No. 22A941
CAPITAL CASE

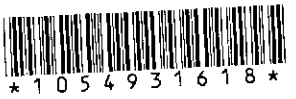
IN THE
Supreme Court of the United States

RICHARD GLOSSIP,
Applicant,
v.
STATE OF OKLAHOMA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

RESPONDENT'S APPENDIX

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS

THE STATE OF OKLAHOMA

PCD 2023 267

RICHARD GLOSSIP,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

Oklahoma County
Case No. CF-97-256

Court of Criminal Appeals
Direct Appeal Case No. D-2005-310

Post-conviction Case No. PCD-2004-978
Post-conviction Case No. PCD-2015-820
Post-conviction Case No. PCD-2022-589
Post-conviction Case No. PCD-2022-819

No. _____

SUCCESSIVE APPLICATION FOR POST-CONVICTION RELIEF
DEATH PENALTY – EXECUTION SCHEDULED MAY 18, 2023

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IN THE COURT OF CRIMINAL APPEALS

THE STATE OF OKLAHOMA

RICHARD GLOSSIP, *Petitioner*, v. STATE OF OKLAHOMA, *Respondent.*	Oklahoma County Case No. CF-97-256 Court of Criminal Appeals Direct Appeal Case No. D-2005-310 Post-conviction Case No. PCD-2004-978 Post-conviction Case No. PCD-2015-820 Post-conviction Case No. PCD-2022-589 Post-conviction Case No. PCD-2022-819 No. _____

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COURT OF CRIMINAL APPEALS FORM 13.11A

SUCCESSIVE APPLICATION FOR POST-CONVICTION RELIEF - DEATH PENALTY -

PART A: PROCEDURAL HISTORY

Petitioner, Richard E. Glossip, through undersigned counsel, submits this Successive Application for Post-Conviction relief under Section 1089 of Title 22. This is the fourth application for post-conviction relief filed in Mr. Glossip's case. Rule 9.7A (3)(d) requires copies of the Original Application for Post-Conviction Relief and the prior Successive Applications for Postconviction Relief to be attached. Given that the most recent prior successive application remains pending before the Supreme Court of the United States (No. PCD 2022-589; *Glossip v. Oklahoma*, No. 22-6500 (U.S.)), Mr. Glossip has not re-attached them here, to avoid duplication and confusion. Should the court need additional copies of those applications, Mr. Glossip will provide them immediately on request.

The sentence from which relief is sought: Death.

1. **Court in which sentence was rendered:**
   i. Oklahoma County District Court
   ii. Case Number: CF-1997-256
2. **Date of sentence:** August 27, 2004
3. **Terms of sentence:** Death
4. **Name of Presiding Judge:** Hon. Twyla Mason Gray
5. **Is Petitioner currently in custody?** Yes
6. **Where?** Oklahoma State Penitentiary, McAlester, Oklahoma
7. **Does Petitioner have criminal matters pending in other courts?** No

8. **Does Petitioner have sentences (capital or non-capital) to be served in other states or jurisdictions?** No

I. CAPITAL OFFENSE INFORMATION

Petitioner was convicted of the following crime, for which a sentence of death was imposed: First Degree Murder, in violation of Okla. Stat. tit. 21, § 701.7(A).

Aggravating factors alleged:

1. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;
2. The murder was especially heinous, atrocious, or cruel [dismissed by Court prior to trial];
3. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society [rejected by jury].

Aggravating factors found:

1. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration.

Mitigating factors listed in jury instructions:

1. The defendant did not have any significant history of prior criminal activity;
2. The defendant is 41 years of age;
3. The defendant's emotional and family history;
4. The defendant, since his arrest on January 9, 1997, has been incarcerated and has not posed a threat to other inmates or detention staff;
5. The defendant is amenable to a prison setting and will pose little risk in such structured setting;
6. The defendant has family who love him and value his life;
7. Has limited education and did not graduate from high school. He has average intelligence or above. He has received his G.E.D.;
8. After leaving school, the defendant had continuous, gainful employment from age 16 to his arrest on January 9, 1997;
9. The defendant could contribute to prison society and be an assistance to others;
10. Prior to his arrest, the defendant, had no history of aggression;
11. The defendant was not present when Barry Van Treese was killed; and
12. The defendant has no significant drug or alcohol abuse history.

Was Victim Impact Evidence introduced at trial? Yes

Check whether the finding of guilty was made:

After plea of guilty ( ) After plea of not guilty (X).

If found guilty after plea of not guilty, check whether the finding was made by:
A jury (X) A judge without a jury ( )

Was the sentence determined by:
A jury (X), or ( ) the trial judge?

II. NON-CAPITAL OFFENSE INFORMATION

Petitioner was convicted of the following offense(s) for which a sentence of less than death was imposed (include a description of the sentence imposed for each offense).

Petitioner was not convicted of any offense other than the single capital offense.

III. CASE INFORMATION

Name and address of lawyer in trial court:
Silas Lyman
1800 E. Memorial Rd.#106
Oklahoma City, OK 73131
(405) 323-2262

Names and addresses of all co-counsel in the trial court:
Wayne Woodyard
Oklahoma Indigent Defense System
610 South Hiawatha
Sapulpa, OK 74066
(405) 801-2727

Was lead counsel appointed by the court? Yes

Was the conviction appealed? Yes
To what court or courts? Oklahoma Court of Criminal Appeals
Date Brief in Chief filed: December 15, 2005
Date Response Brief filed: April 14, 2006
Date Reply Brief filed: May 4, 2006
Date of Oral Argument: October 31, 2006
Date of Petition for Rehearing (if appeal has been decided): May 3, 2007

Has this case been remanded to the District Court for an evidentiary hearing ondirect appeal? No

If so, what were the grounds for remand? n/a

Is this petition filed subsequent to supplemental briefing after remand? No

Name and address of lawyers for appeal:
Janet Chesley
Kathleen Smith
Capital Direct Appeals
Oklahoma Indigent Defense System
P.O. Box 926
Norman, OK 73070
(405) 801 2666

Was an opinion written by the appellate court?
Yes, for D-2005-310
Yes, for D 1998-948[1]

If "yes," give citations if published:
Glossip v. State, 2007 OK CR 12, 157 P.3d 143 (2007)
Glossip v. State, 2001 OK CR 21, 29 P.3d 597 (2001)

Was further review sought? Yes

a. After this Court affirmed Mr. Glossip's death sentence in D-2005-310, he sought certiorari in the U . S . Supreme Court, which was denied on January 22, 2008 in Glossip v. Oklahoma, 552 U.S. 167 (2008).

b. An Original Application for Post-Conviction Relief was filed in this Court, Case No. PCD-2004-978, on October 6, 2006. The court denied Mr. Glossip's original application in an unpublished opinion on December 6, 2007. The following grounds for relief were raised in the original application:

PROPOSITION I

PROSECUTORIAL MISCONDUCT DEPRIVED MR. GLOSSIP OF A FAIR TRIAL-AND RELIABLE SENTENCING PROCEEDING.

PROPOSITION II

TRIAL AND APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE OKLAHOMA CONSTITUTION.

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[1] This Court reversed Mr. Glossip's conviction and death sentence in his first appeal.

PROPOSITION III

TRIAL AND APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO ARGUE THAT JUDICIAL BIAS SO INFECTED THE PROCEEDINGS THAT MR. GLOSSIP WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTIONS 6, 7, 9, AND20 OF THE OKLAHOMA CONSTITUTION.

PROPOSITION IV

MR. GLOSSIP WAS DENIED A FAIR TRIAL WHEN THE TRIAL COURT FAILED TO KEEP THE JURY SEQUESTERED DURING DELIBERATIONS.

PROPOSITION V

THE CUMULATIVE IMPACT OF ERRORS IDENTIFIED ON DIRECT APPEAL AND POST-CONVICTION PROCEEDINGS RENDERED THE PROCEEDING RESULTING IN THE DEATH SENTENCE ARBITRARY, CAPRICIOUS, AND UNRELIABLE. THE DEATH SENTENCE IN THIS CASE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND A DENIAL OF DUE PROCESS OF LAW.

c. On November 3, 2008, Mr. Glossip filed a Petition for Writ of Habeas Corpus in the United States District Court for the Western District of Oklahoma. Glossip v. Trammell, Case No. 08-CV-00326-HE. The federal district court denied the petition on September 28, 2010. The following grounds for relief were raised in Mr. Glossip's habeas petition:

GROUND ONE

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUSTAIN A CONVICTION AND SENTENCE OF DEATH UNDER THE REQUIREMENTS OF THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

GROUND TWO

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING IRRELEVANT AND HIGHLY PREJUDICIAL EVIDENCE INTO THE RECORD IN VIOLATION OF MR. GLOSSIP'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND THREE

THE TRIAL COURT ERRED IN PERMITTING THE STATE TO DISPLAY SELECTIVE PORTIONS OF CERTAIN WITNESSES' TESTIMONY THROUGHOUT THE TRIAL BECAUSE IT OVEREMPHASIZED THAT TESTIMONY, CONSTITUTED A CONTINUOUS CLOSING ARGUMENT, AND VIOLATED THE RULE OF SEQUESTRATION OF WITNESSES.

GROUND FOUR

MR. GLOSSIP WAS DEPRIVED OF A FAIR TRIAL AND A FAIR SENTENCING HEARING BY THE IMPROPER TACTICS, REMARKS, AND ARGUMENTS OF THE PROSECUTORS DURING BOTH STAGES OF TRIAL.

GROUND FIVE

MR. GLOSSIP WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HIS RIGHTS UNDER THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITEDSTATES CONSTITUTION.

GROUND SIX

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE AGGRAVATING CIRCUMSTANCE OF MURDER FORREMUNERATION.

GROUND SEVEN

ERRORS IN JURY INSTRUCTIONS GIVEN IN THE SECOND STAGE OF TRIAL DENIED MR. GLOSSIP'S RIGHTS UNDER THE EIGHTH ANDFOURTEENTH AMENDMENTS TO DUE PROCESS AND A RELIABLE SENTENCING PROCEEDING.

GROUND EIGHT

THE TRIAL COURT ERRED IN ALLOWING IMPROPER VICTIM IMPACT TESTIMONY DURING THE SENTENCING STAGE, VIOLATING MR. GLOSSIP'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

GROUND NINE

THE TRIAL COURT'S VOIR DIRE PROCESS VIOLATED MR. GLOSSIP'S RIGHTS PROTECTED BY THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OKLAHOMA CONSTITUTION.

GROUND TEN

THE ADMISSION OF A PRE-MORTEM PHOTOGRAPH OF THE VICTIM INJECTED PASSION, PREJUDICE, AND OTHER ARBITRARY FACTORS INTO THE SECOND STAGE PROCEEDINGS.

GROUND ELEVEN

TRIAL AND APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH, EIGHTH,AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE OKLAHOMA CONSTITUTION.

GROUND TWELVE

TRIAL AND APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO ARGUE THAT JUDICIAL BIAS SO INFECTED THE PROCEEDINGS THAT MR. GLOSSIP WASDENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THEUNITED STATES CONSTITUTION.

GROUND THIRTEEN

THE ACCUMULATION OF ERRORS SO INFECTED THE TRIAL AND SENTENCING PROCEEDINGS WITH UNFAIRNESS THAT MR. GLOSSIP WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL, DUEPROCESS AND A RELIABLE SENTENCING PROCEEDING IN VIOLATION OF THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS.

The Tenth Circuit affirmed the denial of habeas relief in Case No. 10-6244 on July 25, 2013. See Glossip v. Trammell, 530 Fed. Appx. 708 (2013). A petition for rehearing was filed on September 9, 2013 and was denied on September 23, 2013. A petition for writ of certiorari was filed in the Supreme Court and was denied on May 5,2014. See Glossip v. Trammell, 572 U.S. 1104, 134 S. Ct. 2142, 188 L.Ed.2d 1131 (2014).

d. A Subsequent Application for Post-Conviction Relief was filed in this Court, Case No. PCD-2015-820, on September 15, 2015. The court denied Mr. Glossip's subsequent application in an unpublished opinion on September 28, 2015. The following grounds for relief were raised in the subsequent application:

PROPOSITION ONE

IT WOULD VIOLATE THE EIGHTH AMENDMENT FOR THE STATE TO EXECUTE MR. GLOSSIP ON THE WORD OF JUSTIN SNEED

PROPOSITION TWO

COUNSEL WERE INEFFECTIVE IN VIOLATION OF THE SIXTH AMENDMENT

PROPOSITION THREE

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT THE MURDER CONVICTION BECAUSE NO RATIONAL TRIER OF FACT COULD HAVE FOUND BEYOND A REASONABLEDOUBT THAT MR. GLOSSIP AIDED AND ABETTED SNEED

PROPOSITION FOUR

COUNSELS' PERFORMANCE VIOLATED MR. GLOSSIP'S RIGHTS UNDER THE SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHEN THE MEDICAL EXAMINER TESTIFIED IN A WAY THAT MISLED THE JURY AND UNDERMINES THE RELIABILTY OF THE VERDICT AND DEATH SENTENCE

The Court of Criminal Appeals denied a petition for rehearing on September 29, 2015. Mr. Glossip filed a petition for a writ of certiorari in the U.S. Supreme Court the same day, and it was denied September 30, 2015.

e. An additional subsequent Application for Post-Conviction Relief was filed in this Court, Case No. PCD-2022-589, on July 1, 2022. The Court denied that Application on November 10, 2022. The following grounds for relief were raised in the subsequent application:

PROPOSITION ONE

RICHARD GLOSSIP IS FACTUALLY INNOCENT OF THE MURDER OF BARRY VAN TREESE.

PROPOSTION TWO

THE STATE'S BAD FAITH DESTRUCTION OF VITAL EVIDENCE DURING THE PENDENCY OF MR. GLOSSIP'S FIRST DIRECT APPEAL VIOLATED HIS RIGHT TO DUE PROCESS.

PROPOSITION THREE

MR. GLOSSIP'S TRIAL COUNSEL WERE CONSTITUTIONALLY INEFFECTIVE FOR FAILING, ON BEHALF OF THEIR INNOCENT CLIENT FACING THE DEATH PENALTY, TO CONDUCT ANY INDEPENDENT INVESTIGATION OF THE CRIME, INVESTIGATE MR. GLOSSIP'S MENTAL IMPAIRMENTS AND DEFICITS, INTERVIEW MANY OF THE STATE'S WITNESSES, OR INVESTIGATE AND PURSUE

THE STATE'S DESTRUCTION OF EVIDENCE IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND ART. II, §§ 7, 9 AND 20 OF THE OKLAHOMA CONSTITUTION.

PROPOSITION FOUR

THE INVESTIGATION, TRIAL, AND APPEAL IN MR. GLOSSIP'S CASE FAILED TO MEET THE DEMANDS OF THE DUE PROCESS OF LAW.

PROPOSITION FIVE

MR. GLOSSIP IS INTELLECTUALLY DISABLED AND INELIGIBLE FOR THE DEATH PENALTY UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS AND ART. 2, § 9 OF THE OKLAHOMA CONSTITUTION.

f. An additional subsequent Application for Post-Conviction Relief was filed in this Court, Case No. PCD-2022-819, on September 22, 2022. The following grounds for relief were raised in the subsequent application:

PROPOSITION ONE

THE STATE WITHHELD MATERIAL EVIDENCE FAVORABLE TO THE DEFENSE OF JUSTIN SNEED'S PLAN TO RECANT HIS TESTIMONY OR RENAGOTIATE HIS PLEA DEAL.

PROPOSITION TWO

THE PROSECUTOR COMMITTED PREJUDICIAL MISCONDUCT WHEN SHE VIOLATED THE RULE OF WITNESS SEQUESTRATION TO ORCHESTRATE SNEED'S TESTIMONY, INTENDING TO COVER A MAJOR FLAW IN THE STATE'S CASE.

PROPOSITION THREE

THE STATE PRESENTED FALSE TESTIMONY FROM SNEED ABOUT ATTEMPTIMG TO THRUST THE KNIFE INTO VAN TREESE'S HEART.

PROPOSITION FOUR

THE STATE SUPPRESSED IMPEACHMENT EVIDENCE OF SNEED'S KNIFE TESTIMONY

PROPOSITION FIVE

THE CUMULATIVE EFFECT OF THE STATE'S SUPPRESSION OF EXCULPATORY AND IMPEACHMENT EVIDENCE REQUIRES REVERSAL OF THE CONVICTION AND SENTENCE.

The Court denied the Application on November 17, 2022. Mr. Glossip petitioned for certiorari on January 3, 2023. That petition remains pending at the Supreme Court of the United States. *Glossip v. Oklahoma*, No. 22-6500 (U.S.).

PART C: FACTS

Mr. Glossip was convicted of the murder of Barry Van Treese, which everyone acknowledges was physically committed by Justin Sneed, on the theory that he hired Sneed to do it by agreeing to split with him the money Sneed could steal from Van Treese during the murder. The defense called no witnesses. Since present counsel became involved in 2015, it has become increasingly clear that Mr. Glossip did no such thing, and that the murder was instead a botched robbery by Sneed and a likely female accomplice attempting to steal money for drugs.

The Attorney General's Office provided the defense with access to most of the District Attorney's File—seven boxes—in September of 2022, and Mr. Glossip filed a petition shortly thereafter based on information contained in those files. However, they unilaterally withheld a box's worth of documents they deemed "work product." On January 27, 2023, they made the rest of the documents available in a box that has come to be known as Box 8, containing mostly prosecutors' notes.

PART D: PROPOSITIONS – ARGUMENTS AND AUTHORITIES

This Partial Application is not intended to be Mr. Glossip's full and final presentation of these claims. Rather, it is being filed now to comply with the requirement in Rule 9.7(G)(3) that a petition must be filed "within 60 days from the date the previously unavailable legal or factual basis serving as the basis for a new issue is announced or discovered." This Court has directed Petitioners to file applications within 60 days even if they are not fully developed or complete to "notify the Court" of the new grounds, and that "[o]nce a timely application is filed, an extension of time to further develop the application with added materials pertaining to the timely raised issue can be submitted to the Court." *Slaughter v. State*, 2005 OK CR 6, 108 P.3d 1052 (2005) at

¶ 21 fn 12. Accordingly, Mr. Glossip requests that the Court allow him to amend and/or supplement this Partial Application when he has had the opportunity to fully develop the claim. Mr. Glossip has consulted with the Attorney General's Office, which does not oppose the extension of time or future amendment or supplementation of this application.

This pleading's posture as a successive application does not constrain the Court's ability to grant relief. This Court may consider the merits and grant relief on a subsequent application where it "contains sufficient specific facts establishing that the current claims and issues have not and could not have been presented previously . . . because the factual basis for the claim was unavailable as it was not ascertainable through the exercise of reasonable diligence on or before that date." Ok. St. T. 22 § 1089(8)(b)(1). The claims in this Application stem from information the Attorney General's Office withheld from the defense even when making available portions of the District Attorney's file in September of 2022, despite repeated diligent requests from the defense for access over the course of years. Those documents were not made available to the defense until January 27, 2023. Accordingly, this application is being filed within 60 days of that information being made available.

In any event, this Court maintains the power to grant post-conviction relief any time "an error complained of has resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right." *Valdez v. State*, 2002 OK CR 20, 46 P.3d 703, 710-11; *see also* Okla. Stat. tit. 20, § 3001.1. The rule announced in *Valdez* is not an anomaly. This Court has consistently followed similar rationale when addressing successive post-conviction applications. *See Malicoat v. State*, 2006 OK CR 25, 137 P.3d 1234; *Torres v State*, 2005 OK CR 17, 120 P.3d 1184; *Slaughter*, 2005

OK CR 6, 108 P.3d 1052; *McCarty v. State*, 2005 OK CR 10, 114 P.3d 1089; *Brown v. State*, Case No. PCD-2002-781 (Aug. 22, 2022) (unpublished).

The Court cannot consider these individual claims in isolation. For claims of state misconduct, the United States Supreme Court is clear: misconduct in general and suppression of evidence in particular is "considered collectively, not item by item." *Kyles v. Whitley*, 514 U.S. 419, 436 (1995). Courts must consider the "cumulative effect" of the entirety of the suppressed evidence. *Id.* at 437. It is the "net effect" of the entirety of the suppressed evidence that must be accounted for in determining whether state misconduct renders a proceeding unfair. *Id.*; *see also Jones v. State*, 2006 CR 5 ¶58 (considering "cumulative effect" of *Brady* violations). Regardless of the type of claim, a weakly supported conviction is more vulnerable to the taint of state misconduct or ineffective assistance of counsel than one supported by robust evidence. As the OCCA has put it, "[a] sentence 'only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.'" *Brown v. State*, 1997 OK 1 ¶15 (quoting *Strickland*, 466 U.S. at 696). A weaker case is more vulnerable to reversal because the touchstone of the inquiry is fundamental fairness of the proceeding. *See Childress*, 2000 OK CR at ¶48. Oklahoma law requires decisionmakers to consider the "evidence as a whole" to assess the reliability and legality of a conviction in a range of situations. In the context of a subsequent application for post-conviction relief, section 1089(D)(8)(2) requires that consideration when assessing claims of actual innocence or challenges to a sentence of death. *See also Valdez*, 2002 OK CR at ¶27 (comparing new mental health evidence to assess whether the "jury's determination" might have been different).

PROPOSITION ONE: THE STATE WITHHELD MATERIAL EVIDENCE FAVORABLE TO THE DEFENSE.

A. DUE PROCESS REQUIRES PROSECUTORS TO DISCLOSE EVIDENCE FAVORABLE TO AN ACCUSED.

The prosecutor's interest "in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). As first declared by the Supreme Court in *Brady v. Maryland,* 373 U.S. 83, 87 (1963), prosecutors in possession of evidence favorable to the defendant are required, by principles of due process and the guarantee of a fair trial, to disclose it. To obtain relief from a conviction for violation of this duty, a defendant must show both that the withheld information had exculpatory or impeachment value, and that it was material. *See Harris v. State,* 2019 OK CR 22, ¶¶ 38-40, 450 P.3d 933, 949-50. A defendant is *not* required to show the prosecutor acted deliberately. *Id.*

B. THE STATE FAILED TO DISCLOSE CRUCIAL IMPEACHMENT EVIDENCE PROSECUTORS OBTAINED FROM JUSTIN SNEED PRIOR TO THE SECOND TRIAL REGARDING MENTAL HEALTH AND DRUG USE.

Notes taken by prosecutors in a meeting with Justin Sneed reveal that Sneed told prosecutors not only that he had taken lithium in jail, but that he had seen a "Dr. Trumpet," quickly revealed by basic research to be Dr. Larry Trompka, the psychiatrist who served the Oklahoma County Jail in 1997. Attachment 1. This fact is important in light of Sneed's subsequent testimony that he "never seen no psychiatrist or nothing" (Tr. 6/16/04 at 63). Moreover, upon gaining this information, the defense was then able to learn that Dr. Trompka had in fact [redacted] when Sneed had testified he "asked for some Sudafed because I had a cold, but shortly after that they ended up giving me Lithium for some reason, I don't know why." *Id.* at 64. Now with the benefit of the information the prosecutor had about the psychiatrist, the defense was recently able to obtain information from Dr. Trompka, who explained that "[redacted] are exacerbated by illicit drug use, such as

methamphetamine," and a "manic episode may cause an individual to be more paranoid or potentially violent." Attachment 2.

This same page of notes contains the following notation: "meals not steady, no hungry, get crank from girls." This note contradicts the State's claim at trial that the reason Sneed did not have steady meals was that he was not paid, and was thus dependent on Glossip. It also suggests significant methamphetamine use (enough to make him not hungry), which, combined with the information from Dr. Trompka, would be significantly impeaching and offer the jury crucial information about Sneed's behavior both at the time of the crime and during his interrogation by Detectives Bemo and Cook.

Assistant District Attorney Gary Ackley, who helped try this case, agrees that the information about Sneed's mental health "goes to Mr. Sneed's state of mind and, depending on when he was administered the lithium, would have been discoverable." Attachment 3, ¶ 30. Given Sneed's centrality to the State's case, this impeachment evidence was material. *See Browning v. Trammell*, 717 F.3d 1092, 1107 (10th Cir. 2013) (materiality established "at least when the eyewitness testimony is 'the *only* evidence linking [the defendant] to the crime,' and the impeachment evidence casts substantial doubt upon its reliability." (quoting *Smith v. Cain*, 565 U.S. 73, 76 (2012) (emphasis in *Smith*))).

C. THE STATE FAILED TO DISCLOSE THAT WITNESS KAYLA PURSLEY HAD SEEN THE SINCLAIR VIDEO.

It has long been known in this case that police obtained a surveillance video from the Sinclair station across the street from the Best Budget Inn. It was not provided to the defense in discovery. In 2003, defense counsel prior to the second trial specifically requested access to the video, and were told by prosecutor Connie Smothermon via email that "OCPD never booked a video tape into evidence. There is some confusion as to whether one was looked at or actually

taken by an officer. Either way, it never made it to this case file. The information I have is that any video tape would be of the interior of the station only." Attachment 4.

In the recently disclosed notes from Box 8, Gary Ackley wrote, in an interview with Kayla Pursley, that the Sinclair video showed the inside of the station and she could not remember, but did not think, it showed the outside. He stated she watched the video to see what time Sneed had come in, and thinks OCPD took the video. The defense had never before been told that Pursley had seen the video.

Pursley testified at the second trial about Sneed coming into the Sinclair station, and about John Beavers coming in subsequently and talking with her about a broken window in Room 102, and her making a call. RT 5/21/04 at 26-32. The fact that the witness had watched a video of these events after they happened should have been disclosed to the defense—and so should the video, with which they could have cross-examined her. Moreover, the disclosure of these notes caused Ackley to recall he believed he had actually *seen* that video that had never been produced and "believe[d] it existed at the DA's office at one time." Attachment 3 ¶ 22. He also believed it should have been provided to the defense. *Id.* ¶ 23. This information—the video itself and Pursley's statements about it—were material and exculpatory.

D. THE STATE FAILED TO DISCLOSE DETAILS FROM WITNESS STATEMENTS THAT CONFLICTED WITH OTHER EVIDENCE.

Also contained in Box 8 were prosecutor Gary Ackley's notes from interviews with witnesses Bill Sunday and Cliff Everhart. In the notes from the Bill Sunday interview, Ackley wrote Sunday had told him he "spent $25K for repair." Attachment 6. While prosecutors disclosed portions of this interview to the defense, they omitted this statement. At trial, Ken Van Treese testified the "total expenditures for maintenance in that two-month period was about $2,000," a fact he used to claim that Glossip's negligence, and not the need for a significant

amount of money, was the reason the motel was in disrepair. RT 5/25/04 at 162-63. Thus, Sunday had told prosecutors something that contradicted testimony they presented and used to bolster their theory of Mr. Glossip's motive. Had that information been disclosed, the defense could have elicited that testimony from Sunday to impeach Ken Van Treese. Ackley believes this is information that should have been provided to the defense. Attachment 3 ¶¶ 37-39.

Box 8 also contained what appear to be Connie Smothermon's notes from an interview with witness Cliff Everhart. Those pages contain a note that says "Liquidated / Big screen / 900 couch." Smothermon has not provided an affidavit, and, thus, what precisely she meant by this notation is a question of fact on which her testimony is required. However, the most logical interpretation is that Everhart said the amount of $900 in conjunction with the sale of a big screen television and a couch.

Everhart testified about Glossip selling his possessions, and testified he personally gave him $100 for an aquarium and thought he received $150-200 for vending machines, but when asked about the big screen TV and couch, he stated, "I really don't know." Tr. 5/25/04 at 200-01. If in fact he had told prosecutors it was $900, as these notes strongly imply, that was crucial information the defense needed to have, because the source of the $1,757 Glossip was carrying when he was arrested outside his lawyer's office was a major issue in the case. Indeed, the existence of that money without other explanation was important evidence this Court found corroborated Sneed's testimony that Glossip was involved in the murder. *Glossip v. State,* 2007 OK CR 12, ¶ 48; dissent ¶ 30. As Everhart had personally accounted for up to $300, and police concluded he had over $100 left over from his most recent paycheck, accounting for an additional $900 went quite a long way toward explaining the cash Mr. Glossip was carrying, and

would have been both impeaching for Everhart, now claiming he did not know, and highly exculpatory to Mr. Glossip.

This claim could not have been brought sooner because the factual basis was not available until the State finally disclosed the Box 8 documents on January 27, 2023. Had these items from Box 8 been disclosed before trial as the State was constitutionally obligated to do, there is a reasonable probability that the result of the trial would have been different.

PROPOSITION TWO: THE STATE LOST OR DESTROYED (OR CONTINUES TO WITHHOLD) A KEY SURVEILLANCE VIDEO IT HAD IN ITS POSSESSION AS LATE AS 2003 WHILE CONTINUING TO TELL THE DEFENSE THEY DID NOT HAVE IT.

As discussed *supra* in Proposition One, police seized a surveillance tape from the Sinclair gas station next door to the motel covering the timeframe surrounding the murder. The State never disclosed the video to the defense, and when the defense requested to see it in 2003, they were led to believe the State did not have it, having been told the tape had not made it into the District Attorney's file. Attachment 4. Upon being presented with his notes from the Kayla Pursley interview that were discovered in January, 2023 in Box 8, prosecutor Gary Ackley thought he remembered watching the video himself after he was assigned to the case in 2003. Attachment 3 ¶¶ 11-12. He explains he was asked in 2022 to search for the video and did not locate it, but he "believe[s] it existed at the DA's office at one time," and it "should have been turned over to the defense." Id. ¶¶ 22-23.

While the State apparently felt the video was not useful evidence, they were looking only for evidence to support their case—and thus did not scrutinize the video for, for instance, evidence of another accomplice with Sneed, or any indication of what clothing he was wearing (to compare with bloody clothing found at the motel). Nor did they have any reason to scrutinize the timeline for the entire course of the evening, which could have shown problems with the

State's version of events. Presently, it is simply not possible to know *what* that video might have shown that could have been helpful to the defense, but there is no question it was potentially useful. The inability to prove that now is no fault of Mr. Glossip's; as Ackley says, the State had the video, and did not produce it when asked. That means *either* they lost or destroyed it, *or* they still have it somewhere. If they still have it, it is a massive *Brady* violation. If they don't, they lost or destroyed it when it was in their possession, despite a specific request, which constitutes bad faith and is a violation of Mr. Glossip's due process rights under the Fourteenth Amendment and Art. II, § 7 of the Oklahoma Constitution, pursuant to *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).

Prior to the discovery of Ackley's notes in Box 8, Ackley had not recalled that the tape was (or is) in the State's possession as he does now. Accordingly, the factual basis for this claim was not reasonably available previously.

PROPOSITION THREE: MR. GLOSSIP'S DUE PROCESS RIGHTS WERE VIOLATED WHEN, FOLLOWING THE MEDICAL EXAMINER'S TESTIMONY THAT VAN TREESE HAD BEEN STABBED, THE PROSECUTOR SOUGHT TO CHANGE SNEED'S TESTIMONY.

A similar claim was presented to this Court in the September, 2022 application. However, at the time that claim was presented, the State had continued to withhold important evidence of the events surrounding this testimony. Because the record was not complete at that time due to the State's conduct, this Court must consider this claim now even though it is connected to a claim previously presented.

Specifically, the State recently disclosed trial notes from prosecutor Gary Ackley during the testimony of the medical examiner. Those notes are accompanied by post-it notes written by Connie Smothermon giving Ackley direction for re-direct examination. Attachment 7. Shown these newly disclosed notes, Ackley explained he "misunderstood the circumstances of those

wounds," and had gotten into a "quagmire" caused by "not understanding the laceration/puncture wounds came from a blunt knife." Attachment 3 ¶¶ 34-35. He explains Smothermon was "concerned" about his "mishandling of Dr. Choi's testimony." Id. ¶ 35.

The next witness—the last of the day, with Sneed set to testify in the morning—was Cliff Everhart, also examined by Ackley. Smothermon apparently took notes during that testimony, and wrote at the bottom "get Justin Sneed." Attachment 8.

These documents contained in Box 8 shed significant light on the memorandum Smothermon wrote to Gina Walker, Sneed's attorney and also a listed witness, after the day's testimony. Attachment 9. That memo, found in the boxes made available to the defense in September 2022, revealed Smothermon's plan to explain to Sneed the "problem" with the knife, as he had told police he did *not* stab Van Treese, to ensure he would not testify in a way that contradicted the medical examiner's testimony. Staff from the office where Gina Walker worked have confirmed the annotations on the memo are in Walker's handwriting, confirming she received the memo and discussed it with Smothermon. Attachment 10.

This new evidence provides additional support for the claim that the State realized mid-trial that its key witness's prior statements did not match the physical evidence, and rather than pause the proceedings to address the problem with the court and the defense—in a just attempt to discover what the truth actually was—it attempted to conform the testimony to the existing record. What's more, when the defense complained this information had not been disclosed, Smothermon told the court she "asked Mr. Sneed about this knife one time and that was last year [2003]. He told me that he had the knife open during the attack, that he did not stab Mr. Van Treese with it. I knew all the wounds to be blunt force trauma so I didn't pursue it any further." Tr. 5/26/04 at 105. The memo confirms the first statement is false—she discussed it with him

between Choi's testimony and his own the next day. The post-it notes, newly revealed, suggest that the last sentence—that she "knew all the wounds to be blunt force trauma"—is false, too. She was attempting during trial to explain to Ackley how knife-type wounds could have been made without a knife, and according to Ackley, she was upset with him, suggesting she *knew* there were wounds that they had not explained, and had wanted Ackley to avoid any implication that a knife had been used.

In addition, the State's failure to disclose that Sneed had talked with them about the medical examiner's testimony and the knife as a "problem" prior to his testimony constitutes material impeachment evidence that should have been disclosed.

It is impossible to know exactly what Smothermon meant, and what she knew and didn't know, without her testimony, and this claim depends upon what she knew when. Accordingly, it cannot be resolved without an evidentiary hearing. If indeed Smothermon knew that Sneed's prior statements were incompatible with the medical examiner's opinion, and she planned to "get" him to fix this "problem," as her notes and memo suggest, then a major violation of Mr. Glossip's due process rights occurred, and his conviction cannot stand.

PROPOSITION FOUR: RICHARD GLOSSIP IS ACTUALLY INNOCENT OF THE MURDER OF BARRY VAN TREESE.

Factual innocence of the crime provides a freestanding basis for relief in a capital case. *See, e.g., Slaughter v. State*, 2005 OK CR 6, ¶ 6, 108 P.3d 1052, 1054 ([T]his Court's rules and cases do not impede the raising of factual innocence claims at any stage of an appeal. We fully recognize innocence claims are the Post-Conviction Procedure Act's foundation."); *McCarty v. State*, 2005 OK CR 10, ¶¶ 17-19, 114 P.3d 1089, 1094 (claim of factual innocence fails because proffered evidence did not prove innocence); *see also Herrera v. Collins*, 506 U.S. 390, 417 (1993) (assuming execution would be unconstitutional, and relief available from federal courts,

upon a "truly persuasive demonstration of 'actual innocence'" made after trial). This Court maintains the power to grant post-conviction relief any time "an error complained of has resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right." *Valdez v. State*, 2002 OK CR 20, ¶ 28, 46 P.3d 703, 710-11 (citing Okla. Stat. tit. 20 § 3001.1).

Evidence gathered by post-conviction counsel between 2015 and today demonstrates that this crime was a methamphetamine-fueled robbery gone wrong by Justin Sneed with another, likely female, accomplice, not involving Richard Glossip, rather than a plot by the manager of a motel to turn over proceeds to the owner, and then convince an employee to murder that owner so he could take back *half* of the money he had turned over and somehow end up controlling the motel.

A large amount of new evidence was presented to this Court in the application filed July 1, 2022. No hearing has ever been held on that evidence, and it remains the case that if the witnesses whose affidavits were presented are believed, Mr. Glossip simply had nothing to do with this murder. Mr. Glossip requests this Court to consider the entire record in assessing this, and every, proposition, including his July 1, 2022 application. Since then, additional information further supports this conclusion.

First, witness Paul Melton has provided additional, more detailed information about Sneed's explanations to him in jail of the crime. Attachment 11. The additional detail provided in this affidavit is broadly consistent with the physical evidence and is even more credible than the more limited information previously presented.

Additionally, highly qualified forensic pathologist Dr. Peter Speth has reviewed the case again in light of this new information and believes that although the work done by Dr. Choi was

so poor that it is not possible to tell definitively, there is some evidence that Van Treese may have been choked and/or smothered, rather than dying from blood loss or severe brain injury, of which there was little evidence. Attachment 12. This conclusion is highly relevant in light of Melton's statement that Sneed told him he had wrapped a cord around Van Treese's neck until he stopped breathing. Attachment 11 ¶ 26.

Melton's account of Sneed's explanation is also newly relevant in light of continuing revelations of the State's handling of the testimony about knife wounds. Specifically, according to Melton, Sneed described the girl who was in the room with him stabling Van Treese multiple times. *Id.* ¶ 25.

In sum, Melton's account is corroborated on multiple accounts from multiple sources. If Melton is being truthful, it is all but certain that Sneed and a female accomplice killed Van Treese in an attempt to rob him, without involvement by Richard Glossip. As this claim turns on the truthfulness of a witness, an evidentiary hearing is required.

PROPOSITION FIVE: CUMULATIVE ERROR RENDERED MR. GLOSSIP'S CONVICTION AND SENTENCE FUNDAMENTALLY UNFAIR AND UNRELIABLE IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS.

"The cumulative error doctrine applies when several errors occurred at the trial court level, but none alone warrants reversal. Although each error standing alone may be of insufficient gravity to warrant reversal, the combined effect of an accumulation of errors may require a new trial." *Tafolla v. state,* 2019 OK CR 15 ¶ 45. Mr. Glossip has identified and raised a large number of errors over the course of this case. With the exception of the unanimous grant of relief on the ineffective assistance of counsel claim after the first trial, courts have not granted relief on any individual claim; many have been found to be waived by prior counsel who had a constitutional duty to assert them, and several have been recognized as errors or likely errors but

found, in isolation, to be harmless. Mr. Glossip requests this Court to consider the entire record in assessing this, and every, proposition. Doing so is in keeping with "the ultimate focus of our inquiry[:] . . . 'the fundamental fairness of the proceeding whose result is being challenged.'" *Childress v. State*, 2000 OK CR 10 ¶48 (quoting *Strickland v. Washington*, 466 U.S. 668, 696 (1984)).

Mr. Glossip has identified the following errors in this case:

1. **Intentional destruction of box of 10 items of evidence,** including items from inside Room 102 (shower curtain, duct tape, etc.) and motel documents possibly relevant to alleged motive, by OKCDP in 1999, with first appeal still pending, before second trial (possibly at direction of DA's office, per police personnel)

   Claim Status: Presented but never addressed on the merits.
   - Presented in July, 2022 application
     - This Court ruled: "The basis of Glossip's claim, in Proposition Two, that the State destroyed evidence during the pendency of his first direct appeal and before his ultimate retrial, was known before the second trial. This proposition is clearly waived under the post-conviction procedure act."
   - Failure to object to this at trial also presented as IAC in July, 2022 application; denied because it could have been raised in prior appeals (note direct appeal attorney Janet Chesley signed affidavit saying failure to raise this serious issue was an error on her part)

2. **Prosecutors coached Sneed to change his testimony about the knife** after medical examiner testified Van Treese had been stabbed, contradicting Sneed's previous statement; based on mid-trial memo from Smothermon to Walker. Smothermon lied to the court on the record about her prior conversations with Sneed.

   Claim status: Denied as waived and, in the alternative, on the merits; new evidence exists not yet presented
   - Presented in September, 2022 application; This Court ruled it waived because it was known at trial that Smothermon and Sneed had spoken; alternative merits denial that discussing prior testimony with witnesses does not violate rule of sequestration
     - This Court did not address new information that Smothermon provided Sneed and Walker, who was also a listed witness, with the testimony of a prior witness, referred to the knife as "our biggest problem"; this Court expressed doubt that Walker received the memo

- Box 8 contains further evidence on this claim that has not been passed upon; additional evidence establishes Walker received and annotated the memo; to be included in March, 2023 application

IMPORTANT NOTE: To this day Sneed's testimony directly conflicts with the autopsy findings. He has maintained he acted alone, and testified he stabbed Van Treese only once. The autopsy found six wounds likely caused by the broken-tipped knife, some on the back of the body. New information from Gary Ackley derived from matter found in Box 8 establishes that the prosecution did not fully assess the physical evidence before bringing the case to trial.

3. **Sinclair Video**, believed to show inside of station during evening of murder, including views of Justin Sneed, but no one can state whether it shows people other than Sneed and Kayla Pursley; it was never turned over to the defense, despite requests. It is now lost, destroyed, or still being withheld. Information from Box 8 revealed that prosecutors likely viewed it in 2003. The defense was told that it was not booked in evidence and state was unsure it was ever collected.

   Claim status: Discussed but never presented as stand-alone claim; to be presented in March, 2023 petition
   - Not discussed in direct appeal or state and federal habeas
   - Discussed as part of overarching due process claim in July, 2022 application
   - To be discussed in light of additional information from Box 8 in March, 2023 application

4. **Significant, important, and obvious investigatory steps never taken by police,** including interviewing all witnesses present at motel, securing crime scene, searching Sneed's room, collecting all available evidence from the motel (including financial records), investigating Sneed's background or interviewing his brother (whose involvement Sneed mentioned to police prior to any mention of Glossip), conducting complete interviews of key witnesses William and Marti Bender, investigating tainted $23,000 from the trunk of Van Treese's car, following up on known leads

   Claim status: Presented but never addressed on the merits.
   - Due process aspect presented in July, 2022 application as Proposition Four; this Court denied because it could have been raised in prior appeals

5. **Defense counsel did not investigate.** Neither the original nor subsequent defense lawyers conducted any significant factual investigation; defense called no witnesses at merits phase of second trial. Present counsel, as well as Reed Smith, have uncovered mountains of evidence about what really occurred in Room 102

   Claim status: Presented but never addressed on the merits (IAC)

- IAC claim presented as Proposition Three in July, 2022 application; denied as waived because it was not raised in an earlier proceeding.
- Previous IAC claims inexplicably did not address the complete failure to investigate the facts of the case.

6. **Multiple independent new witnesses** provide an account given to them by Sneed of the murder as a drug robbery not involving Glossip, broadly consistent with one another and with the physical evidence. If these witnesses are telling the truth, there is no case at all against Mr. Glossip for murder.

   Claim status: Denied without hearing
   - Presented as Proposition One in July, 2022 application. No hearing was granted and no explanation was given (by the Court or the OAG criminal division) for how the witnesses' testimony, if believed, was compatible with the conviction.

7. **Polygraph materials lost, destroyed, or fictitious**: repeatedly requested, from 1998 through present; never provided. Either destroyed by police (despite request during retention period), or never existed and detective's sworn testimony about it in court and State's argument in 2014 clemency was false. Notes from prosecutor disclosed in Box 8 indicate that as of 2003, this evidence, if it ever existed, was destroyed by police in the normal course of their business.

   Claim status: Not litigated. (While always a violation, only became highly material when relied on by the State in 2014 clemency proceeding).
   - Polygraph materials requested in September, 2015 motion for discovery, supplement to application for post-conviction relief
   - Continually requested by current team in correspondence to both DA and AG

8. **Use of posters** displaying witness testimony during second trial.

   Claim status: Denied on the merits
   - Denied by this Court in 3-2 vote without allowing posters to be added to the record; dissent noted "in the image of an American courtroom plastered with poster-size trial notes taken by the prosecutor, we see the practice gone badly wrong."
   - Denied on the merits in federal habeas; district court held the "trial court clearly erred in allowing the posters to remain on display in the courtroom throughout the trial" but were harmless; it was "a close question" (p. 38)

9. **Sneed wished to recant** before second trial; was falsely told the State would obtain a death sentence against him if he did not testify.

Claim status: Denied as waived (only part of the claim was addressed)

- *Brady* aspect of this issue presented in September, 2022 application in Proposition One. This Court denied on the basis that trial counsel knew Sneed was reluctant to testify so it should have been addressed previously.
- This Court did not acknowledge or address evidence that Sneed specifically inquired about *recanting* (as distinct from reluctance to be a witness); did not acknowledge or address the fact that Sneed was falsely told he would likely get the death penalty if he refused to testify, despite *State v. Dyer;* engaged in speculation as to what Sneed meant by recanting, rather than holding a hearing to determine the truth.
- Note this Court also relied on Sneed not having made efforts to recant in denying July application.
- Alternative merits denial finding the evidence (as mischaracterized by court) not material
    - Subject of still pending petition for certiorari in U.S. Supreme Court, re-listed and scheduled for conference multiple times

10. **Jury given incorrect corroboration instruction.** They were told they *may* eliminate accomplice testimony in assessing adequate corroboration, not that they *must* do so, contrary to *Pink v. State.*

    Claim status: Addressed obliquely

    - Direct appeal included claim that the corroboration was not adequate. Dissent found the issue "close" and noted the instruction was wrong but found that insignificant because the prosecutor did not argue the incorrect standard.

11. **Evidence released to family prematurely** without adequate (or in some cases any) testing or defense access, including the car and the $23,000 cash found in the trunk, and Van Treese's wallet. Similarly, motel records were never seized or copied, and when Donna Van Treese brought them to court at the first defense lawyer's request, the State did not retain them or even make copies to preserve evidence relevant to the asserted financial motive. (Nor did defense lawyer Wayne Fournerat, the one found ineffective). They were subsequently destroyed. All of these items were unavailable for the second trial.

    Claim status: Not litigated

12. **Impeachment Information about Justin Sneed's Mental Health Was Not Disclosed.** State had notice (actual or constructive) that Sneed had received a highly pertinent diagnosis and did not inform defense; this constituted significant impeachment evidence and contradicted Sneed's trial testimony.

Claim status: Presented in the present application.

13. **Mr. Glossip's IQ is at most 78**. State relied on theory Glossip was manipulative "mastermind;" defense never investigated plausibility or identified readily available contradictory evidence.

    Claim status: Presented but never addressed on the merits
    - Presented as both stand-alone claim and IAC in July, 2022 application; this Court rejected because could have been presented earlier.

14. **Autopsy** was not conducted properly in accordance with professional standards, causing loss of evidence about true cause of death (little or no evidence of serious brain injury or bleeding to death; possible evidence of strangulation or asphyxiation)

    Claim status: Not litigated (although problems with medical examiner testimony were raised in 2015 application and denied without hearing); discussed in the present application.

15. **Unreliable and inappropriate opinion testimony** presented: State elicited completely improper testimony from Kayla Pursley and Billye Hooper that they did not think Sneed would have committed the murder alone.

    Claim status: Not litigated.

16. **Additional Brady material** withheld from defense as recently as January 2023 (Box 8)
    a. Cliff Everhart told prosecutors Glossip's selling of possessions was for "900," where he testified he knew no amount, which accounts for a lot of the money Glossip had on him at arrest that the State argued were robbery proceeds
    b. Bill Sunday told the State it cost $25K to repair the motel, in contrast to the $2-3,000 KVT testified to in implying Glossip could or should have done it

    Claim status: Presented in the present application.

17. **Arrest and intimidation of innocence witnesses** by OCDA and AG offices, including unauthorized and possibly illegal use of privileged prison medical records in the press against defense witness Michael Scott and coercive interview as recently as 2022.

    Claim status: Noticed given to this Court in 2015 and 2022, but not separately litigated.

IMPORTANT NOTE: The State obtained a witness's prison medical records in 2015 without a release. Presumably the records regarding Sneed's bipolar diagnosis were equally available to the State prior to 2004.

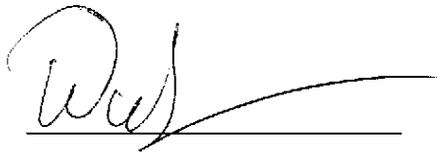
18. The state has never acknowledged that **Sneed has serious credibility problems**, and yet they do acknowledge Glossip's conviction depends entirely on his testimony. No known attempt by the state to independently vet Sneed's statements before putting him on the stand. Key details have changed repeatedly; account not born out by physical evidence.

    Claim status: Raised in 2015 application as 8th Amendment reliability claim and overall sufficiency of the evidence claim; denied as waived
    - This Court treated reliability claim as the same as previously raised claim regarding sufficiency of corroboration
    - Decision was 3-2.

While the courts have not granted relief on any of these claims individually, considered together, they establish that Mr. Glossip's trial was fundamentally unfair and constituted a breakdown of the adversarial process. He is entitled to a new trial.

PRAYER FOR RELIEF

Wherefore Mr. Glossip respectfully requests that this Court enter an order granting the requested discovery, remand the case for an evidentiary hearing in the district court, enter an order reversing his conviction and sentence, and any other relief as may be just and appropriate.



Warren Gotcher, OBA #3495

VERIFICATION

I, Warren Gotcher, state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

3-27-23
Date

Warren Gotcher, OBA #3495

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2023, a true and correct copy of the foregoing Successive Application for Post-Conviction Relief, along with a separately bound Appendix of Attachments were delivered to the Clerk of this Court, with one of the copies being for service on the Attorney Counsel for Respondent.

Warren Gotcher

GLOSSIP V. STATE OF OKLAHOMA
APPENDIX OF ATTACHMENTS
TO MARCH 27, 2023 APPLICATION FOR POST-CONVICTION RELIEF

1. Page from Connie Smothermon's notes from interview of Justin Sneed
2. Affidavit of Dr. Larry Trompka
3. Affidavit of Gary Ackley
4. October 29, 2003 email from Smothermon to Burch
5. Page from Gary Ackley's notes from interview of Kayla Pursley
6. Pages from Gary Ackley's notes from interview of Bill Sunday
7. Page from Gary Ackley's notes from medical examiner testimony, with post-its
8. Page from Connie Smothermon's in-trial notes re Cliff Everhart
9. 2003 Memo from Smothermon to Walker
10. Affidavit of Chuck Loughlin
11. 2023 Affidavit of Paul Melton
12. 2023 Certification of Dr. Peter Speth

ATTACHMENT 1

Δ had gloves like ski gloves & said do you need gloves Justin? ✓

Barry ⇒ looked got suspicious

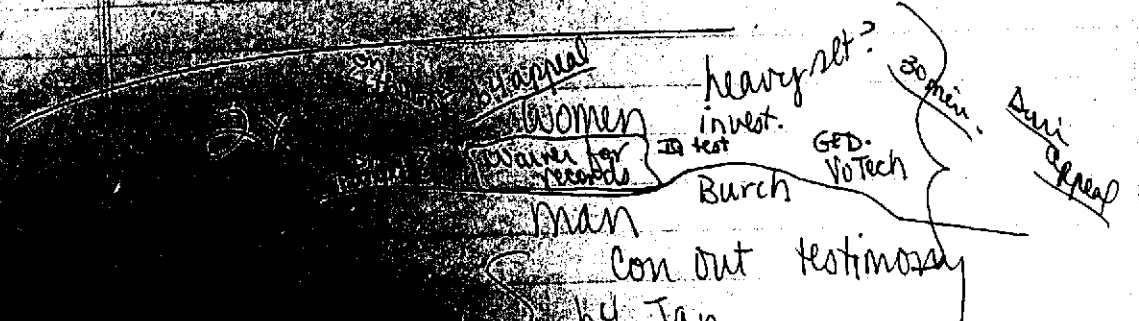
Vi asking everyone Barry. thought someone opened his room maybe female figure

$3,000

- meals not steady
- no hungry
- get crank from pills

Gossip said he got rid of key to Rm 102

Δ said Vi took key to Rm 102



ATTACHMENT 2

AFFIDAVIT OF DR. LAWRENCE "LARRY" TROMBKA

STATE OF OKLAHOMA)
)
) ss.
COUNTY OF OKLAHOMA)

Dr. Lawrence "Larry" Trombka, a person of lawful age, being duly sworn, under penalty of perjury do state as follows:

1. I received my medical license in 1987. I graduated from medical school and did a four-year residency in psychiatric services. I am a licensed psychiatrist by the state of Oklahoma. I have worked for the Department of Corrections providing psychiatric and mental health services for inmates at various jails and prisons in the state of Oklahoma.

2. In 1997-1998, I was the sole psychiatrist at the Oklahoma County Jail providing psychiatric and mental health services to the inmates. I would visit the jail once a week.

3. At the time that I worked at the Oklahoma County Jail in the late 1990s, lithium was a first line drug used to treat patients diagnosed with [redacted]

4. I have reviewed Attachment A, which is entitled "Oklahoma County Sheriff's Office Medical Information Sheet."

5. Based on this document and my knowledge from working at the Oklahoma County Jail, this form is documenting that inmate Justin Sneed was going back to the Department of Corrections on July 8, 1998.

6. Based on my knowledge and experience working at the Oklahoma County Jail, the Jail would have had a file with Mr. Sneed's medical records. This file would contain my notes and diagnosis, as well as any medication I prescribed for Mr. Sneed's treatment. The Oklahoma County Jail maintained these records and I did not keep my own copy. At that time the Jail was run by the Oklahoma County Sheriff's Department.

7. Based on my knowledge and experience working at the Oklahoma County Jail, I was the only medical health professional who would have ordered Mr. Sneed to be prescribed

lithium, as it would need to have been ordered by a physician or psychiatrist. Nurses could administer the drug but only a physician could have ordered the lithium as a prescription.

8. Dr. Charles Harvey was another medical doctor also working at the Oklahoma County Jail who had a medical clinic at the Jail in 1997 but he was not a psychiatrist. I recall that he would not prescribe lithium or any similar psychotropic drug as he was only a medical doctor and not trained in psychiatry, but rather would refer the patient to me for evaluation.

9. Based on my medical training and experience, the use of lithium was not and has not been indicated for dental issues. Rather it is a psychotropic drug used for mental health disorders, [redacted]. Lithium would also not be prescribed for a cold or confused by medical health professionals with Sudafed.

10. Based on my training and experience, [redacted] symptoms can be exacerbated by illicit drug use, such as methamphetamine. That is, methamphetamine can make individuals with [redacted] feel euphoric, like they are manic. In addition, the manic episode may cause an individual to be more paranoid or potentially violent. The manic episode would last only for a few days when the individual is coming off the methamphetamine.

11. A manic episode could also affect an individual's perception of reality as well as their memory recall.

12. It was my experience that when a competency evaluation is conducted by a State psychologist, like Dr. Edith King, she would have access to the inmate's medical records maintained by the Jail.

I swear upon penalty of perjury that the statements in the foregoing two pages are true and accurate to the best of my knowledge and recollection.

Further, Affiant sayeth naught.

Dr. Lawrence "Larry" Trombka

Subscribed and sworn before me on this 17th day of March, 2023.

Notary Public

ROD BAKER
Notary Public in and for the State of Oklahoma
Commission #15009573
My Commission expires 10/18/2023

Attachment A

OKLAHOMA COUNTY SHERIFFS OFFICE

MEDICAL INFORMATION SHEET

INTAKE NUMBER: IN97502547 NAME: SNEED, JUSTIN BLAYNE

DOB: 09/22/77

DATE IN CUSTODY: 01/17/97 DATE TRANSFERRED: 07-08-98

GENERAL BEHAVIOR: FAIR

MEDICAL PROBLEMS: [redacted]

ALLERGIES: NKDA

MEDICATIONS: PREVIOUS USE OF LITHIUM

REMARKS: USE UNIVERSAL PRECAUTION DURING TRANSPORT

MEDICAL SIGNATURE: Jerry Walker

ATTACHMENT 3

AFFIDAVIT OF GARY L. ACKLEY

STATE OF OKLAHOMA)
)
) ss.
COUNTY OF CLEVELAND)

I, Gary L. Ackley, being of lawful age and sound mind, and being duly sworn, under penalty of perjury, do state as follows:

1. I served as an Assistant District Attorney in the Oklahoma County District Attorney's Office ("DA's Office") from 1983 to 2015. During my time there, I prosecuted multiple cases, including the State's case against Richard Glossip in his 2004 retrial. My involvement in the case started sometime around October 2003, after the Oklahoma Court of Criminal Appeals had remanded the case back to Oklahoma County.

2. In 2022 and 2023, I spoke multiple times with the Reed Smith/Jackson Walker attorneys who I understand have been retained by a group of Oklahoma legislators to look into the Glossip case.

3. On March 2, 2023, I spoke by telephone with Rex Duncan, the Independent Counsel appointed by the Oklahoma Attorney General, the Honorable Gentner Drummond, to investigate the Glossip case.

4. While at the DA's Office, I was a member of the homicide committee. This was a committee that then District Attorney Wes Lane implemented, and it was comprised of several prosecutors from the office including Fern Smith, Connie Smothermon, Sandy Elliot, Steve Deutsch, and others at various times. The committee would review the homicide cases on how to proceed and any plea offers, and advise Wes Lane. Mr. Lane made the ultimate decisions.

5. It is my opinion that the DA's Office would not have agreed to modify Justin Sneed's plea agreement to offer him anything less than life without parole for his testimony in Glossip's 2004 retrial.

6. It is my opinion that had Mr. Sneed decided not to testify in Glossip's 2004 retrial, the State would have likely gone ahead to prosecute Mr. Glossip for murder 1 without Mr. Sneed's testimony, although I do not recall that ever being discussed at the time.

7. In May/June 2022, through my review of the DA's Case Files and discussions with investigators conducting the Reed Smith independent investigation, I was informed that a box of evidence containing 10 items was destroyed by the Oklahoma City Police Department. I do not recall, either before or during Glossip's retrial, being aware of the destruction of the evidence. It is likely that I was aware of that fact during the 2004

retrial, but, given that I was utterly powerless to change that fact, I had no choice but to confront it and proceed with the job at hand.

8. It is my opinion that destruction of evidence by the police in this capital murder case should not have happened. The Oklahoma County District Attorney's Office had a longstanding agreement with the Police Department to preserve all evidence in a capital murder case. That this happened horrifies me.

9. Based on my knowledge and experience, the Oklahoma Criminal Discovery statute covers recordings and requires production of any recording to the opposing party in criminal proceedings.

10. As part of my obligations and standard practice as a prosecutor, I would disclose any new or inconsistent statements made by witnesses to the defense.

11. After my assignment to the Glossip case in about October 2003 and before the 2004 retrial. I may have viewed a surveillance video from the Sinclair Gas Station ("Sinclair Gas Station Video" as part of general case preparation. I have discussed this video with Reed Smith attorneys, especially Christina Vitale, on at least 2 occasions. I have been very clear that, while at times I have thought I recalled certain portions of the video, that I am by no means certain. I stated to them at one point that I may even be recalling descriptions of the video from reports rather than the video itself.

12. I do not state that I did not see the video. At times I felt somewhat confident that I remembered certain passages of it. At other times, I entirely lack confidence that I saw it. I can only say that it has been a long time, almost 20 years, and that I have viewed dozens of convenience store/gas station video tapes, usually in connection with robbery. On 2-28-23 I pointed out that "I think I saw it, I think I remember seeing it". On 6-2-22 I said "In all honesty I don't remember seeing or handling that video. I vividly remember references to its existence. 18 years after the fact I lack confidence that I remember the video or the police reports about the video." I wish my memory was more clear.

13. I feel, now, that it is highly significant that no notes prepared by me have been produced regarding the contents of the video. As video became more common in my cases, I soon realized that merely viewing the video was a luxury my schedule could not afford. It was my practice to memorialize my viewing in a handwritten memorandum on legal pads, identifying date and the video viewed. I then took notes summarizing the contents of the video, with the counter reading to allow fast access to specific portions of videos.

14. According to police reports, the Sinclair Gas Station Video was a surveillance tape that depicted the inside of the Sinclair Gas Station in the early morning hours of January 7, 1997, before, during and after the murder of Barry Van Treese at the Best Budget Inn, which was next to the Sinclair Gas Station. Witness Kayla Purseley was on duty in the gas station during that time and testified.

15. If I viewed the Sinclair Gas Station Video prior to the 2004 retrial, it is highly unlikely that I went to the police station merely to view the videotape. Most likely, if I viewed the video it was either in my office or in the Oklahoma County District Attorney's conference room.

16. I do not recall at any time before May 2022 being aware that the Sinclair Gas Station Video was the subject of a motion to compel by Glossip's defense. I was not aware that Glossip's defense had been asking for the video in fall 2003. I was not aware that ADA Connie Smothermon had informed Glossip's defense prior to the 2004 retrial that the video never made it into the DA's case file nor did Oklahoma City Police Department ever book it into evidence. My present sense of those events is that they took place before I entered the case and that my duties dealt with the case in the state in which I found it.

17. I stated in March of 2023 that I thought the Sinclair Gas Station Video was of poor quality, that Kayla Pursely, the Gas Station clerk, may have even been visible in the video, and that it was boring (meaning that it had long periods of inactivity).

18. Reviewing my Kayla Pursley witness interview notes refreshed my memory that Ms. Pursley stated that she looked at the video while she was at the store that morning (of the murder) to see when Mr. Sneed came in

19. Based on my interview notes I believe Kayla Pursley must have seen Mr. Sneed on the Sinclair Gas Station Video coming into the Sinclair Gas Station at some point before the January 7, 1997 murder though I did not recall that fact until reviewing my notes. Based on my interview notes, Ms. Pursley indicated that the Oklahoma City police took the videotape. The Reed Smith investigators in February 2023 refreshed my memory that Ms. Pursley testified at trial regarding the time when Mr. Sneed came into the Sinclair Gas Station.

20. Kayla Pursley was ADA Smothermon's assigned witness at the 2004 retrial.

21. In May 2022, pursuant to an open records request by Reed Smith, then District Attorney David Prater requested that I come to look for the Sinclair Gas Station Video. As part of my search for the Sinclair Gas Station Video, I went through the DA's case file boxes on three occasions in the summer of 2022.

22. Though I was ultimately unable to locate the Sinclair Gas Station Video, I do believe it existed at the DA's office at one time.

23. Based on my knowledge and experience of the Oklahoma Discovery statute, I believe that the Sinclair Gas Station Video qualified as a recording, and should have been turned over to the defense.

24. I was also shown my notes from an October 22, 2003 interview of Justin Sneed.

25. ADA Smothermon, Gina Walker, Justin Sneed, and myself were present at this October

2003 interview. Based on my recollection, Gina Walker was Mr. Sneed's attorney at the time. Based on my interview notes, either Gina Walker or Justin Sneed indicated that he had been on lithium when his IQ test was administered.

26. Based on my interview notes, either Gina Walker or Justin Sneed also indicated and I wrote down that "the nurse's cart record discrepancies v. Mr. Sneed's jail permanent record."

27. In my interview notes, I also wrote down "tooth pulled?" I am not sure why I wrote that down other than to note that it was stated during the interview. Based on my general knowledge, I do not believe that lithium is a pain medication.

28. Justin Sneed was Connie Smothermon's assigned witness at the 2004 retrial.

29. I do not recall knowing or discussing with anyone that Justin Sneed was on lithium at any time as treatment for bipolar disorder. I do believe that would have been an important fact for the defense to know and think it is *Brady* impeachment material. I think this condition was disclosed to the parties to the litigation by filing of a written report in the case by Dr. King in a competency evaluation of Justin Sneed on July 17, 1997 per the OSCN Appearance Docket for this case, CF-97-244.

30. Based on my knowledge and experience, being administered lithium, if at a relevant time, goes to Mr. Sneed's state of mind and, depending on when he was administered the lithium, would have been discoverable.

31. I was not aware that Justin Sneed's attorney filed an application for mental health evaluation and competency prior to my being assigned the Glossip case.

32. I also recently reviewed my notes taken during the 2004 retrial, including when the medical examiner, Dr. Chai Choi was testifying. Dr. Choi was one of my assigned witnesses.

33. I remember and these notes document my concern during the cross examination of Dr. Choi regarding the lacerations and puncture wounds she found during the autopsy, and testimony by Dr. Choi about those wounds being caused by a knife.

34. My writing during the cross examination of Dr. Choi stating "reverse Dr. Choi" was my note to myself noting my perception that Dr. Choi did not testify regarding the laceration/puncture knife wounds consistent with my understanding of her report, but upon reflection I realized she had not contradicted her report. The laceration/puncture wounds were caused by a knife. At the time, I did not understand her statement. I misunderstood the circumstances of those wounds because of their unique nature. The victim was stabbed with a knife, but the sharp point of the knife had been broken off, apparently some substantial time before the fatal attack, creating wounds not typical of stab wounds in my experience.

35. There are post-it notes attached to my notes from the trial testimony of Dr. Choi which state "could cut be made by sharp furniture? Glass? Cut on elbow and hand," "cuts [do not equal]

knife cuts," and "cuts or splits in skin from impact?". I assume that ADA Smothermon passed them to me to try to help me understand and help me out of the quagmire (of my not understanding the laceration/puncture wounds came from a blunt knife) I had created. I recall ADA Smothermon being concerned at the time about my mishandling of Dr. Choi's testimony, as was I.

36. I also recently reviewed my interview notes from witness Bill Sunday's interview. Based on my notes, during the interview, Mr. Sunday indicated that he helped Ken Van Treese and Jim Gainey manage the motel after the murder. Mr. Sunday also indicated that they hired painters and spent $25,000 in repairs.

37. I was not aware this fact was not disclosed to the defense and thought it would have been disclosed through alternative sources, like Ken Van Treese. Mr. Sunday was my assigned witness and Mr. Van Treese was ADA Smothermon's assigned witnesses.

38. One of the State's motives for murder presented to the jury was disrepair of the motel, that Glossip neglected his duties to maintain the motel, and was concerned about being confronted or fired over that failure.

39. I do not recall that Ken Van Treese testified in the 2004 retrial that they spent $2,000-3,000 in repairs total for the motel following the murder. I agree that $25,000 is different than $2,000-3,000, and I consider this information that I would have given over to the defense though I do not specifically recall doing so. I have not seen any written communications disclosing such information.

I swear upon penalty of perjury that the statements in the foregoing are true and accurate to the best of my knowledge and recollection.

Further, Affiant sayeth not.

Gary L. Ackley
Assistant District Attorney, retired
OBA #123

Subscribed and sworn before me on this 21st day of March, 2023.

KATIE COWAN NOTARY # 19012102 EXP. 12/04/23 PUBLIC STATE OF OKLAHOMA

My commision expires - - 12/04/23

ATTACHMENT 4

EXHIBIT G

From: <ConnieP@oklahomacounty.org>
To: <Lynn@oids.state.ok.us>
Date: 10/29/03 8:57AM
Subject: RE: Richard Glossip

OCPD never booked a video tape into evidence. There is some confusion as to whether one was looked at or actually taken by an officer. Either way, it never made it to this case file. The information I have is that any video tape would be of the interior of the station only.

Gary is finishing the HAC response and will file it within the hour.
Thanks,
Connie

——Original Message——
From: Lynn Burch [mailto:Lynn@oids.state.ok.us]
Sent: Tuesday, October 28, 2003 2:24 PM
To: Silas Lyman; L Wayne Woodyard; ConnieP@oklahomacounty.org
Subject: RE: Richard Glossip

Connie:

I have reviewed my files in regard to any Joseph Harp documents regarding Justin Sneed. While I found some reports and memos generated by that investigator (who is no longer emloyed by OIDS) on the appeal issues, I did not find a release from Sneed or any documents concerning him from DOC or specifically Joe Harp.

I forgot to ask you yesterday if you had found out anything about the status of that video tape from the Sinclair station adjacent to the motel. Also, if you have data on when the motel financial documents provided to us yesterday were actually generated, I would appreciate it.

I have done some research on remuneration cases and will decide later today whether to supplement our motion by the Wednesday, 10 am deadline.

Thanks.
Lynn

LWW 29211

ATTACHMENT 5

ΔG wasn't openly mean to ΔA, but over time ΔA became more dependent on ΔG b/c ΔA got less & had less independence of action & ΔG took advantage.

ΔG was never violent in front of W, but was mean to [illegible] at times, very kind to her at times.

Sinclair [illegible] showed [illegible] NJR if outside - doesn't think so.

W looked at [illegible] to see when ΔA came in on 1-7-03. Thinks Oct [illegible].

→ acted normal.

ΔA had been in once, uninjured, & later, had a wound on eye "he hit on shower head" - Acting fidgety

W worked by 10pm.

Jackie - Housekeeper

Boss -

On duty 11-3

[illegible] — Cliff Everhart's the frequent [illegible] girlfriend [illegible] until 11 pm.

ATTACHMENT 6

M: 918-689-6798 3-2-97

Daughter 528-1996

John William Sunday 918-689-2195

→ No priors → 25 yrs Cop - MP US Army [illegible] Eufaula

Robin Sunday R.N. Native Afghanistan

Helped Ken VanTreese by managing motel w/ Jim [illegible] after death.

Worked day shift; [illegible] had night.

1st stepped foot on motel prop day after - Thinks 1-8. 2 hours.

Saw death notice in paper & called Ken's daughter in Norman & talked to Ken to offer sympathy & assistance. Ken asked us to meet him at motel ≈ 9:30-10 -

1-8-97: Motel office only - Jim [illegible] already present - Ken explained it & asked them for help. [illegible] not clean. We assumed due to death of V - later found ordinary. ~~[illegible]~~ Would have chosen not to stay as motel guest.

[illegible] closed in? for maint. [illegible] - some [illegible] heater mop, [illegible] paint, curtains [illegible]; Bathroom [illegible] good, some [illegible]

(Case) 6-28-96

[illegible]

M: 918-689-51a 3-2-47

Worked at motel until end of March — 3 m.

- Hired painters. Spent $25K for repairs
Still had $40-60K in back after.

- Knows D re carpet call —
Did replace some carpets.

- Never dealt Δ Glossip —
saw him leaving to go to OCPD in police car w/ Δ Aunt Woods.

→ V had never made that kind of profit before.

2 rooms were full of junk - mattresses, etc -
trashed & ... [illegible] ... refuse & broken springs
→ filled entire dumpsters ... mattress
Bought 40 new & 40 new bedspreads
16 + Portland.

Rooms Stunk — ... rented rooms, demanded refunds to left.
→ ... stopped up
Washer & Dryer broken
→ replaced

... repaired entire motel
... movie capability
... installed a computer heat. system
... Updated Room condos

... behind ... — can't prove ...
...
... then she
... she was not
... J. [illegible]

ATTACHMENT 7

5-26-04

Reverse - Dr. Choi -

Δ Δ tried to stab V w/ a ~~knife~~ blunt-pointed knife - who's the brain in the operation?

Could cut be made by sharp furniture? (Cuts ≠ knife cuts)

Cuts OR splits in skin from impact?

cut on elbow & hand

ATTACHMENT 8

10-10-03 | Meeting w/ C[illegible] / Donna

[in storage rm]

Cliff Everhart
433
0737

Looked for reg
not one!

Billie knew Everh 1%

20 min to clean room
- maid taking too long
- for # rooms

relaxed owner
would let get by w/ skipping 20 out
or give free room

not look at rooms
much

Sneed puppet

Drug [illegible] problem – knew & used MJ

saw Sneed 2 hrs then gone
bruising around eye

Common sense – deposit under front
seat

feel have to do everything
not a leader

not see Sneed have need for $
Gossip had pet
not low [illegible] no [illegible]

Liquidated
Big Screen
900 couch
Jewelry
Wanted $ for boobs

ATTACHMENT 9

Gina,

Here are a few items that have been testified to that I needed to discuss with Justin –

1 - Officer Vernon Kriethe says in his report that after he arrested Justin and was transporting him downtown Justin voluntarily said –

It was my job to take him out and his to clean up
The evidence –he didn't do a very good job

Does Justin remember making that statement?

2. -Kayla Pursley says she saw Justin leave in Glossip's car about 5:30 or 6:00 and she doesn't know how long he was gone or where he went. ?????

3 - Our biggest problem is still the knife. Justin tells the police that the knife fell out of his pocket and that he didn't stab the victim with it. There are no stab wounds, however the pocket knife blade is open and the knife is found under the victim's head. The victim and Justin both have "lacerations" which could be caused from fighting/ falling on furniture with edges or from a knife blade. It doesn't make much sense to me that Justin could have control of the bat and a knife, but I don't understand how/when the blade was opened and how/when they might have been cut. Also, the blade tip is broken off. Was the knife like that before or did that happen during?

4 - Justin's clothes were found in the canister in the laundry room. There was a small piece of duct tape stuck on one of the socks. I understand that he hid the clothes while everyone was looking at the car which was well after Glossip was with him and they were taping up the shower curtain – is that right?

5 - Officers testified that the shower curtain to room 102 was missing. Is that the room where they got the shower curtain? I have it listed as room 102 one place in my notes and room 101 in another place????

6 - Did they turn down the air conditioner in room 102? If so, when?

They have listed the statements in the PSI has a potential impeachment document. There doesn't seem to be anything inconsistent in them. Justin didn't make any statements – it is mostly family history that he and I are going to talk about.

Thanks - we should get to him this afternoon. Tina wasn't here on Monday so Justin may not get to the old jail until noon.

Connie

ATTACHMENT 10

[redacted]

AFFIDAVIT OF CHUCK LOUGHLIN

STATE OF OKLAHOMA)
)
) ss.
COUNTY OF OKLAHOMA)

Mr. Chuck Loughlin, a person of lawful age, being duly sworn, under penalty of perjury do state as follows:

1. I am an investigator licensed by the State of Oklahoma since 2016 and have specialized in criminal defense work.

2. I have worked for the Oklahoma County Public Defender's Office since 1997. In 1997, I worked under the direction of Assistant Public Defenders Tim "Tarzan" Wilson, George Miskovksy, and Gina Wilson on Justin Sneed's case.

3. During my time working in the Oklahoma County Public Defender's Office, I had frequent interaction and worked under the direction of Assistant Public Defender, Gina Walker, and several other attorneys.

4. In connection with my work in the Oklahoma County Public Defender's Office, I frequently reviewed handwritings from Gina Walker and became familiar with her handwriting.

5. I have reviewed Attachment A, which is a typed letter written by Connie Pope to Gina Walker. This letter contains handwritten notes in black ink on the right and left margins.

6. Based on my knowledge and familiarity with Gina Walker's handwriting, I believe the handwriting in Attachment A to be that of Gina Walker.

I swear upon penalty of perjury that the statements in the foregoing are true and accurate to the best of my knowledge and recollection.

Further, Affiant sayeth naught.

Charles Loughlin

Subscribed and sworn before me on this 27th day of February, 2023.

Donna Law

Notary Public

DONNA LAW NOTARY # 01012594 EXP. 08/04/25 PUBLIC STATE OF OKLAHOMA

ATTACHMENT 11

AFFIDAVIT OF PAUL MELTON

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, Paul Melton, being of legal age and sound mind, and under penalty of perjury, do hereby swear and affirm that the following is true and correct:

PM

1. I am 56 years old. My date of birth is December 12, 1966.

PM

2. I was incarcerated with Justin Sneed in the spring of 1997, either March or April, and spent about 13 months with him. At first, I hung out with him because he had cigarettes. For a while I considered him a friend. We talked a lot while in jail together. He told me all about his crime in detail, many times. I was worried about him at first because he kept on talking about his crime to everyone. I told him he was going to get himself killed.

PM

3. I remember all of what he told me. Everything that I am saying now came from Justin Sneed's mouth, and it is not coming from me. I remember everything he said like a movie playing in my mind.

PM

4. Justin Sneed told me he came to Oklahoma with his brother and a roofing crew from Texas. Justin had a warrant out for his arrest. They stayed at the Best Budget motel and both started working there as maintenance men. Justin and his brother weren't there long before Justin noticed that the owner had money when he picked up the motel deposits.

PM

5. Justin used to watch the owner when he would come to pick up the motel deposits. He would see him come out the office and get in his car and fiddle with his front seat. That's how he knew where the owner kept the money.

PM

6. Justin and his brother were trying to figure out a way to rob the owner. They figured they could get around $4000-$5000. Justin told me about one time when they were in the maintenance room together with the owner, and Justin told his brother to hit the owner over the head with a big wrench. His brother wouldn't do it and took off back to Texas not long after that.

PM

7. Justin Sneed was a dope head. After his brother left, Sneed started using his master key set to break into the rooms to steal things at the motel, but this was a dope motel, and dope heads don't leave a lot of stuff in their rooms, so he started breaking into cars and businesses around the motel to trade stuff like stereos and other stuff for dope.

PM 8. Justin told me he met several girls from the strip club. He could see how they were working their hustle at the motel. He tried to get in with a group of girls, trying to be their pimp, but they didn't need a pimp like he was trying to become. He saw that one girl from the strip club was sleeping with the motel owner and the security guard.

PM 9. Justin said he and that girl hooked up, and he told her about how he wanted to rob the owner. This was when he thought he could get $4000-$5000. Sneed thought of getting the owner in a room with a bunch of girls and then take a bunch of pictures to blackmail him.

PM 10. The girl didn't want to do that. The owner was giving her thousands of dollars regularly. She didn't need to rob him for that much. Justin said the owner even paid for her breast job. According to Justin, she had several sugar daddies giving her money.

PM 11. The girl was Sneed's age. And after they got together, Sneed was thinking that she belonged to him. But Sneed also said she was a stripper, and a meth head, and a prostitute. She was getting regular money but Sneed wasn't. Sneed and the girl were going through money fast, spending it on dope.

PM 12. Justin told me he saw that the manager of the motel could have been making a ton of money if he were to run girls and dope out of the motel. Sneed thought the manager was stupid for not doing it. Sneed said he wanted to manage the motel so he could make money, but the manager was always there and would never take a day off and let Sneed manage sometimes. Sneed really wanted to be the manager of the motel.

PM 13. The girl started to use Sneed to bring johns to the motel and use the rooms without paying because Sneed had the keys. No one would know. Then Sneed and the girl came up with a plan to rob johns in the motel rooms. The first guy they robbed had $1200: Sneed thought he hit the jackpot. Sneed kept the whole $1200 and he didn't share it with the girl. Sneed was using everybody else; no one was using Sneed. Including the manager.

PM 14. Sneed told me that when they would rob the johns, the plan was for the girl to get the guy in the shower. She would turn off the lights in the room to signal to Sneed they were going to the shower. Sneed would wait a few minutes, listen at the door, and if he didn't hear anything, he would go in and steal money from the guy's wallet. Then Sneed snuck out, the girl left, and they got $1200. They knew the guy wasn't going to call the police.

PM 15. Sneed said the second guy they lured was married and the girl knew it. She turned off the lights, they went into the shower, but when Sneed came in, the guy came out of the bathroom and caught him. The girl yelled, "Do you want your wife to find out?" The john just said, "Look, this is all I've got." He gave them his money and left and didn't call the police.

PM 16. Then the girl told Sneed she knew the owner had about $20,000-$30,000. She told Sneed she had seen bundles of hundred-dollar bills. The owner showed her a big wad of cash.

PM 17. Justin told me that he and the girl made a plan. If they could get $20,000-$30,000, they could set up shop in a new motel in Texas. They planned to run dope and girls out of a motel there, with Sneed as the manager.

PM 18. Sneed said that he and the girl planned to use the same MO on the motel owner that they used to lure and rob the other johns. But they wanted to get the most money they could. They needed the owner to have deposits from both the motels, the one in Oklahoma City and the other motel in Tulsa.

PM 19. Sneed told me the story of the night of the murder. He said the owner came to Oklahoma City and told the girl that he planned to go to Tulsa. Justin and the girl needed him to come back to OKC once he got the other deposit. The girl told the owner that she had to work until closing at the strip club, so he should go to Tulsa and come back to meet her past 1:00 a.m. when her shift ended. The owner said he would come back, but Justin said they didn't really know if he would.

PM 20. Sneed told me that he and the girl watched for the owner. When the owner came back, he didn't even stop at the office. They knew right then that he had a lot of money because he didn't have enough time to go home and come back to OKC. They watched the owner go in the room, and then she went in. Sneed watched and waited for the signal with the lights. He waited a few minutes, and planned to sneak in while they were in the shower, get the owner's car keys, get the money out of the car, and put the keys back.

PM 21. Sneed told me what happened in the room. He said he listened at the door and went in the room with a bat, but the girl and the owner weren't in the bathroom, they were in bed and the owner was in his underwear or naked. She had no clothes on. When Sneed came in, the owner jumped up and he said all hell broke loose.

PM 22. Sneed told me that the owner jumped up and jumped on Sneed. Sneed's arm was cocked back with the bat, but the owner knocked him back and it broke the window. The owner was on top of Sneed whooping his ass. The girl started screaming, "Do you want your wife to find out? Do you want your wife to find out?" But the owner didn't pay attention to that whatsoever. The owner had Justin pinned and was beating on him real good.

PM 23. Then the girl yelled, "Stop!" Sneed thought she just jumped on the owner's back, but he later figured that she had a knife and stabbed him. When she jumped on the owner's back, Justin said he had time to get up and get his bat. When he did, he hit the owner, but not in the head.

PM 24. He said now the owner was fighting them both off and tried to get to the door. Sneed then hit the owner in the head and dazed him really good, but the owner was still fighting them both off. Sneed said he pinned the owner against the wall, and he and the owner fought from one side of the room to the other. Sneed said, "You should have seen all the blood!" Sneed would laugh about it when he told me.

PM 25. Sneed said that if it wouldn't have been for the girl, he wouldn't have killed the owner. The owner had Justin down and was beating on him. Sneed said it only turned when the girl jumped on the owner's back. Otherwise, the owner was whooping his butt. Sneed said the girl flipped the tables because the owner couldn't fight them both off and she was stabbing him. I don't know how many times.

PM 26. When Sneed finally got the guy down, he said he just kept hitting him with the bat, but the guy wouldn't stop breathing. Justin said he then took a cord and wrapped it around the guy's neck until he stopped breathing. Justin told me he watched him take his last breath, and he thought it was funny. He thought "How dare this owner try to stop me." Justin Sneed was a meth head, and he had an attitude that what the owner had was his.

PM 27. Justin Sneed said once the guy was dead, he knew they couldn't just run out of the room because the window was broken and they made a lot of noise. They waited in the room to see if anyone was going to come by, and got high while they waited. The girl told Sneed she could not get the owner into the shower. She tried but the owner told her he wasn't staying and he was expected home. That's why he wouldn't go into the shower. No one came by the room.

PM 28. Sneed told the girl that he needed to cover the window. He told her to stay there and clean up what you can but try not to touch anything.

PM 29. Sneed told me he went to the maintenance room to get a shower curtain and duct tape. While he was there, he also changed into a maintenance man jumpsuit, the kind you wear when its cold out, because his clothes were all bloody. Sneed figured if anyone saw him, he would look like he was working and say he was cleaning up after two drunks broke the window. He went back in the room and Sneed and the girl taped up the shower curtain over the window.

PM 30. Sneed said the girl was naked when the murder happened, and she had blood on her. She wiped the blood off her with a towel and put her clothes on. Her clothes didn't get bloody because she was not wearing them during the fight. Sneed brought a maintenance man jumpsuit for her to wear over her clothes when she left the room. Sneed said he wanted it to look like it was two guys leaving the room if anyone saw them, so he could say it was the two drunks. They left the motel room and she went to a room upstairs, not in Sneed's room.

PM 31. Sneed said that when he counted the money, he was pissed. It was only a couple thousand. It wasn't a lot. He expected 20-30 thousand, like the girl had said.

PM 32. He told the girl he needed to put some plexiglass over the window because someone could still stick their fingers in the blinds if they wanted to look in. If he could leave the owner in the room until that night, then he could move the body and cut him up or bury him somewhere. Since the owner never stopped at the office, and Sneed moved the car, and no one seemed to care about the noise in the room, Sneed thought he could still get away with it.

PM 33. Sneed told me that, in the morning, when Sneed hung up the plexiglass, the manager came by, and he thought for sure he was busted. But the manager didn't look in the room. Sneed told me that if the manager would have gone in the room, Sneed said would have had to kill him too.

PM 34. Sneed said that later the security guard came by and he thought he was busted again. He thought the security guard would go in the room for sure because the window was broken, but he didn't. When the guard asked if Sneed had seen the owner, Sneed told the security guard he thought the owner was with a girl. Sneed said the security guard had covered for the owner before when he was with a girl, so he did not look in the room.

PM 35. Sneed told me he thought he won the lottery when both the manager and the security guard did not look in the room.

PM 36. Sneed said that later in the day the cops were all around the motel, so Sneed and the girl left. Sneed said he called a close friend of his from the roofing company to meet them somewhere and pick them up. When his friend picked them up, Sneed said he told his friend that he got in a fight with someone they tried to rip off. He asked his buddy to drive them to another hotel and rent a motel room for them because his face looked so bad, and the friend did that. Sneed's friend paid for the room for two or three days because Sneed's money had blood on it.

PM 37. Justin said that he and the girl stayed in this motel together for a couple of days. They were both angry about the little money they had taken from the owner. He said that the girl thought Justin was full of crap and didn't tell her about all the money he got from the car because she knew a lot more was there. And Justin thought she was full of crap about the money ever being there.

PM 38. Sneed told me that he began to worry that she was going to kill him. He said, "The only witness to her being there is me." He told me this girl was "pretty gangster," and that she always carried a bunch of knives. All those girls carried a bunch of knives.

PM 39. Sneed told me that while they were at the new motel. they were both getting paranoid and wanted to get high. The meth back then would keep them up for days. He said he sent her out to buy some meth because he looked all beaten up and the money had a bunch of blood on it. They decided she would have an easier job getting the meth from a dealer than he would. She went out to buy the dope. the dealer took the money and gave her the meth.

PM 40. Sneed said the second dope run is when she didn't come back. Justin called the guys he worked with again. There was no need for him to stay at the motel by himself. He called them and they picked him up. Later he got arrested at their place.

PM 41. Sneed never said the manager had anything to do with the murder. Not one time. Period. Ever. Sneed told me more than once he hated the manager because Sneed wanted to be the manager.

PM 42. Sneed started telling everyone in jail that he was a murderer. and the other guy was innocent. I told him to quit saying that or he'd get killed. That stuff follows you in prison. He said he was just snitching on the other guy who was snitching on him.

PM 43. Sneed told me about the time he talked with the police. He said that when he first got arrested. he told the detective that he didn't have anything to do with the murder. Then the detective said. he knew Sneed didn't do it alone. When the detective said this. Sneed thought they had arrested the girl. She had left him like 3-4 days before he was arrested and he didn't know if she was under arrest.

PM 44. Sneed said that the cop then said. "You know they are all saying that you didn't do this alone. They are all saying it's you." Sneed said he started to think "they all" were the strippers and hookers from the club. He didn't know if the girl went back to the club. That's who he thought the cops were talking about.

PM 45. Sneed said then the cops said they arrested the manager. He didn't know what the hell the manager was arrested for. He thought "they" were the hookers.

PM 46. Sneed told me that he told the police a few more stories. After they were done with the interview. Sneed said the detective took Sneed to the holding cell and told him. "Look either you can go down as the murderer here. or you and him will go down. Either way. the manager is going down." He told Sneed they would seek the death penalty. And if it was both of them robbing the owner to split the money. then they are both guilty. The detective told Seed that it had to be a murder for hire. There had to be someone above him or they were both guilty. Sneed said he just meant to rob the owner. The detective told him to stick to the story he told in the interrogation room. Sneed said the detective told him if he didn't go along with the murder for hire. Sneed would get the death penalty.

PM 47. I told Sneed he shouldn't trust the detective, that he doesn't know if they caught the girl. I asked him, "What if they find her?" He said he would still stick to the story that the manager did it. Sneed said, "If a man and a woman committed a murder together, who is going to get the death penalty out of the two of them? The man."

PM 48. Sneed told me he wanted to say that the manager was a meth head and needed money for meth. That's why the manager needed to rob the owner.

PM 49. Sneed told me that after a few months, the detective came to visit Sneed in the jail. Sneed told him what he was going to say about the manager being a meth head. The detective told him he couldn't say that. He told Sneed that, "I'm the detective, I'm running the investigation. This is what happened, the manager was embezzling money." When Sneed pushed back the detective said he already closed the case. That's when Sneed found out about the embezzlement. Justin never said anything about embezzlement. It was the cop. He was Justin's lifeline. The cop told Justin, "We can't find anyone else who would say Glossip is a meth head but you. The only person that everyone says is a meth head is you, Justin."

PM 50. I asked Sneed what he was going to do when the manager's attorney started testing the evidence in the case? The only thing Sneed was worried about was any evidence from the girl helping him tape the shower curtain and the knives. Sneed said the detective told him the case was closed. That the evidence there is, is all the evidence they have. They weren't looking for anyone else, and the case is closed.

PM 51. People don't know Justin like I did. At first, I thought he was my friend. He was a really weird guy, but they don't know how sick and demented his mind is. I had to sit there and listen to this stuff. I went to my attorney and my attorney tried to go to the DA, but they weren't interested.

PM 52. I wrote the girl's name on a piece of paper and had it with me until I went to prison. From there, I got rid of it. It's not safe to have that information on you in prison. I wish I could remember her name. I think her first name was "Sherri."

PM 53. I asked Justin what's he going to do if they kill an innocent guy? He said he would have the state over a barrel. He would threaten to tell the press after the manager gets executed that Oklahoma just killed an innocent guy. Then maybe they will give him a chance to be paroled someday.

PM 54. Justin told me he never went in the room to kill anybody. He only went in there with a bat. He was supposed to get the keys and the money. He didn't have any knives. The girl had the knives. He blames the girl for the murder. If she hadn't of come out of the bathroom to get the owner off of him, he would have gotten beat up but he wouldn't be sitting there in jail.

PM 55. I know the manager is innocent. I don't know him. This has nothing to do with me. I have no reason to even talk about this. except for I have to get up and look in the mirror.

PM 56. No one ever talked to me about the case. and I never heard anything about it until Don Knight came to see me with another woman while I was in prison in Nevada on a three-strikes charge. I know what I know about this case because I'm the one that Justin Sneed told everything to. I'm the one that knows what he said.

PM 57. Everything I have stated here came from Justin Sneed. right out of his mouth.

PM 58. This document has been read to me in its entirety. It is true and complete to the best of my knowledge.

FURTHERMORE. THE AFFIANT SAYETH NAUGHT.

Dated this 16 day of March. 2023.

Paul Melton

Paul Melton

SUBSCRIBED AND SWORN TO before me on this 16th day of March. 2023.

Notary Public

Signed Katrina Burden

My Commission Expires 3/15/2026

[Notary Stamp]

KATRINA BURDEN
Notary Public-State of Nevada
APPT. NO. 18-1575-2
My Appt. Expires 03-15-2026

ATTACHMENT 12

Certification

March 20, 2023

In the matter of the death of
BARRY VAN TREESE
Found deceased, room 102, Best Budget Inn,
Oklahoma City, January 7, 1997

Peter Speth, MD, being of full age, does hereby certify as follows:

1. On September 14, 2015, this affiant provided Attorney Jim Castle in Denver, Colorado, with a *Certification* in the matter of Richard Eugene Glossip, Appellant v. State of Oklahoma, Appellee. That *Certification* was based upon the limited review of the Autopsy Report of Mr. Barry van Treese prepared by Dr. Chai Choi on January 8, 1997, Autopsy Nr. 021-97, and the two transcripts of the Court of Criminal Appeals of Oklahoma, the first dated July 17 through August 20, 2001, and the second dated April 13, 2007.

2. In that *Certification*, this Affiant reviewed many aspects of the autopsy report and then opined the following:

> ***"9. Finally, there is a precipitating or contributory cause of death that was not previously considered to explain Mr. van Treese's rapid demise in the context of the known autopsy findings.***
>
> ***a. Autopsy findings consistent with an attempt to smother and/or apply pressure to the front of the neck -- - findings consistent with asphyxia as cause or contributory cause of death***
>
> ***(1) Dr. Choi's autopsy report describes a "red mark"" over the front of the neck.***
>
> ***(2) Dr. Choi also describes contusions and other injuries involving the nose, lips and tongue, with blood in the mouth.***
>
> ***(3) There are petechial hemorrhages involving the eyelids and conjunctivae and froth in the bronchi.***
>
> ***b. Essential autopsy procedures to help confirm a component of smothering and/or pressure to front of neck were omitted by Dr. Choi during autopsy***
>
> ***(1) It is essential to perform a layer-wise dissection of the strap muscles of the neck and larynx in-situ in a blood-free stage of the autopsy and to describe the positive and negative findings in the autopsy report --- this was not conducted by Dr. Choi.***
>
> ***(2) It is essential to perform a layer-wise posterior dissection of the retropharyngeal and neck region - - this was not conducted by Dr. Choi***
>
> ***c. We are left, then, with the likely inference of an asphyxial component in the cause of death, but without the necessary proofs. However, an asphyxial component would explain the unanswered findings and rapid demise."***

3. Renewed contact regarding the "Glossip case" ensued on March 8, 2023. Attorney Donald R. Knight informed this Affiant that information had been obtained with relevance to the above-quoted excerpt. This Affiant was then provided with autopsy diagrams that had been prepared by Dr. Choi, transcripts of testimony by Dr. Choi on June 4, 1998, and May 25, 2004, and transcripts of testimony by Ms. Billye Hooper, Mr. John Beavers, Mr. David Marcharmer, Police Officer Timothy S. Brown, Mr. Cliff Everhart and police officer John R. Fieley.

4. What follows in this Certification is meant to supplement and update the opinions which were rendered in the 2015 *Certification*.

A. Regarding head injury as cause of death

1. Dr. Choi has written and testified that brain injury was the cause or contributory cause of death.

2. In 1997 it had already long been firmly established that in all forensic medical examiner cases in which the brain may play a role with regard to cause of death, and especially in homicide cases, the brain is to be fixed before cutting! Here, as example, is an excerpted quote from *Knights Forensic Pathology*, a recognized authoritative text book:

> ***"After weighing [the brain], a decision has to be made whether to examine the brain immediately – the so-called 'wetcutting' – or to suspend it in formalin until fixed. The advantage of fixation is, of course, that the firmness of the tissue allows thinner and more accurate knife-cut sections to be taken, as well as better histological preservation. Where neurological issues are involved, either traumatic or from natural disease, it is almost mandatory for the brain to be fixed before cutting. Even the impatience of the investigative authorities can usually be overcome if the advantages of a higher standard of opinion are explained. The technique of brain fixation is well known..."***

Failure to have fixed the brain prior to cutting was a serious deviation of standards and prevented any possible accurate assessment of brain injury as a cause or contributory cause of death.

3. When traumatic brain injury (TBI) is the cause or contributory cause of death, there is notable, rapidly developing edema of the brain and lungs. But, Dr. Choi reports: "*The right lung weighs 380 gm, and the left weighs 280 gm.*" The lung weights are very normal for a male with the height and weight of Mr. Van Treese. Therefore, there is no notable edema of the lungs. And Dr. Choi reports: "*Externally the brain is slightly edematous.*"

4. These findings clearly indicate only two possible conclusions: Either there was no significant traumatic brain injury or Mr. Van Treese died very rapidly before the edema could form. If there was significant brain injury, it is not described anywhere in Dr. Choi's report and cannot now be ascertained, even if the brain was saved in formalin, because the brain was not properly fixed prior to cutting.

5. As such, these omissions and unscientific conclusions have jeopardized the fair and proper adjudication of this case.

B. Regarding loss of blood as cause of death

1. Dr. Choi has written and testified that blood loss was the cause or contributory cause of death.

2. It is accepted, undisputed science that loss of blood as cause or contributory cause of death results in poorly discernible postmortem dependent lividity, difficulty obtaining blood from the heart for lab studies, pallor of organs and pallor of the cortical regions of the kidneys when in the shock phase, with pallor throughout all regions of the kidneys in exsanguinations.

3. Here are two representative quotes from the abundant scientific literature (the second, a scientific article dealing with baseball bat "blows to the head":

> ***" Classical autopsy findings of blood loss, besides a secured source of bleeding and possible pooling of blood, include sparse lividity, organ pallor, subendocardial haemorrhage, wrinkling of the spleen capsule and 'shock kidneys'."***
>
> Potente, Stefan, et al. "Relative blood loss in forensic medicine—do we need a change in doctrine? " *International Journal of Legal Medicine* 134 (2020): 1123-1131

> ***" Due to the not immediately lethal nature of the cerebral injuries, the sparseness of the livores and the pallor of the inner organs, the cause of death was deemed to be exsanguination due to the scalp lacerations."***
>
> Gläser, Nadine, et al. "Biomechanical examination of blunt trauma due to baseball bat blows to the head." *Journal of Forensic Biomechanics* 2 (2011).

4. Dr. Choi check-marked 'Posterior' lividity and "Purple" at the beginning of her report and then added "PURPLE POSTERIOR" in all caps in the body of the report. She then described the kidneys as:

"*Sections show the organs to be slightly congested with unremarkable cortices, medullae...*" – Certainly not shock kidneys or exsanguination. The brain is described as: "*Multiple serial sections show marked congestion.*" The only suggestion of some blood loss is the wrinkling of the spleen.

5. It is well known among forensic pathologists that there is a tendency to grossly overestimate the amount of blood loss when observing blood pooling at scenes of death. This affiant has demonstrated that during teaching sessions, by distributing a known amount of blood on a surface or in garments and then allowing medical personnel to estimate the amount. It also was a key issue in a notorious murder case in Ventura, California, in 1980 in which a prominent medical examiner and another pathologist grossly overestimated blood loss (this affiant has a notarized certification describing that aspect of the case).

6. Clearly there was no evidence of significant blood loss at autopsy. Dr. Choi should have realized that on the basis of the "purple posterior" lividity and the appearance of the cut sections of the kidneys, also the general lack of pallor and the ability to obtain heart blood for toxicology.

7. By presuming blood loss without pathologic support, in addition to the faulty conclusion of brain injury, as the cause[s] or contributory cause[s] of death, Dr. Choi failed to look further for the true cause of death. Due to this unprofessional conduct, a grave, egregious error occurred.

C. Regarding scalp lacerations

1. When documenting injuries, each injury should be numbered, as Dr. Choi correctly did. However, from that point on, Dr. Choi departed from the accepted standards.

2. Dr. Choi deviated from the required standards by failing to photographically document injuries.

a. It must have been abundantly clear to Dr. Choi from the beginning that this case would be litigated. Therefore, it was an obligation on her part to provide objective evidence regarding the injuries (not just her interpretation or description). That is accomplished with professional photographic documentation of the injuries in accordance with standards (not just flawed diagrams). Here is the NAME standard that this affiant assisted in writing early in the 1980's:

> ***" Standard E14 Photographic Documentation***
>
> ***Photographic documentation complements written documentation of wounds and creates a permanent record of forensic autopsy details. Photographic documentation of major wounds and injury shall include a reference scale in at least one photograph of the wound or injury to allow for 1:1 reproduction.***
>
> ***The forensic pathologist or representative shall:***
>
> ***E14.1 photograph injuries unobstructed by blood, foreign matter, or clothing.***
> ***E14.2 photograph major injuries with a scale."***

> Photographs are taken at every forensic autopsy. Photographs can be invaluable in documenting the appearance of an injury such as a gunshot wound, stab wound, or laceration. Because forensic autopsies are often performed to rule out injury, "negative photographs" of uninjured tissues and organs can be as valuable as photographs of injuries. Although one can often accurately describe abnormalities in tissues and organs, photographs provide a permanent visual record of the finding, and they may capture the appearance of a finding in detail or reflect characteristics of a finding that escaped its original description.
>
> Dolinak, David, Evan Matshes, and Emma O. Lew. *Forensic pathology: principles and practice*. Elsevier, 2005.

b. According to the standards, the injuries are first documented by overall photos taken perpendicularly from the distance, first without numbered labels, then repeated with numbered labels next to each injury. Then close-up photos are taken perpendicularly of each injury with the respective, numbered label next to each injury. Finally, the latter is repeated, but with a right-angle ruler next to each injury. In addition, if any of the injuries are gaping due to the tension lines in the skin, the latter step is repeated, but with the wound reapproximated by pulling the ends of the wound apart.

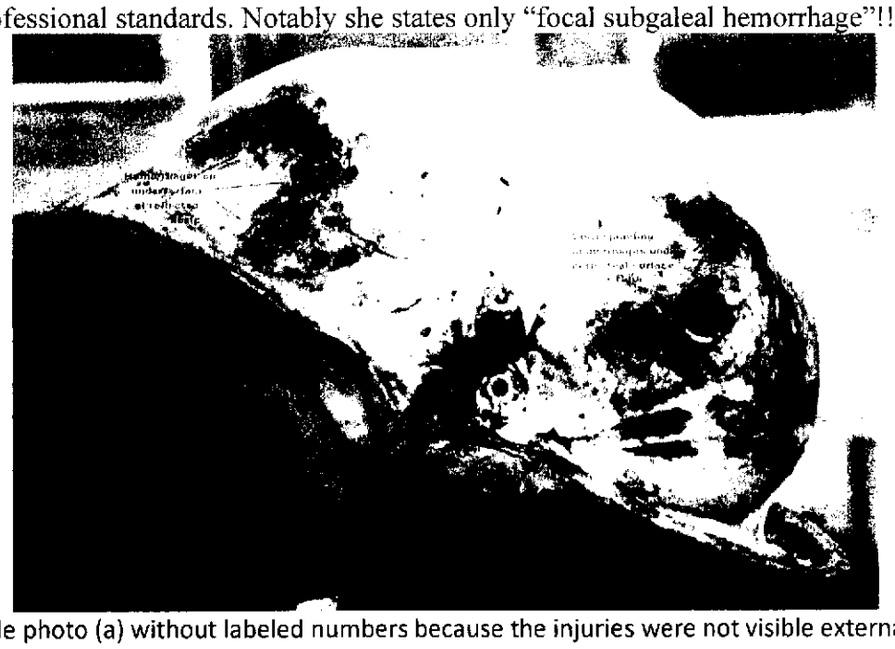
> " ***The photographs should be taken from several different angles, but especially from a directly perpendicular viewpoint, with the plane of the film at right angles to that of the lesion...tangential shots foreshorten the true shape. An accurate scale should always be adjacent to the lesion, as close as possible, but not impinging upon it or obscuring any detail. Specific rulers, such as those of the American Board of Forensic Odontology (ABFO), include two scales at right angles and a perfect circle at their intersection: this can help in correcting any distortion."***
>
> Saukko, Pekka; Knight, Bernard. Knight's Forensic Pathology (p. 556-557). CRC Press.

c. There are only two photos depicting the scalp lacerations. Both are overall photos without labels and without rulers, and many of the injuries are seen tangentially. Those two photos are #3306 and #3307. The absence of the required photographic documentation of the injuries is a serious departure from the required standards!

d. To make things worse, the diagrams provided no assistance because the diagrams do not agree with the photos, especially as they relate to the injuries on the back of the top of the head. This raises the serious question as to whether one can relay more generally on Dr. Choi's descriptions and conclusions: Falsus in uno, falsus in omnibus.

3. As is shown in example photos (a) and (b) below, any and all contusions of the scalp, including those associated with lacerations, must be documented on the <u>underside</u> of the scalp when it is incised and reflected forward and back to expose the skull. This documentation is necessary because of the high vascularity there, resulting in very visible hemorrhages when the scalp is subjected to a blow (contusion), with or without laceration. Many of these contusions are not visible externally. In order to correlate hemorrhages on the undersurface with surface injuries, each hemorrhage on the underside of the scalp is photographed with the respective numbered labels, first without and then with the right-angle ruler in place.

Dr. Choi did not even describe, let alone photograph the undersurface -- this is a most serious departure from professional standards. Notably she states only "focal subgaleal hemorrhage"!!

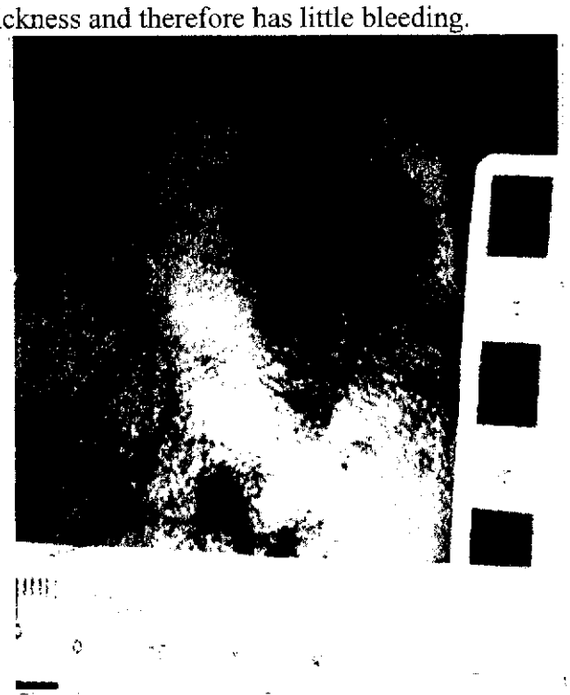


Example photo (a) without labeled numbers because the injuries were not visible externally.

Example photo (b) without labeled numbers because the injuries were not visible externally.

4. Given the available photos, the contused lacerations on Mr. Van Treese's scalp do not appear to be the result of a baseball bat strike, and may, in fact, be largely peri- or post-mortem.

a. The contused laceration caused by the impact of the smooth, cylindrical barrel of a baseball bat should have a uniform area of impact (contact) abrasion on either side of the laceration tapering more or less to a point at each end of the laceration due to the curved surface of the skull. In example photo (c) below one can see that uniform contact abrasion on either side of the laceration. The laceration is not full-thickness and therefore has little bleeding.



Example photo (c) Hamilton JR, Sunter JP, Cooper PN. Fatal hemorrhage from simple lacerations of the scalp. Forensic science, medicine, and pathology. 2005 Dec;1:267-71.

The lacerations in example photo (d) below were inflicted by a cylindrical tire iron – again one sees uniform, but much narrower contact abrasions. One also sees the blood clots welling up in the lacerations.

Example photo (d): Spitz WU, Diaz FJ. Spitz and Fisher's medicolegal investigation of death: guidelines for the application of pathology to crime investigation. Charles C Thomas Publisher; 2020 Jul 20.

b. Mr. Van Treese's contact abrasions, visible in photo #3307, are very disrupted, incomplete, and pebbly. As such, they do not carry with them the characteristics one typically sees from the smooth barrel of a baseball bat. The lacerations appear to have been inflicted by some other object of insufficient moment of inertia to cause skull fractures. And for the most part, the abrasions appear yellowish, dry and parchment-like suggesting that they were peri- or postmortem (also explaining the presence of "only focal subgaleal hemorrhage").

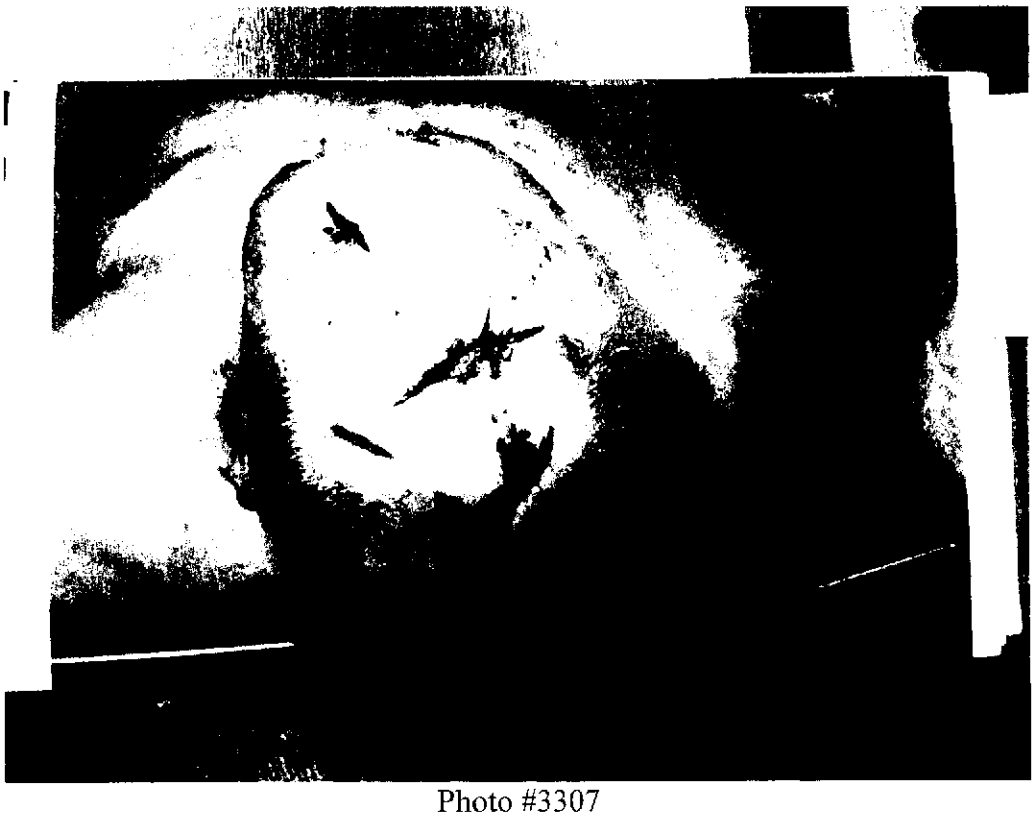


Photo #3307

c. This may explain why there were no skull fractures. When one considers the moment of inertia when the mass encumbered by the barrel of a baseball bat, held by the grip or handle end and is wielded by a healthy young adult male, a fracture of the skull, or at a minimum, significant bruising, should be expected. That has been reviewed by Gläser et al at: *Gläser, Nadine, et al. "Biomechanical examination of blunt trauma due to baseball bat blows to the head." Journal of Forensic Biomechanics 2 (2011).* The lack of skull fracture and bruising of the skull, with only "focal subgaleal hemorrhage," argues against these wounds having been caused by a baseball bat.

D. The likely cause of death

1. In Dr. Choi's report, the "red mark over the middle of the front" [of the neck] demands explanation. Dr. Choi ignored the "red mark" other than to mention it in passing. From the standpoint of a competent pathologist, this is unacceptable.

a. External evidence of pressure applied to the front of the neck may only be visible during the first hour or two; it may even be externally invisible right from the onset. This has been my experience, and it is also emphasized in the scientific literature. Here is an example from the scientific literature:

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Asphyxiation, Suffocation, and Neck Pressure Deaths (p. 355). CRC Press. Kindle Edition.

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38 Survived Neck Compression

Stefan Pollak and Annette Thierauf-Emberger

"Local injuries on the neck range from vague reddening via different forms of abrasion to intra- and subcutaneous haematomas. Redness of the skin is mostly patch- or streaklike (Figure 38.1). It is often associated with superficial epidermal defects and intracutaneous bleeding. Mere reddening of the skin remains visible for about 2 days after the incident at the most [20]. Consequently, victims of assaults to the neck should be examined as soon as possible. The same applies to suspects, as strangling perpetrators may be injured themselves when they meet resistance. Scratches from fingernails are particularly..."

==========

b. Dr. Choi did not even bother to photograph the mark. In fact, the only photo taken of the front of the neck (#3306) does not even depict the front of the neck because the beard has not been shaven away, as is the accepted standard of practice, and calls into question the reliability of her conclusions.

c. Alternate light source often enhances these vague marks. It helps to recognize any possible pattern within the mark. Dr. Choi never utilized that.

2. The petechial hemorrhages in the conjunctivae and lid need explaining. They were mentioned in the report, but given no further explanation or attribution. Dr. Choi, when asked about them during testimony, gave the bizarre explanation that they were "a kind of bruise."

a. Scientifically speaking, petechial hemorrhages in the conjunctivae and lids are no longer considered as arising from hypoxia and therefore are not a sign of asphyxial hypoxia. Rather, the prevailing theory as to why they arise in the conjunctivae, lids and occasionally in the face, is that arterial blood is still reaching the face, but venous blood is variably blocked, causing increased

intravenous pressure, resulting in the pinpoint hemorrhages. Precisely this happens when pressure is applied around the front of the neck. But it may also happen in congestive heart failure or other analogous situations. The following is a quote from the defining article that is generally accepted:

> ***"We suggest that a clear, physiologically based understanding of the pathogenesis of petechiae of the head is critical for their appropriate interpretation. We present a review of the literature and the basis of our conclusion that conjunctival and facial petechiae are the product of purely mechanical vascular phenomena, unrelated to asphyxia or hypoxia."***
>
> Ely, S. F., & Hirsch, C. S. (2000). Asphyxial deaths and petechiae: a review. *Journal of Forensic Sciences*, *45*(6), 1274-1277.

3. When considering that brain injury and loss of blood are not compelling causes of death in this case (as set forth above) and one is then confronted with the mark on the front of the neck and the petechial hemorrhages, it is possible that the cause of death may be the result of pressure applied around the front of the neck, probably with associated smothering around the mouth and nose. The latter explains the injury to the tongue, to the inner surface of the lip pressed against the teeth and the injuries about the nose and elsewhere about the face. At the very least, this cause of death should have been examined seriously and ruled out.

4. The next step then by Dr. Choi should have been a state-of-the-art, layer-wise, dissection of the anterior neck in a bloodless field. To attain the latter, one removes the chest and abdominal organs and the brain before dissecting the neck. In my practice I went even further – I had the technician aim a slow stream of water on my dissection to wash away any stray blood evolving from small vessels during the layer-wise dissection. I doubt that the correct protocol was followed by Dr. Choi – otherwise she would have described the procedure and findings or lack thereof – negative findings in this setting are just as important as positive findings. What one is looking for are tiny hemorrhages in the dermis or strap muscles, including the back surfaces of the sternocleidomastoid muscles, and around the laryngeal structures in situ. In my casework I went even further – I would open the carotid arteries longitudinally and look for tiny endothelial tears with very focal hemorrhages in the surrounding adventitial connective tissue. Since Dr. Choi did not even photograph or carefully examine the mark and simply dismissed it, I am quite certain that these procedures were not followed. Here are some examples from the scientific literature:

> **The layered neck dissection**
>
> The neck dissection consists of several stages of careful tissue dissection performed to either document injury or the absence of injury. After careful inspection, documentation, and photographing of the neck and any injuries, the skin and subcutaneous tissues are reflected off the underlying skeletal muscles along a fascial plane (**Image 8.27**). Following exposure of the anterior cervical strap muscles, the muscles are then dissected off of each other in a layer-by-layer, stepwise fashion along fascial planes until the thyroid cartilage and trachea are exposed
>
> Dolinak, David, Evan Matshes, and Emma O. Lew. *Forensic pathology: principles and practice*. Elsevier, 2005.
>
> ==========

> ***"Dissection of the soft tissues, of the musculature and of the organs of the neck in a bloodless field is essential... Internally, the bruises...may be visible to a greater or lesser extent in the tissues of the neck. Often they are quite superficial and are confined to the dermis... When examination of the deep neck structures begins, careful removal of the overlying tissues layer by layer is required, seeking genuine haemorrhage as each set of muscles is exposed."***
>
> Saukko, Pekka; Knight, Bernard. Knight's Forensic Pathology (p. 645. 376-377). CRC Press.

5. The absence of petechial hemorrhages in the larynx and trachea is of no importance.

6. One more consideration needs addressing – are the other findings at autopsy compatible with a strangulation-smothering cause of death? The lungs may be of normal weight or congested depending on the timeframe and which prevailed – strangulation or smothering. They may also be of normal weight or light weight if they became overinflated in a desperate need to exhale while being smothered. The lungs were described as congested, but of normal weight. Froth exuded from the cut surfaces. This is caused by the mixing of air with congestion, consistent with smothering. The brain was very congested and that is entirely consistent with strangulation and/or smothering. And, as stated above, the kidneys were "slightly congested with unremarkable cortices, medullae," also consistent with strangulation or smothering.

E. Timeframe of the lacerations & focal subarachnoid hemorrhage.

1. When tissues, such as the scalp and the meninges (the thin linings surrounding the brain), are traumatically injured, in a normal, healthy person, a reaction can begin to be seen under the microscope on careful examination already after 20 to 30 minutes. What one sees at the edge of the injury, is a response by so-called white blood cells called polymorphonuclear granulocytes (also called neutrophils). They are beginning to migrate out of tiny vessels nearest to the edge of the injury. They will migrate into the area of injury to begin the so-called "inflammatory reaction," the first step in the cleaning up and repairing. The pathologist has learned to recognize these cells by their characteristic morphology and staining characteristics under the microscope. This phenomenon becomes quite recognizable after about an hour. Here are two authoritative scientific references:

"4. Open skin wounds

4.1. Blood cell reaction

A stabbing, cut or blow to the skin can lead to tissue destruction. tearing or rupture of blood vessels. and results in bleeding. Red blood cells that leave the blood vessels become partly or totally spherical and are located in an acidic environment in the perivascular tissue. The very early vital blood cell reaction will be the granulocyte emigration which will be seen in single cases within 10 min, in most cases, within 1 hr."

Oehmichen, M. "Vitality and time course of wounds." *Forensic science international* 144.2-3 (2004): 221-231.

Age estimation of wounds
P. Betz:

Table 1 Appearance of histologically detectable parameters in human skin wounds dependent on the post infliction interval (n = 221)

Parameter	Earliest appearance	Regular appearance
Neutrophil granulocytes	20–30 min	> 15 hrs
Macrophages	3 hrs	> 3 d
Macrophages > granulocytes	20 hrs	> 11 d
Lipophages	3 d	(> 5 d)
Erythrophages	3 d	–
Siderophages/hemosiderin	3 d	(> 7 d)
Hematoidin	(8 d)	–
Lymphocytes	(8 d)	(> 19 d)
Fibroblastic cells	~ 1 d	> 5 d
Migrating keratinocytes	2 d	> 6 d
Complete reepithelialization (surgical wounds)	5 d	> 20 d

Betz P. Histological and enzyme histochemical parameters for the age estimation of human skin wounds. International Journal of Legal Medicine. 1994 Mar;107:60-8.

2. Dr. Choi states, regarding her microscopic examination of the lacerations, "There is no acute inflammation." That would imply that Mr. Van Treese did not survive more than 20 to 30 minutes after infliction of the lacerations. Regarding the focal subarachnoid hemorrhage – Dr. Choi does not address the issue at all.

Closing Comment:

This review has established an appalling lack of due diligence, an egregious lapse in duty to provide even the most basic professional services by Dr. Choi, which has made her findings in this homicide investigation unreliable to a reasonable degree of scientific reliability. It is still possible that further testing can be accomplished if tissue has been preserved and maintained, as federal professional standards require. If such testing is possible, and more information about the autopsy, especially including more photos, are uncovered, perhaps we can come closer to understanding what actually happened to Mr. Van Treese on January 7, 1997. Until then, we are left with more questions than answers on these critical issues. It is hoped that this Certification will help to seek justice.

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