23-6064 ORIGINAL

No.23-___

IN The

Supreme Court of the United States

ANTHONY LYN KIMBROUGH
Petitioner, Pro-Se
Vs.

THE STATE OF OKLAHOMA ET AL,
Respondents,

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

PETITION FOR A WRIT OF CERTIORARI

ANTHONY LYN KIMBROUGH
D.O.C.#224852
LEXINGTON CORRECTIONAL FACILITY
P.O. BOX 260
LEXINGTON, OKLAHOMA.73051

Question Presented

1. Whether Escobar vs. Texas, 143 S.ct 557 (January 9th 2023) The use of "material false testimony" to jurors by its States forensic fingerprint expert should apply retroactively to Oklahoma State convictions that were final when Escobar was announced. The Question(s) presented are:

2. Whether a State Consistent with the Sixth and Fourteenth amendment of the united States Constitution. allows a trial court in the state of Oklahoma to "abuse its discretion" by its failure to use the proper standard in determining whether to grant or deny the Petitioner motion for First Post-Conviction D.N.A. testing. 22 O.S. (2013) §§ 1373.1-1373.7 such as: Favorable presumption and/or considering (a)ll the evidence produced at trial along with any newly discovered evidence and the impact that and exculpatory DNA test could have had in light of this evidence. This State law Requires a decision by this court which consequently will stop the conflict among the Federal Court and State courts of last resort such as State vs. Crumpton,332 P.3d 448 (2014).

3. Whether and to what extent the 14th amendment due process clause applies to Post-Conviction D.N.A. Proceedings to determine whether a prisoner conviction would be set aside and/or modified upon favorable results of D.N.A. testing. This case particularly concerns the State of Oklahoma First, Motion for Post-Conviction D.N.A. testing. 22 O.S. (2013) §§ 1373.1-1373.7. where a liberty interest has been established under § 1373.5(A) "it allows for the vacation of a conviction or other relief. This statue is not an amendment to the original Post-Conviction act 22 O.S. § 1080(a)-(f) and the fact the (O.C.C.A) will deny any indigent defendant the right to appeal his appointed counsel was ineffective during the hearing. This State law Requires a decision by this court which consequently will stop the conflict among the Federal Court and State courts of last resort such as Greenholtz vs. Inmates of the Nebraska Penal and Correctional complex,442 U.S. 1 (1979).

4. Whether the Oklahoma Court of Criminal Appeals Properly applied the Standard articulated in William vs. Pennsylvania, 579 U.S. 1 (2016) in cases where a showing of actual subjective Bias is not required to establish a Fourteenth amendment due process violation.

5. Whether Escobar vs. Texas, 143 S.ct 557 (January 9th 2023) States DNA (Standard of Proof) should apply retroactively to Oklahoma State convictions that were final when Escobar was announced. a decision by this court which consequently, will affect the constitutional rules governing the operation of all State and Federal Courts with lower and/or higher DNA (Standard of Proof).

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Parties to the Proceedings

Petitioner is Anthony Lyn Kimbrough Pro-se, Respondents are the State of Oklahoma, by and through Gentner Drummond Attorney General, Steve Kunzeiler, the District Attorney in and for Tulsa County, Oklahoma. And the Honorable District Judge Dana Moody in and for Tulsa County, Oklahoma.

Related Proceedings

Order Affirming Denial of Motion For Post-Conviction DNA Testing filed on August 23rd 2023 Case no. PC-2023-624

The Petitioner Petition-in-error from the Denial of the Petitioner motion for First Post-Conviction DNA testing filed on July 28th 2023 case no. Pc-2023-624

The District Court Judge denied the Petitioner first motion for Post-Conviction DNA testing filed on July 6th 2023 Case no. Cf-93-1833

Anthony Kimbrough vs. The State of Oklahoma, Petitioners First Motion for Post-Conviction (D.N.A.) Testing was filed on February 23rd 2023 22 O.S. §§ 1373.1-1373.7 with attached Sworn affidavit of innocent (exhibit-A) in case no. #Cf-93-1833

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The language use by the 54 Oklahoma legislature in the Post-Conviction D.N.A. Act 22 O.S. (2013) §§ 1373.1-1373.7 makes it clear this act is not subject to the provisions of the uniform Post-Conviction DNA act. First the legislature did not amend the uniform Post-Conviction Procedure act to include any mention of the Post-Conviction D.N.A. act. And we conclude this indicated the Post-Conviction D.N.A. act. Is not an additional ground for relief Pursuant to the Uniform Post-Conviction procedure act. 22 O.S. §§ 1080 (a)-(f). and this court will not interpret the Post-Conviction D.N.A. act to unilaterally create a new provision of the uniform Post-Conviction act without authority from the Legislature.....27

PETITION FOR A WRIT OF CERTIORARI

Petitioner Anthony Lyn Kimbrough respectfully petition for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

OPINIONS BELOW

The order of the Oklahoma Court of Criminal Appeals denying the Petitioner petition-in-error is not reported but available at (Pet. Appendix-A at 1a-9a)

The Trial Judge Courts order Finding of Facts and Conclusion of law denying the Petitioner 3rd Post-Conviction relief is not published but is available at (Pet. Appendix-B at 10a-20a)

JURISDICTION

The Oklahoma Court of Criminal Appeals order affirming denial of Petitioner Petition-in-error on August 23rd 2023. Case no. PC-2023-624. This petition for a writ of certiorari is being filed within (90) days of that denial. This Court has Jurisdiction pursuant to 28 U.S.C. § 1257(a). Petitioner having asserted below and asserting here a deprivation of rights secured by the Constitution of the United States. The petition for certiorari has been filed timely.

RELEVANT CONSTITUTION AND STATUTORY PROVISIONS

The Text of the Oklahoma motion for first Post-Conviction DNA Act 22 O.S. (2013) §§ 1373.1-1373.7 and the Original Post Conviction Act 22 O.S. § 1080 (a)-(f) are reproduced verbatim in the Petition for writ of Certiorari (Pet. Appendix-C at 21a-32a).

INTRODUCTION AND SUMMARY OF ARGUMENTS

This case centers on the Petitioner request to DNA-test crime-scene evidence that could definitively prove his innocence in the shooting death of a Tulsa Police officer. To wit: one .380 shell casing from a gun, one pillow, and three latent fingerprints. The State argued the shell casing prove their murder case, (closing argument by Doug Horn Tr. vol VII at 1599-1600) while the Defense Counselors argued the shell casing prove their case and the Petitioner innocents (Closing Argument by James Rowan Tr. vol VII at 1625-26). That on June 3rd 1993 the Petitioner surrendered to authorities in

California at his pro-bono Attorney office and was later transported to the Oakland county jail were the Petitioner was arrested and held on First degree murder charges, at the request of the Tulsa police department, a full set of the Petitioner ink finger print cards was faxed to their forensic laboratory for comparison with evidence at the murder and Drug crime scene three latent prints of the Petitioner was found inside the laquinta inn by (Det Tom Campbell Tr. vol-V at pages 1212-16) eight latent prints out of eighty was found inside and outside of the Pontiac Grand am car which was stop by the Police officer Six of the latent prints belong to that of the Petitioner and two latent prints belong to that of Felicia Barnett the Petitioner girlfriend (Det. R. Heim and Det T. Campbell Police reports)[1]But none of the ink finger print cards from Oakland, California was used to make a match with any of the evidence found at the drug-crime scene. That on July 2nd 1993 upon extradition back to Tulsa, Oklahoma. The Petitioner appeared in the Tulsa County District Court for arraignment, Because the Petitioner was unable to afford counsel the Court appointed Richard O' Carroll a Defense Attorney with the capital trial Division (OIDS) to represent the Petitioner, he filed an entry of appearance on July 23rd 1993 and on August 4th 1993 the District Attorney filed a motion requesting an order to require

[1] The following Latent's have been identified with Petitioner Fingerprint Cards. Latent #7 From the right vertical support for the wind shield, #39 From the top, left side #42 From the top, left side, #56 From the top left side, atf, #67 from the inside of the trunk surface, and #68 from the inside of the trunk surface. The following Latent's have also been identified with Felica Barnett, #21 From the right front door. #36 From the painted area behind left rear door wing window. (Pet. Appendix-H 48a-52a)

the Petitioner to furnish additional fingerprints. Defense Counselor objected by filing a motion to strike the State motion requesting an order to require the Petitioner to furnish Finger prints and on August 6th 1993 defense counsel filed another response to plaintiff request on the State motion requesting the defendant to furnish finger prints. The Petitioner in the past has furnish three (3) sets of fingerprint cards. The first sets of cards were on August 5th 1992 when the Petitioner was charge and arrested in Tulsa County on Possession of residue (cocaine) and possession of a gun in the commission of a felony Cf-92-3428. The second set of fingerprint cards was on June 3rd 1993 when the Petitioner turn himself into police custody in Oakland, California. The third set of prints was on July 2nd 1993 when the Petitioner returned back to Tulsa, Oklahoma. this set of fingerprints cards was collected by the State fingerprint expert Robert Yerton.[2]

a. Factual background

Anthony L. Kimbrough was charged with first degree murder on April 23rd,1993 the murder charge in this case involved the death of Gus Spanos, an Officer with the Tulsa Police Department. The drug Trafficking charges arose from events following the homicide the officer died as a result of a single gunshot wound to his head. (R.Hemphill, Tr.iv at 991) he was shot during a routine traffic stop in a residential area at north Cincinnati and East 58th street in Tulsa, Oklahoma. According to the evidence at Trial,

[2] State fingerprint expert Robert Yerton was a retired Tulsa police officer, (Pet. Appendix-G 39a-47a)

and in particular, the testimony of the detective in charge of the homicide division of the Tulsa Police Department and the investigation of this case, there was no physical evidence at the crime scene connecting the Petitioner to the Police officer death. (W.Allen, Tr.vi at 1517; M.Huff, Tr. iv at 928) There was one empty shell casing from a .380 caliber ammunition was recovered from the street in front of the patrol car and toward the center of the street the casing was said to be east of the officers feet, about 10 to 20 feet away (D. Mackin Tr. vol IV at 859) an opinion was offered that the casing belongs to ammunition that would commonly be used in a medium caliber semiautomatic handgun, which ejects casings to the right. The general location of the casing was said to be consistent with a shot being fired toward the officer from the area where the stopped vehicle was presumed to have been sitting, assuming the shell casing was ejected to the right of a weapon held near the car (Det M.Huff Tr. Vol IV at 917,919,924) another opinion was offered state firearm tool expert Richard Raska, on cross examination he testified that somebody could probably have a gun specially made if they were left handed to fire up and to the left to keep the shell casing out of their face (R. Raska vol VI at 1361) Defense counsel argue the .380 shell casing was found in a high crime area were shot are being fired all the time and/or the .380 shell casing could have bounce or ricocheted to its current location (Closing Argument by Mark Barrett Tr. vol-VII at 1643).The State Medical examiner Robert Hamphill recovered a full-metal jacketed bullet from the deceased. He was unable to estimate the distance between the gun and the officer at the time he was shot. (R. Hemphill Tr. IV at 998,1001) Based on the spot

where the bullet entered in the right back of the head and the place where the bullet came to rest at the forehead, the medical examiner described the path of the bullet to be side to side angle of no more than 10 or 15 degrees (R. Hemphill Tr. vol IV at 1002) the bullet traveled at a slightly upward angle of less than 10 degrees, taking an almost level path through the head (R. Hemphill Tr. vol IV at 1003). That after four (4) months of the Petitioner being charged with murder the State filed an amended information adding two counts in addition to first degree murder the Petitioner was charged with Drug Trafficking in illegal drugs count-2 and failure to obtain drug stamp count-3, the State theorized the Petitioner shot the police officer because he had a bench warrant out for his arrest for possession of unlawful drug residue (cocaine) and possession of a gun in commission of a felony in Cf-92-3428 and because there were drugs allegedly in the car at the time the car was pull over by the police officer, defense counsel filed a motion for joiner citing Glass vs. State, 701 P.2d 765 (1985) arguing that the drugs were never found inside the Grand am car but inside the Petitioner uncle bed room in which the Petitioner slept. The Trial Judge reach his decision on the basis that the evidence of drug trafficking was sufficient for the purpose of showing motives for the homicide and therefore could be jointly prosecuted at trial (Motion Tr.11-23 93 at 5). Three (3) residents in the neighborhood where the shooting took place State eye witness (Sereeney Wilson) and (Defense eye Witness Marion Clifton) observed some of the events but neither identified the Petitioner as one of the drivers at the scene, Defense eye witness Micheal L. Phillip testified at

Preliminary Hearing but not at trial, that he arrived at the scene before Police officer (Charile Tapper) and that he seen two People in the car leaving the scene. (P.H. Tr. at pages at 1269-82) State witness S. Wilson testified she saw the police officer standing beside his patrol car talking to a black or Hispanic man of medium build with short hair, who was sitting in the stopped car in front of the patrol car. According to S.Wilson, the unidentified man may have had someone with him in the passenger seat. In S.Wilson account, the man in the car opened the driver's door. Put one leg (clothed in blue jeans) outside the car and pulled a hand gun out with his right hand and shot up at the police officer hitting him in the back of his head. The car according to Wilson, then turned around in a driveway and drove north on Cincinnati, another car sped by a fraction of a second later going south on Cincinnati (S. Wilson Tr. vol IV at 948,954,956,970-74,978) S. Wilson was given a photo lineup of six (6) suspects after viewing the lineup S. Wilson didn't select the Petitioner in the group as the suspect who she saw shoot the police officer. See (Supplementary offense report by Det. cpl G.A. Meek) another eyewitness, Marion Clifton who was call by the defense, lived at 214 east 58th street just east of the area where officer stopped his patrol car (M. Clifton Tr. vol VI at 1392) according to Clifton, there were two cars stopped on 58th street. In addition, to the patrol car, a Dark burgundy car facing east and a silver car facing west, or in the opposite direction (M. Clifton Tr. vol VI at 1393-94) Clifton said the person driving the dark burgundy car, the officer, and the person driving the silver car all got out of their vehicle's and talk to one another Clifton left his window at this point and went into another room.

(M. Clifton Tr. vol VI at 1404) when Clifton looked outside again the person who was driving the car stopped by the officer was getting back into his car, as was the person in the silver car. The silver car drove to the stop sign on Cincinnati and turned right. The dark burgundy car drove down the street, turned into a drive way, backed out, and headed west back to the stop sign at Cincinnati, where the car turned right or north and drove away (M. Clifton Tr. vol VI at 1395-96,1406) Clifton was not certain about the make of the silver car. (M. Clifton Tr. vol VI at 1396) he thought it was odd the police car did not move, but he did testify the person that got out of the stop car was not the Petitioner but a bigger and much taller person than the Petitioner (M.Clifton Tr. vol VI at 1392-96,1404-6, 1431-33) Three minute's elapsed between the time officer Spanos called the dispatcher to indicate he was making a traffic stop, and the time his backup officer Charlie Tapper arrived on the scene and called the dispatcher to report an officer was down. (C.Tapper Tr. vol IV at 824 -25) During Trial Officer (C.Tapper) testified that he arrived at the scene first and that 30 seconds had gone by before (M. Phillp) drove up and almost ran over both officers with his car (C.Tapper Tr. Vol IV at 836-37). before being shot officer Spanos called the tag number of the car he pull over into the dispatcher on his radio this was routinely done for all traffic stops. The car was later identified as a 1986 black Pontiac Grand am registered to Nancy Moody a friend of the Petitioner (G. Lewis Tr. vol IV at 801-03) after a search of a house and garage belonging to William Kimbrough the Petitioner uncle, the car was found and confiscated by the Tulsa Police Department and taking to the Police academy for processing. K-9 officer (P.Calhoun)

testified he took his dog to the Tulsa Police/center to command his dog to find drugs in the suspect car the dog expressed interest on the floor under the driver's seat and the rear of the trunk near the tag by sniffing in those areas, but there were no drugs found in the car, (P. Calhoun Tr. vol vi) during the a search of William Kimbrough house in a bed room often visited by the Petitioner produced two sealed Kleenex boxes containing plastic baggies of cocaine. (Jeff Cash Tr. vol VI at 1291-94) according to the officer testimony there were (37) plastic bags containing about (14) grams of cocaine for a total of 515 grams. The State fingerprint expert Robert Yerton testified he lifted (3) three latent Prints item #2 which contain 1 of 19 bags of cocaine in his personal opinion belong to the known fingerprint cards of the Petitioner and matched the Petitioner number (one finger) or (right thumb) with the minimum of (15) points of identification (R.Yerton Pet. Appendix-G,39a-47a) R.Yerton mention he lifted an additional print from the outside of the particular Kleenex tissue boxes and it's his opinion that the latent print lifted from the Kleenex box has been identified to the number (6) or the Right Thumb of the fingerprints card belonging to the Petitioner with a minimum of (12) points of identification (R.Yerton Tr. vol-VI at 1328-31) an un-identifiable print was also found but unable to make a match to any one (R.Yerton Tr. Vol VI at 1334 at Appendix-G, 39a- 47a). The state's primary witness against the petitioner was his 28 year old cousin, Patrica who had outstanding warrants for her arrest on the day of the shooting (P. Kimbrough Tr. vol V at 1061) when she testified at trial she stated that she originally told three different stories to the detectives about what had happened on April 23rd 1993

(P. Kimbrough Tr. vol-V at 1059) according to Patrica her boyfriend Dejuan and two other people in the house they were awakened sometime after midnight by someone knocking of the door and windows of the house (P. Kimbrough Tr. vol V at 1044-45) Patrica Said that the visitor was the Petitioner dressed in green shorts and green and white stripped t-shirt the same as he had been wearing earlier in the evening (P. Kimbrough Tr. vol-V at 1046) that it was only after Patrica became concerned and worried about being charged with the homicide of the police officer and Drug Trafficking in illegal drugs did she change her story for the fourth time to the Detectives this time by saying that the Petitioner confessed to her that he shot the police officer. See, April 15th 1994 (Motion to Dismiss for failure to produce evidence that Patrica Kimbrough committed the homicide of officer) see also, Defense counsel offer of proof that if Patrica (5) year old son Lamar Lewis Jr. were allowed to testify with the use of prior statements to refresh his memory if necessary then he would say he observed his mother shoot the police officer. He would testify he was asleep in the Petitioner car when it was stopped. He woke up looked out the rear window and saw his mother shoot the police officer from behind. He also recalled another person or persons beside his mother and the Petitioner being present (Tr. vol VI at 1465-66) the Trial Judge ruled the child incompetent (Motion Tr. 5-13-94 at 76) No other State witness said the Petitioner shot the officer including the Petitioner uncle Jerry Richardson which testified he received two telephone calls from the Petitioner at his apartment in Texas according to Richardson the Petitioner never admitted to shooting an officer but spoke of getting rid of a gun and moving drugs,

Richardson also said the Petitioner told him Patrica was in hiding (J. Richardson Tr. vol V at 1163-65,1167) at the time of trial Richardson had a drug trafficking charges pending against him and was facing (2) two possible life sentences (AFCF).[3] That on May 16th 1994 Jury selection began and on May 25th 1994 the jurors deliberated for hours before sending out a note to the Trial Judge asking for the cassette player to re-play the 911 tape for time frame purposes.The State Attorney argued that the tape should be admitted into evidence to narrow the time frame down to his State witness (S.wilson) testimony and not to the defense witness (M.Clifiton Testimony) (Closing Argument D. Moss Tr. Vll at 1661-68) The fact that (Officer C.Tapper) misled the jurors by testifying that he got at the scene first and didn't see any other car coming or leaving the scene in his direction or else he would have immediately gone after the car led to the Petitioner conviction. Compare (Officer C.Tapper Tr. vol IV at page 844-47) with (Micheal L. Phillp testimony P.H. Tr. at pages at 1269-82).

b. (Procedural Background)

For nearly 30-years Petitioner has fought in both State and Federal courts to prove his innocence. Those efforts have produced extensive evidence calling the Petitioner conviction into doubt. On May 27th 2004 (10) years after the Petitioner Judgment and sentences, (Thomas Ekis) a forensic fingerprint expert from Texas re-examine the same

[3] 1-year after the Petitioner conviction and sentence J. Richardson drug Trafficking and failure to obtain a drug stamp charge got drop to simple possession with intent to distributed and receive two five-year deferred sentences running c.s. Cf-92-3503.

latent-prints by State finger print expert Robert Yerton and in his opinion the latent-print found on the Kleenex tissue box containing 1 of 19 bags of cocaine don't belong to both the Petitioner (Right-Finger) or (Right-Thumb), but belong to the Petitioner (Left-thumb) [4] the Dissimilarities in these two expert opinions requires re-checking by newer technology such as Touch (D.N.A.) both experts were un-able to identified a latent (Palm Print) found upon a second Kleenex box which also contained bags of cocaine See, (Thomas Ekis fingerprint report Pet. Appendix-E, 35a-37a) compare with (R. Yerton Jury Trial Testimony Tr.vol VI at 1328 -1334 Pet. Appendix-G 39a-47a) Mayfield vs. U.S. 504 F.Supp.2d 1023 (D.Or.2007) Fingerprint examiners turn out to have a significant error rate. Perhaps the best-known example of such an error occurred in 2004 when the FBI announced that a latent print found on a plastic bag near a Madrid terrorist bombing was "a 100 percent match" to Oregon attorney Brandon Mayfield. The FBI eventually conceded error when Spanish Investigators linked the print to someone else. On February 23rd 2023, In pursuit of the Petitioner innocents the Petitioner filed his motion for first Post-Conviction DNA testing supported with his sworn affidavit of his

[4] The dissimilarities in Robert yerton opinion could have been avoided if the Petitioner first attorney of record was not remove from the Petitioner case the removal came right after the defense counselor gave his witness list summary to the Prosecutors of what his defense witnesses were going to testified to: Don Cravens-Crime Scene/Fingerprint expert c/o Oklahoma county Public defender office will testify regarding his independent analysis of the state's fingerprint expert Robert Yerton evaluation and to the possibility of the placement of the defendant's fingerprints at the drug crime scene And Lanny Emanual-Forensic Firearms expert will testify regarding his independent analysis of shell casing, pillow and projectile recovered from the decedents body and any other firearm evidence produced by the state. See, defense counsel witness summary list (Pet-Appendix-F 38a).

innocent (Pet.Appendix-D at 33a-34a) and because the Petitioner is arguing his innocents, the Trial Judge held a DNA hearing on July 6th 2023. See, 22 O.S. 2013 § 1373.2 which establishes eligibility for DNA testing and § 1373.2(A)(2) and (3) establish the following (2) Persons convicted on a plea of not guilty, guilty or nolo contendere; and (3) Persons deemed to have provided a confession or admission related to the crime, either before or after conviction of the crim. On the same day the Trial Judge denied the Petitioner request for DNA testing and it was from that order the Petitioner filed the following Petition-in-error:

I. THE DISTRICT ATTORNEY FAILED TO RESPOND TO PROPOSITION-I IN THE PETITIONER FIRST MOTION FOR POST-CONVICTION DNA TESTING AND THERE FORTH HAS WAIVED HIS RIGHT TO RESPOND AND/OR DISMISS THE PETITIONER CLAIM ADDRESSING ESCOBAR D.N.A. (STANDARD OF PROOF) RETROACTIVITY.

Pursuant to Zane v. Kramer, 195 F.Supp.3d 1243, 1256 (W.D. Okla.2016) (plaintiff waived claim where he did not respond to argument raised in defendant's summary judgment motion)" see also, Palmer v. Unified Gov't of wvandotte cty 'Kan. City Kan., 72 F. Supp. 2d 1237, 1250-51 (D. Kan, 1999) The Court deems plaintiffs failure to respond to an argument raised in defendant papers tantamount to an express abandonment of any such claim."). In the present case, the District Attorney failed to respond to the Petitioner (Proposition-I) see, the Petitioner First Motion for Post-Conviction D.N.A. testing (Appendix-R) compare with July 6th 2023 Transcript of Post-Conviction DNA evidentiary hearing in case no.Cf-93-1833 and there forth has waived his right to address the D.N.A (Standard of Proof) retroactivity of Escobar see, Ex parte Escobar 2022WL221497 January 26th 2022,See also, Escobar vs.

Texas,143 S.ct 557 January 9th 2023 opinion announced by the Supreme Court of the United States. Northcutt v. Fulton, No. CIV-20-885-R, 2020 U.S. Dist. LEXIS 235325 (W.D. Okla. Dec.15, 2020) e.g., Rock Roofing LLC v. Travelers Cas. & Sur. Co, 413 F.Supp.3d 1122, 1128 (D.N.M .2019) (plaintiff's failure to respond to defendant's argument waived the issue);

II. THE TRIAL JUDGE EX-PARTE COMMUNICATION THROUGH E-MAIL TO BOTH DEFENSE ATTORNEY AND STATE PROSECUTOR VIOLATED THE CODE OF JUDICIAL CONDUCT CANON-2 AND CANON-3. AND THAT JUDICIAL BIAS BY THE TRIAL JUDGE AGAINST THE PETITIONER HAVE BEEN SHOWN IS A VIOLATION OF THE PETITIONER 14TH AMENDMENT FEDERAL CONSTITUTIONAL RIGHT TO A FAIR DNA TESTING HEARING.

Pursuant to the Code of Judicial Conduct Canon-2 and Canon-3 A Judge should respect and comply with the law and should conduct him/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary, in order to promote public confidence in the Judiciary, courts have imposed upon those Judges held to have engaged in ex parte communication disciplinary sanctions. See, 22 O.S. § 1373.2 (A)-(E) Motion Requesting Testing § 1373.2 (C)Requires: The motion requesting forensic DNA shall be accompanied by an affidavit sworn to by the convicted person containing statements of fact in support of the motion. And 22 O.S. § 1373.2 (D) Requires: upon receipt of the Petitioner motion requesting forensic DNA testing, the sentencing court shall provide a copy of the motion to the attorney representing the State and require the attorney for the State to file a response within (60) days of receipt of service or longer, upon good cause shown. The response shall include an inventory of all the evidence related to the case, including the custodian of such evidence. In the present case, on February 23rd 2023 the Petitioner file his

first motion for Post-conviction D.N.A. testing supported with his sworn affidavit as (exhibit-A) in case no. Cf-93-1833, the State has until April 23rd 2023 to file its responds however upon good cause shown the State can request an extention of time if needed, in this case the Trial Judge didn't follow the mandatory languish of § 1373.2(D) supra. But instead order the Petitioner case to be tried on May 31st 2023 in which gave the State Prosecutor (98) days to respond to the Petitioner First Motion for Post-Conviction DNA testing See, March 9th 2023 Court order cf-93-1833 See also, Byrd vs. Casewell,34 P.3d 647 (2001) The Court of Criminal Appeals held that the District Court order violated the Statute covering revocations which required the state to prove grounds for revocation within 20 days of arraignment. That pursuant to the Codes of Judicial Conduct Canon-2 a Trial Judge could schedule and/or re-schedule a hearing only if the Judge believes that no party would gain a procedural or tactical advantage as a result of the ex-parte communication. the ex-parte communication in this case was by the Trail Judge e-mailing both the Defense Attorney and State Prosecutor and the Defense Attorney calling the Trial Judge back indicating to the Trial Judge that its ok to grant the state an extention of time, but defense Counselor not resolving what action the Petitioner wanted the lawyer to take See, the Petitioner (Motion for right to represent himself for any and all upcoming proceedings June 7th 2023 See also, Defense Counselor (Motion to enforce stipulation based on states failure to respond) with in sixty (60) days of receipt of service," filed June 9th 2023 that the (Motion to enforce) was at the Petitioner request to Defense Counselor. see also, the Petitioner (Supplemental motion for right to represent himself for any and all upcoming proceedings June 26th 2023) in case no

Cf-93-1833 that it is well documented by case law and the Judicial Code of Conduct Canon-2 that ex parte communication is not violated for scheduling or rescheduling hearings the only exception to this rule is when the scheduling is illegal and/or un-necessary. In this case the scheduling and/or re-scheduling of the Petitioner DNA hearing was both illegal and un-necessary because § 1373.2(C)(D) has mandatory languish See, the Petitioner Criminal Docket Sheet from February 23rd 2023 to July 6th 2023 Cf-93-1833 See, Persuasive authority Mississippi Com'n on Judicial performance vs. Thompson, 80 So. 3d 86 (Miss.2012) The trial judge improper dismiss of cases based on errors in application of law, improper ex parte Communication inference in proceedings before other Judges, interjects into matters at time when no case was pending before him, and failure to follow the law warranted public reprimand 30-day suspension from office, fine of $ 2,000 and assessment of costs. the Trial Judge in this case knew or should have known what the law is and that if the State Prosecutor wanted a extention of time the proper way to ask for one is threw a motion for extention of time just as the Prosecutor has requested in prior cases before this court See, Christopher Tarver vs. State, on April 8th 2019 Tarver, filed his First motion for Post-Conviction DNA Testing and On June 25th 2019 the State filed for an extention of time to respond to the Petitioner first motion for Post-conviction DNA testing, and on June 25th 2019 Judge Dawn Moody Granted the States motion See, criminal docket sheet Cf-2006-5408. by the above case law, it proves the Trial Judge, Defense Attorney and the State Attorney all knew what the law is, and the scheduling and/or re-scheduling by the Trial Judge in this case has cause a procedural and/or tactical advantage for the Prosecutor. The First "procedural" or "tactical

advantage" for the Prosecutor was the Defense Counsel not resolving what action the Petitioner wanted the lawyer to take which was why the Petitioner had filed two motions to represent himself. See also, the letter sent by Petitioner to his Defense Counselor on June 15th 2023 (exhibit-5)The Second "procedural" or "tactical advantage" for the Prosecutor was had the Petitioner (Motion to enforce stipulation based on states failure to respond) with in sixty (60) days been granted the State Attorney would not been able to respond and/or object to the Petitioner request for Post-Conviction DNA testing because the State Prosecutor waived the right to respond (exhibit-3) See also, the State Response to the Petitioner motion requesting Post-Conviction DNA testing, the States motion was not made in good faith but bad faith, see, the Tulsa Police Department property receipt no. #AC9221 page 7 of 10 Item 58-67 are missing. See also, Tulsa Police Department Property Receipt no. #AC9223 is completely missing also missing is the three (3) latent Finger prints found at the drug crime scene in which State fingerprint expert Robert Yerton had problems identifying the latent prints to be the Petitioner and that the three (3) latent prints were never listed in the Tula Police Department Property Receipts. See, the States inventory list in the State Response to Petitioners motion requesting Post-Conviction DNA testing filed on April 28th 2023 (exhibit-10) Cf-93-1833 See also, Defense witness Richard O'Carroll testimony who was the first Attorney of record for the Petitioner that he believe the State fingerprint expert R.Yerton manipulated the fingerprints against the Petitioner at the drug crime scene (July 6th 2023,Transcript of Post-Conviction DNA evidentiary hearing testimony by First defense attorney Richard O'Carroll at 10-20 case no. Cf-93-1833). See also, July 6th 2023 Transcripts

of Post-Conviction DNA testing hearing at Pages 25-26) Compare with the Petitioner First Motion for DNA testing as attached (exhibit-R).The Third "procedural" or "tactical advantage" for the Prosecutor was that Defense Counsel mis-led the Petitioner in believing he had filed a subpoena for the Tulsa Police Chief to bring any and all latent prints, in the above styled case, which were used to determine the identity of the assailant, See the (Subpoena Duces Tecum) sent to the Petitioner by mail from Defense Counsel the Subpoena was never filed in the District Court of Tulsa County (the Police Chief never showed up for the Post-Conviction DNA evidentiary hearing with the latent Prints) (exhibit-6) See, July 6th 2023 Transcripts of Post-Conviction DNA testing hearing at pages 22-24). The Forth "procedural" or "tactical advantage" for the Prosecutor was the Petitioner had waived his 6th amendment right to represent himself, and that it was only after the Petitioner waived his 6th amendment right to represent himself did he find out that his Defense Attorney which was appointed by the Trial Judge mis-led the Petitioner in believing that his motion to enforce would be granted See, (March 9th 2023 Court Order appointing Defense Attorney (exhibit-1) see also, Trial Judge dismissal of the Petitioner (Motion to enforce stipulation based on states failure to respond) the ruling to dismiss was because the Trial Judge stated on record she had e-mail the Petitioner Defense Counselor saying she was going to change the court date and Defense Counselor calling the Trial Judge back in indicating to the Trial Judge its ok. See, Transcripts of the Petitioner Post-Conviction DNA testing hearing on July 6th 2023 in case no. Cf-93-1833 Thompson, 80 So.3d at 86 supra. See also, Fort vs. State,516 P.3d 690 (2022) the district Court added, in its conclusions of law, that in order to maintain

and foster proper respect and confidence of the people in the Courts, the Courts must be presided over by unprejudiced, unbiased, impartial, and disinterested Judges and all doubt and suspicion to the contrary must be Jealously guarded against. Castleberry vs. Jones,99 P.2d 174,179 (1940) it further noted that," even if there is no showing of actual bias due process is denied by circumstances that create the likelihood or the appearance of bias. Peters vs. Kiff,407 U.S. 493 (1972) See, also William vs. Pennsylvania,579 U.S. 1,8 (2016) a showing of actual subjective bias is not required to establish a due process violation). rather, as the district Court noted," there are objective standards that require recusal when the probability of actual bias on the part of the Judge or decisionmaker is too high to be constitutionally Tolerable. Caperton vs. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009) quoting Withrow vs. Larkin, 421 U.S. 35, 47 (1975). The district court found that the facts of the present case present the unconstitutional potential for bias admonished against in Caperton. a new trial is necessary in order to preserve the integrity and reputation of our criminal Justice system.

III. THE TRIAL JUDGE DECISION IN DENYING THE PETITIONER REQUEST FOR POST-CONVICTION DNA TESTING OF BIOLIOCAL MATERIAL EVIDENCE WAS AN ABUSE OF DISCRETION.

Pursuant to Harvey vs. State, 458 P.2d 336 (Abuse of discretion) by trial court is any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law pertaining to matter submitted. And /or a judgment or decision by an administrative agency or judge which has no foundation in fact or in law, see also U.S. vs.

Bands,2023 WL109968. In the present case, the Trial Judge "Abuse its Discretion" in the following order:

1. A fact the Trial Judge over looked was although (Felica Barnett) the Plaintiff girlfriend say she was at home with 5-year-old Larmar Lewis Jr, however Felica Barnett Palm print was found on the outside of the left rear door wing window on the driver side of the back car door, The same left rear wing window in which the 5-year Larmar Lewis Jr said he was looking out of when he seen the Police officer being shot from behind. See also, (the Petitioner Motion for the Appointment of Counselor at page-4) Judge Dawn Moody granted the motion in which both Det R. Heim and Det T. Campbell identified Felicia Barnett Palm print as #36 found on the outside of the left rear door wing window on the driver side of the back car door. See, April 15th 1994 (Motion to Dismiss for failure to produce evidence that Patricia Kimbrough committed the homicide of officer) P. Kimbrough was never charge in this case for her admitted involvement of drug Trafficking in illegal drugs. case no. Cf-93-1833 See also, the Petitioner sworn affidavit (exhibit-A) where the Plaintiff said he was the passenger of the pull over car, 5year old Larmar was sitting in the back seat of the car and F. Barnett was outside of the car talking to the Police Officer when the Plaintiff witness a man in the gray car get out of his car and shot the police officer from behind. See also, July 6th 2023 Transcript of Post-Conviction DNA hearing at pages 37-42).
2. A Fact the Trial Judge over looked was that although Patrica Kimbrough testified that the Petitioner confessed to her saying that he had shot a Police Officer the confession does not

corroborate the Physical evidence of the crime scene. that state eye witness Sereeny Wilson testified that the person she had seen shot the Police officer from behind was sitting in the stop car and the Person she describe was a black or Hispanic male which had step one foot outside the car wearing (blue jeans) pointing the gun up and shooting the Police officer in the back of the head while still seating inside the car S.Wilson testimony is in direct conflict with the State Medical Examiner in which the M.E. testified that based on the spot where the bullet entered in the right back of the head and the place where the bullet came to rest at the forehead, the medical examiner described the path of the bullet to be side to side angle of no more than 10 or 15 degrees the bullet traveled at a slightly upward angle of less than 10 degrees, taking an almost level path through the head (R. Hemphill Tr. vol IV at 1002-1003) the M.E. testimony prove that P. Kimbrough had lied because her testimony clearly don't match or corroborate the Physical evidence of the crime scene nor does the Physical description of the Shooter match that of the Petitioner. that during jury trial P. Kimbrough testified that Petitioner had on green short and a green and white stripe T-shirt in which the Petitioner had on all day and night, the fact the Petitioner was nervous and or pacing back and forth when talking to P. Kimbrough only proves the Petitioner had witness the Police shooting and was scared. See, the Petitioner Sworn affidavit as (exhibit-A) See,(July 6th 2023 Trial Judge Court Order attached to Petition-in-error as (exhibit-8) see also, (July 6th 2023 Transcript of Post-Conviction DNA evidentiary hearing at page 37-42) compare with P. Kimbrough jury trial testimony See, the Petitioner First Motion for Post-Conviction DNA testing. That State witness P. Kimbrough had motives to testify falsely against the Petitioner

although the Petitoner has claim that P. Kimbrough was not at the scene (exhibit-A) the fact remained she was worried about being charge with the homicide of the police officer because her 5 year old son said he was asleep in the car when the car came to a stop by the police officer he woke up look out the car window and seen his momma shoot the police officer see, Defense Counsel Motion to dismiss Patrica Kimbrough committed the murder see, Harvey, 458 P.2d 336 supra. See also, Jail house Informant testimony and/or cooperating witness, Ctr. On Wrongful Convictions, Nw. Univ. Sch. of Law, The Snitch System 3 (2005) the third category of evidence that has been consistently identified as a leading cause of wrongful convictions is the testimony of a Jailhouse snitch and/or cooperation witness, the concern over the accuracy and reliability of this testimony is well justified among the first 200 DNA exonerations, 35 innocent people were wrongly convicted based in part on false testimony provided by these "incentivized" government witnesses. A comprehensive study of 111 death row exonerations over a 30-year period found that jailhouse snitch testimony figured prominently in nearly 50% of all death row exoneration.

3. A Fact the Trial Judge over looked was that although Jerry Richardson testified that the Petitioner told him he had hid the car, and that the Police will never find the gun or that he was worried about moving his drugs, this statement doesn't corroborated the Physical description of the driver of the car nor does this statement corroborated the identification of the owner of the drugs at the drug crime scene See, the State fingerprint expert R.Yerton un-explain conflict in his identification of the Petitioner fingerprints at the drug crime scene Robert Yerton testified he lifted (3) three latent Prints item #2 which contain 1 of 19 bags of

cocaine in his personal opinion belong to the known fingerprint cards of the Petitioner and matched the Petitioner number One Finger or Right Thumb with the minimum of (15) points of identification (R.Yerton Tr. Vol VI at 1328-29) R. Yerton mention he lifted an additional print from the outside of the particular Kleenex tissue boxes and its his opinion that the latent print lifted from the Kleenex box has been identified to the number (6) or the Right Thumb of the fingerprints card belonging to the Petitioner with a minimum of (12) points of identification (R.Yerton Tr. vol-VI at 1328-31) an un-identifiable print was also found but unable to make a match to any one (R.Yerton Tr. Vol VI at 1334) and that (10)years after the Petitioner Judgement and Sentences a independent fingerprint expert rechecked the same latent prints by R.Yerton and in his independent opinion the fingerprint now belongs to the Petitioner Left Thumb not Right Thumb the Petitioner in this case claim the Prints are not his See, the Petitioner Sworn Affidavit of his innocent (exhibit-A) see Mayfield vs. U.S. 504 F.Supp.2d 1023 (D.Or. 2007) Fingerprint examiners turn out to have a significant error rate. Perhaps the best-known example of such an error occurred in 2004 when the FBI announced that a latent print found on a plastic bag near a Madrid terrorist bombing was "a 100 percent match" to Oregon attorney Brandon Mayfield. The FBI eventually conceded error when Spanish Investigators linked the print to someone else. See, the Petitioner Sworn affidavit as (exhibit-A) See, (July 6th 2023 Trial Judge Court Order attached to Petition-in-error as (exhibit-8) See also,(July 6th 2023 transcript of Post-Conviction DNA testing hearing testimony were defense witness Richard O' Carroll who was the first attorney of record testified that he still believe after (30) years of the Petitioner conviction that State fingerprint

expert R.Yerton manipulated and/or falsified the fingerprints evidence against the Petitioner at the drug crime scene at pages 10-20) in Cf-93-1833. See also, (R.Yerton testimony in the Petitioner First Motion for DNA testing) as attached (exhibit-R). Harvey, 458 P.2d 336 supra. Jerry Richardson had motives to testify falsely against the Petitioner at the time of trial J. Richardson was charge with drug trafficking and failure to obtain a drug stamp, which carried a possibility of 2- life sentences. That one year after the Petitioner judgment and sentences J. Richardson drug charges got drop to possession with intent to distribute, he received two five-year deferred sentences running C.S. See, the Petitioner First Motion for DNA testing as attached (exhibit-R). Ctr. On Wrongful Convictions, Nw. Univ. Sch. of Law, The Snitch System 3 (2005) Supra.

Forensic Science errors

Pursuant to Brandon L. Garrett, Judging Innocence,108 Colum.L.Rev.55,119(2008) An examination of the first 200 DNA exonerations reveals that the use of faulty forensic evidence is the second leading cause of wrongful convictions. In 113 DNA exonerations, the government introduced some form of non-DNA forensic evidence to link the defendant to the crime. The report appropriately acknowledges that forensic science errors have led to wrongful convictions and levels sharp criticism on the forensic science community for the profound lack of scientific research or protocols to support the anal tical procedures it uses and the conclusions it reaches. The report found that there is little or no science to confirm the validity of several fingerprints.

4). A Fact the Trial Judge over looked was that State eye witness S.Wilson was given (6)six photo lineup of suspects but didn't identify the Petitioner as the suspect she seen shoot the Police officer see attached (exhibit-9).

5). A Fact the Trial Judge over looked was defense witness Marion Clifton who lived right across the street from the shooting of the Police Officer testified that the Petitioner was not the Driver of the two cars nor was the Petitioner one of the two people he witness talking to the Police officer. See, the Petitioner First motion for Post-Conviction DNA testing as attached (exhibit-R).

6). A Fact the Trial Judge over looked was that during the Petitioner Preliminary hearing defense eye witness Micheal L.Phillp testified had seen two people inside the front seat of the Pull over car and leaving the Scene at a high rate of speed. See, the Petitioner First motion for DNA testing as attached (exhibit-R).

7). A Fact the Trial Judge over looked was a 5year old little boy said he was inside the car and he witness a Police Officer being shot.

8). The Trial Judge order stating the Petitioner didn't meet the 22 O.S. § 1373.4(A)(1) D.N.A (Standard of Proof) reasonable probability was and "Abuse of Discretion" had the trial Judge not over looked the above facts of the case and applied the correct law to those facts then yes the Petitioner would have meet the above (Standard of Proof) had the (3) three latent prints been D.N.A. tested and P.C.R./S.T.R. applied, it would have excluded the Petitioner more importantly it would have potentially provided a D.N.A. profile for the actual owner of the drugs found inside the Petitioner uncle bed-room. this same argument holds true for

the .380 shell casing and pillow found at the murder crime scene had been D.N.A. tested and PCR/STR applied it would have excluded the Petitioner more importantly it would have potentially provided a D.N.A. profile for the actual shooter. See Harvey,458 P.2d at 336 supra.

Eyewitness Identifications

Every major study of wrongful convictions in the last decade has concluded that eyewitness misidentification is the most common cause of wrongful convictions in America. Of the first 200 DNA-based exonerations,79% of the cases involved an eyewitness misidentification one of the flaws of eyewitness identifications is caused by the way the human brain stores and retrieves information. Well-intentioned crime victims and other eyewitnesses simply make honest mistakes when attempting to identify strangers encountered under the rapid, unanticipated, and stressful circumstances of a criminal act. Studies have shown that the problem is exacerbated when the witness is tasked with accurately identifying a person of a different race, also known as a "cross-racial" Identification. Among the first 200 DNA-based exonerations, almost all involved "stranger" misidentifications, and nearly 48% of the misidentifications were made by a witness of a different race then the suspect. In the Present case eye witness S.Wilson is a white woman and the Plaintiff is a black man. See, Garrett, Judging Innocence,108 Colum.L.Rev.55, at 119 Supra.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PETITIONER CRITICAL STAGE OF HIS FIRST MOTION FOR POST-CONVICTION DNA TESTING HEARING OF BIOLIOGAL MATERIAL EVIDENCE VIOLATED THE PETITIONER 6TH AMENDMENT FEDERAL CONSTITUTIONAL RIGHT.

Pursuant to U.S. vs. Babcock,40 F.4th 1172 (10th cir.2022) the court held even when, as was apparently true here an attorneys ignorance of relevant law and facts precludes a court from characterizing certain actions as strategic...The pertinent question under the first prong of Strickland remains whether, after considering all the circumstances of the case the attorneys representation was objectively unreasonable at 1050-51 Compare with Persuasive authority Henderson vs. Sargent, 926 F.2d 706 (8th cir. 1991) modified,939 F.2d 587 (1993) (Failure to investigate possibility that others had motive, opportunity, and ability to kill victim was ineffective assistance); In the Present case, the Petitioner was Prejudice by the Defense Counsel in the Following Respects:

1). Defense Counselor failed to show that State eye witness S.Wilson was given (6) six photo lineup of suspects but didn't identify the Petitioner as the suspect she seen shoot the Police officer see attached (exhibit-9)

2). Defense Counselor failed to mention at Preliminary hearing defense eye witness Micheal L.Phillp testified had seen two people inside the Pull over car leaving the Scene at a high rate of speed with two people sitting in the front seat of the car. See, the Petitioner First motion for DNA testing as attached (exhibit-R).

3). Defense Counselor failed to mention defense witness Marion Clifton who lived right across the street from the shooting of the Police Officer testified that the Petitioner was not the Driver of the two Cars nor was the Petitioner one of the two people he witness talking to the Police Officer. See, the Petitioner First motion for Post-Conviction DNA testing as attached (exhibit-R).

REASONS FOR GRANTING THE PETITION

Pursuant to **22 O.S. 2013 §§1371.1-1373.7** the motion for first Post-conviction testing (D.N.A.) act. The petitioner is entitled to forensic testing for purposes of demonstrating factual innocence. The Petitioner states in support thereof the following: (1). The Petitioner Maintains that he did not commit the offense as charged and convicted. **22 O.S. 2013 § 1373(2)** allows for any persons convicted on a plea of not guilty, guilty or nolo contendere to petition the court for Post-conviction (D.N.A.) testing. (2). The Petitioner has submitted an affidavit as required by the rules for Post-conviction D.N.A. Testing claiming and stating that he is factually innocent of the offense. See, **David Flowers**,387 P.3d 947 (2016). The Language use by the 54 Oklahoma legislature in the Post-Conviction D.N.A. Act makes it clear this act is not subject to the provisions of the uniform post-conviction procedure act. First the legislature did not amend the uniform post-conviction procedure act to include any mention of the Post-conviction D.N.A. act. And we conclude this indicated the Post-Conviction D.N.A. Act. Is not an additional ground for relief Pursuant to the uniform Post-conviction procedure act. **22 O.S.§§ 1080** (a)-(f) et seq. and this court will not interpret the Post-Conviction D.N.A. act to unilaterally create a new provision of the uniform post-Conviction act without authority from the Legislature. **22 O.S. §1373.7** that the Petitioner appeal right an appeal under the provisions of the Postconviction DNA Act may be taken in the same manner as any other appeal. In the Petitioner case a "liberty interest" has been established under 22 O.S. (2013) § 1373.5(A) as "it allows for the vacation of a conviction, or other appropriate relief. upon a showing of favorable DNA test results" because this

statute creates a "liberty interest" in demonstrating innocence with new evidence. The (O.C.C.A) decision in denying the Petitioner any relief or DNA testing is illegal because the States process for considering his DNA testing request violated fundamental fairness due to the manner in which the (O.C.C.A) construed the Postconviction DNA Act's "favorable results" requirement. The statute requires a court to order DNA testing if such court finds certain facts, including "a reasonable probability" that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution." Okla.Stat.22 §1373.4(A) (1). Petitioner contends the (O.C.C.A) has "authoritatively construed this requirement in a way that renders the substantive liberty interest meaningless, by refusing to give effect to the statutory prescription that the most favorable hypothetical result" must be presumed, and instead presuming that "favorable results are implausible when considered in light of inculpatory evidence upon which the conviction is based." See, (Reed 598 U.S.at 235); additionally, Petitioner asserts that the Oklahoma courts did not presume a sufficiently high degree of favorability. Petitioner asserts that the trial court "assumed only slightly favorable results. not the genuinely favorable results that the Petitioner alleges DNA testing will show and there forth Petitioner contends if the trial court had assumed the most favorable hypothetical result of the requested DNA testing along with considering all the evidence in the Petitioner case it would have to had assumed that there was a "reasonable probability" that the Petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution §1373.4(A)(1). In addition, the State of Oklahoma has a bad history of

their Police Department forensic experts misleading the jurors with material evidence that is false. See, Gilchrist vs. Board of review of the Oklahoma employment security commission, 94 P.3d 72 Judge Thompson concluded that Gilchrist testimony in the criminal trial concerning (DNA) evidence had been without question un-true 150 F.supp.2d at 1226 and terribly misleading if not false. Finally, a decision by this court will not only protect the Petitioner 5th,6th, and 14th amendment United States Constitutional rights but will affect the constitutional rules governing the operation of all State and Federal Courts, See, the O.C.C.A order affirming denial of motion for Post-Conviction DNA testing (Pet.Appendix-1a-9a).

Conclusion

For the foregoing reasons the Petition for writ of certiorari should be granted.