23-6171

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK HENRY HILL II—PETITIONER

VS.

STATE OF OKLAHOMA; ERIC PFEIFER,
CHIEF MEDICAL EXAMINER STATE OF OKLAHOMA—RESPONDENTS

On Petition for a Writ of Certiorari
To the Oklahoma Court of Criminal Appeals
For the State of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

Patrick Henry Hill, II
OKDOC #436084
OSR • B-4-2
P.O. Box 514
Granite, OK 73547

August 31, 2023

QUESTIONS PRESENTED

Veterans, to include active duty service members and family members that are stationed in the continental United States at installations garrisoned by units of the armed forces under the exclusive jurisdiction of the United States, oftentimes reside in adjacent local communities outside the installation. Veterans, after completion of service, oftentimes reside in adjacent local communities, but seek health care at medical facilities on the installation.

1. Whether Oklahoma Courts, under state law, can properly exercise criminal jurisdiction involving a "separable controversy", over Veterans detained in state custody, based on opinions of state medical examiners where state medical examiners are without jurisdiction to conduct a forensic pathology investigation, whereas federal law provides for a complete forensic pathology investigation by the Armed Forces Medical Examiner.

2. Whether the Oklahoma Court of Appeals' legal analysis regarding claims of actual innocence comport with the Supreme Court of the United States holding in *House v. Bell*, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1 (2006).

3. Whether a state district court's decisions to rely on evidence regarding shaken baby syndrome—a proven unreliable science—to deny post-conviction relief, require the OCCA to conduct plain error review of district court's decision to rely on said evidence to uphold a conviction when a reliability hearing is not conducted.

• • • Nothing Follows • • •

LIST OF PARTIES

The List of Parties (Respondents) includes the following:

1. Gentner Drummond, Attorney General for the State of Oklahoma, 313 N.E. 21st, Oklahoma City, OK 73105; and

2. Eric Pfeifer, Chief Medical Examiner for the State of Oklahoma, Office of the Chief Medical Examiner, 921 NE 23rd St., Oklahoma City, OK. 73105;

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PETITION FOR WRIT OF CERTIORARI

Petitioner, former U.S. Army Private First Class, 44 year old Patrick Henry Hill II, *pro se*, respectfully prays that a writ of certiorari issue to review the judgment below. Petitioner requests latitude of a layman in the above styled cause of action pursuant to this Court's holding in *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

OPINIONS BELOW

The decision of the Oklahoma Court of Criminal Appeals (Appendix A) affirming the state district court's Order denying post-conviction relief is not published. The decision of the District Court of Comanche County (Appendix B) denying Petitioner's application for post-conviction relief is not published.

JURISDICTION

The Oklahoma Court of Criminal Appeals entered its Order affirming denial of post-conviction relief on June 2, 2023. This Court has jurisdiction under 28 U.S.C.A. § 1257 (a), where in the petition before it a right, privilege, or immunity is specially set up or claimed under the Constitution to the United States and statutes of the United States. Furthermore S. Ct. Rule 10 (b) and (c) applies in the instant case.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

- This case involves the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.
- This case also involves the following federal provisions:

•Title 10 Armed Forces, USCA § 1471[Forensic pathology investigations] eff. 1999, which provides in relevant part:

> Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.. . .
>
> (A) the decedent- -
>
> (i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States

•Title 28 USCA, Rule 702, Federal Rules of Evidence [Testimony by Experts], in part:

> If other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

• This case further involves the following provisions of the statutes of Oklahoma in effect at the time:

•Okla. Stat. tit 12 Sec 2702 [Testimony by Experts] (12 O.S. § 2702), in part:

> If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if: 1. The testimony is based upon sufficient facts or data; 2. The testimony is the product of reliable principles and

methods; and 3. The witness has applied the principles and methods reliably to the facts of the case.

• Okla. Stat. tit 63, **2001**, Sec 939 [Production of records, documents, evidence or other material] (63 O.S. 2010, § 939), in part:

> Except as otherwise provided by law, the chief medical examiner shall produce records, documents, evidence or other material of any nature only upon the order of a court of competent jurisdiction.

•Okla. Stat. tit 63, **2001**, Sec 940 A, [Cooperation of state and county officials—Notification of deaths] (63 O.S. 2010, § 940 A, in part:

> All law enforcement officers **and other state and county officials** shall cooperate with the Chief Medical Examiner and all other medical examiners in making investigations . . . Said officials and the physician in attendance of the deceased . . . shall promptly notify the medical examiner of the occurrence of all deaths coming to their attention which, pursuant to the provision of Sections 931 through 954 of this title, are subject to investigation, and shall assist in making dead bodies and related evidence available for investigation.

•Okla. Stat. tit 63, **2001**, Sec 940 B, Para 1, 2 [Cooperation of state and county officials—Notification of deaths] (63 O.S. **2001**, § 940 B, Para 1, 2), in part:

> Deaths that occurred in institutions within the pathologist's purview were "[t]he death of any patient, inmate, ward, or veteran in a **state hospital** or other institution, except Oklahoma Medical Center Hospitals and clinics thereof shall be reported by the chief administrative officer of the hospital or institution or his designee to the Office of the Chief Medical Examiner at the time of the death and prior to release of the body.
>
> 1. Within thirty-six (36) hours, a written report shall be submitted and shall be accompanied by true and correct copies of all medical records of the hospital or institution concerning the deceased patient.

> 2. The Chief Medical Examiner shall have the authority to require production of any records, documents, or equipment or other items regarding the deceased patient deemed necessary to investigate the death.

•Okla. Stat. tit 63, **2001**, Sec 941 [Investigation by county examiner] (63 O.S. 2010, § 941), in part:

> [T]he investigation medical examiner shall have access at all times to any and all **medical** and dental **records** and history of the deceased, including, but not limited to, **radiographs**...in the course of his official investigation **to determine the cause and manner of death**.

RELATED CASES

Weimer v. State, PC-2023-255 (Okl. Cr. May 26, 2023) (not for publication) and *Ray v. State,* PC-2022-1067 (March 3, 2023) (not for publication) are cases in which absent an order by a court of competent jurisdiction the Oklahoma Office of the Chief Medical Examiner lacked the jurisdiction to conduct neither an official nor a complete forensic pathology investigation upon the decedents in those cases where they either died or had been treated at an installation under the exclusive jurisdiction of the United States. In addition to the jurisdictional flaws in those cases, like *Hill v. State,* PC-2023-244 (Okl. Cr. June 2, 2023) (not for publication), petitioners Weimer and Ray both offered, as proof, evidence in direct contradiction with the forensic pathology evidence the State used to convict them. All three of these men are Veterans having served on active duty in the U.S. Army. Petitioners Charles E. Weimer and Lancey D. Ray both have petitions for writ of certiorari pending before the U. S. Supreme Court.

STATEMENT OF THE CASE

1. On October 17, 2002, Hill, through court appointed counsel, entered a "blind plea" of guilty to the charge of Manslaughter in the First Degree before the District Court for Comanche County, Lawton, Oklahoma. The State had alleged manslaughter by "Shaking Baby Syndrome."

State Post-Conviction Proceedings in the District Court

2. On April 24, 2013, having been represented by retained counsel, Hill filed an application for post-conviction relief, to the state District Court for Comanche County, regarding evidence of material facts in his case disproving shaking baby syndrome, not previously presented and heard, that requires vacation of the conviction in the interest of justice. 22 O.S. 2012, § 1080 Para. (d). Additionally Hill moved for an evidentiary hearing pursuant to § 1084[Evidentiary Hearing—findings of fact conclusions of law], regarding his application for post-conviction relief that could not be disposed of on the pleadings and record; moreover, there existed a material issue of fact which required the making of a record to be preserved. Furthermore Hill moved to withdraw his original plea and requested an evidentiary hearing.

3. Hill's material facts were presented first with his application for post-conviction relief in the form of a report-letter generated by Dr. Stephen K. Ofori, M.D., M.P.H., F.A.C.S., a neurologist at Neurosurgery Centers of Southwest Oklahoma, Inc. in Comanche County, Lawton, Oklahoma. In addition to Dr. Ofori's report, Hill, per § 1084, presented an affidavit of counsel that had advised him to

plead guilty and to accept a sentence to the amended charge of Manslaughter First Degree. Counsel's affidavit read in part:

> [T]hat had the medical evidence that is available now been available in 2002, I would have never advised Mr. Hill to enter a plea of guilty and to be sentenced on Manslaughter First Degree.

Further the affidavit read, "[i]t also appears from the statement of Dr. Ofori that Patrick Hill may have had a factual innocence claim in 2002. The district court however denied post-conviction relief not having reached the merits of Hill's factual innocence claim.

4. On November 18, 2013, per § 1084, Dr. Ofori testified to his findings in open court (evidentiary hearing). State medical examiner Dr. Jeffery Gofton, who conducted the autopsy by which he opined shaken baby syndrome, had not appeared. The state district court nonetheless directed both counsel for Hill and counsel for the state to submit proposed findings of fact and conclusions of law to it by January 15, 2014. The court later extended the January 15, 2014 deadline to April 2, 2014.

5. On January 31, 2017, the district court entered its finding to whereby it ordered further evidentiary hearing. The district judge retired soon after its finding to conduct a subsequent evidentiary hearing was entered.

6. On August 16, 2021, after COVID-19 restrictions were lifted, a second evidentiary was conducted. Again Dr. Ofori testified having provided supplemental evidence in behalf of Hill. Again state medical examiner Dr. Jeffery Gofton did not

appear. The district court ordered the both counsel for Hill and counsel for the state to submit proposed findings of fact and conclusions of law to it by August 30, 2021.

7. On August 30, 2021 counsel for Hill filed proposed findings of fact and conclusion of law. The state however declined to provide any proposed findings of fact and conclusions of law.

8. On September 24, 2021, contrary to 22 O.S. § 1084, the district court entered its order denying Hill's application for post-conviction relief. The district court failed to "make specific findings of fact . . . relating to each issue presented" pertaining to the evidence of material fact presented by Dr. Ofori. Dr. Ofori had presented evidence in direct contradiction with what the state's medical examiner reported as "shaken baby syndrome".[1] In this instance, clearly the district court had not adjudicated Hill's claim on the merits as the state law (§ 1084) procedural principle has dictated since the provision was first created in 1970. Moreover by not ordering the state medical examiner to appear to answer to his challenged testimony, the district court was overly restrictive in consideration of the merits of Hill's post-conviction appeal, in light of fact that Hill had presented evidence in direct contradiction with the medical examiner's evidence. *Maines v. State*, 1979 OK CR 71, ¶ 7, 597 P. 2d 774, 776. Therefore no presumption of a merits determination can exist in light of the material facts presented by Hill, i.e., Dr. Ofori during post-conviction proceedings. *Harrington v. Richter*, 562 U.S. 86, 99, 131 S. Ct. 770, 785, 178 L. Ed. 2d 624 (2011).

[1] *See* 22 O.S. § 1084 in part: "The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

In sum Hill was denied Fourteenth Amendment Due Process guaranteed by the United States Constitution.

State Post-Conviction Appeal to the OCCA

Due to no fault of Hill, no notice of intent to appeal the district court's order denying application for post-conviction relief was filed; therefore, Hill requested an out-of-time post-conviction appeal pursuant to Rule 2.1 (E) (1), *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18, App. (2023).

9. On February 22, 2023, the OCCA granted Hill's request for a post-conviction appeal out of time.

10. On March 20, 2023, Hill, a *pro se* litigant, timely filed his brief in support of petition in error. Hill *inter alia* argued (1) his factual innocence, (2) the district court had abused its discretion in denying post-conviction relief in light of the otherwise new material fact issues presented which were in direct contradiction with what the state had used to charge and convict of first degree manslaughter, and (3) judicial bias demonstrated by the district court's denial of Hill's right to be heard on every issue presented according to law, i.e., 22 O.S. § 1084, and Canon 3 (B) (6) of Oklahoma's Code of Judicial Conduct which requires judges to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

11. On June 2, 2023 in its 3 page Order, the OCCA affirmed the denial of post-conviction relief, wherein the OCCA explained, ". . . alleging: factual innocence, his plea was based on the advice of counsel; and the science behind 'shaken baby'

syndrome has evolved and there is every possibility that today he would be acquitted [. . .] We review the District Court's determination for an abuse of discretion [*sic*]." Order p. 1; Appendix A. Regarding Hill's right to withdraw his plea based on the new evidence, the OCCA explained, "[p]etitioner has made no claim that he was denied an appeal through no fault of his own and has thus failed to demonstrate an abuse of discretion by the District Court." Order p. 3; Appendix A. Never mind the fact that, as shown and sworn to by defense counsel, an appeal for Hill at that time, as he understood, was essentially foreclosed when counsel advised—based on the State's evidence at the time—to plead guilty. As shown hereinabove the State's evidence has since been contradicted. Hill's plea was therefore involuntary. *See Fields v. Gibson*, 277 F. 3d 1203, 1213 (10th Cir. 2002) ("[A] plea may be involuntary if counsel informs defendant that he has no choice, he must plead guilty.")

Moreover in affirming the denial of Hill's application for post-conviction relief the OCCA cited *Maines v. State*, 1979 OK CR 71, ¶4, 597 P. 2d 774, 775 holding that, "[F]ailure to perfect appeal creates the 'appearance of one who has waived or deliberately bypassed his statutory direct appeal.'" Under other circumstances, that opinion might have jibed, but given the new evidence in Hill's case that holding must not be allowed to stand. *But see Maines v. State,* 1979 OK CR 71, ¶ 6, 597 P. 2d 774, 776 where the OCCA explained, "[A]ppellant is advised that, on remand, he must articulate some 'sufficient reason,' **i.e. special circumstances**, as required

by s 1086, explaining his failure to appeal in order to proceed to adjudication of the merits of his application." (Bold emphasis added)

In the instant case, Hill, during state post-conviction proceedings, had shown as sufficient reason, i.e., a special circumstance, new evidence regarding allegations of "shaken baby syndrome", specifically new evidence that showed the state medical examiner was wrong.

12. On June 28, 2023, pursuant to Rule 3.15 B [Mandate stayed], Hill timely submitted to the Clerk of the Appellate Courts (OCCA), his "Motion for Recall of Mandate". The motion was stamped "Received JUN 28 2023 Clerk of the Appellate Courts", not filed but returned to Petitioner with a copy of Rule 5.5 attached. Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), specifically disallows a petition for rehearing of the issues raised in the petition in error, brief and any prior appeals after the OCCA has rendered its decision on a **post-conviction** appeal. The rule further states "[t]he Clerk of this Court shall return to the movant any **petition for rehearing** tendered for filing." No rule exists which precludes a motion to recall the mandate on a post-conviction appeal. Rule 3.15 B provides in part "[t]he mandate shall not be recalled . . . unless a majority of the Court, **for good cause shown**, recalls or stays the mandate." (Emphasis added). And the court itself has held "[t]he mandate may be recalled after it is spread upon the records of the trial court where there has been . . . **inadvertence** . . . in connection with the issuance of the mandate" and "it is competent for it to determine whether it will resume jurisdiction **for any purpose**,

and having decided to do so, it may then request the court below to return the mandate so that re-argument may be had . . ." (Emphasis added) *Denton v. Hunt*, 79 Okla. Crim. 166, 152 P. 2d 698, 700.

In Hill's motion for recall of mandate he argued in part, that "his issues presented did contain a claim of Factual Innocence which in fact was not addressed and not subject to bar or waiver where '[p]risoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.' *House v. Bell*, 547 U.S. 518 (quoting Schlup v. Delo, 513 U.S. 298)." Motion p. 4; Appendix C

Wherefore because Hill's motion for recall of mandate was not filed in the appellate court for the OCCA's review, thus not made a part of the record on appeal, Hill has provided a copy of the stamped "Received" the motion to recall as Appendix C.

Reasons for Granting the Petition

Veterans, to include active duty service members and family members that are stationed in the continental United States at installations garrisoned by units of the armed forces under the exclusive jurisdiction of the United States, oftentimes reside in adjacent local communities outside the installation. Veterans, after completion of service, oftentimes reside in adjacent local communities, but seek health care at medical facilities on the installation. Such is the instant case.

A couple of cases in point, regarding Oklahoma's Office of the Chief Medical Examiner lack of jurisdiction to investigate deaths of persons who either died at or were treated at an installation garrisoned by units under the exclusive jurisdiction of the United States, of equal importance are *Weimer v. State*, PC-2023-255 (Okl. Cr. May 26, 2023) (not for publication) and *Ray v. State*, PC-2022-1067 (Okl. Cr. March 3, 2023) (not for publication). All three cases involve Veterans who sought care for a loved one, who happened to be a minor, who was treated at the Reynolds Army Community Hospital at Fort Sill. In Ray's case, like Hill's, the dependent had been treated first at the Reynolds Army Community Hospital at Fort Sill where Department of the Army approved medical records had been generated, but later transferred to another healthcare facility. Weimer's and Ray's cases are pending before this Court on petition for writ of certiorari.

The Supreme Court should be advised that Hill, Ray, and Weimer, are all persons of color, convicted in Oklahoma which ranks in the top ten states in the nation for wrongful convictions. The Oklahoma Innocence Project reported that one of the reasons for wrongful convictions is un-validated forensic science.

This Court is further advised that a 2021 study in the *Journal of Forensic Science* revealed "that for unnatural deaths (those which are usually examined) examiners were more likely to attribute the deaths of Black children to homicide and white children to accidents." DROR, 1, Melinek J. Arden JL, et al. "Cognitive bias in forensic pathology decisions." *J Forensic Science*, 2021; 66: 1751-1757.

The circumstances and the case against *Hill* was similar to the cases against Weimer and Ray in that: (1) Oklahoma's Office of the Chief Medical Examiner lacked jurisdiction to conduct an official and complete forensic pathology investigation, (2) the opinion of the state medical examiner was "legally insufficiency", (3) Hill is a Veteran of the War in Iraq, (4) the child in Hill's care was taken to the Reynolds Army Community Hospital at Fort Sill for emergency medical treatment, (5) the state medical examiner conducted the forensic pathology investigation, i.e., autopsy though he had not reviewed the medical records generated at the Reynolds Army Community Hospital on the child, (6) Hill too was tried in the state district court for Comanche County, and (7) Hill is African American, a Black man—a person of color.

The 2021 study in the *Journal of Forensic Science* further showed that medical examiners had rule the deaths of white children as accidental 27.8% of the time and homicide 13.2% of the time. As for Black children, they ruled 35.4% homicides and only 6.2% as accidents. This is a very large difference, considering that aside from race the information given across all the cases was the same. And that that is not to say that there was racial prejudice at work in those decisions. The pathologists may have been allowing their past professional experience to influence their expectations. The study did show however how easily irrelevant information can influence even a trained pathologist in their cognitive processes. The researchers who produced the study argue for a death investigation system which is insulated from law enforcement and prosecutors—working only with relevant information to

produce the most objective and unbiased conclusions possible. DROR, 1, Melinek J. Arden JL, et al. "Cognitive bias in forensic pathology decisions." *J Forensic Science*, 2021; 66: 1751-1757.

Hill is one of thousands who have been charged with and convicted of murder or abuse based on diagnosis of "shaken baby syndrome" in the nation; furthermore, in Oklahoma wrongful convictions have been due to bad evidence perhaps presented in good faith where forensic pathologists and prosecutors may believe in the accuracy of what they have presented in court.

Therefore the importance of this case is not only important to the Petitioner but to other Veterans and active duty service members alike.

I. OKLAHOMA COURTS, UNDER STATE LAW, CANNOT PROPERLY EXERCISE CRIMINAL JURISDICTION INVOLVING A "SEPARABLE CONTROVERSY", OVER VETERANS DETAINED IN STATE CUSTODY, BASED OPINIONS OF A STATE MEDICAL EXAMINER WHERE STATE MEDICAL EXAMINERS ARE WITHOUT JURISDICITON TO CONDUCT A FORENSIC PATHOLOGY INVESTIGATION, WHEREAS 10 USCA § 1471 PROVIDES FOR A COMPLETE FORENSIC PATHOLOGY INVESTIGATION BY THE ARMED FORCES MEDICAL EXAMINER.

The OCCA's decision in *Hill v. State*, PC-2023-244 (June 2, 2023) (not for publication), is in conflict with its own recent decision in *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ¶ 39, 497 P. 3d 686. In *Matloff* the OCCA, regarding a faulty jurisdiction, suggested, if: (1) The trial had not produced an accurate picture of the accused's conduct, (2) questions arise about the truth-finding function, (3) procedural protections were affected because of the jurisdictional flaw, and (4) the

proceedings resulted in the wrongful conviction or punishment of an innocent person: A reversal of the final conviction would be just. S. Ct. Rule 10 (b) applies.

Furthermore, the OCCA's decision in *Hill v. State*, PC-2023-244 (June 2, 2023) (not for publication) regarding the jurisdictional issue which prevented a complete forensic pathology investigation by the state medical examiner, was in conflict with this Court's relevant decision in *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed 2d 560 (1979); therefore, S. Ct. Rule 10 (c) applies.

Furthermore the OCCA decided an important question of federal law regarding Petitioner's jurisdictional issue that has not been, but should be settled by the Supreme Court for the United States. Supreme Court Rule 10 (c).

In *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P. 2d 202, 203-04, the OCCA adopted the criteria for review of sufficiency of evidence claims articulated in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 61 L. Ed 2d 560 (1979) ("[W]hether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier o fact could have found the essential elements of the crime charged beyond a reasonable doubt."). And that criterion requires a determination whether **record evidence** could reasonably support a finding of guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S., at 318, 99 S. Ct., at 2789. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony. *Jackson* at 319, 99 S. Ct., at 2789. And upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon the trier of fact

discretion only to the extent necessary to guarantee the fundamental protection of due process of law. *Id.*

Absent an order from a military tribunal of competent jurisdiction, the state medical examiner lacked jurisdiction to access medical records generated at the Reynolds Army Community Hospital at Fort Sill; moreover, his investigation was limited to patients who died in a state hospital.[2]

In *Bosse v. State*, 2017 OK CR 10, ¶ 79, 400 P. 3d 834, 862, citing state law, 63 O.S. § 941 [Investigation by county examiner], the OCCA recognized the state forensic pathology investigation "includes a physical examination of the body of the deceased, collection of physical specimens from the body, review of medical records...".[3] The report of autopsy by state medical examiner Dr. Gofton was limited to his own findings—absent the data in medical records generated at the Reynolds Army Community Hospital at Fort Sill.

A reasonable review pursuant to *Jackson*, supra, of Dr. Gofton's contradicted report of autopsy or oral testimony per § 1084, regarding the methodology employed in the forensic pathology investigation and what the pathologist actually reviewed (or not), was required to determine whether the pathologist's opinion supported a

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[2] Okla. Stat. tit 63, **2001**, Sec 940 B provided for a forensic pathology investigation, "[t]he death of any **patient**, inmate, ward, or veteran in a **state hospital** or other institution; except Oklahoma Medical Center Hospitals and Clinics thereof; shall be reported . . . to the Office of the Chief Medical Examiner. . ."

[3] Okla. Stat. tit 63, **2001**, Sec 941 provides: [t]he investigation medical examiner shall have access at all times to any and all **medical** and dental **records** and history of the deceased, including, but not limited to, **radiographs**...in the course of his official investigation to determine the cause and manner of death.

finding of guilt beyond a reasonable doubt. A reasonable review of Dr. Gofton's opinion at the required evidentiary hearing would not permit a rational jury to convict—given the substantial conflict in the state pathologist's report of autopsy—in light of the new evidence. Or as *Jackson* requires, a reasonable review of the state medical examiner's report in light of Hill's statements made to law enforcement and made before the court would not permit a rational judge to accept his plea of guilty. Given the jurisdictional issue shown hereinabove, which inherently shows that the report of autopsy generated by state medical examiner Dr. Gofton is legally insufficient, the OCCA's decision not to *sua sponte* conduct a review pursuant to *Jackson* is in conflict with this Court's decision in *Jackson* regarding claims of insufficient evidence.

The OCCA's decision regarding the Petitioner's claims on post-conviction is in conflict with its decision in *Taylor v. State*, 1995 OK CR 10, 889 P. 2d 319; therefore, S. Ct. Rule 10 (b) applies. In *Taylor* the court decided to "abandon the *Frye* test and adopt the more structured and yet flexible admissibility standard set forth in Daubert,"[4] and in deciding *Taylor* it relied on 12 O.S. § 2702 [Testimony by Experts]. The OCCA noted "[w]e have previously considered federal opinions in interpreting our State Evidence Code provisions.[5] *Taylor v. State*, 1995 OK CR 10,

[4] In *Taylor* the OCCA explained "[s]hortly after the evidentiary hearing in this case, the United States Supreme Court held in *Daubert v. Merrell Dow Pharmaceuticals* that *Frye* had been superseded by the Federal Rules of Evidence and most specifically by Rule 702." *Id.*

[5] Oklahoma's 12 O.S. § 2702 is identical to Rule 702 in that it is a counterpart section in Federal Rules of Evidence. *See Beck v. State*, 824 P. 2d 385, 389 (Okl. Cr. 1991) (concluding that in the absence of state cases interpreting a particular section of the Evidence Code this

n. 29, 889 P. 2d 319.*See also United States v. Campbell*, 963 F. 3d 309, 314 (4th Cir. 2020) (Applying medical expertise to form an opinion on the cause of death is often the types of **specialized knowledge** that can help a jury.)

The OCCA's decision regarding Dr. Gofton's legally insufficient report of autopsy is in conflict with the Standard of Review explained by the Tenth Circuit court of appeals in *U.S. v. Avitia-Guillen*, 680 F. 3d 1253, 1256 (10th Cir. 2012). On post-conviction appeal the OCCA held, "Where, as here, a defendant does not seek to withdraw his plea within the time allowed by Rule 4.2 (A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), he is presumed to have waived the right to litigate that issue." Order p. 2. The issue of Dr. Gofton's legally insufficient report of autopsy, the result of the Oklahoma Office of the Chief Medical Examiner's lack of jurisdiction, was *not* decided. Yet a conundrum exists for the State of Oklahoma in attempting to uphold the conviction of Patrick Hill. Whether Dr. Gofton reviewed the medical records generated at Fort Sill, or whether he completely missed that step is the question. *See In re Paoli R. R. Yard PCB Litig. Infra.* On one hand, absent an order from a court of competent jurisdiction Dr. Gofton could not have accessed any medical records generated at the Reynolds Army Community Hospital at Fort Sill, and any access to such records absent an order from a military tribunal would have been a Fourth Amendment violation. The Eighth Circuit in *Bissonette v. Haig*, 776 F. 2d 1384, 1386, 54 USLW 2288 (8th Cir. 1985) held:

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court will look to United States Supreme Court's construction of counterpart section in Federal Rules of Evidence).

> [T]he decisions of the Supreme Court embody certain limitations of the use of military personnel in enforcing the civil law, and that searches and **seizures** in circumstances which exceed those limits are unreasonable under the Fourth Amendment.

Dr. Gofton reasonably should have known that he was acting contrary to 63 O.S. **2001**, § 940 B.

A. The OCCA's decision regarding the state medical examiner's insufficient investigation is in conflict with the circuit courts.

The OCCA's decision not to order remand for an evidentiary hearing regarding the state medical examiner's lack of jurisdiction—which, in the instant case, inherently involved the issue of an incomplete forensic pathology investigation—was a decision of an important federal question of federal law that is in conflict with the United States court of appeals decisions in *Claar v. Burlington N.R.R.*, 29 F. 3d 499, 502 (9th Cir. 1994) and *In re Paoli R. R. Yard PCB Litig.*, 35 F. 3d 717, 745 (3d Cir. 1994).S. Ct. Rule 10 (b) applies.

In *Claar* the district court had found that neither of the two doctors that testified in the proceedings made any effort to rule out other possible cause for the injuries even though they admitted that this step would be standard procedure before arriving at a diagnosis, and because the doctor's failed to review certain other records they could only testify reliably to certain conditions. Likewise was the case against Hill where the state medical examiner had not reviewed "certain other records".

In *In re Paoli R. R. Yard PCB Litig.*, the court held that "any step that renders the analysis unreliable . . . renders the expert's testimony inadmissible. This is true whether the step completely changes a reliable methodology or merely misapplies that methodology."

B. The OCCA's decision regarding medical evidence not considered by the medical examiner is in conflict with its own previous decision in Brafford v. State, PC-2014-803 (Okl. Cr. September 11, 2015) (not for publication).

The decision of the OCCA in *Hill v. State*, PC-2023-244 (June 2, 2023) (not for publication) is in conflict with its previous decision in *Brafford v. State*, PC-2014-803 (Okl. Cr. September 11, 2015) (not for publication), to the extent the court in *Hill* failed to remand for evidentiary hearing regarding the Reynolds Army Community Hospital reports Dr. Gofton had not considered. *Brafford* was convicted of killing her fourteen month old stepson.

On post-conviction appeal the OCCA reversed the district court's order denying post-conviction relief for *Brafford* and remanded for an evidentiary hearing, in relevant part, for the district court to address (1) the allegation of the ineffectiveness of trial counsel predicated upon an allegation of the failure of trial counsel to identify medical evidence the state medical examiner had not considered, and (2) the effect of those witnesses' opinions on the trial court proceedings.

At the scheduled May 2017 evidentiary hearing, Dr. Sibley, the medical examiner who conducted the autopsy in Brafford's case, testified regarding his autopsy findings. Prior to the evidentiary hearing however Sibley, for the first time, personally reviewed radiology reports of the deceased. On the basis of these reports,

he concluded that the victim could have suffered a prior subdural hematoma a significant period of time before receiving the fatal injury. At that evidentiary hearing, Sibley testified that this suggested the deceased had **suffered a prior injury, which may have been undiagnosed, and which would have made him vulnerable to a relatively minor trauma**. Sibley testified that this information changed his opinion; that while initially, when presented with the case, he had not been prepared to call it a homicide, he was even less inclined to do so in retrospect. Sibley said that, given the victim's apparent preexisting subdural hematoma, the deceased death was consistent with a fall from a bed, or a fall on a kitchen floor, regardless of the victim's position at the time of the fall. That is, Sibley's opinion would now support Petitioner's explanations of the injury. *Brafford v. State*, PC-2014-803 (March 26, 2019) (not for publication). Order Pp. 5, 6; Appendix C.

Similarly twenty-one year old Hill at the time, he was convicted of the killing the tenth month old son of his live-in girlfriend by "shaken baby" syndrome. But Hill was not afforded the same opportunity Brafford was afforded. The medical examiner Dr. Jeffery Gofton who conducted the autopsy in Hill's case did not appear at the evidentiary hearings held.

Hill's expert, Dr. Ofori, however reported "The presence of fibrin deposits and focal collections of **chronic inflammatory cells clearly demonstrate previous head trauma that might have occurred before March 12, 2002**, when the baby suddenly became ill". Further Dr. Ofori reported that:

> The fact that the baby was crying on March 12, 2002, before Mr. Patrick Hill tended to console the baby by shaking him and bouncing him on his lap before putting him down indicates the baby was in some distress, most likely from some ongoing intracranial problem such as cerebral edema from **previous head trauma**.

Similarly as the medical examiner testified during post-conviction proceedings in *Brafford* regarding **"a prior injury, which may have been undiagnosed, and which would have made him vulnerable to a relatively minor trauma"**, so were the facts presented by Dr. Ofori during post-conviction proceedings for Hill—but without the concurrence of the medical examiner who actually performed the autopsy nor having been afforded the opportunity to hear what the medical examiner might have concluded in light of Dr. Ofori's findings.

Moreover Dr. Ofori further reported, "[n]umerous studies have shown that it takes a great deal of rotational force to produce the type of changes noted at autopsy in the children mistakenly diagnosed as having been shaken . . . Clearly shaking the child in order to console him and bouncing the child off the lap several times even if done vigorously, will not produce such changes that are usually attributed to the Shaken Baby Syndrome. For this reason, the diagnosis for Shaken Baby Syndrome has been disputed as the cause of death in such infants when custodians of these children are accused of having shaken them to death."

And similarly to what Dr. Sibley concluded, and to what Dr. Barnes concurred during the May 2017 evidentiary hearing for *Brafford*, Dr. Ofori concluded in Hill. That is, "[i]t is medically not likely that the activities Mr. Patrick Hill described (shaking the baby to console him, bouncing the baby off his lap and

putting him down on the sofa) on March 12, 2002, was the proximate cause of the death of the baby. . .". Meaning "**a prior injury, which may have been undiagnosed, and which would have made him vulnerable to a relatively minor trauma**". *Brafford* Supra.

Eventually the OCCA reversed and remanded the case for a new trial based on (1) a showing of actual innocence and (2) the medical examiner who conducted the autopsy had not considered all available evidence, i.e., radiology report, at the time he conducted his forensic pathology investigation. *Brafford v. State,* PC-2014-803 (Okl. Cr. March 26, 2019) (not for publication). The OCCA explained in relevant part, "[b]ecause Sibley's opinion went directly to the cause and manner of the victim's death, the evidence is material [. . .] No other witness testified to the possibility of a prior existing subdural hematoma, or its effect on the victim's condition, so the evidence is not cumulative. Finally, the evidence would have provided expert medical support of Petitioner's explanation of the victim's death and her claim of innocence [. . .] Based on the testimony of Sibly and Barnes, Petitioner has presented a viable argument for a claim of actual innocence based on newly discovered evidence, requiring a remand for a new trial. 22 O.S. 2011, § 1080 (d)." *Brafford v. State*, No. PC-2014-803 (Okl. Cr. March 26, 2019).

Again, the OCCA did not afford Hill the opportunity as *Brafford,* by remand, to hear the medical examiner's opinion in light of the new evidence presented by Dr. Ofori, and then make its determination whether to remand for new trial or not.

C. The OCCA's decision is in conflict with this Court's decision in Burks v. United States, 437 U.S. 1, 18.

The OCCA's decision not to conduct the required determination regarding whether the Dr. Gofton's report of autopsy could reasonably support a finding of guilt beyond a reasonable doubt circumvented the only just remedy according to this Court's decision in *Burks v. United States*, 437 U.S. 1, 18, 98 S. Ct. 2141, 57 L. Ed. 2d 1. S. Ct. Rule 10 (c) applies. The Court in *Burks* held, "[T]he the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient, the only 'just' remedy available for that court is the direction of a judgment of acquittal." *Burks* 437 U.S. 1 at 18.

Ultimately, because Hill showed that the medical examiner's forensic pathology investigation was incomplete because of the jurisdictional flaw, and as a consequence the evidence was legally insufficient to sustain a conviction as the medical examiner's report was not based upon sufficient fact and data nor had he applied forensic pathology principles and methods reliably to the facts of the case, the only just remedy available for the OCCA was the direction of a judgment of acquittal. *Burks* at 437 U.S. 1, at 18

Furthermore similar to *Claar v. Burlington N.R.R.*, 29 F. 3d 499, 502 (9th Cir. 1994) and *Brafford* the medical examiner in the case against Hill had *not* considered, and in this case absent an order from a court of competent jurisdiction could not have considered the medical records generated at the Reynolds Army Community Hospital at Fort Sill in the case.

II. THE OCCA's LEGAL ANALYSIS REGARDING CLAIMS OF ACTUAL INNOCENCE DOES NOT COMPORT WITH THE SUPREME COURT OF THE UNITED STATES DECISION IN HOUSE V. BELL, 547 U.S. 518, 126 S. CT. 2064, 165 L. ED. 2D 1 (2006)

The Oklahoma Court of Criminal Appeals decision regarding Hill's actual innocence claim conflicts with this Court's decision in *House v. Bell*, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1.

First and foremost, in declining to here Hill's claim of actual innocence the OCCA explained, "[w]here, as here, a defendant does not seek to withdraw his plea within the time allowed [. . .] he is presumed to have waived the right to litigate that issue." Order p. 2; Appendix A. Further the OCCA explained, "[f]ailure to perfect appeal creates the 'appearance of one who has waived or deliberately bypassed his statutory direct appeal.'" *Id.* The Supreme Court however recognized a miscarriage-of-justice exception. *House*, 547 U.S., at 536. Prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. *House*, 547 U.S., at 537-38. The record of post-conviction proceeding (i.e. evidentiary hearings) reflect that Hill made such a stringent showing.

Second the OCCA's decision in Hill is in conflict with the Supreme Court's decision in *House v. Bell*, 547 U.S. 518 where it acknowledged Hill's actual innocence claim, but to the contrary explained having, "filed an application for post-conviction relief alleging: **factual innocence**, his plea was based on the advice of counsel; and the science behind 'shaken baby' syndrome has evolved and there is

every possibility that today he would be acquitted. The district court denied the application in order filed September 24, 2021. **We review the District Court's determination for an abuse of discretion.** [*sic*]" Order p. 1; Appendix A.

The OCCA applied an abuse of discretion review as the standard of review to Hill's otherwise claim of actual innocence. Quoting from its own set of cases the OCCA explained that an abuse of discretion is a clearly erroneous conclusion and judgment that is clearly against the logic and effects of the facts presented. *Neloms v. State,* 2012 OK CR 7, ¶35, 274 P. 3d 161, 170. Besides the fact that in light of the new evidence Hill had presented to the district court which contradicted the State's evidence—which makes the case for the argument that the district court's conclusions and judgment were clearly erroneous, and clearly against the logic and effect of the facts presented—the OCCA's decision in this regard was based on an unreasonable determination of the facts in light of the evidence presented in the State district court post-conviction proceeding; furthermore, the OCCA altogether applied the wrong standard of review to begin with.

Moreover as no OCCA judge dissented that court altogether failed to apply the applicable standard of review regarding Hill's actual innocence claim. The Standard of Review for an actual innocence claim requires the court to, (1) make a probabilistic determination about what reasonable, properly instructed jurors would do,[6] (2) the standard does not require absolute certainty about the petitioner's guilt or innocent, and (3) because an actual claim involves evidence the trial jury (or

[6] As the Supreme Court explained in *House,* the court's function is not to make an independent factual determination about what likely occurred, but rather to assess the likely impact of the evidence on reasonable jurors. *House v. Bell,* 547 U.S. 518, 538.

judge) did not have before it the inquiry requires the court to assess how reasonable jurors would react to the overall, newly supplemented record. *House v. Bell,* 547 US. 518, 538, 126 S. Ct. 2064, 1165 L. Ed 2d 1.

In *House* the Supreme Court recognized that the district court had held an evidentiary hearing; likewise, in Hill the district court held an evidentiary hearing during post-conviction proceedings. In fact, the record would show that the district court in Hill's case held two evidentiary hearings, the first having been held on 18 NOV 2013 and the second held on 16 AUG 2021. At each hearing Hill presented new evidence; the later having been supplemented with additional evidence.

Moreover in *House* because the Supreme Court's review was based on a fully developed record where the district court had held an evidentiary hearing, the Supreme Court pointed out that the court was required to "consider 'all the evidence', old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under 'rules of admissibility that would govern at trial.'" *House* at 537-38.

In sum the standard of review for an actual innocence claim, as laid out in *House,* is the standard by which neither the OCCA nor the state district court, when faced with the newly supplemented record, assailed to accomplish.

III. THE OCCA IS REQUIRED TO CONDUCT A PLAIN ERROR REVIEW OF A DISTRICT COURT'S DECISION TO RELY ON EVIDENCE REGARDING AN UNRELIABLE SCIENCE TO UPHOLD A CONVICTION WHEN A RELIABILITY HEARING WAS NOT CONDUCTED.

The state district court having considered the charge that Patrick Hill caused the death of a child in his care by having shaken him, the state district court should have conducted a reliability hearing before having accepted Hill's guilty plea. Such a hearing would have seemly justified the court's determination of a factual basis for Hill's plea of guilty. *King v. State*, 1976 OK CR 103, 553 P. 2d 529, 535. Moreover though the state district court had not conducted a reliability hearing in the first instance, recent during post-conviction proceedings presented opportunity for it to do so.

The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant. *U.S. v. Olano*, 507 U.S. 725, 736, 113 S. Ct. 1770, 1779, 123 L. Ed. 2d 508 (1993). The Tenth Circuit Court of Appeals has held it reviews de novo the question of whether the district court actually performed its gatekeeper role in the first instance. *Dodge v. Cotter Corp.*, 382 F. 3d 1212, 1223 (10th Cir. 2003). *U.S. v. Avitia-Guillen*, 680 F 3d. 1253, 1256 (10th Cir. 2012) (same.). And "when a party fails entirely to object to expert testimony at or before trial, we review only for plain error." *Id.* Plain error review requires a careful review of the record. *Macsenti v. Becker*, 237 F. 3d 1223, 1231 (10th Cir. 2001).

There has been a change in scientific consensus regarding "shaken baby syndrome" as calling it "an assumption packaged as a medical diagnosis." And the OCCA should have recognized that change of opinion in the scientific community at

least to the extent to determine the value of such an assumption if any value should have been given to the state's assumption at all.

In terms of shaken baby syndrome, recognized as a dubious science, an otherwise unreliable science and the principles and methods employed to determine whether such an event occurred, Justices Ginsburg, Breyer and Sotomayor dissenting acknowledged as much in *Cavazos v. Smith*, 565 U.S. 1, 132 S. Ct. 2, 181 L. Ed. 2d. 311. In *Cavazos* Justice Ginsburg wrote, regarding the thesis of two experts that had testified, in pertinent part, "[r]eason to suspect the Carpenter-Erlich thesis had grown in the years following Smith's 1997 trial. Doubt has increased in the medical community 'over whether infants can be fatally injured through shaking alone'."

The OCCA made clear in *Day v. State* that, "[t]he Tenth Circuit does not, as Oklahoma does, restrict Daubert to novel scientific, technical, or specialized evidence." *Day v. State*, 2013 OK CR 8, n.1, 303 P. 3d 291. In *Taylor v. State*, 1995 OK CR 10, ¶14, 889 P. 2d 319, 326, the OCCA however held "[t]he admission of expert testimony is governed generally by 12 O.S. § 2702" the counterpart to Federal Rule of Evidence 702. Oklahoma's section 2702, regardless of whether the expert is proffering to testify to a novel "principle or method" or not, dictates. Oklahoma Statute Section 2702 provides in relevant part: "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence [...], a witness qualified as an expert by knowledge, skill, experience,

training or education may testify in the form of an opinion or otherwise, if [. . . .] The testimony is the product of reliable principles and methods."

Moreover, citing two particular sources, among others, Justice Ginsburg wrote: "Donohoe, Evidence-Based Medicine and Shaken Baby Syndrome, Part 1: Literature Review, 1966-1998, 24 AM. J. Forensic Med. & Pathology 239, 241 (2003) (By the end of 1998, it had become apparent that 'there was inadequate scientific evidence to come to a firm conclusion on most aspects of causation, diagnosis, treatment, or any other matters pertaining to SBS'; and that 'the commonly held opinion that the finding of [subdural hemorrhage] and [retinal hemorrhage] in an infant was strong evidence of SBS was unsustainable."). *Cavazos* at *13. And, "Uscinski, Shaken Baby Syndrome: An Odyssey, 46 Neurol. Med. Cir. (Tokyo) 57, 59 (2006) ("[T]he hypothetical mechanism of manually shaking infants in such a way as to cause intracranial injury is based on a misinterpretation of an experiment done for a different purpose, and contrary to the laws of injury biomechanics as they apply specifically to the infant anatomy."). *Cavazos at* * 14.

For Hill, court records show during state post-conviction proceedings, on two separate evidentiary hearings, Hill presented evidence in direct contradiction with the evidence presented by the State. Hill's evidence during post-conviction proceedings was Dr. Stephen K. Ofori who after having conducted his analysis concluded the diagnosis of Shaken Baby Syndrome was wrong. *See* Appendix B. The State however failed to produce the state medical examiner, its expert witness (Dr. Jeffery Gofton) or any witness; moreover, neither did the state district court order

the state to do so. Although "a hearing is unnecessary where the reliability of an expert's method is properly taken for granted", *United States v. Tingle*, 880 F. 3d 850, (7th Cir. 2018), a review of Hill's case in light of recent developments and the new evidence presented by Dr. Ofori makes necessary a plain error review. During post-conviction proceedings Dr. Ofori testified about several competing scientific theories on the science of diagnosing "shaken baby syndrome". *See Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P. 3d 907, citing *Olano*, "[t]o be entitled to relief under the plain error doctrine [appellant] must prove: 1) the existence of an actual error (i.e., deviation from a legal rule); 2) that the error is plain or obvious; and 3) that the error affected his substantial rights, meaning error affected the outcome of the proceeding." On post-conviction appeal of the district court's decision rely on unreliable evidence to uphold a conviction, Hill was entitled to a reliability hearing where the unreliable evidence shown was the basis for withdrawing his guilty plea. The district court, i.e. trial court, was where he'd entered the guilty plea. But the district court had not determined whether the methods employed by state medical examiner Dr. Jeffery Gofton were reliable. The district court has broad latitude in determining the appropriate form of the reliability inquiry. But the trial court's broad latitude to make the reliability determination does not include the discretion to abdicate completely its responsibility to do so. *United States v. Valencia-Lopez*, 971 F. 3d 891, 898 (9th Cir. 2020). As shown hereinabove the OCCA's decision in Hill, regarding the super plain error, was in conflict with its own decision in *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P. 3d 907.

The federal claims presented hereinabove were otherwise properly presented to the OCCA, the highest state court that rendered the decision Petitioner asks this Court to review. *Howell v. Mississippi*, 543 U.S. 440, 443, 125 S. Ct. 856, 160 L. Ed. 2d 873 (2005).

CONCLUSION

Petitioner reasonably believes the petition for a writ of certiorari should be granted, and believes that the Supreme Court should hold:

1. That "new evidence" in support of an actual innocence claim means evidence the trial jury (or judge) did not have before it, which requires a holistic judgment about all the evidence old and new and its likely effect on reasonable jurors (or judge) applying the reasonable-doubt standard;
2. That in the absence of an order from a Judge Advocate General or military tribunal of competent jurisdiction, wherein a subpoena, discovery request, or other lawful process was had, state courts under state law, cannot properly exercise criminal jurisdiction over Veterans and active duty service members and dependents based on evidence generated at an installation garrisoned by units under the exclusive jurisdiction of the United States where state medical examiners lack jurisdiction to conduct official and complete forensic pathology investigations of evidence; and
3. The OCCA was required to conduct a plain error review of District Court's decision to rely on evidence regarding an unreliable science to uphold a conviction when a reliability hearing was not conducted.

Wherefore Petitioner asks this Court to announce as a new rule of constitutional law, its holdings, and make retroactive to cases on state collateral review in Oklahoma.

Respectfully submitted this 31st day of August 2023,

By, _____

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