No. 22-7509

IN THE

SUPREME COURT OF THE UNITED STATES

Gary R. Thompson, Jr. — PETITIONER
(Your Name)

vs.

The State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Gary R. Thompson, Jr.
(Your Name)
16161 Moffat Road
Post Office Box 548
(Address)
Lexington, Oklahoma 73051-0548
(City, State, Zip Code)
(405) 527-5593
(Phone Number)

QUESTION(S) PRESENTED

QUESTION(S) PRESENTED

Under a certified question of law; Does

(1) the double jeopardy protection contained within the Fifth Amendment of the United States Constitution, still hold the promise and guarantee of the (a) prohibition and (b) protection from one being twice placed in jeopardy for the same offense? And;

(2) if that being placed twice in jeopardy, of life and limb – into jeopardy, which led to a second trial and ultimate conviction, in direct violation of clearly established federal law, as determined by the United States Supreme Court, in the matter of *Blockburger v. United States*, 284 U.S. 299 (1932) and the decision more recent in *United States v. Dixon*, 509 U.S. 688 (1993)? And;

(3) does a successful act of fraud upon the court, in violation of the Supreme Court decision in *Hazel-Atlas Glass Co. v. Hartford*, 64 S. Ct. 997 (1944); by former Oklahoma County Assistant District Attorney Robert Bradley Miller, who, in conducting the second trial, successfully suppressed the first trial before the same judge and same assistant public defender, clearly misleading the jury? And;

(4) if the "acts of government officials" are in further violation of Title 18 U.S.C. Section § 242, "conspiracy," a related provision of federal law, entitled Petitioner to have his Petition for Writ of Certiorari Granted, where under Title 18 U.S.C. Section § 241, makes if a crime for "two or more persons [to] conspire to injure, oppress, threaten, or intimidate any person ...in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States[.]" {thus making the conspiracy a criminal conspiracy in addition to a civil rights violation}. Does this not warrant double indifference?

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

Blockburger v. United States,
284 U.S. 299 (1932)

United States v. Dixon,
509 U.S. 688 (1993)

McQuiggin v. Perkins,
133 S. Ct. 1924

Hazel-Atlas Glass Co v. Hartford Empire Co
64 S.Ct. 997

TABLE OF CONTENTS

INDEX TO APPENDICES

* Initial Writ - Dispositive Motions and Orders in Date Sequences

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

Constitutional & ~~Statutory~~ Authority Page

OTHER

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 Court of Criminal Appeals 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. Order Attached

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 FEB-10 2023.
A copy of that decision appears at Appendix _____.
① Request Reconsideration & Motion to Vacate
[ ] A timely petition for rehearing was thereafter denied on the following date: FEB-22-2023, and a copy of the order denying rehearing appears at Appendix _____.
② Motion to Vacate MAR-06 2023 ← Court-Decline-Jurisdiction ↑

[ ] 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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Benton v. Maryland, 395 U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 707 (1960). The primary idea underlying this prohibition is that a state must not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal compelling him to live in a continued state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty, *Green v. United States*, 355 U.S. 184, 187-188, 78 S. Ct. 221, 2 L. Ed.2d 199 (1957).

Because, however, "[t]he prohibition is not against being twice punished, but against being twice put in jeopardy," *Ball v. United States*, 163 U.S. 662, 669, 16 S. Ct. 1192, 41 L. Ed. 300 (1996). "It is not...essential that a verdict of guilty or innocence be returned for a defendant to have been placed in jeopardy so as to bar a second trial on same charge." *Green*, 355 U.S. at 188, 78 S. Ct. 221, Rather, "in a jury trial jeopardy attache[s] when the jury is empaneled and sworn" *Crist v. Bretz*, 437 U.S. 28, 38 98 S.C.t 2156, 57 L.Ed.2d 24 (1978).

The misconduct of {former} Oklahoma County Assistant District Attorney Robert Bradley Miller's, gross misconduct and abuse of power while in office, in violation of the decision in *Robinson v. Maynard*, 829 F.2d 1501 (10th Cir. 1987), appellant counsel's failure to raise issue of prosecutorial misconduct in state appeal required an evidentiary hearing, where Oklahoma Court granted other defendant's relief from same kind of conduct from same prosecutor, to resolve ineffective assistance of counsel claim.

In retaliatory prosecution cases, for example, the causal inquiry is particularly complex because the official alleged to have the retaliatory motive. The decision to bring charges is made by a prosecutor – who is generally immune from suit and

whose decision receive a presumption of regularity. To account for that "problem of causation, plaintiffs, in retaliatory prosecution cases must prove as a threshold matter that the decision to press charges was not supported by probable cause". *Hartman v. Moore*, 547 U.S. 250, 259-260, 126 S. Ct. 1695, 164 L. Ed. 2d 441. Establishing that causal connection.

Double jeopardy is distinguished pedigree that can inhibit through, however, tempting to synthesize millennia of double jeopardy jurisprudence into a simple rubric. In 1969, *Benton v. Maryland*, overturned *Palko*, the *Benton* court termed " the double jeopardy clause a fundamental ideal in our Constitution and heritage" so essential as to require application against the state. {law at the time}

After *Benton*, the double jeopardy clause prohibited prosecution by state authorities of a person whom previously had been subjected to the state prosecution for the same offense. *Benton* eviscerated the first ground of the decision in *Bartkus* and *Albate.*

In the *United States v. Dixon*, 509 U.S. 688 (1993), that decision overruling *Corbin* restoring *Blockburger*, See "[c]ontrolling authority of *Blockburger v. United States*, 284 U.S. 299 (1932)." Clearly established federal law.

STATEMENT OF THE CASE

STATEMENT OF THE CASE

THE FIRST-UNAUTHORIZED-TRIAL BY STATUE

The Oklahoma County District Court, under the moving authority of the Office of District Attorney charged Petitioner with a crime and offenses of discharge of a weapon with intent to kill, {in violation of Title 21 Section § 1289.17A} and murder in the first degree, {in violation of Title 21 Section § 701.7} in 1993, where the Oklahoma County District Court did not have "competent jurisdiction" under the [s]tatutory language to try him; where he was neither the principle or a "conspirator" nor did he have any actions within the "furtherance" of the criminal conspiracy. (See Attached)

Where the statutes for First Degree Murder under Title 21 Section § 701.7, instructs that "in the commission" or "attempted-commission," for the state to resort to such supplanting and substituting (of statutory language) presented an unconstitutional departure, under plain error. As such, that bill of attainer {by information} created an unintended attachment unauthorized by the Oklahoma Legislative Branch of Government and under such a departure the trial court was without competent jurisdiction to conduct the first trial, in 1993. See; *Dickens v. State*, 106 P.3d 599. (See Attached)

The "first empaneled jury in December of 1993," placed "his liberty of life of limb into jeopardy," having two counts before them presented by the state, (1) the discharge of the weapon with intent to kill and (2) the first-degree murder count. The jury after testimony rendered a verdict of "[N]ot Guilty of Discharge of the Weapon," {with intent to kill}; as the actual-assailant and co-defendant, while tried, admitted to his crimes, and the fact that "his action was a in spontaneous act and that Petitioner neither had any afore knowledge of his actions and that he did not participate in the altercation which led to the death." The first trial was without competent jurisdiction for trial.

The first jury indicated that they find no reason to convict Petitioner for the murder, communicating that the mens rea, the cause and purpose of the shooting, {an independent conflict between the two} and the actos reas, {the method and manner in which his action had undertaken} exited the car without notice and pursued his target}, did not attach to Petitioner. Deadlocked on the murder count, in favor of Petitioner, the jury was dismissed. Petitioner was a passenger in the back seat of the vehicle, with no participation of co-defendants actions once he left the vehicle.

However, in a sweeping act of malicious prosecution, fraud upon the court and conspiracy, the state did not release Petitioner from state custody. This was done with the intent to deprive Petitioner of due process of law. And filed a second information with the lone count of murder and proceeded to conduct a second, secret trial by suppressing the first trial from the jury, and withholding the first trial transcripts and the jury verdict forms from Petitioner.

THE SECOND-TRIAL IN VIOLATION OF DOUBLE JEOPARDY

Then, took the same case to the same judge, using the same assistant public defender, who, as all silent conspirators, conducted yet a second trial, with the sole count for first degree murder. But took fundamentally unfair steps to ensure a conviction. The district attorney sought to suppress the first trial and mislead the jury, and under such deceptive gamesmanship, obtained a conviction for first degree murder of a knowingly innocent person, "as determined by a jury."

For a case, (Emphasis added) that was not constitutional until the year of 1996, three (3) years later to be a lawful information charging page, (an intervening change of law to the Murder Statutes), with *Kinchion v. State*, 81 P.3d 683), where the amendment from a "specific killer" to "any death occurring during the unlawful act," under the doctrine of transferred intent. For those actually involved in the crime.

However, the murder statute still reads in "during the commission" or "attempted commission," not in the conspiracy or co-joint or endeavoring, other extended legal-theoretical attachments of conspiracy or furtherance doctrines. Petitioner suffered cause and prejudice and was unable to raise this claim in a prior petition where the office of the district attorney yields such unlawful influence of the clerk of the court, nor any judge since his incarceration ordered the release of the transcripts of the first trial or juror verdict forms to Petitioner or his appellate attorney. Appellate counsel directly requested them and was refuted. (See attached)

EXCUSABLE DEFAULT/CAUSE AND PREJUDICE-EFFECT

The state withheld the documents for "decades" despite repeated request over the years, all with negative results. It was not until March 29th of 2022, that, Petitioner was finally able to obtain a copy of the jury verdict forms, from a third party legal investigative service and community assistance, not from the court or district attorney. Defense and appellate counsel was denied access. Petitioner establishes cause and prejudice suffice to excuse his failure to present his evidence in support of his first appeal.

Petitioner must now be able to obtain review of his constitutional claims only if he fell within the narrow class of cases implicated by a fundamental miscarriage of justice. This is truly such an exceptional claim. Again, he did not receive the suppressed material from the court, the very court {point-of-order} whom while withholding and suppressing the material-exculpatory documents, the transcripts and actual jury verdict forms of Not Guilty, all the while denying relief for the claim raised; having the very-substance and very-content of those exculpatory documents they were withholding and suppressing.

For this court to not grant his certiorari would ensure that a fundamental miscarriage of justice would go uncorrected, (Emphasis added) and where he would

not be granted relief from this unconstitutional and unlawful conviction, he would be subjected to an administrative death sentence. The state created impediment was direct cause for default. The State of Oklahoma argued against him, while withholding the documents that substantiated his claims.

Such an act established a "state created impediment," and establishes the clear "cause and prejudice" for default or the delay in not bringing forth this claim in an earlier petition. And to this very day, the transcripts of the first trial are still not released. In suppressing documents to the benefit of the state of "such enormous exculpatory value," in light of Petitioners known actual innocence, innocence that is established by an empaneled jury. Such continued acts constitute a clear breach of the public trust and the courts representation.

The first jury's finding Petitioner Not Guilty of discharge of the weapon, the very method and manner of death, and their dead-locked on the mis-joinder offense of murder, {double-jeopardy by way of charging the underlying felony, and connecting nexus felony murder by way of the same crime discharge of the weapon}, "in Petitioner's favor", such bacquittal, the ultimate discharge of the jury – "did ripen into a final and true acquittal" at the dismissal and discharge of that jury.

The state under a substantive miscarriage of justice is established by such cruel and unusual punishment of one who is truly innocent in every sense of the definition and meaning, by a jury determination.

Petitioner, in the interim, was granted an evidentiary hearing in March 2016 on the other acts of misconduct of Assistant District Attorney Robert Bradley Miller, after having manufactured a witness, a jail-house informant {Dennis Leonard Day}, who later recanted and admitted that he neither witnessed the actual shooting in this case, and the state had made a secret "deal" for assistance to this witness, that under the reasoning that the secret "deal" was not violation.

Such intervening change of law, see; *Mitchell v. State*, 424 P.3d 677 (June 28th 2019), (overruling *Pink*), an intervening change in law now requiring "independent corroboration" of conspiracy, making the manufactured witness' false testimony an invalid evidence-cause.

Such false premise, since the office of the district attorney is under the authority of the Executive Branch, and the "deal" that was made was not within the judicial forum of the district court, Judiciary, there was not violation. Assistant District Attorney Robert Bradley Miller wrote out a letter for parole release to the Oklahoma Department of Corrections Parole Board (which also operates within the Executive Branch of Government).

In the evidentiary hearing, for *Brady* violations, Petitioner attempted to raise the "first jury's verdict-issue", but the state's successful suppression and courts withholding of the jury verdict forms and the jury transcripts, created an impediment.

NOTE: Documents that has never been released even until this day, no court has ordered it, although consistently denied relief. Proper remedy would be to Order the production and release of the transcripts and jurors notes, or vacation of this case and mandated recall of the warrant.

REASONS FOR GRANTING THE PETITION

REASON FOR GRANTING THE PETITION

The reason why the petition must be granted because the failure to grant the petition would result in a fundamental miscarriage of justice. It would not relieve Petitioner from the clear and intentional violation of the United States Constitution by the government officials of the State of Oklahoma and deny the protections and guarantees of constitutional rights to those whom the founders intended.

Because Petitioner is actually innocent and factually innocent for the crimes and offense of murder in the first degree and has been unlawfully, unconstitutionally convicted and held in the Oklahoma Department of Corrections for almost thirty (30) years, and under such an administrative death sentence, obtained by such an act of fraud and conspiracy certainly cuts to the heart of the promise and vision of the founders for such the United States Supreme Court was created, for those under the very circumstances that this court stands as his last hope.

For this court to intervene and exercise its' absolute authority and use its judicial force to correct the wrong against one of the citizens of this great country, when the states have simply lost sight of justice. That hope is the fabric of expectation and faith is the substance of belief in the promise of the federal government and reliance on the Supreme Court's ability to constrain the state, when such violation within the United States takes place. Petitioner {an innocent man} prays for relief from an unlawful death by incarceration sentence by the State of Oklahoma who does not hear his cries.

I

The AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court, Burt v. Titlow __ U.S. __, 134 S. Ct. 10, 16, 187 L. Ed.2d 348 (2013). When a state court adjudicated a claim on the merits AEDPA prohibits federal court from granting habeas relief "unless the state

courts adjudication of the claim (1) results in a decision that was contrary to, or (2) involved an unreasonable application of clearly establish federal law, as determined by the Supreme Court of the United States, or (3) resulted in a decision that was based on an unreasonable determination of the facts "in light of the evidence presented in the state court proceedings."

Here, Petitioner filed his writ of habeas corpus for his immediate, pursuant to the guarantee of the State of Oklahoma Constitution, recorded under Title 12 O.S. {Civil Procedure} Section §§ 1333-1335, where the state responded under the State Application for Post-Conviction Relief {Criminal Procedure}, under Title 22 O.S. Section §§1080-1086, where he raised a substantive showing of the clear and intentional violation of double jeopardy;

to which the court, under the fraudulent aversion of the claim, "never addressing the underlying merits of the claims," adopted the office of the Assistant Attorney General's response that Petitioner's writ should be dismissed, where he raised his "Federal, Constitutional Claim of Double Jeopardy", and the state argued, under the authority of (1) a misplaced state assertion-response, (A)"that he should be denied a bond reduction hearing" and that (B) "he should not be granted to have department of corrections credits added to his sentence." [Intentional By-Pass of Rebuttal]

After the Cleveland County District Court dismissed the asserted federal claims {Case No. WH-2022-7}, and Oklahoma Court of Criminal Appeals, went on to reaffirm the dismissal of the writ appealing the denial of the federal claims raised in the district court (Case No. HC-2023-83), under the authority of the state decision (neither adequate-or-independent [Emphasis added]).

These claims raised upon relief guaranteed by clearly established federal law, See; *Blockburger*, supra, and the state decision to truncate was clearly contrary to federal law and an unreasonable application of state law to truncate federal law, as determined by the United States Supreme Court.

COLLATERAL RELIEF

And the State Court of Criminal Appeals issued an Order of Dismissal before the record from the district court was transmitted to them, to this day the record has never been transmitted, in accordance with state law, and federal due process.
A timely Motion to Reconsider and Motion to Vacate, in light of such substantial clear error was filed February 22, 2023. A Motion to Vacate was filed within the Oklahoma Court of Criminal Appeals whose response, from the clerk, was under the application for post-conviction procedure rules. It should be noted that the dispositive motions are still not ruled upon within the district court whom dismissed the writ.

The State of Oklahoma has demonstrated a culture of injustice and continued to exhibit a clear indifference to not only its own law but the very decision from the United States Supreme Court itself. If federal law is determined by the Supreme Court decisions in *Blockburger v. United States*, 284 U.S. 299 (1932), the recent decision in *United States v. Dixon*, 509 U.S. 688 (1993), overruling *Corbin*, restoring *Blockburger*, in upholding the protection from double jeopardy, the State of Oklahoma cannot in the name of justice;

cite state decisions 837 P. 2d 480-*Twyman*, challenge to the validity of a parole revocation, 809 P.2d 68-*Daniels*, a writ of mandamus to apply DOC credits to sentence, 353 P.3d 532-*Dutton*, the municipal courts prerogative to sentence both prison time and fines, 597 P.2d 774-*Maines*, failure to include transcripts...denial, and 43 P.3d 410-*Berryhill*, a frivolous application for post- conviction relief...denial, to rebut a United States Constitutional Protection and Guarantee, as such "double jeopardy protection was not given by the State of Oklahoma, and therefore they must not be able to take it away."

THE INTEGRITY FOR THE RULE OF LAW AND FUNDAMENTL FAIRNESS REEMERGES IN THE STATE OF OKLAHOMA

The truncated analysis further speaks of the culture of injustice, the manifest error of law and rebuttal and the unconstitutional barrier of finality even in the face of clear error. The Oklahoma Attorney General Gentner F. Drummond, filed a Motion to Vacate the Death Sentence against Richard *Glossip*, Case No. PCD 2023-267, where upon one of many reasons, the County District Prosecutor has "successfully withheld exculpatory evidence against *Glossip* and his legal team since the inception of his case, and upon the Attorney General's office being made aware of such "[p]rejudicial suppression and intentional-withholding of exculpatory material" filed his motion in the interest of justice, on the 6th day of April 2023.

The Oklahoma Court of Criminal Appeals went on to Deny the Motion to Vacate filed by the Attorney General on April 20, 2023, as a Denial of *Glossip*'s successive application for postconviction relief – Death Penalty- citing that his execution date is already scheduled for May 18th 2023. NOTE: that Glossip's conviction and sentence rest upon a co-defendant/state's witness who actually committed the crime then asserted that Glossip hired him and instructed him to commit it. This would present a mixed question of law and fact.

For (1) the statutes for Murder in the First Degree, Title 21 701.7 has again the statutory construction, for "in the commission" or "attempted commission", not the co-joint, conspiracy, endeavoring and other statutory criminal acts which prevent competent jurisdiction to try him. The evidence as revealed of the co-defendant and actual perpetrator *Sneed* as the crime was a murder act "instructed by *Glossip*" which would fall into yet another category of criminal offenses, outside of Oklahoma's First Degree Murder; [a] murder for hire, [b] solicitation for murder, [c] aider or [d] abettor liability. Therefore, on this "stand alone" error he is entitled to relief.

Under the controlling rule of law, the co-defendants testimony under the intervening change of law since *Glossip's* conviction the decision under *Mitchell*, co-defendant *Sneed's* stand alone {self-serving} testimony no longer has evidentiary foundation or merit {See; *Mitchell v. State*, 424 P.3d 677}. This intervening change in law also "stands alone" additionally makes the state's co-defendant testimony outside of the framework for sufficient or substantiated evidence, outside the 'new independent corroboration requirement" under statutory construction.

As cited by the Attorney General that the State used a "compromised witness" threatened with the death penalty, who had severe mental disorders and mental defects and he was under treatment at the time of his testimony. None of it was disclosed at the time of trial and during multiple appeals process, and now the state still intends to execute *Glossip*. This is "substantially fundamentally unfair." Yet, in light of even the State of Oklahoma's Attorney General himself filing the Motion to Vacate, the Oklahoma Court of Criminal Appeals elected to rationalize the denial of justice and comport the constraints of the rule of law. Then, what hope does the common man have to have his cries for justice resolved. The Supreme Court must intervene!

The Oklahoma Court of Criminal Appeals failed to provide a doctrinal answer through the Eight Amendment, to take the life of the accused where there is such substantial doubt of his guilt. And to rule otherwise goes right to "the heart of the retribution rationale," in this court's own words, "is that a criminal sentence must be directly related to the personal culpability of the criminal offender." What hope does Petitioner have if this court does not intervene to simply ensure justice that has been long overdue denied him.

When the State Attorney General and legal authority has provided substantial legal reasoning and sound legal direction, even when it is the most difficult position

The actions of; Kenneth C. Watson, Presiding Judge, OBA #9393, Robert Bradley Miller, Prosecutor, OBA #14106300, and Andrea Digilio Miller, Defense Counsel, OBA #17019, were intentionally unconstitutional, willfully malicious and in clear violation of the U.S. Constitution. Clearly established Federal Law as determined by the Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gary L. Thompson, Jr.

Date: May 2 2023