mail of his intent to file this brief more than 10 days prior to the filing deadline.

As an Oklahoma legislator and advocate for his constituents, McDugle has a particular interest in, responsibility for, and perspective on how Oklahoma's capital sentencing scheme does and should function. He has been a strong supporter of capital punishment, and he places the safety of the public above all else.

But McDugle also believes that Oklahoma must take measures to ensure that it does not condemn people who did not commit the crimes for which they were convicted, and that it upholds people's constitutional rights. He believes that executing an innocent person is a gross miscarriage of justice that in no way contributes to public safety.

Concerned by the apparent injustice he saw in the documentary, *Killing Richard Glossip*,[2] McDugle helped commission an independent investigation into Glossip's case. The investigation was completed by the law firm Reed Smith LLP on a pro bono basis. Reed Smith spent 3,000 hours reviewing more than 12,000 documents (totaling 146,168 pages) and interviewing dozens of witnesses—including members of law enforcement, jurors, experts, and prosecutors and defense attorneys from Glossip's trials. The resulting 343-page report,[3] and three supplemental reports issued since,[4] contained substantial new evidence

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[2] Save Richard Glossip, *Killing Richard Glossip* (2017), https://saverichardglossip.com/killing-richard-glossip/.

[3] Reed Smith, LLP, *Independent Investigation of State v. Richard E. Glossip: Final Report* (June 7, 2022), https://www.reedsmith.com/-/media/files/news/2022/glossipindependentinvestigation_finalreport.pdf ("Report").

[4] Reed Smith, LLP, *Reed Smith augments Richard Glossip report with further new findings* (Sept. 20, 2022) https://www.

that Glossip's conviction rests on perjured testimony, and that he may well be innocent.

Thus, the interest of McDugle is two-fold. First, as a legislator responsible for the criminal sentencing structure in Oklahoma—and the mechanisms for ensuring it works properly—McDugle has a strong interest in seeing this Court address Glossip's legal claims before the State of Oklahoma executes him. Second, the Report, its supplements, and the additional evidence put forward by his counsel present a challenge to Oklahoma's capital sentencing scheme: it is critical that before completing an execution, state courts fully and fairly consider compelling evidence of individuals like Glossip showing that their convictions were obtained through unlawful means, especially when there is evidence of innocence.

SUMMARY OF ARGUMENT

It would be a tragedy for a state to execute an innocent person. Indeed, it would be a grave miscarriage of justice to execute anyone with evidence that puts the integrity of their conviction in question. Richard Glossip faces state-imposed imminent death, despite powerful evidence of his innocence that the state improperly withheld from him for decades.

First, refusing to punish the innocent, especially when the punishment is death, lies at the core of our democracy, and has shaped this country's policies since its inception. State actors' adherence to legal procedures is essential to maintaining the integrity of

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reedsmith.com/en/news/2022/09/reed-smith-augments-richard-glossip-report-with-further-new-findings.

our criminal legal system, and to ensuring our safety by prosecuting the individuals who are actually guilty of committing crimes.

Second, innocent people assuredly are convicted of crimes they did not commit, and our laws include safeguards against wrongful execution when those erroneous convictions occur. Oklahoma has experienced—and corrected—numerous miscarriages of justice that have resulted in the imprisonment of people with claims of actual innocence, particularly in cases involving state misconduct. A remedy for such misconduct must equally be available to Glossip.

Third, the concealment of exculpatory evidence constitutes a serious miscarriage of justice that has led to numerous wrongful convictions across the United States. The disclosure requirement in *Brady v.* Maryland, 373 U.S. 83 (1963), exists to curb this exact behavior. Here, evidence that the State's most essential witness—who was the actual perpetrator—wished to recant his testimony would have eviscerated its case against Glossip. Justin Sneed's pleas to recant—which tracks his admissions to a multitude of other individuals that Glossip was not involved in the crime—went unheard. The prosecutor knew of Sneed's wishes, but instead of disclosing Sneed's fervent desire to recant to Glossip, the prosecutor worked with Sneed to align his false story with other testimony at Glossip's most recent trial. Furthermore, the concealment was just part of a pattern of state malfeasance, which also included destroying potentially exculpatory evidence while Glossip's case was still on appeal. The State must be held to answer for its conduct, and Glossip must be

allowed to present evidence of his innocence before he is executed.

Fourth, absent judicial review and a rejection of the improperly high bar proposed by the State of Oklahoma for obtaining a new trial based on concealment of exculpatory evidence, the integrity of convictions and death sentences cannot be assured. Sneed's testimony brought about Glossip's conviction. Absent a new trial, a jury will never know that Sneed wanted to recant, nor will it ever hear what amounts to ample evidence of Glossip's innocence. This evidence is likely to lead to acquittal. Sneed's testimony appears to have been the product of a false story fed to him by detectives who did not fully investigate the case. Those detectives coerced from Sneed a narrative that fit their theory of Barry Van Treese's murder. Sneed pled guilty, and testified against Glossip in exchange for a non-death sentence. But Sneed admitted to several people with whom he was incarcerated that he lied about Glossip's participation. And this admission is corroborated by other individuals who knew Sneed at the time of the murder, and who would challenge the State's theory on Glossip's motive and relationship to Sneed. New independent evidence also shows that the State's proposed motive could not hold, and that it originated with a witness who, unbeknownst to the jury, was categorically untrustworthy.

These damning revelations would favor a different verdict, yet Glossip still suffers the most serious of consequences. States must not be rewarded for their misconduct by imposing a herculean barrier to relief from that malfeasance, lest citizens lose trust in the criminal legal system. And Oklahoma should not be

allowed to proceed with an execution before evidence of innocence is examined. This Court should intervene.

ARGUMENT

I. American Law Abhors Punishing the Innocent, Especially When the Punishment is Death.

Refusing to execute the innocent differentiates the United States from some of history's most brutal and authoritarian regimes. In the 1930s, Chinese communists reasoned, "Better to kill a hundred innocent people than let one truly guilty person go free." During uprisings in Vietnam in the 1950s, communists argued: "Better to kill ten innocent people than let a guilty person escape." PHILLIP SHORT, POL POT: ANATOMY OF A NIGHTMARE 496 (2006).

In this country we expect better. The integrity of our justice system—and our safety—depends on ensuring that proper procedures are followed in arresting and prosecuting individuals for crimes, and that the people we punish are actually guilty of the crimes for which they are accused. As John Adams recognized in 1770:

> [W]hen innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me, whether I behave well or ill; for virtue itself, is no security. And if such a sentiment as this, should take place in the mind of the subject, there would be an end to all security what so ever.

Adams' Argument for the Defense: 3–4 December 1770.[5] It was because of this threat to security that Adams declared, "many guilty persons should escape unpunished, than one innocent person should suffer." *Id.*

Similarly, Benjamin Franklin declared, "it is better 100 guilty Persons should escape, than that one innocent Person should suffer." Letter From Benjamin Franklin to Benjamin Vaughan, 14 March 1785.[6] The founders knew that no utility could be derived from putting an innocent person to death, and in fact more harm would be caused to the security of our democracy.

The founders would recoil at the execution of an innocent person like Richard Glossip.

II. The System Must Correct Miscarriages of Justice and Wrongful Convictions.

It is an unfortunate truth that innocent people are convicted of crimes they did not commit. We must not ignore these mistakes. When a person's life is at stake, we must provide an outlet to rectify these failures of justice. This Court recognizes as much. Indeed, the need to avoid imposing the harshest sentences on individuals whose guilt is not certain has shaped this Court's jurisprudence for decades. The Court in *Kennedy v. Louisiana*, 554 U.S. 407 (2008), held that the Eighth Amendment prohibits the death penalty for the rape of a child, in large part because of a

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[5] *Founders Online*, National Archives, https://founders.archives.gov/documents/Adams/05-03-02-0001-0004-0016.

[6] *Founders Online*, National Archives, https://founders.archives.gov/documents/Franklin/01-43-02-0335.

"special risk of wrongful execution" that can stem from child rape cases. *Id.* at 443 (quoting *Atkins v. Virginia*, 536 U.S. 304, 321 (2002)). In *Atkins v. Virginia*, this Court noted that in the years leading up to its ruling, "a disturbing number on death row [had] been exonerated." *Atkins*, 536 U.S. at 320-21. Further, in 2006, Justice Souter called for a reading of the Eighth Amendment that accounts for the fact that many individuals who previously had death sentences were exonerated following the initiation of DNA testing. *Kansas v. Marsh*, 548 U.S. 163, 207-08 (2006) (Souter, J., dissenting).

Oklahoma is not immune to this phenomenon, but it has corrected miscarriages of justice in numerous cases over time. The National Registry of Exonerations ("National Registry").[7] At least forty-five individuals have been exonerated in Oklahoma since the 1960s. *Id.* Of those, at least eight were on death row. *Id.*[8] And for some, their convictions were secured following the withholding of key evidence, false trial testimony, or both.

Consider the case of Curtis McCarty, who served twenty-one years in prison—nineteen of which were on death row—for a 1982 murder he did not commit.

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[7] https://www.law.umich.edu/special/exoneration/Pages/about.aspx ("Browse Cases" link, and "Exonerations before 1989" link; then filter "ST" to "OK").

[8] The Death Penalty Information Center lists an additional two individuals as exonerated from death row—bringing the Oklahoma exoneration count to forty-seven. Death Penalty Information Center, Innocence Database: Oklahoma, https://deathpenaltyinfo.org/policy-issues/innocence-database?state=Oklahoma.

Curtis McCarty, The Innocence Project.[9] Like Glossip, McCarty's conviction resulted from official misconduct and perjured testimony. Oklahoma City District Attorney Robert Macy withheld key evidence from the jury, and now-disgraced forensic analyst Joyce Gilchrist falsely testified that hairs recovered from the crime scene matched McCarty's hairs. *Id.* Two juries sentenced McCarthy to death before DNA testing exonerated him in 2007. *Id.*

Yancy Douglas and Paris Powell were wrongly convicted of murder and sentenced to death in 1995, based on perjured testimony from rival gang member Derrick Smith. Yancy Douglas, National Registry of Exonerations.[10] Smith was offered a lighter sentence on his own pending charges if he falsely implicated Douglas and Powell in the murders. *Id.* The prosecution withheld evidence of that deal, preventing Smith's impeachment. *Id.* Smith later recanted, and Douglas and Powell were exonerated in 2009. *Id.*

Oklahoma has made another grave error that must be corrected. Richard Glossip's trial was tainted by similar state misconduct and false testimony to that present in the cases of McCarty, Douglas, and Powell. And just like these individuals, Glossip deserves judicial relief now that the truth has surfaced.

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[9] https://innocenceproject.org/cases/906/.

[10] https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3187.

III. Denying the Convicted a Remedy for Prosecutorial Misconduct Only Worsens Miscarriages of Justice.

The concealment of potentially exculpatory evidence by the state always constitutes a deeply concerning miscarriage of justice. But this behavior is all the more troubling when it is just one indicator of a pattern of state actors blatantly and inexplicably disregarding evidence in a case which contradicts the narrative they created. And it is worse still when the result of state misconduct is a death sentence. Legal stopgaps, including the disclosure requirement in *Brady v. Maryland*, 373 U.S. 83 (1963), exist for precisely this reason. Imposing an unreasonably high standard on such claims undermines constitutional due process, and sanctions the behavior that leads to wrongful convictions throughout this nation.

A 2020 report from the National Registry of Exonerations, which analyzed thousands of recorded exonerations in the United States between 1989 and 2020, found that prosecutorial misconduct was present in 30% of wrongful conviction cases. National Registry, Government Misconduct & Convicting the Innocent 11-12 (Sept. 1, 2020).[11] When isolating murder cases, that rate grew to 44% *Id.* at 12. And frequently, as in this case, the evidence that was concealed was impeachment evidence. *Id.* at 32, 86, 89-91. Such evidence can—and should—form a viable basis for a *Brady* claim. Indeed, this Court has explicitly stated as much. *Giglio v. U.S.,* 405 U.S. 150,

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[11] https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf

154 (1972) ("When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general [Brady] rule.") (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

Sneed's impeachment is not inconsequential. It undermines the State's entire case, which even the Oklahoma Court of Criminal Appeals acknowledged hinged on Sneed's testimony. Report, 5. The prosecution agrees, stating "there's no way [the jury] would have convicted Glossip" had they not believed Sneed *Id.* at 208. But the jury was deprived of key information about Sneed's credibility.

In 2007, Sneed wrote to his attorney, "[t]here are a lot of things right now that are eating at me right now," and that—if his lawyer did not get back to him—he would try to contact Glossip's defense team. Reed Smith, LLP, *First Supplemental Report* 1 (Aug. 9, 2022). Sneed then called his testimony a "mistake." *Id.* His attorney responded, "[h]ad you refused, you would most likely be on death row right now." *Id.* No jury has ever seen this correspondence, because the prosecution concealed it. *Id.* at 2. This letter represents more than just hesitancy to testify; Sneed had already testified at trial. Rather, Sneed must have intended to recant before receiving his attorney's reminder about the death penalty. He would have had no other reason to contact Glossip's attorneys. Furthermore, Reed Smith discovered an earlier letter, penned before Glossip's second trial, in which Sneed asked his attorney outright whether he could recant his testimony. Reed Smith, LLP, *Second Supplemental Report* 1 (Aug. 20, 2022).

Evidence suggests that the prosecution knew Sneed wanted to recant, yet he was not allowed to do so. Instead, before trial, the State placed Sneed's attorney on its witness list, stating vaguely that "rehabilitation" might be needed after Sneed testified. Furthermore, the prosecutor drafted a memo before Sneed took the stand, stating that she planned to "get to" Sneed because his statement to the police was inconsistent with medical examiner testimony concerning apparent stab wounds on Van Treese at Glossip's second trial. Cert pet. 19. Notes reflecting answers to the prosecutor's questions about that testimony suggest that someone, be it the prosecutor or Glossip's own attorney, spoke to Sneed about them before Sneed testified. *Id.* at 20. Then, Sneed's testimony changed, and he claimed for the first time, seventeen years after the murder, that he carried a knife and had attempted to stab Van Treese. *Id.*

Even more disturbing than the withholding of this information is the fact that it does not represent the full extent of improper state conduct in this case. The Oklahoma City Police Department (OCPD) destroyed a box of evidence in 1999—during Glossip's first appeal—at the direction of the Oklahoma County District Attorney's Office. Report, 45-53. The reason listed for the destruction of evidence—"Appeals Exhausted"—was patently false. The initial appellate decision in Glossip's case, which overturned his conviction, was not released until 2011. *Id.* at 53. And numerous law enforcement officers have stated that OCPD protocol called for the indefinite retention of evidence in homicide cases. *Id.* at 47. Once again, the prosecution obstructed Glossip's ability to defend himself.

The destroyed box contained, among other things, accounting records recovered from Van Treese's vehicle. *Id.* at 34, 46, 52. Without them, Glossip could not effectively challenge the allegation that he had stolen money from the hotel. The box also held physical items collected from the crime scene, including duct tape, a white shower curtain, and Van Treese's wallet. *Id.* at 46, 49-50. DNA testing has advanced greatly since 1997, and each of these items could have contained exculpatory DNA. Yet Glossip cannot request new DNA testing, because the physical evidence is gone.

The intentional concealment and destruction of relevant evidence in a capital case is reason enough to void Glossip's conviction and death sentence. After all, if any other Oklahoma resident destroyed evidence in a criminal case, they would rightfully face criminal charges. For state actors to do so without consequence is anathema to a functioning civil society and would be cause for considerable legislative concern. But this new information is only part of the picture in Glossip's case. It also bolsters ample other evidence that Sneed lied under oath, and it is yet another convincing sign of Glossip's innocence.

IV. Absent This Court's Intervention, Oklahoma Could Execute An Innocent Man.

This case demonstrates the worst possible outcome in an unfair trial. Should this Court not review Richard Glossip's claims, and clarify that the standard for relief from prosecutorial concealment of material exculpatory evidence is less burdensome than that imposed by Oklahoma courts, he will die with unvetted, persuasive evidence that he is

innocent. Putting someone to death under these circumstances, having robbed the jury of key relevant facts, belies our Constitution, and undermines capital punishment as a permissible criminal penalty.

The withheld and destroyed evidence at issue is just the latest of a growing list of new exculpatory evidence that was unavailable to Glossip for decades, which strongly suggests Glossip had nothing to do with the crime. Had the police actually investigated the murder, they would have uncovered the far more plausible scenario: Sneed murdered Van Treese during a robbery gone wrong, which he planned and initiated with a woman with whom he was involved at the time. New evidence shows that Sneed testified falsely against Glossip to avoid the death penalty himself, and to take revenge on Glossip after the police fallaciously told Sneed that Glossip had linked him to the murder. *Id.* at 69. It proves that financial information used to support the State's theory was false and misleading. *Id.* at 129. Further, it severely undercuts the credibility of Cliff Everhart, the State's other supporting witness. *Id.* at 166. Each piece of new evidence casts serious doubts on Glossip's conviction; together, it would probably lead to acquittal. Glossip deserves, at minimum, a new trial.

A. Justin Sneed's Statements Inculpating Glossip Were Manifestly False.

Today, it is clear that Sneed's testimony constituted perjury. New evidence shows that it was detectives, not Sneed, who first broached the idea of Glossip's involvement, and Sneed adopted their story. Sneed attempted to recant his story repeatedly after speaking with detectives, but those attempts were extinguished and instead he was coerced to testify

falsely against Glossip. An execution cannot move forward when no jury has had the opportunity to hear and evaluate evidence that the most consequential trial testimony was false.

1. New evidence shows detectives fabricated a theory that Glossip was guilty, then coerced Justin Sneed to adopt their story.

Early in the murder investigation, detectives developed one theory to the exclusion of others: Sneed and Glossip murdered Van Treese. Lead Detective Robert Bemo and his partner Bill Cook arrived at the crime scene within two hours of the murder. Report 4, 30, 35. Officers on the scene told the detectives that Glossip had given them some inconsistent facts. *Id.* Minutes later, a patrol officer was contacted to bring Glossip in for questioning. *Id.* at 34. By this point, police had only spoken to a handful of witnesses, and Sneed had yet to be located. *Id.* at 61. Yet during Glossip's interrogation, which occurred mere hours into the investigation, Bemo told Glossip:

> [W]e're gonna get Justin [Sneed] and when we tell him, you know, what we've got against him and everything and what's coming down, if he brings your name up in this thing, we come back you're going done (sic) for first degree murder, buddy, do you understand what I'm saying?

Id. at 62. That day, Bemo also told Glossip that he had "seen the last free air he'll ever breathe." *Id.* at 65. Bemo made sure his threat became reality.

Days later, Bemo and Cook questioned Sneed. Report, 16. The detectives began the interrogation by telling Sneed that they believed he and someone else were involved. *Id.* at 66. Sneed ultimately confessed, but during the course of his interrogation the detectives named Glossip six times, suggesting they believed he was the accomplice. Report, 66.

Early on, detectives told Sneed that Glossip was under arrest, and deceptively stated that *Glossip* blamed *Sneed* for the murder. *Id.* at 66-69. When Sneed tried to say his brother Wes (not Glossip) helped plan the robbery, detectives clung to their theory that Glossip was involved and tried to insert Glossip as a second accomplice. *Id.* at 72; Save Richard Glossip, *Transcript of Interview of Justin Sneed From Videotape on January 14, 1997*, 18-19 (last visited Jan. 23, 2023).[12] The detectives said that Glossip attempted to cover up the crime and split the money with Sneed. *Transcript* at 18. When Sneed failed to take that bait, the detectives again said that Glossip told them that Sneed had planned the crime. *Id.* Only then did Sneed first mention Glossip's name. Incorporating what detectives seemingly wanted to hear, Sneed said that Glossip told him that Wes had broached the idea of a robbery, but that Wes had never discussed a robbery with Sneed. *Id.* at 18-20. From there, Sneed's account evolved, with pointed guidance from detectives, into his trial testimony that Glossip had hired him to kill Van Treese.

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[12]https://saverichardglossip.com/wp-content/uploads/2021/06/sneed-interview2.pdf.

2. Sneed immediately abandoned the story the police fed him.

New evidence shows that Sneed changed his story soon after his interrogation. Sneed told multiple individuals about Van Treese's death, beginning with people incarcerated with him at the Oklahoma City Jail. Not one of those accounts involved Glossip.

Sneed's cellmate, Joseph Tapley, averred that Sneed discussed the murder several times, and that Sneed mentioned that money was in Van Treese's car. Report, App. 6 at 4. Sneed never mentioned Glossip; indeed, Tapley had the impression that Sneed acted alone. *Id.* at 5.

According to Paul Melton, Sneed said that he had planned to rob Van Treese with his then-girlfriend. *Id.* at 5-6. Sneed told Melton that Van Treese also was the girlfriend's "sugar daddy," and that the two had planned for the girlfriend to lure Van Treese to a motel room for the robbery. *Id* at 5.[13] But Van Treese fought back, and was killed. *Id.* at 5. Sneed took money from Van Treese's car. *Id.* at 6. Sneed never mentioned Glossip—or anyone other than his unnamed girlfriend—to Melton. *Id.* at 5.

Within hours of Sneed's arrival at the jail, Sneed told Roger Lee Ramsey what he told Melton: Sneed worked with a woman to lure the victim into a hotel room, so that Sneed could rob him. Report, App. 6 at 6-7. Sneed killed the man because the man did not want to give up his money. *Id.* at 6. Sneed said that he implicated Glossip because, according to Sneed,

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[13] Other witnesses also attest to Mr. Sneed using this kind of scam in the past. Report at 222, 229.

Glossip pointed the finger at Sneed. *Id.* at 7. Sneed never mentioned Glossip paying him, or hiring him to commit the crime. *Id.*

Both Tapley and Melton said Sneed expressed a fear of the death penalty. *Id.* at 5-6. Tapley relayed that Sneed wanted to "sign" for a life sentence. *Id.* at 5. Melton also referenced Sneed's concern about his girlfriend being charged. *Id.* at 6.

On May 26, 1998, the State entered a written plea deal with Sneed. Report, 41. Sneed would testify against Glossip, and in exchange Sneed would be spared the death penalty. *Id.* But in the years following Glossip's initial conviction, Sneed repeatedly admitted that his implication of Glossip, and the murder-for-hire plot, were lies.

Between 2005 and 2008, while at the Joseph Harp Correctional Center, Sneed told Frederick Gray that he had approached his "fall partner," i.e. Glossip, about helping him rob Van Treese, but that Sneed proceeded with the crime without him because the fall partner would not help. Report, App. 6 at 8. Sneed said he did not want to kill Van Treese, but Van Treese fought for the money. *Id.* Sneed told Gray that he testified against his fall partner as revenge for not helping him. *Id.* Sneed told Gray that the fall partner got death, while Sneed got life, and that Sneed lied about being hired to kill Van Treese. *Id.* Report, App. 6 at 8.

During the same period, Michael Scott heard Sneed brag that Sneed set up Glossip, and that Glossip "didn't do anything." *Id.* According to Mr. Scott, it was common knowledge at Joseph Harp that Sneed lied about Glossip. *Id.* at 8-9.

3. Independent new evidence supports Sneed's jailhouse admissions.

Sneed's conversations about the true motive for the crime during his incarceration were not mere posturing. They are supported by other independent new evidence. For instance, Stephania Garcia, who worked at a club near the Best Budget Inn (Report, 218), recalled that Sneed used dancers in the club to lure men into hotel rooms so that Sneed could rob them—the same story Sneed told to multiple people after he was arrested.[14] Sneed also was known for stealing and misleading others. According to Jamie Spann, a friend and coworker of Sneed's, Sneed acted like he "owned the motel." *Id.* at 216. Sneed openly carried stolen jewelry around in a purple Crown Royal bag and wanted women to split profits with him if they engaged in sex work at the motel. *Id.*

Recently-discovered evidence also explains why Sneed would react to Van Treese's hesitation to give him money so viciously. According to several individuals, Sneed used a wide array of drugs regularly. *Id.* at 218. On the day Sneed murdered Van Treese, he was coming down off a two-day meth run. *Id.* App. 5 at 2. Sneed had a short temper, perhaps attributable to his substance abuse. Spann noted that Sneed "acted mean" when coming off of meth. *Id.* at 217. Garcia recalls that when Sneed was high he "got insane" and became violent, and that when he was coming down from a high, he was "even crazier."

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[14] During the police investigation, John Prittie, the guest next door to Room 102 where Van Treese was murdered, stated that he heard two voices in Room 102 the night of the murder, and only identified one of them as male. *Id.* at 24.

Report, 218-219. Albert Mize, a drug dealer to Sneed, said Sneed was a “hot head” who was “always acting like a tough guy or a big shot.” *Id.* at 219. Garcia, who regularly did drugs with Sneed (*Id.* at 118), saw Sneed shove a dancer into a bathroom at the motel, call her a “fucking bitch,” and strangle her. *Id.* at 222. On another occasion, Garcia saw Sneed pick up a brick and announce that he was going to get money, returning later with drugs, and with blood on his shirt. *Id.* at 223.

Furthermore, it is now clear why Sneed targeted Van Treese. Margaret Humphrey, a maid and guest at the motel, stated that weeks before the murder, she heard Sneed yelling at Van Treese about not being paid. Report, App. 6 at 2. Afterwards, she heard Sneed say that Van Treese was going to “get what was coming to him” and that Sneed was “going to rob and kill [Van Treese]” to “get what was owed to [Sneed].” *Id.* Around the same time another guest, Tricia Eckhart, overheard Sneed saying that Van Treese was “going to get what he deserved.” *Id.* Simply put, Sneed needed money, he believed Van Treese had money, and he was already upset with Van Treese for not being paid. *Id.* at 227-33. Glossip had no such motive.

B. The Murder-For-Hire Theory Was Fictitious.

The State posited that Glossip hired Sneed to murder Van Treese, because Van Treese had discovered that Glossip was stealing money from the motel and was planning to fire Glossip. Report, 21. absent this theory, Sneed’s participation in a crime with Glossip would have made no sense. Yet several new pieces of information render this stated motive,

and other key details of Sneed's testimony concerning the money at issue in the case, demonstrably false.

First, Sneed testified that he and Glossip stole and split approximately $4,000 after the murder. *Id.* at 109. But for this testimony to hold, Van Treese must have had that much money in his possession that day. Reed Smith determined, based on daily receipts in evidence that Van Treese picked up the day he was killed, that he likely had less than $2,900 with him at the time of the crime. *Id.* at 110-11.

Second, new evidence shows it is impossible to confirm that *any* money was missing, let alone stolen from, the motel. The idea that money was missing from the motel came from testimony by Van Treese's wife that the motel was short $6,101.92 for the year. Report, 129-30. But no financial records to support Ms. Van Treese's testimony were introduced at trial. Indeed, evidence that could confirm whether or not the business was short—a deposit book and two receipt books kept by Van Treese—were destroyed by police at the prosecutor's behest before Glossip's last trial. *Id.* at 44. A flood at the Van Treese home reportedly destroyed any other business records. *Id.* at 136. Without these documents, Glossip could not adequately counter Ms. Van Treese's testimony.[15]

Furthermore, the only person who testified that Glossip had embezzled money from the motel, and that Van Treese planned to confront Glossip about it, was Cliff Everhart. *Id.* at 166, 176. Everhart—whose

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[15] The defense failed to object to any of this testimony. Report, 136.

role at the motel is unclear[16]—testified that he was the one who told Van Treese that Glossip was stealing from the motel, and that he and Van Treese were to confront Glossip together about the theft. *Id.* at 166. Yet evidence never presented to the jury shows that Everhart was patently untrustworthy, and further undermines the trial testimony of Sneed.

Glossip's ex-girlfriend, D-Anna Wood, described Everhart as one of Sneed's only friends, and explained during an interview that Everhart used his role as a supposed security guard to coerce drugs and sex from women at the motel. *Id.* at 226, 226 n. 911. Additional records show that Everhart was corrupt even before he arrived at the Budget Inn. Everhart was a former Police Chief of Binger, Oklahoma, where he allegedly created an atmosphere of intimidation, needlessly harassing and stopping townspeople, and circulating an anonymous newsletter containing obscene and derogatory comments about local business owners. Mark A. Hutchison, *Town of Binger Finds Itself Bogged in Political Mire*, The Oklahoman (Feb. 11, 1996).[17] Everhart lost the community's trust and resigned. *Id.* After that, he was Police Chief of Longdale, Oklahoma, where he was charged with—and ultimately pled guilty to—an array of charges related to official misconduct and deceit. The actions at issue included receiving illegal gambling payments, seizing and keeping an illegally converted firearm

[16] Everhart alternatively claimed he was part-time security, or that he had some ownership in the hotel. Report, 122. Other individuals closely connected to the business disputed both of these claims. *Id.* at 122, 170.

[17] https://www.oklahoman.com/story/news/1996/02/11/town-of-binger-finds-itself-bogged-in-political-mire/62364908007/.

instead of turning it in to the Oklahoma State Bureau of Investigation, and fraudulently demanding state reimbursement for an expense Everhart never incurred. Report, 9 n. 26, 173. Unbeknownst to the jury, these charges were pending when Everhart testified at Glossip's second trial.

Even more troubling, Everhart was a former investigator for the Oklahoma Indigent Defense System ("OIDS"), where performance evaluations indicate that he "exhibit[ed] character deficiencies including very limited honesty and integrity." *Id.* at 10, 167-68. He was known to fabricate information and attempted to obstruct investigations. *Id.* at 168. Notably, OIDS records reveal that Everhart obstructed an investigation in a case to which he was assigned, thereby hindering the discovery of "crucial and readily discoverable evidence of innocence." *Id.* Everhart denied trying to obstruct the investigation—a denial his supervisor called a "complete falsehood." *Id.* In 1998, while Glossip's case was being investigated, many of Everhart's former colleagues at OIDS expressed concern about Everhart's involvement. *Id.* at 169-70.

Everhart consistently used any power and position he had to his own benefit. He abused the people under his care and trust. He had no regard for the harm caused by his actions, and he violated the law as a state actor. Despite these obvious warning flags that Everhart was unreliable, the State used his testimony to support its theory of the case. Report, 122 n. 452; *Id.* at 208-24. The use of this evidence is even more egregious when considered in light of concealed evidence that Justin Sneed—with the State's

knowledge—lied about Glossip's involvement in the first place.

This information reflects just some of the evidence discovered by Reed Smith that flatly contradicts the State's portrayal of Sneed as weak, dependent on Glossip, and devoid of an independent motive to kill Van Treese. *See* Report 10, 209-27. At best, Sneed told conflicting stories about the murder that render him completely incredible. At worst, Glossip is an innocent man condemned to die. Either way, the disclosure of the evidence that the State withheld would have further illuminated Sneed's lack of credibility and tipped the scale in Glossip's favor. And armed with all of the new evidence at a retrial, Glossip probably would not be convicted.

CONCLUSION

Citizens must be able to trust the criminal legal system, and they need to know that justice is never out of reach. They also need assurance that if a miscarriage of justice takes place, safeguards are in place to ensure that it is rectified before it turns fatal. States must be held accountable for their missteps in cases like Glossip's, and the remedies must be free from onerous legal road blocks by the very State that improperly convicted them. Only then can we insure the integrity of convictions, and of the grave penalties that come with them.

For these reasons, McDugle asks this Court to grant the petition for a writ of certiorari, review Glossip's constitutional claims on the merits, and reverse the judgment of the Oklahoma Court of Criminal Appeals.

Respectfully submitted,

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