Appendix A

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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

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COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 11 2023

JOHN D. HADDEN
CLERK

CHRISTOPHER J. BARNETT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. PC-2023-705**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the denial of post-conviction relief by the District Court of Tulsa County in Case No. CF-2019-3570.[1] Petitioner was found guilty by a jury of Assault and Battery with a Deadly Weapon. He was sentenced to thirty-two years in the custody of the Department of Correction and a ten thousand dollar fine. Petitioner's conviction was affirmed on direct appeal. *Barnett v. State*, F-2020-373 (Okl.Cr. March 3, 2022) (not for publication).

On July 31, 2023, the Honorable David Guten, District Judge, denied Petitioner's application for post-conviction relief in a lengthy

[1] Petitioner is also charged in Tulsa County District Court Case No. CF-2019-3495. This case is still pending in the trial court and is scheduled for jury trial on February 5, 2024. Petitioner has frequently filed pleadings jointly in both cases asserting the same arguments. This order only addresses Petitioner's application as it pertains to CF-2019-3570.

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seventy-four page order [2]. Judge Guten notes in his order that Petitioner's arguments, laid out in dozens of different pleadings before the trial court are unclear, confusing, repetitive, and overlap with the pending case in Tulsa County District Court Case No. CF-2019-3495. Based on his review of the pleadings Judge Guten determined the following issues that appear to be advocated by Barnett in his application: (1) *Brady* [3], newly discovered evidence, and discovery requests; (2) failure of the State to investigate gunpowder residue, DNA and fingerprints; (3) failure of the state to authenticate Facebook posts at trial; (4) ineffective assistance of counsel at trial and on appeal; (5) mental incompetency; and (6) lack of jurisdiction based on *McGirt*. [4] We Agree.

We review the trial court's determination for an abuse of discretion. *Hancock v. State*, 2022 OK CR 13, ¶ 15, 513 P.3d 1088,

[2] Between July 18, 2022, and September 1, 2022, Petitioner filed numerous motions with the trial court. On September 15, 2022, The Honorable Judge Tracy Priddy, District Judge, ruled the trial court lacked jurisdiction to adjudicate the defendant's motions except for Petitioner's Motion for Evidentiary Hearing and Supplemental Brief filed on July 18, 2022, which the trial court interpreted as an application for post-conviction relief. Between September 15, 2022, and Judge Guten's July 31, 2023, order Petitioner filed more than one hundred (100) pleadings with the trial court related to the application for post-conviction relief.

[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

[4] *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

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1089. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State,* 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a petitioner with a second direct appeal. *Johnson v. State,* 1991 OK CR 124, ¶ 4, 823 P.2d 370, 372. The Act provides petitioners with very limited grounds upon which to base a collateral attack on their judgments. *Logan v. State,* 2013 OK CR 2, ¶3, 293 P.3d 969, 973. "Issues that were previously raised and ruled upon by this Court are procedurally barred from further review under the doctrine of *res judicata;* and issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." *Logan,* 2013 OK CR 2, ¶ 3, 293 P.3d at 973.

Petitioner raised on direct appeal the issues regarding authentication of Facebook posts and ineffective assistance of trial counsel. These issues are barred under *res judicata.* Petitioner has not established sufficient reason for not asserting his current grounds

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for relief in previous proceedings. *Id.* Except for his claims of ineffective assistance of appellate counsel, and lack of jurisdiction under *McGirt*, Petitioner's remaining claims are waived. *Id.*

Petitioner argues his appellate counsel was ineffective because he inadequately raised or did not raise the deficiencies of his trial counsel on appeal. Claims of ineffective assistance of appellate counsel may be raised for the first time on post-conviction, as it is usually a petitioner's first opportunity to allege and argue the issue. As set forth in *Logan*, 2013 OK CR 2, ¶ 5, 293 P.3d at 973, post-conviction claims of ineffective assistance of appellate counsel are reviewed under the standard for ineffective assistance of counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Smith v. Robbins*, 528 U.S. 259, 289 (2000)("[Petitioner] must satisfy both prongs of the *Strickland* test in order to prevail on his claim of ineffective assistance of appellate counsel."). Under *Strickland*, a petitioner must show both (1) deficient performance, by demonstrating that his counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-89. We recognize that "[a] court

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considering a claim of ineffective assistance of counsel must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104 (2011)(quoting *Strickland*, 466 U.S. at 689).

On direct appeal, this Court held that Petitioner failed to show the kind of serious errors by trial counsel that deserve the name deficient performance nor demonstrated a reasonable probability that, but for such deficiencies, the outcome would have been different. *Barnett v. State*, F-2020-373 (Okl.Cr. March 3, 2022) (not for publication). Therefore, appellate counsel's failure to raise the alleged deficiencies of trial counsel on appeal fails to establish appellate counsel's performance was deficient or objectively unreasonable and Petitioner has failed to establish any resulting prejudice. As a result, Petitioner's ineffective assistance of appellate counsel claim is without merit.

Finally, Petitioner claims the State lacked jurisdiction to charge, try, and convict him because of his status as an Indian. Petitioner specifically states his claim is based upon *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In his order Judge Guten stated Petitioner's claims

of Indian status were vague, insubstantial, and inadequate to fulfill the requirements of a valid McGirt claim. We agree. Petitioner alleges that he is entitled to relief but cites no controlling authority in support of this claim. The appeal record in this matter contains no evidence supporting a claim Petitioner or his victims are Indian which is necessary before claiming exemption from prosecution under State law. *See United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001). *See generally Goforth v. State*, 1982 OK CR 48, ¶¶ 5-7, 644 P.2d 114, 116. Petitioner's claim the trial court lacks jurisdiction under *McGirt* is without merit.

Petitioner has failed to demonstrate an abuse of discretion by the District Court. Therefore, the District Court's order denying post-conviction relief is **AFFIRMED**. Petitioner's Motions to Supplement Petition in Error filed October 19, 2023, and November 16, 2023, are **DENIED.** Rule 3.11, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023). Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), the

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MANDATE is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 11 day of December, 2023.

SCOTT ROWLAND, Presiding Judge

ROBERT L. HUDSON, Vice Presiding Judge

GARY L. LUMPKIN, Judge

DAVID B. LEWIS, Judge

WILLIAM J. MUSSEMAN, Judge

ATTEST:

John D. Hadden
Clerk

Appendix B

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
JUL 31 2023
DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Certified copy to Defendant

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CF-2019-3570
	)	District Judge David Guten
CHRISTOPHER JONATHAN BARNETT,	)	
	)	
	)	
Defendant.	)	

Order Denying Petitioner's Application for Post-Conviction Relief and Other Post-Conviction Filings

I. INTRODUCTION

In this proceeding, Defendant Christopher Jonathan Barnett ("Barnett") claims that he is entitled to post-conviction relief ("PCR") for various reasons, as set forth in a multitude of pleadings filed *pro se*.[1] The record demonstrates otherwise. Consequently, after reviewing the pertinent facts of the case and the law applicable to PCR applications in general and to Barnett's claims in particular, the Court denies the relief that Barnett seeks.

In reaching that conclusion, the Court will review pertinent events not only in the history of this case, but also in another case brought against the defendant, *State v. Barnett*, Case No. CF-2019-3495 in the District Court of Tulsa County, as to which Barnett has frequently filed his pleadings jointly. For the sake of brevity, this Order will refer to the cases as "# 3570" and "# 3495," respectively. Although the information in # 3495 was filed first, the events of # 3570 preceded those of # 3495, so it will be considered first.[2]

This Order only addresses Barnett's motions and applications insofar as they pertain to # 3570. For example, in this case, Barnett has made multiplicitous requests for discovery. This Order will address those requests below. Barnett makes the same requests under the # 3495 case number, as well, which will be considered separately, in that case.

The Court makes the following findings of fact and conclusions of law pursuant to OKLA. STAT. tit. 22, § 1084, based upon the record in the case, the Court file, and the submissions of the parties. At a hearing on the matter held July 19, 2023, Barnett appeared *pro se*, having previously terminated his third (3rd) court-appointed counsel, Brian Boeheim.

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[1] **Exhibit 1** attached to the State's response brief, filed October 20, 2022, is a spreadsheet of pertinent pleadings in this case filed to that date, the majority of which Barnett had filed *pro se*. The spreadsheet identifies the pleadings by date of filing, by filing number as designated below, and by the issues raised in each filing. Barnett has filed numerous pleadings since that date, virtually all of which are redundant or irrelevant to the issue of PCR.

[2] The following acronyms will be used throughout this Order:

Oklahoma Attorney General's Office: "OAG"
Oklahoma Court of Criminal Appeals: "OCCA"
Oklahoma State Bureau of Investigation: "OSBI"
Tulsa County District Attorney's Office: "DA"
Tulsa Police Department: "TPD"
The University of Tulsa: "TU"

II. FINDINGS OF FACT

A. Proceedings Before the # 3570 Preliminary Hearing on August 26, 2019

Case # 3570 involves Barnett's shooting of a process server who tried to serve papers on Barnett at his residence on **July 24, 2019**. That day, TPD arrested Barnett and he was released on bond of $75,000 pursuant to a preset schedule. Because charges were not immediately filed, the matter was carried in the court records as **NF-2019-5426**.

Case # 3495 involves threats against the University of Tulsa (TU), two of its professors, and fans leaving a school football game at halftime, that Barnett allegedly made on **July 25, 2019**. That day, in # 3495, the Tulsa County District Attorney charged Barnett by information with one count of Threatening an Act of Violence, in violation of OKLA. STAT. tit. 21, § 1378(A), and Barnett was arrested on a warrant.[3]

July 26, 2019: In # 3495, Barnett appeared before Special District Judge April Seibert, who appointed the public defender's office to represent Barnett. Judge Seibert set bond as to # 3495 in the amount of $1 million and continued the bond of $75,000 as to NF-2019-5426.

July 29, 2019: Barnett posted the $1 million bond. Pursuant to the State's

[3]On December 2, 2019, the District Attorney filed an amended information alleging the original offense in four counts, one pertaining to the fans, and three pertaining to individuals, two of whom had been named as victims in the original information. On September 3, 2021, the District Attorney filed a second amended information alleging the same four counts.

motion to reconsider the bond in a hearing for which Barnett was represented by Brendan McHugh, Judge Seibert ordered that Barnett be held without bond. Her decision was embodied in an order filed July 30, 2019, in # 3495.

July 30, 2019: In # 3495, Mr. McHugh and Dana Jim filed an ***Entry of Appearance and Plea of Not Guilty*** on behalf of Barnett.

In # 3495, Mr. McHugh filed ***Defendant's Motion for Bond Reduction and to Modify Condition of Bond and Lift Impermissible Prior Restraint***. The 42-page pleading requested that Barnett's bond be reduced and that the conditions of relinquishing social media outlets be removed as a prior restraint of free speech.

In # 3495, Mr. McHugh filed ***Defendant's Demurrer to Information***, based on the assertion that Barnett's conduct did not constitute a true threat within the purview of the statute charged.

In # 3495, Mr. McHugh filed Barnett's ***Motion to Dismiss Information for Vindictive Prosecution***, which alleged that District Judge Jefferson Sellers and other public officials had improperly instigated the charges, which violated Barnett's rights under the First and Second Amendments of the U.S. Constitution. The alleged violations of Barnett's rights were ostensibly tied, at least in part, to statements that he had made in relation to the incident involving his shooting of the process server on July 24, 2019 (as charged in # 3570).

In # 3570, the Tulsa County District Attorney filed an information charging Barnett with Assault and Battery with a Deadly Weapon, in violation of OKLA. STAT.

tit. 21, § 652(C).[4]

July 31, 2019: In # 3495, Mr. McHugh filed a ***Motion to Disqualify Tulsa County District Attorney's Office***, based upon allegations about Tulsa County judges who are purported potential witnesses in the case, and who are routinely advised by the DA, thereby allegedly creating a risk of a conflict of interest.

In # 3570, Brendan McHugh and Dana Jim filed an ***Entry of Appearance and Plea of Immunity and Notice of Stand Your Ground Defense***, pursuant to Oklahoma's "Stand Your Ground" law, OKLA. STAT. tit. 21, §§ 1289.25 *et seq.*

August 1, 2019: In # 3495 and # 3570, Barnett appeared before Special District Judge David Guten and was held without bond. Preliminary hearings for both cases were set August 26, 2019. In both cases, Mr. McHugh filed a motion for a bond reduction hearing, which Special District Judge James Keeley set for hearing on August 5, 2019.

In # 3570, Mr. McHugh filed ***Defendant's Notice of Stand Your Ground Defense and Request for Evidentiary Hearing*** which asserted, in part, that Barnett "was justified in using deadly force . . ." due to being in "reasonable fear of imminent peril of death or great bodily force." *Id.* at 2.

August 2, 2019: In # 3495 and # 3570, The State filed its ***Response to Defendant's***

[4]The State amended the Information on August 12, 2019, and again on September 3, 2019, following the preliminary hearing, by means of which the State endorsed additional witnesses and cleaned up some charging language, but the charge itself remained the same.

Motion for Bond Reduction, asserting that the matter was *res judicata* under Judge Seibert's ruling.

August 5, 2019: In # 3495 and # 3570, Judge Keeley entered an order striking the bond hearing as *res judicata.*

August 6, 2019: In # 3570, Mr. McHugh filed a lengthy ***Motion to Dismiss for Spoliation of Evidence and Request for Evidentiary Hearing***, based on the notion that TPD improperly destroyed evidence – a firearm carried by Ian Napier at the time he was shot by Barnett.

August 7, 2019: In # 3495 and # 3570, the issue of bond was posed again when Mr. McHugh filed ***Defendant's Motion for Emergency Bond Reduction and to Reconsider Order Striking Bond Reduction Hearing*** (Filing # 104457<u>0060</u> in # 3570; "F-0060"), which argued that principles of *res judicata* did not apply to Barnett's bond issue and that new evidence merited another look at the issue.

August 12, 2019: In # 3570, the State filed the ***Amended Felony Information***, as stated in footnote 4.

August 14, 2019: Judge Keeley conducted the bond reduction hearing, the transcript for which is 97 pages. Mr. McHugh presented two witnesses, Christopher Fogleman (a bail bondsman) and George William Barnett, III (the defendant's husband), proffered eleven exhibits, and secured the admission of four. *See Transcript of Bond Hearing Held on August 14, 2019, Before the Honorable James W. Keeley* ("BHT"), available in the Court file for # 3570.

August 16, 2019: In # 3495 and # 3570, Judge Keeley entered an order denying Barnett's motion for reduction of bond.

August 19, 2019: In # 3495, the State filed a ***Motion for Continuance Without Objection***, requesting that the preliminary hearing be continued in order for the State to gather additional information from the OAG concerning potential witnesses.

B. August 26, 2019: The Preliminary Hearing in # 3570

Barnett's preliminary hearing was held before Judge Keeley. Pursuant to the State's unopposed motion for continuance, Judge Keeley reset the preliminary hearing for # 3495 to September 30, 2019. The parties proceeded with the preliminary hearing for # 3570. *See Transcript of Proceedings Had on the 26th Day of August, 2019, Before the Honorable James Keeley* ("PHT"), available in the Court file for # 3570. The State presented four witnesses:

State's Witness	State's examination	Defense Counsel Brendan McHugh examination
George William Barnett III (defendant's husband; present at residence at time of shooting)	PHT at 16-28	PHT at 28-35
Ian Napier (shooting victim)	PHT at 36-58	PHT at 59-82
Erik Payne (reporter for Channel 6 News sponsored video of his interview of defendant about the shooting)	PHT at 84-87	None

State's Witness	State's examination	Defense Counsel Brendan McHugh examination
Jackie Delpilar (reporter for Fox 23 sponsored video of her interview of defendant about the shooting)	PHT at 88-91	PHT at 91-93
Argument and ruling on demurrer and motion regarding spoliation PHT at 97-106 Resetting of preliminary hearing in # 3495 PHT at 107-108		

The Court bound Barnett over for District Court arraignment on the charged offense, noting a modification that needed to be made in the charging language. (PHT at 106-107.)

C. Proceedings After the Preliminary Hearing in # 3570

September 3, 2019: In # 3570, the State filed the ***Second Amended Information***, as stated in footnote 4.

September 24, 2019: In # 3495 and # 3570, both of Barnett's private counsel, McHugh and Jim, filed a ***Motion to Withdraw as Attorneys of Record for Christopher J. Barnett***, due to his inability to pay for their services. District Judge Tracy Priddy granted the motions to withdraw in both cases and appointed the Tulsa County Public Defender to represent Barnett in both cases. *See Transcript of Proceedings Held September 24, 2019, Before the Honorable Tracy Priddy*, available in the Court file for # 3570.

October 2, 2019: In # 3495, Judge Keeley, with the State, Barnett and his

counsel Jason Lollman present, passed the preliminary hearing in the case to November 13, 2019.

In # 3495, Barnett *pro se* filed a 2-page ***Motion for Speedy Trial / Motion for Relief from Illegal T.U. Protective Order*** (Filing # 1044772555 in # 3495; "F-2555"), which requested a speedy non-jury trial and also relief from a protective order entered in a separate case involving a dispute between TU, Barnett, and his husband.

October 3, 2019: In # 3495 and # 3570, Barnett, *pro se,* filed a 4-page ***Habeas Corpus Petition*** (Filing # 1044772583 in # 3570; "F-2583), asking for a reconsideration of bond so he could be released from custody and "return to work, pay my bills, pay private council, and get my affairs in order." (F-2583 at 4.)

October 7, 2019: In # 3570, at a hearing before Judge Priddy not attended by Barnett but at which he was represented by Jason Lollman of the Tulsa County Public Defender's Office, the Court set a motions deadline of December 6, 2019, and response date for the State of December 20, 2019. The arraignment was set January 2, 2020.

October 10, 2019: In # 3495 and # 3570, Barnett, *pro se,* filed another, 1-page ***Habeas Corpus Petition*** (Filing # 1044773048 in # 3570; "F-3048"), which asked that the Court set a date for hearing his habeas corpus petition.

Barnett, *pro se,* filed a 4-page ***Motion for Stand You [sic] Ground Immunity / Motion to Stay All Proceedings*** (Filing # 1044773036 in # 3570; "F-3036"), in which Barnett admitted having a gun and using it to shoot the victim in # 3570, Ian Napier, but also claimed to have been justified in doing so under Oklahoma's Stand Your

Ground law. (F-3036 at 2: "**I shot him** in the elbow . . . ."; *Id.* at 3: "**I shot Iia [*sic*] Napier** in self defense and I was justified in doing so . . . ." (emphases added).) He requested that the Court stay all other proceedings until the immunity issue was resolved.

October 18, 2019: In # 3495 and # 3570, Barnett, *pro se,* filed a 4-page ***Letter to Judge Priddy*** (Filing # 1045175893 in # 3570; "F-5893"), in which he requested a reduction of his bond, a finding of immunity under the Oklahoma Stand Your Ground law, and a dismissal of the charges in # 3495. He admitted that he shot the process server to save his own life and that of his husband. (F-5893 at 2: "**I shot a man** . . . ."; "**I shot him** in 100 % self defense."; "**I had to shoot him** to save my life . . . ." (emphases added).) Barnett also **accepted 100% responsibility for writing his blog posts**, which he admitted were offensive, but insisted were not threatening. (*Id.* at 3.) He wanted to be released "because I also clean carpet & November is usually the busiest time of the year." (*Id.* at 4.)

October 22, 2019: In # 3495 and # 3570, Barnett, *pro se,* filed a 6-page ***Letter to Judge Keeley*** (Filing # 1045172824 in # 3570; "F-2824"), in which he asserted that his blog posts were constitutionally protected free speech and that he shot the man at his door. (F-2824 at 1: "**I shot him** before he could shoot me." (Emphasis added).) Barnett stated:

> I suffer from rapid bi-polar depression disorder. Prior to being arrested, I received treatment & counseling from my doctors. Being in custody, I am suffering & I am not getting the medication or treatment I need. I have also lost my health insurance. I would love to be able to return home, get

the medical treatment I need & get back to work. I have 3 dogs who help keep my bi-polar depression under control.

(*Id.* at 2.)[5] Barnett asked for the court's help "so I can return home, get back on my medication[,] start seeing my doctors again, return to work & be with my husband . . . ." (*Id.* at 4.) Barnett claimed to have cleaned more than 20,000 homes without incident over the last 20 years. (*Id.* at 3.) He expressed his hope to receive immunity pursuant to Oklahoma's Stand Your Ground law. (*Id.* at 6.)

October 29, 2019: In # 3495 and # 3570, Barnett, *pro se,* filed a 1-page ***Letter to Judge Priddy*** (Filing # 1045286438; "F-6438"), in which he requested a hearing as to his habeas corpus petition, asked that he be released on bond, and sought the dismissal of the pending charges because of vindictive prosecution and due process violations.

November 7, 2019: In # 3495, Barnett, *pro se,* filed a 1-page ***Letter to Judge Keeley*** (Filing # 1045255195 in # 3495; "F-5195"), in which he requested that the felony charge be amended to a misdemeanor, to which he would plead guilty, and that his $75,000 bond be reinstated.

November 13, 2019: In # 3495, Barnett, *pro se,* filed a 2-page ***Letter to Judge Keeley*** (Filing # 1044892615 in # 3495; "F-2615"), in which he explained a dispute between TU, his husband and himself, and his reasons for writing a blog post about the dispute. He renewed his request for a reduced charge or for a bond so that he could return home.

[5]Barnett provided no medical records to the court to substantiate this description of his mental condition.

In # 3495, the State filed a ***Bench Brief*** dealing with three topics: the meaning of "endeavoring," the proper venue for the case, and legal concepts of "threats" compared to protected, free speech.

In # 3495, Judge Keeley presided over the preliminary hearing at which Jason Lollman represented Barnett. The State presented six witnesses and obtained the admission of 52 exhibits, including many Facebook and other digital posts. *See Proceedings of Preliminary Hearing, November 13, 2019, Before the Honorable James Keeley, Special District Judge, Tulsa, Oklahoma* ("3495 PH"), available in the Court file for # 3495.

State's Witness	State's examination	Defense Counsel Jason Lollman examination
Katie Shields (notarized affidavit for Barnett 10/14)	3495 PH at 10-14	3495 PH at 14-15
Julie Friedel (TU security investigator who monitored threats made by Barnett against TU and associated persons)	3495 PH at 16-53; 64-67 (including numerous objections by Mr. Lollman)	3495 PH at 53-64; 67-68
Michelle Dill (TU professor, subject of Barnett threats)	3495 PH at 70-84	3495 PH at 84-87
Susan Barrett (TU professor, subject of Barnett threats)	3495 PH at 89-104	3495 PH at 105
Winona Tanaka (TU professor and provost, subject of Barnett threats)	3495 PH at 106-125, 133-134	3495 PH at 125-133
Det. Kevin Warne (TPD executed search warrants at Barnett residence and business, recovering firearms and ammunition)	3495 PH at 135-147	3495 PH at 147-149

Mr. Lollman demurred to the evidence at length. 3495 PH at 151-53. The court bound Barnett over for trial. *Id.* 155-57. The Court also denied Barnett's motion for a bond reduction. *Id.* at 150-51. District Court arraignment was set for December 2, 2019. *Id.* at 157.

December 2, 2019: In # 3495, the State filed an ***Amended Information***, as stated in footnote 3.

In # 3495, counsel for the parties appeared before Judge Priddy, who set a motion deadline of January 24, 2020, and a response deadline of February 14, 2020. The arraignment was passed to February 20, 2020.

December 10, 2019: In # 3570, Mr. Lollman filed a ***Motion to Dismiss and Request for Evidentiary Hearing*** (Filing # 1045551522 in # 3570; "F-1522"), pursuant to Oklahoma's Stand Your Ground law.

January 2, 2020: In # 3570, Judge Priddy heard Barnett's motion to dismiss. *See Transcript of Proceedings Held January 2, 2020, Before the Honorable Tracy Priddy* ("1/2/20 T"), available in the Court file for # 3570. The transcript from the preliminary hearing was admitted into evidence. (1/2/20 T at 4.) Barnett testified. (1/2/20 T at 5-30.) **He admitted to shooting at the man in front of his house.** (1/2/20 T at 9-11, 26.) The hearing was continued to the next day.

January 3, 2020: In # 3570, Judge Priddy heard arguments from counsel for both parties on the issue of immunity under Oklahoma's Stand Your Ground law. *See*

Transcript of Proceedings Held January 3, 2020, Before the Honorable Tracy Priddy ("1/3/20 T"), available in the Court file for # 3570. (Mr. Lollman for the defense: 1/3/20 T at 3-6, 7-8, 9.) The Court denied Barnett's motion for immunity and dismissal. (1/3/20 T at 9-15.) The jury trial was set for June 15, 2020.

January 14, 2020: In # 3495 and # 3570, Mr. Lollman filed a ***Motion for Bond*** (Filing # 1045988543 in # 3570; "F-8543"), in which Barnett requested that he be released on a reasonable bond and on whatever conditions the Court thought appropriate.

January 24, 2020: In # 3495 and # 3570, Judge Priddy heard substantial arguments from counsel concerning the issue of bond, and denied Barnett's motion. *See Transcript of Proceedings Held January 24, 2020, Before the Honorable Tracy Priddy*, available in the Court file for # 3570.

February 3, 2020: In # 3495, Barnett's counsel, Caleb Jones, filed a ***Motion to Quash for Insufficient Evidence and Brief in Support*** (Filing # 1046082587 in # 3495; "F-2587"), which argued that the State had failed to adduce evidence of intent to commit an act of violence in violation of the charged offense.

February 18, 2020: In # 3495, the State filed its ***Response to Defendant's Motion to Quash.***

February 20, 2020: In # 3495, Judge Priddy heard arguments in regard to Barnett's motion to quash and overruled the motion. *See Transcript of Proceedings Held on February 20, 2020, Before the Honorable Tracy Priddy*, available in the Court file for #

3495. The jury trial for the case was set June 1, 2020.

February 27, 2020: In # 3570, The jury trial was reset from June 15, 2020, to March 2, 2020, by agreement of the parties.

D. The Jury Trial (March 2-5, 2020)

March 2, 2020: In # 3570, Caleb Jones on behalf of Barnett filed ***Defendant's Motion in Limine*** (Filing # 10463134<u>89</u> in # 3570; "F-3489"), which addressed two basic points. First, it sought to exclude evidence concerning posts made on Barnett's Facebook account pursuant to *Burks v. State*, 595 P.2d 771, 1979 OK CR 10, arguing that the evidence was not *res gestae*. Second, it sought to exclude evidence concerning the allegations in # 3495, regarding Facebook posts threatening TU, its personnel and fans.

In # 3570, the **jury trial** started with the consideration of Barnett's motion *in limine*, which the Court and counsel discussed at length. *See Transcript of Proceedings, Jury Trial, Vol I of IV, Held March 2, 2020* ("TT I") at 3-23. Caleb Jones argued on behalf of Barnett. *Id.* The Court noted the two parts of the motion. (*Id.* at 3-4.) The Court ruled that the two posts offered by the State were *res gestae* and would be admitted. (*Id.* at 21-22.) The State conceded that other posts would not be offered. (*Id.* at 22-23.) The parties agreed that they would consider a stipulation that could moot the second aspect of the motion insofar as it pertained to testimony of Julie Friedel, a TU employee who would lay a foundation for the admission of the posts to be offered. (*Id.* at 23.) Selection of jurors took the rest of the day. (*Id.* at 24-119.) Barnett was represented

through that process by Jason Lollman and Caleb Jones. (*Id.* at 29.) Mr. Lollman managed to have one of the potential jurors stricken for cause . (*Id.* at 81-85.)

March 3, 2020: In # 3750, jury selection continued. *See Transcript of Proceedings, Jury Trial, Vol II of IV, Held March 3, 2020* ("TT II") at 7-156.[6] Mr. Lollman challenged the State's motion to strike two potential jurors for cause, and succeeded in retaining one in the panel. (*Id.* at 91-98.) His *voir dire* comprised approximately 40 pages of the transcript. (*Id.* at 108-148.) Before the jury was seated, Mr. Lollman ensured that his continuing objection to evidence covered by his motion *in limine* was noted for the record. (*Id.* at 158.) Mr. Jones delivered the opening statement on behalf of Barnett. (*Id.* at 179-182.) Thereafter the State presented two witnesses, both of whom Mr. Lollman cross-examined:

State's Witness	State examination	Defense examination
Ian Napier: process server shot by Barnett	TT II at 183-215, 222	TT II at 216-222
George William Barnett III: defendant's husband, at home when shooting occurred	TT II at 221-237, 243-245	TT II at 237-242

March 4, 2020: In # 3750, the jury trial continued. *See Transcript of Proceedings, Jury Trial, Vol III of IV, Held March 4, 2020* ("TT III") at 7-156. The State presented six live witnesses, all but one of whom the defense cross-examined:

[6]Jury selection continued after a brief *Frye Cooper* hearing as to Barnett's rejection of the State's plea agreement offer. (*Id.* at 4-6.)

State's Witness	State examination	Defense examination
Nick Ridner (Tulsa firefighter who responded to crime scene and treated victim Ian Frazier, taking gun from his waistband)	TT III at 7-9; 10	TT III at 9-10
John K. Murray (TPD officer accompanying Barnett to hospital for treatment of chest pains)	TT III at 11-19; 21-22	TT III at 19-21
Erick Payne (Channel 6 news reporter who interviewed Barnett)	TT III at 23-28	TT III at 28-29
Jacqueline Delpilar (Fox 23 news reporter who interviewed Barnett)	TT III at 30-35	TT III at 35
Stipulation re Julie Friedel (Investigator at TU who found Barnett Facebook posts)	TT III at 36-43, including discussion between Court and counsel, in which Mr. Lollman helped shape content of stipulation	
Patrick McClain (TPD Sgt. who explained crime scene and evidence recovered)	TT III at 44-74	TT III at 74-82 (including extensive effort to obtain latitude in cross-examination at 77-80)
Chris Buyerl (TPD SID officer who arrested Barnett and recovered thumb drive from him)	TT III at 83-92 (including effort by Mr. Lollman to exclude testimony about TU threats case at 85-86)	TT III at 92-93
Demurrer to State's evidence and Court's inquiry of Barnett about testifying: TT III at 95-100		

The State rested and Mr. Lollman demurred to the evidence. The Court overruled the demurrer and questioned Barnett about his decision to testify in his own defense. TT III at 95-100. Barnett was the only witness presented by the defense:

Defense Witness	Defense examination	State examination
Christopher Barnett: Defendant	TT III at 101-118; 154-155)	TT III at 118- (including Mr. Lollman's objections, such as at 119-21, 142)

The State offered into evidence a stipulation by the parties as to anticipated rebuttal testimony from Detective Max Ryden. (TT III at 156-57.) The evidence concluded there. (TT III at 158.) Mr. Lollman made a strong argument for the inclusion of a self-defense instruction. (TT III at 161-169.) The Court ruled in favor of using the instruction. (TT III at 169-171.)

March 5, 2020: In # 3570, the jury trial concluded with arguments by counsel. Mr. Kunzweiler opened for the State. (TT IV at 7-32.) Mr. Lollman made one objection. (TT IV at 16-17.) Mr. Lollman then gave the closing argument for Barnett. (TT IV at 32-45.) Mr. Collier closed for the State. (TT IV at 45-58.) Mr. Lollman objected three times in quick succession, the last occasion of which the Court sustained the objection and directed the State to move on. (TT IV at 53-54.) The jury returned a verdict of guilty in two hours, with a punishment of 32 years and a fine of $10,000. (Docket Entry # 3570 for March 2, 2020; TT IV at 62.) The defense requested a presentence investigation report. (TT IV at 64.)

May 21, 2020: In # 3570, Mr. Lollman filed a ***Motion for New Trial*** (Filing # 104676<u>5255</u> in # 3570; "F-5255") on Barnett's behalf, asserting that (1) the State's closing argument included numerous improper statements, and (2) Facebook posts were admitted improperly under *Burks v. State*, 595 P.2d 771, 1979 OK CR 10.

May 22, 2020: In # 3570, the parties appeared before Judge Priddy for formal sentencing. *See Transcript of Proceedings / Sentencing / Held May 22, 2020, Before the Honorable Tracy Priddy*, available in the Court file for # 3570. Mr. Lollman argued for a new trial, based on the filed motion. (Sent. T. at 4-5, 6-7.) The Court overruled the motion. Mr. Lollman objected to part of the victim impact statement. (Sent. T. at 9.) The victim, Mr. Napier, made a statement to the Court. (Sent. T. at 11-13; *Ian Napier Impact Statement* filed May 27, 2020.) Mr. Lollman requested that the sentence be suspended in whole or in part. (Sent. T. at 14-15, 17-18.) After the Court imposed a sentence of 32 years in prison and a fine of $500, Mr. Lollman announced Barnett's intent to appeal the case. (Sent. T. at 21-22.)

May 27, 2020: In # 3495, pursuant to SCAD 2020-29, the jury trial set June 1, 2020, was stricken, to be reset, and the *Allen* discovery hearing was set October 8, 2020.

E. The Appeal of # 3570

May 29, 2020: Mr. Lollman timely filed a notice of appeal to the Oklahoma Court of Criminal Appeals ("OCCA"). *Barnett v. State*, OCCA Case No. F-2020-373. Barnett's counsel on appeal, Nicole Dawn Herron of the Tulsa County Public Defender's Office, raised the following propositions in Appellant's Brief:

1. The trial court abused its discretion in allowing evidence regarding an internet search from Barnett's home computer because it was not *res gestae* evidence
2. The trial court abused its discretion in allowing evidence regarding an internet search from Barnett's home computer because the State failed to file the requisite *Burks* notice

3. The trial court abused its discretion in allowing evidence regarding an internet search from Barnett's home computer because any probative value was substantially outweighed by prejudice in violation of OKLA. STAT. tit. 12, § 2403
4. Prosecutorial misconduct deprived Barnett of a fair trial in violation of U.S. CONST. amend. 14, including:
   a. He elicited irrelevant, prejudicial testimony from Barnett and argued he did not have remorse
   b. He repeatedly referred to *res gestae* evidence and encouraged the jury to consider it as substantive evidence of guilt
   c. He argued that Barnett had the culpability of a "cold-blooded murderer"
   d. He referred to Barnett as "arrogant" and encouraged the jury to "wipe the smile off his face"
5. The trial court abused its discretion in denying Barnett's motion to dismiss pursuant to OKLA. STAT. tit. 21, § 1289.25, Oklahoma's "Stand Your Ground" law
6. Barnett was deprived of effective assistance of counsel
7. Cumulative error deprived Barnett of a fair trial

See Appellant's Brief, attached hereto as **Exhibit 3**.

F. The Continuation of # 3495

While the appeal of # 3570 was pending, Barnett's other case, # 3495, continued forward, although the COVID-19 pandemic affected all court proceedings.

May 27, 2020: In # 3495, pursuant to SCAD 2020-29, the jury trial set June 1, 2020, was stricken, to be reset.

October 8, 2020: In # 3495, the jury trial was set June 14, 2021.

May 20, 2021: In # 3495, the jury trial set on June 14, 2021, was stricken, to be reset.

March 8, 2022: In # 3495, after several status conferences and *Allen* hearings were passed, a status conference was set April 12, 2022.

G. Barnett loses his appeal in # 3570

March 3, 2022: The OCCA rejected all of Barnett's arguments and affirmed his conviction and sentence. *Barnett v. State*, OCCA Case No. F-2020-373, Summary Opinion at 7 (Mar. 3, 2022; unpublished, attached to the State's response brief as **Exhibit 4**). Grouping the first three propositions, the OCCA noted that the trial court had not abused its discretion in admitting the Facebook posts, "which tended to show Appellant's criminal motive and intent in shooting a process server, and to rebut his defense of justification . . . ." *Id.* at 3. As to the proposition about the prosecutor's conduct, the OCCA wrote that "the prosecutor's questions and statements in closing argument were not so grossly improper as to deny Appellant a fundamentally fair trial." *Id.* at 4. The OCCA also upheld the trial court's denial of immunity for Barnett under Oklahoma's Stand Your Ground law. *Id.* at 4-5. The OCCA held that Barnett failed to establish a claim of ineffective assistance of counsel, either as to the deficient performance strand or the prejudicial effect strand of the analysis under *Strickland v. Washington*, 466 U.S. 668 (1984). *Id.* at 6. Thus, the OCCA also found that there was no cumulative error which warranted relief. *Id.* at 6-7. On March 15, 2022, the OCCA mandate was filed in Tulsa County District Court.

H. Filings after the OCCA decision in # 3570

May 24, 2022: In # 3495, at a status conference with the Court, the jury trial was set February 13, 2023.

June 27, 2022: In # 3495, the Court granted the public defender's motion to withdraw as counsel for Barnett.

July 18, 2022: In # 3570, Barnett *pro se* filed an 8-page ***Motion for Evidentiary Hearing Due to Newly Discovered Evidence / Petition to Set Aside and Vacate Judgement Due to Actual Innocence and Newly Discovered Evidence and Brady Law Violations / Petition to Vacate and Dismiss with Predjudice [sic] Because the State Did Not and Cannot Authenticate Facebook Messages Used to Obtain Conviction*** (Filing # 1052769437 in # 3570; Barnett's "PCR App" or "F-9437"), portions of which are illegible, due to the quality of the copy of the original handwritten document. Three major subdivisions of the PCR App are, however, clear:

First, Barnett argued for a new trial based on newly discovered evidence. He asserted that he learned of the new evidence on July 8, 2022. (PCR App at 1.) Due to the poor quality of the copy of the PCR App, the exact nature of the evidence is impossible to determine – it involves emails and communications between attorney John Lackey, who represented TU, and the OAG. (*Id.* at 2.)

Second, Barnett claimed actual innocence because investigators did not test his hands for gunpowder residue. (*Id.* at 3.)

Third, Barnett asserts that the State had no proof that he authored certain

Facebook posts or that he owned the Facebook account in which posts were made. He explained that his computers were never seized or searched, and that the posts were concocted by TU, with which he and his husband had an ongoing dispute. (*Id.* at 3-7.)

In # 3495 and 3570, Barnett *pro se* filed an 8-page ***Supplimental [sic] Brief for Evidentiary Hearing Due to Brady Violations and Motion for New Trial or Dismissal with Predjudice [sic]*** (Filing # 1052769424 in # 3570; Barnett's "PCR App Supp" or "F-9424"), which is legible and amplifies the statements made in Barnett's PCR App:

First, it claimed that the DA withheld exculpatory evidence in the form of "hundreds of documents and emails." (PCR App Supp at 1.) With these documents, Barnett asserted:

> I could have proven that the University of Tulsa fabricated the Facebook post Steve Kunswieler [*sic*] used in CF 193570 to convict me. The Facebook post was never authenticated and cannot be because it was not my Facebook account and I did not write the post.

(*Id.*) Barnett claimed that TU provided evidence used against him in # 3570, but that it was withheld from him in # 3945. (*Id.* at 2.) In a confusing sequence, he then said that the evidence used against him in # 3570 came from # 3495. (*Id.*) A phone call between the OAG and TU attorney John Lackey, which purportedly lasted 1.5 hours, was said to be exculpatory yet not turned over in # 3570, but no explanation of its contents was given or how it was exculpatory. (*Id.*) Barnett accused District Judge Jefferson Sellers of being corrupt, and argued that exculpatory emails from Tulsa Community College, the OAG, the Wagoner County Sheriff and District Attorney, and communications from District Judge Rebecca Nightingale and Steven Terrill,

were not turned over in discovery. (*Id.* at 2-3.)

Second, the PCR App Supp argued that Jason Lollman provided ineffective assistance of counsel by failing to investigate the lack of gunpowder residue, to subpoena Facebook, to obtain a digital expert witness, to focus on Ian Napier's command to open the Barnetts' door, or to challenge the lack of exculpatory evidence. (*Id.* at 3-4.) Barnett also complained that Lollman failed to subpoena TU. (*Id.* at 6.)

Third, Barnett repeated his criticism of the police for failing to investigate gunpowder residue. (*Id.* at 5.)

Finally, Barnett noted that he was litigious and that he intended to sue the Public Defender's Office, which would create a conflict in their representation. (*Id.* at 6-7.)

July 28, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 1-page ***Motion to Admit Case Law for Recent Motions Filed Seeking New Trial Due to Newly Discovered Evidence, Petition to set Aside and Vacate Judgment Due to Brady Violations and the District Attorney[']s Failure to Authenticate Facebook Email Printouts Provided by the University of Tulsa in Both Cases, Because the University of Tulsa Fabricated the Evidence to Chill Free Speech Once Again*** (Filing # 1052766597 in # 3570; "F-6597"), which submitted a copy of *United States v. Vayner*, 769 F.3d 125 (2nd Cir. 2014), to support Barnett's argument that the Facebook posts admitted at trial were not properly authenticated.

In # 3495 and # 3570, Barnett *pro se* filed a 1-page ***Motion to Admit Case Law in***

Support of New Trial for Brady Violations / In Support of Recent Motions Filed in Both Cases (Filing # 1052766662 in # 3570; "F-6662"), which submitted a copy of *State ex rel. Oklahoma Bar Association v. Miller*, 360 P.3d 508, 2015 OK 69, and *Brady v. Maryland*, 373 U.S. 83 (1963). Barnett referred again to a 1.5 hour telephone call between the State and TU's attorney, John Lackey, which was supposedly not provided in discovery before trial. Barnett gave no content of the call, nor explanation of why it would have affected the outcome of the trial in # 3570. Barnett reiterated that his attorneys were ineffective, and that the State misled "everyone" about a Facebook writing, unspecified, "which I was accused of authoring and did not." (F-6662 at 2.) He requested an attorney "ASAP." (*Id.*)

In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion to Appoint Counsel*** (Filing # 1052766654 in # 3570; "F-6654"), which requested counsel for both cases and expressed his need for discovery. (F-6654 at 1-2.) Barnett stated, "The Facebook Post the DA used in CF193570 was false and the State and DA knew it. . . . The DA, State nor my attorney even authenticated the Facebook post." (*Id.* at 2.)

In # 3495 and # 3570, Barnett *pro se* filed an 8-page ***Rule 15 Motion to Recuse / Motion to Unseal Ex Parte Order Signed on 02-12-2020*** (Filing # 1052766670 in # 3570; "F-6670"). Barnett repeated his request for discovery of emails between the State and TU personnel. (F-6670 at 2.) He asserted that TU "made up information on social media . . . ." but did not specify what information. (*Id.*) He stated that John Lackey was a child molester. (*Id.*) Barnett described his intention to get information from the

email addresses of various judges. (*Id.* at 3.) He asserted that Judge Priddy was a witness to a conversation between Mr. Lollman and the DA concerning communications from TU, thus requiring the Court to recuse. (*Id.* at 3-4.) He reiterated his claims of ineffective assistance of counsel. (*Id.* at 4-7.) He insisted, "The issue of authenticity of emails, pri[n]ted social media, printed websites must be resolved . . . ." (*Id.* at 7.) He summarily argued that he is subject to double jeopardy, innocent of all charges, and the target of vindictive prosecution. (*Id.* at 8.)

August 1, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion to Appoint Brendan McHugh and Dana Jim as Conflict Counsel in Case # CF 193495 and CF 193570*** (Filing # 1052766596 in # 3570; "F-6596"), in which Barnett estimated the trial would take 16 weeks and requested that a trial date be set in October 2023. (F-6596 at 1.)

In # 3495 and # 3570, Barnett *pro se* filed a 3-page ***Motion to Admit Napue v. Illinois in Support of Brady/Giglio Violations by the Prosecution and State, Brief in Support of Evidentiary Hearing Napue v. Illinois*** (Filing # 1052766665 in # 3570; "F-6665"), which submitted a copy of *Napue v. Illinois*, 360 U.S. 264 (1959), to support Barnett's argument that the State knowingly used false testimony at trial. "The DA presented false testimony about a Facebook post he found that he knew I did not write." (F-6665 at 1.)

August 4, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 3-page ***Motion for Relief from Brady Violations / Motion for Discovery to Be Provided to Me Since I Have No***

Counsel (Filing # 1052766786 in # 3570; "F-6786"), in which he repeated his request for discovery of emails from various sources, including TU and Hall Estill, and a request for counsel in both cases.

In # 3495 and # 3570, Barnett *pro se* submitted an 11-page ***Letter to Judge Priddy*** (Filing # 1052766798 in # 3570; "F-6798") that repeated his requests for discovery and his determination to obtain evidence pursuant to a host of subpoenas. Barnett asserted that he planned "to call over 125 witnesses." (F-6798 at 3.) He repeated that "the DA misrepresented the Facebook post as mine and failed to disclose who emailed it to him." (*Id.* at 4.)

In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion to Admit Griffin v. State and Brief in Support*** (Filing # 1052766802 in # 3570; "F-6802"), which submitted a copy of *Griffin v. State*, 19 A.3d 415 (Md. 2011), to support the notion that the Facebook posts admitted at trial in # 3570 were not properly authenticated. Barnett also attached a 2-page ***Motion to Recuse Judge*** pertaining to Judge Priddy.

August 8, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 3-page ***Motion to Appoint Counsel for Brady / Giglio Violations and to Subpoena Exculpatory Evidence Withheld and Suppressed by the Oklahoma Attorney General[']s Office and the Tulsa County District Attorney[']s Office*** (Filing # 1052766808 in # 3570; "F-6808"), which requested counsel to assist in obtaining discovery that was purportedly withheld improperly and again asserted the State used a Facebook post "with no proof" it was Barnett's. (F-6808 at 1.)

As to # 3495 and # 3570, in Case No. HC-2022-675 in the OCCA, Barnett *pro se* filed a ***Writ of Habeas Corpus CF-193495 Tulsa County*** which presented issues that he had raised in his filings in this Court, including discovery relating to TU, the authentication of Facebook posts, *Vayner*, *Brady*, bond, lack of investigation by the State, Stand Your Ground and self-defense, ineffective assistance of counsel, and recusal of the Court.

August 15, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 10-page ***Motion to Suppliment [sic] the Record Further in CF20193570 8-6-2022*** (Filing # 1053064368 in # 3570; "F-4368"), which reiterated Barnett's request for discovery purportedly withheld, including emails involving many persons. The motion asserted again that the Facebook posts admitted at trial were not Barnett's and fabricated. (F-4368 at 1-4.) Barnett also claimed the protection of the Stand Your Ground laws of Oklahoma. (*Id.* at 5-8.)

August 17, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 3-page ***Motion to Suppliment [sic] Regarding Other Crimes Evidence for CF20193570*** (Filing # 1053064180 in # 3570; "F-4180"). Barnett repeated, "The State introduced a Facebook post I did not write or author." (F-4180 at 1.) He reiterated his request for discovery of emails involving various parties. (*Id.* at 2.) Barnett also argued that the Facebook post violated *Burks v. State* requirements about notice of evidence of other crimes. (*Id.* at 2.)

August 22, 2022: In Case No. HC-2022-675, the OCCA entered an ***Order Declining Jurisdiction*** due to Barnett's having failed to prove he was denied relief in the

district court.

August 30, 2022: As to # 3495 and # 3570, in OCCA Case No. MA-2022-740, Barnett *pro se* filed for a ***Writ of Mandamus*** which alleged the issues he had raised in the district court, including *Brady*, exculpatory evidence, discovery, appointment of counsel, unauthenticated Facebook posts, *Vayner*, lack of investigation by the State, recusal of the Court, and ineffective assistance of counsel.

August 31, 2022: In # 3495 and # 3570, Barnett *pro se* filed an 8-page ***Motion to Support Brady Violation Claim, Ineffective Assistance of Counsel, Due Process Violations, 6th & 14th Amendment Violations*** (Filing # 1053165163 in # 3570; "F-5163"), that asserted he did not create or control the Facebook post admitted at trial. (F-5163 at 1.) Barnett reiterated that TU fabricated the Facebook accounts. (*Id.* at 2.) He claimed that Judge Sellers violated his rights in another case that he litigated against TU. (*Id.* at 2-3.) Barnett repeated his allegations of ineffective assistance of counsel and conflict of interest in his representation. (*Id.* at 3-8.)

September 1, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 10-page ***Motion to Stay All Proceedings, Motion to Recuse Judge Priddy, Motion to Change Venue, Rule 15 Hearing Motion, Motion for New Counsel*** (Filing # 1053165233 in # 3570; "F-5233"). Barnett alleged that he could not receive a fair trial in Tulsa County. He claimed that Judge Priddy abused her discretion in appointing Brian Martin to represent Barnett. (F-5233 at 2.) He claimed Judge Priddy abused her discretion in admitting the Facebook posts at trial. (*Id.* at 3.) He asserted that he was entitled to a Rule 15 hearing

as to recusal before anything further occurred in the cases. (*Id.* at 8.)

In # 3495 and # 3570, Barnett *pro se* filed a 3-page ***Motion to Recuse Judge*** (Filing # 1053165225; "F-5225"). Much of the motion is illegible, due to the quality of the copy available online. It is clear, however, that Barnett claimed that his new attorney, Brian Martin, had conflicts in representing him and that Judge Priddy should recuse.

September 9, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion for in Camera Request for Purpose of Recusal and Disqualification of Judge Tracy Priddy*** (Filing # 1053366493 in # 3570; "F-6493"), which reiterated his argument that the Court should recuse, in part because of her purported attitude toward Barnett and in part because she allegedly abused her discretion in admitting into evidence unauthenticated social media content. (F-6493 at 2.)

In # 3495 and # 3570, Barnett *pro se* filed a copy of ***Miller v. Dollarhide, P.C., v. Tal***, 163 P.3d 548, 2007 OK 58, which he had cited in his previous filings. (Filing # 1053366497 in # 3570; "F-6497.")

September 12, 2022: In # 3495 and # 3570, a copy of an ***Order Denying Application for Extraordinary Writ*** (Filing # 1053371387; "F-1387"), entered by the OCCA on September 9, 2022, in *Barnett v. State*, Case No. MA-2022-740, was filed. The OCCA declined to exercise jurisdiction in Barnett's *pro se* to obtain a writ of mandamus, because he had counsel in # 3495.

September 15, 2022: The Court held a ***hearing*** as to Barnett's *pro se* motions filed between July 18, 2022, and September 1, 2022. The Court ruled that it lacked

jurisdiction to adjudicate the motions, except for the motions filed July 18, 2022 – *Motion for Evidentiary Hearing* and *Supplemental Brief* – which the Court deemed to be an application for PCR. Any ruling or hearing on the application was held in abeyance pending the State's response.

September 22, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 4-page ***Letter to Judge Priddy*** (Filing # 1053371633; "F-1633"), which appears to have been written September 13, 2022, two days before the hearing on September 15. Barnett stated that he had fired Brian Martin as counsel. (F-1633 at 1.) For the first time, Barnett raised questions about his competency at the time of the offense and trial in # 3570, for which he requested a competency hearing. (*Id.* at 3.)

> It[']s funny how you are the gatekeeper but you committed a Pate violation. I was denied bond based in part because I took mental health medications as Det. Max Ryden testified to at the bond revocation hearing with Judge Siebert. Judge Siebert did not make findings of fact concerning my mental health as required under Brill and Humphrey. I asked my attorneys for a competency hearing. I was suffering from severe PTSD because of something I had seen happen that was terrible, as evidenced by the antidepressants I was prescribed. I was also suffering from depression, bi-polar disorder, ADD, ADHD and more. I did not understand what was going on or the nature of the proceedings against me. I was not able to actively assist in my defense. I emailed mental health at the Jail often which documented my issues. Judge Keeley even said he was concerned about my mental health but did not initiate competentcy [*sic*] hearings. I was mentally unwell and still tried in violation of the 14th Ammendment. [*sic*] There is much more but I[']m short on paper. I will file a habeas corpus with this court for case CF 2019 3570 only and only dealing with the mental health competentcy [*sic*] issue. My mental health illness went into full remission in November 2021. Brian Martin threatened to hold a competency hearing on me because I was telling him about the wrongs committed by the University of Tulsa. This court should hold a hearing in CF 2019 3570 regarding my competentcy [*sic*] at the time of the alleged crime and during my trial.

> Beca[u]se I was mentally unwell at the time of my trial, I was not able to make sound decisions or actively participate in my defense.

(*Id.* at 2-3.) Barnett specifically did not want, however, a competency hearing in # 3495 – "I will pass a current competentcy [*sic*] exam with flying colors." (*Id.*)

In # 3495 and # 3570, Barnett *pro se* filed a 4-page, typewritten ***Writ of Habeas Corpus*** (Filing # 1053371604; "F-1604"). In reviewing the events of the case, Barnett once more denied "authoring the facebook messages or other messages used to deny me bond by the State or that led to these charges." (F-1604 at 3.) He claimed to have been mentally incompetent during the trial of # 3570, and that his attorneys were ineffective for having failed to raise the issue of his mental health. (*Id.* at 2-4.) Barnett stated that he repeatedly asked his attorneys for a competency hearing, but they ignored the requests. (*Id.* at 2.) He said that he told them he was "seeing things and hearing voices." (*Id.*) He was purportedly "suffering from Depression, Bi-Polar Disorder, Detachment Disorder". (*Id.*) He also noted that he was taking anti-depressants. (*Id.*)

As to # 3495 and # 3570, in OCCA Case No. # HB-2022-818, Barnett pro se filed a ***Writ of Habeas Corpus*** which reiterated issues that he had previously submitted to the OCCA for relief, and which also raised the issue of his mental competency

September 23, 2022: In # 3495 and # 3570, Barnett *pro se* filed nine pleadings:

Designated ***Miscellaneous Letters*** on the docket in # 3570 (Filing # 1053371671 in # 3570; "F-1671"): This pleading incorporated 7 pages of reports by TU and police personnel concerning Barnett, with handwritten comments apparently added to the

papers by Barnett.

Designated ***Miscellaneous Letters*** on the docket in # 3570 (Filing # 1053371659 in # 3570; "F-1659"): This pleading also incorporated 8 pages of reports by TU and police personnel concerning Barnett, with handwritten comments apparently added to the papers by Barnett.

Ammendened [sic] Writ of Habeas Corpus (Filing # 1053371674 in # 3570; "F-1674"): This 8-page, typewritten pleading reiterated Barnett's request for a new trial based on his allegations of having been mentally incompetent at the time of the first trial. He stated that he was "suffering from Depression, Bi-Polar Disorder, Detachment Disorder, anxiety, post traumatic stress disorder, add, adhd, rapid bi-polar depression and several other things." (F-1674 at 2.) The motion otherwise repeated many of the allegations that Barnett had made in previous pleadings.

Open Records Request (Filing # 1053371666 in # 3570; "F-1666"): This 3-page pleading requested, pursuant to the Oklahoma Open Records Act, a host of documents and emails relating to many various persons and entities that Barnett had described in previous filings.

Motion for In Camera Hearing to Recuse Judge Priddy to Chief Judge Drummond, Rule 15 Hearing (Filing # 1053371719 in # 3570; "F-1719"): This 4-page pleading faulted Judge Priddy for allegedly failing to attend to the issue of Barnett's mental competency. Barnett claimed once again that the Court abused its discretion in admitting the Facebook posts at trial. (F-1719 at 1.)

Amended Writ of Habeas Corpus (Filing # 1053371707 in # 3590; "F-1707"): This 4-page, typewritten pleading "is based on mental health . . . ." (F-1707 at 1.) The motion reiterated Barnett's claim for relief based on his alleged lack of mental competency to stand trial in # 3570.

Motion to Stay All Proceedings in CF-2019-3570 and CF-2019-3495 (Filing # 1053371691 in # 3570: "F-1691"): This 2-page pleading requested that all proceedings in both cases be stayed until the Court held a hearing to determine Barnett's mental competence at the time of the offenses and during the trial of # 3570, pursuant to the issue of competence raised in Barnett's motions for writ of habeas corpus.

Writ of Habeas Corpus (Filing # 1053371687 in # 3570; "F-1687"): This 8-page, typewritten pleading reiterated Barnett's version of events, and asserted once again that he was not mentally competent to stand trial, in addition to purported *Brady* violations and other problems that he had described in previous pleadings.

Amended Writ of Habeas Corpus (Filing # 1053371679 in # 3570; "F-1679"): This 4-page, typewritten pleading, like others, alleged that Barnett was entitled to relief due to his mental incompetence at time of trial.

September 26, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion to Proceed Pro-Se / Motion to Reset Trial Date & Allen Hearing*** (Filing # 1053371689; "F-1689"). The motion alleged that Barnett's appointed attorney was not working in his interest. Barnett again requested copious discovery of emails and other records to prove that he was not competent to stand trial in # 3570 or during proceedings in #

3495. (F-1689 at 1.) He requested that in # 3495 the trial be passed to April 2023 and that the *Allen* hearing be reset to January 2023 or later. (*Id.* at 2.) Barnett also requested standby counsel. (*Id.*)

September 27, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***2nd Ammended [sic] Habeas Corpus Petition Based on Mental Health and a Pate Violation*** (Filing # 1053371732 in # 3570; "F-1732"), which again asserted that Barnett was incompetent to stand trial in # 3570 pursuant to *Pate v. Robinson*, 383 U.S. 375 (1966).

Barnett *pro se* filed a 2-page ***Motion for Specific Exculpatory Evidence*** (Filing # 1053371728 in # 3570; "F-1728"), which listed emails, reports and other documents that Barnett requested to be produced in discovery. F-1728 included several attached emails and reports from various sources, including TU, OAG and TPD.

September 30, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 2-page ***Motion for Further Post Conviction Relief Based on Factual Evidence and Actual Innocence*** (Filing # 1053363888 in # 3570; "F-3888"), in which Barnett asserted "I did not shoot Ian Napier. I still agree that he was legally shot." (# F-3888 at 1.) He reiterated his argument about gunpowder residue, DNA and fingerprints. (*Id.*) Barnett also restated that he was incompetent during his proceedings. For example, he stated, "I know the mental health meds I was on had me completely out of it. I remember fading in and out. I did not know what was going on." (*Id.* at 2.)

October 6, 2022: In # 3495 and # 3570, Barnett *pro se* filed a 1-page ***Motion to Admit Case Law in Support of Mental Health Habeas Corpus*** (Filing # 105336604069;

"F-04069"), which submitted copies of *Pate v. Robinson*, 383 U.S. 375 (1966), and *Drope v. Missouri*, 420 U.S. 162 (1975), regarding his incompetency argument.

In # 3495 and # 3570, Barnett *pro se* filed a 3-page, typewritten ***Motion for Specific Exculpatory Evidence*** (Filing # 1053366057 in # 3570; "F-6057"), in which he sought discovery in the possession of the OAG, OSBI, and DA. The request for discovery covered both # 3495 and # 3570, and overlapped, if it was not identical to, previous requests for discovery made by Barnett. This request did include something new:

> Please provide the name of the Oklahoma Attorney General Employee who Michael Hunter was having a[n] extra martial [*sic*] sexual affair with as well as her email address for the Oklahoma Attorney General[']s Office. I will need to call her as a witness and Michael Hunter.

(F-6057 at 2.)

October 7, 2022: As to # 3495 and # 3570, in OCCA Case No. HB-2022-818, the OCCA entered an ***Order Declining Jurisdiction*** due to Barnett's not having proved that the district court denied him relief or that the proper parties were adequately noticed.

October 18, 2022: In # 3495 and # 3570, Barnett pro se filed three motions:

Amended Motion for Specific Exculpatory Evidence / Amended on October 05, 2022 (Filing # 1053364164 in # 3570; "F-4164"): Barnett sought a broad range of information, which appears to have been previously requested, from the OAG, DA and OSBI.

Motion for Specific Exculpatory Evidence / Filed October 11, 2022 (Filing #

1053364209 in # 3570; "F-4209"): Barnett appears to reiterate the same range of discovery described in F-4164, but sought from the U.S. Marshal's Service, the FBI, and TPD.

Motion to Proceed Pro-Se (Filing # 1053364201 in # 3570; "F-4201"): Barnett requested the ability to represent himself, with standby counsel. He asserted that Brian Martin is not providing effective assistance, and requested discovery to prove his own mental incompetence. (F-4201 at 1-2.)

October 20, 2022: The State filed its omnibus response to Barnett's application for PCR and other post-conviction filings. The State filed a supplement to its response on November 23, 2022.

I. Filings After the State's Responsive Briefs

After the filing of the State's response and supplement, Barnett filed numerous pleadings in both # 3495 and # 3570, some of which directly claim to pertain to his application for PCR, some of which only tangentially relate to his application, and many of which are irrelevant to the application. Those which appear to relate most directly, though redundantly, to his application for PCR include, but are not necessarily limited to, the following pleadings Barnett that has filed in # 3570 (and generally in # 3495, as well), the titles of which are given as written:

October 28, 2022: ***Defendants Answer to States Response to His Application for Post Conviction Relief.***

October 31, 2022: ***Amended Answer to States Response to Christopher Barnetts Application for Post Conviction Relief.***

November 4, 2022: ***3rd Amended Answer to States Response to Christopher Barnetts Application for Post Conviction Relief.***

December 6, 2022: ***4th Amended Answer to States Response to Christopher Barnetts Application for Post Conviction Relief, 2nd Supplemental Answer to Defendant's 4th Answer for Post Conviction Relief, Motion for New Trial Due to Giglio Violations***; and ***Motion to Dismiss for Lack of Jurisdiction*** (based on *McGirt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 1452 (2020).

December 7, 2022: ***Motion for DNA Resuts of DNA Swabs / Tests.***

January 13, 2023: ***Defendant's Motion in Support of Post Conviction Relief for CF-2019-3570.***

January 23, 2023: ***Defendant's Second Motion in Support of Post Conviction Relief for CF-2019-3570.***

February 23, 2023: ***Motion to Supplement the Record in CF-2019-3570 for Post Conviction Relief / Motion for Trial Transcript for Post Conviction Relief / Ineffective Assistance of Counsel Claim for Post Conviction Relief.***

May 25, 2023: ***Motion for New Counsel*** (with attached incomplete draft of Amended Application for Post-Conviction Relief apparently prepared by Brian J. Boeheim before submitting his application to withdraw as counsel for Barnett).

July 7, 2023: ***Amended Motion for Post Conviction Relief / Motion to Dismiss CF-2019-3495 and Motion to Vacate CF 2019 3570 / Citing Counterman v Colorado SCOTUS***

Case Law.

July 10, 2023: ***Motion to Advise Judge Guten of Verified Amended PCR Application*** (regarding Barnett's reliance upon *Counterman v. Colorado*, __ U.S. __ , 2023 WL 4187751 (2023)).

III. CONCLUSIONS OF LAW

A. PCR Proceedings - in General

Post-conviction relief proceedings in Oklahoma are a creature of statute. OKLA. STAT. tit. 22, §§ 1080 *et seq.* ("the Act"). *Romano v. State*, 917 P.2d 12, 15, 1996 OK CR 20 (The Act "governs post-conviction practice in this state.") Excluding a timely appeal, the Act "encompasses and replaces all common law and statutory methods of challenging a conviction or sentence." § 1080. The parameters of such proceedings are strictly applied. First, issues that were decided on direct appeal cannot be re-litigated pursuant to the Act; they are *res judicata*. *Logan v. State*, 293 P.3d 969, 972-73, 2013 OK CR 2; *Rojem v. State*, 925 P.2d 70, 72-73, 1996 OK CR 47; *Berget v. State*, 907 P.2d 1078, 1080-81, 1995 OK CR 66.

Second, issues that *could* have been litigated on direct appeal, but were not, cannot be decided pursuant to the Act; they are deemed waived. § 1086; *King v. State*, 29 P.3d 1089, 1090, 2001 OK CR 22; *Berget*, 907 P.2d at 1080-81. Post-conviction review was neither designed nor intended to provide applicants another direct appeal. *Id.*, 907 P.2d at 1082 (the OCCA has made it clear that the post-conviction process is not a second appeal.).

Third, issues which were or could have been raised in a previous application pursuant to the Act cannot be re-litigated; they are *res judicata* or waived, respectively. *King*, 29 P.3d at 1090.

Barnett, as the petitioner, bears the burden of proof on the issues raised by his application for PCR. *Hale v. State*, 807 P.2d 264, 268, 1991 OK CR 27; *Green v. State*, 713 P.2d 1032, 1037 (Okla. Crim. 1985).

B. Barnett's Application for PCR

Since the date of the OCCA's decision of Barnett's appeal, Barnett has filed dozens of pleadings with the Court. They overlap and repeat arguments from one to the next, with many scattered assertions of why Barnett deserves a new trial or an outright release. Although Barnett's arguments are often unclear, confusing, and prolix, the following issues appear to be advocated by Barnett: (1) *Brady*, newly discovered evidence and discovery requests; (2) failure of the State to investigate gunpowder residue, DNA and fingerprints; (3) failure of the State to authenticate Facebook posts at trial; (4) ineffective assistance of counsel at trial and on appeal; (5) mental incompetency; and in his most recent Application, (6) lack of jurisdiction based on McGirt. These issues will now be considered in turn.

C. Newly discovered evidence and discovery requests

1. *Brady* and the newly discovered evidence

Barnett's PCR App, PCR App Supp and other filings claim that he recently discovered evidence that relates to communications between TU, its counsel John Lackey, the OAG, and others, which demonstrate, at least in part, that the Facebook

posts introduced at his trial were fabricated by TU personnel and were not properly authenticated for trial, that they do not pertain to his Facebook account, and that he did not write the posts. Barnett's repeated assertions about this discovery, supposedly withheld from Barnett's counsel by the DA in violation of *Brady v. Maryland*, 373 U.S. 82 (1963), fail to justify relief for several reasons.

Due process requires the State to disclose exculpatory and impeachment evidence favorable to the accused. *Fuston v. State*, 470 P.3d 306, 322, 2020 OK CR 4. To substantiate a *Brady* violation, a defendant must show that the prosecution suppressed evidence that was exculpatory or favorable to the defense, and that it was material. *Id.* Such evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Id.* The mere possibility that an item of undisclosed information might have helped the defense or affected the outcome does not establish materiality. *Brown v. State*, 422 P.3d 155, 175, 2018 OK CR 3. The question is not whether the verdict more likely than not would have been different, but whether in its absence the defendant received a fair trial, resulting in a verdict worthy of confidence. *Id.*

Barnett does not fulfill any of the criteria of a valid *Brady* claim. Although he refers to many kinds of communications between TU, the OAG, TPD, DA, and others, including emails and telephone calls, claiming they number in the hundreds of pages, and stating that they do or would exculpate him, he does so in only conclusory terms. The information to which he refers appears to pertain to *the TU threats case*, #

3495. Barnett provides the Court with *no* particulars about any documents that are exculpatory or favorable to him as to *the shooting case*, # 3570. Barnett's own counsel believes the defense received everything pertinent to the shooting case. (*See* Affidavit of Jason D. Lollman attached to the State's response as **Exhibit 5** at Para. 7.) Indeed, the attorneys for both sides in the course of the trial did their best not to expose the jury to any aspect of the TU threats case, to which the purportedly newly-discovered evidence appears to relate. It is impossible to see, therefore, how any of the documents or information, whatever it may be, would have altered the outcome of the shooting case.

Moreover, the Facebook posts *were* authenticated and introduced properly – pursuant to a stipulation made between the parties. The stipulation was made precisely for the purpose of minimizing the chance that TU would become an issue in the shooting case. *See, e.g.*, TT I at 13 (Mr. Jones, on behalf of Barnett: "but I think this Court understands how it could be unfairly detrimental to Mr. Barnett when those allegations [about a TU investigator's daily review of Barnett's Facebook page] *are completely unrelated to the present allegation.*" (Emphasis added); *Id.* at 23 (Court suggests the parties work on a stipulation as to foundation on the posts to avoid mention of TU employee's work in testimony); TT III at 36-43 (stipulation formulated, presented to the jury). Barnett's counsel objected to the admission of the posts, but only as to relevance, not as to any authentication issue. (*Id.* at 43.)

In addition, Barnett himself admitted in testimony that he wrote the posts and

the Facebook account was his. (TT III at 104-105.) He is now changing his stance on that issue because he has had to pay the consequences of his actions, which previously he admitted.

Finally, the OCCA has ruled that the Facebook posts were properly admitted into evidence. That issue is *res judicata*. Barnett cannot undo the OCCA's decision in the context of a PCR application, nor can this Court set aside the decision of the higher court. Consequently, the issue of newly-discovered evidence provides no ground for relief here.

2. Discovery requests

Barnett repeatedly requests discovery of materials from a variety of sources, including the DA, OAG, TPD, OSBI, various individuals, the courts, and law firms. He is not entitled to any of the requested discovery in the context of the shooting case, # 3570, or in the context of his application for PCR. There is no general constitutional right to discovery in a criminal case. *Fuston*, 470 P.3d at 323-24 ("fishing expedition" not warranted where defendant broadly sought records and reports from county courts and prosecutors, the Oklahoma Department of Corrections and U.S. Bureau of Prisons, the FBI and U.S. Marshal's Service). A defendant seeking PCR has no right to obtain the prosecution's entire file. *Fields v. State*, 946 P.2d 266, 272-73, 1997 OK CR 53 (discovery denied where defendant sought but did not explain materiality of records from Oklahoma County district attorney and Oklahoma City police and records from judge presiding at murder trial resulting in death penalty). *See also Rojem*, 925 P.2d at 73-76 (trial court did not err in denying discovery in course of post-

conviction relief proceedings). Here, Barnett provides the Court with no authority for entertaining his far-ranging discovery requests and, hence, they should be denied.

D. Gunpowder residue, DNA and fingerprints

Barnett argues that TPD never tested his hands for gunpowder residue and, if it had, investigators would not have found any on his person, thereby exonerating him. He also argues that the lack of DNA and fingerprint evidence exculpate him. Again, these assertions fail to deliver any relief to Barnett for several reasons.

First, the failure of investigators to do anything is something to be argued to a jury. It is not a legal basis for post-conviction relief. Investigators fail or choose not to take many steps in the course of case development, but that does not mean that what they *do* develop as evidence is legally unsound or a reason for granting a defendant relief from a jury verdict. Barnett provides the Court with no legal authority for ruling otherwise.

Second, whether or not gunpowder residue, DNA or fingerprints would have appeared on Barnett or the gun is irrelevant at this point. Barnett testified under oath at trial (TT III at 109-111, 115-116) and has stated repeatedly in his *pro se* filings, as reviewed above, that he shot Ian Napier. When he was taken to the hospital after the shooting, due to his report of having chest pains, the TPD officer accompanying him heard Barnett tell the nurse "that the chest pains started after he shot someone that tried to pull a gun on him." (TT III at 19.) On cross-examination, the officer agreed that Barnett "was pretty open and honest" that "he shot someone." (*Id.* at 21.) Barnett told news reporters that he shot the man in his yard out of fear for his life – he never

denied that he shot the man. (*Id.* at 23-36.) His defense has never been that someone else shot Napier. Instead, it has always been that he was justified in pulling the trigger. He claimed the protection of the Oklahoma Stand Your Ground laws. At trial his counsel was able to have the jury instructed about self-defense. For Barnett to now fault investigators for failing to test him for gunpowder residue and to claim "actual innocence" is both frivolous and wholly without merit. Both the direct and circumstantial evidence proved that Barnett shot Napier. Barnett himself has admitted to this fact several times. He admitted it in his pleadings, he admitted it to the news media in interviews, he admitted it under oath when he testified at his "Stand Your Ground" hearing, and he admitted it under oath at his trial. His defense has never been that he didn't shoot Ian Napier but rather that he was justified in doing so. It is the very reason he raised the "Stand Your Ground" defense and it's the very reason he wanted a self-defense instruction to be given to the jury, which his counsel was successful in obtaining.

Additionally, only two men were in the house that Napier approached to serve papers. Barnett testified he went to the door, and that his husband George was in their bedroom. George testified that he heard the shot and that he did not fire the gun. No one else was present to have pulled the trigger. Indeed, Barnett told his husband that he shot someone. (*See* TT II at 230, 239.)

Barnett in his filings before this Court has never contradicted the version of who shot whom that the jury heard, at least until his recent filings with the Court, long after the jury rendered its verdict of guilty. In his application for a writ of habeas corpus in

OCCA Case No. HC-2022-675, Barnett does cryptically suggest that someone shorter than he, standing on a milk crate behind him, may have shot Napier. Filing # 1052969383 in that case at 10, available online. He re-asserts this argument in more recent filings with this Court, claiming that Napier's description of the shooter does not match Barnett's own height of approximately six feet, five inches. These were issues for the jury to decide, which it did – against Barnett. Furthermore, even if true, which it is not, this claim of "actual innocence" is one which could have (and should have) been raised in his initial appeal, which it was not. To raise such a claim now is procedurally barred under the Post Conviction Relief Act as it has been waived.

E. Authentication of Facebook Posts

This point has been raised repeatedly by Barnett. As explained in the section dealing with newly-discovered evidence, Barnett's argument about the State's failure to authenticate the posts is wholly without merit. Barnett stipulated to the authenticity, admitted to the authenticity himself, and the OCCA has ruled on this issue, precluding any re-litigation of the issue.

F. Ineffective Assistance of Counsel

A claim of ineffective assistance of counsel is difficult to make. *Strickland v. Washington*, 466 U.S. 668 (1984), provides the analytic framework for such claims. *Logan*, 293 P.3d at 973. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. A petitioner such as Barnett must show both (1) deficient performance

by counsel by demonstrating that his counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Logan*, 293 P.3d at 973.

Strickland explains that, as to the first prong, "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." 466 U.S. at 688. All of the circumstances of the case must be considered. *Id.* A defendant must overcome a strong presumption that counsel's conduct fell within a wide range of professional assistance. *Id.* at 689. Performance should not be reviewed in the lens of hindsight. *Bench v. State*, 431 P.3d 929, 976, 2018 OK CR 31.

As *Logan* noted, the prejudice prong can often be addressed first. *Id.* at 974. A defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. The likelihood of a different result must be substantial, not just conceivable. *Bench v. State*, 504 P.3d 592, 598, 2021 OK CR 39. As to appellate counsel's performance, if the claimed appellate issue has no merit, there is no basis for relief. Thus, pursuant to *Logan*, the relative merit of an omitted issue must be evaluated in order to determine whether appellate counsel's performance was adequate. 293 P.3d at 973-74.

The OCCA identified three categories of "relative merit" in the context of the adequacy of appellate performance. First are those claims which are "plainly meritorious" or "dead-bang winners." Claims that are "plainly meritorious" are

"appellate claims that are so strong and so obviously deserving of appellate relief that they directly establish both inadequate performance and prejudice." *Id.* at 975.

Next are meritless claims. A "meritless" claim, where there is not even a reasonable probability that the claim would have succeeded on appeal, compels a conclusion that appellate counsel was not ineffective in failing to raise the issue. *Id.*

Lastly, are claims that have merit, but are not plainly or obviously meritorious. *Id.* at 974-75. These claims require a more "complex analysis." The question becomes whether appellate counsel's performance in failing to raise the omitted claim is "objectively unreasonable." *Id.* The *Logan* court held "[g]enerally only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." *Id.* at 975-76. Thus, the reviewing court must consider the relative merit of the omitted issues, in relation to any appealed issues, in order to determine whether appellate counsel's performance was adequate, applying a "strong presumption" that the performance was adequate as "[s]uch claims will sometimes require relief -- but usually not." *Id.*

Here, Barnett argues that his trial counsel was ineffective for various reasons, and that his appellate counsel was ineffective for failing to raise on appeal the deficiencies of his trial counsel. Necessarily, if trial counsel was not ineffective, then appellate counsel would not have been ineffective for making such an argument on appeal. For each of the issues that Barnett raises, therefore, this Court finds that neither trial nor appellate counsel ineffectively represented Barnett in their respective forums. It is vital to review each argument about what defense counsel *failed* to do against the

backdrop of what they *did* do. The assessment must consider the attorney's overall performance. *Davis v. State*, 268 P.3d 86, 133, 2011 OK CR 29.

As the Supreme Court noted in *Strickland*, no two lawyers would handle the same situation identically. 466 U.S. at 689. Many methods can constitute excellent representation. Thus, it is important to presume a defense attorney did well, and it is just as important to remember what they *did*, and not simply focus on what they did *not* do.

Here, Mr. Lollman, the trial counsel, filed and litigated multiple motions before and during trial. He submitted and argued for a requested instruction. He examined virtually every witness presented by the State at trial, often for nearly as much time as the prosecution did, and he presented Barnett himself as a witness for the defense. He argued substantially to the jury, despite having a difficult set of facts to controvert.

On appeal, Barnett's counsel, Nicole Herron, advanced seven major propositions on Barnett's behalf. It is a maxim of appellate practice that counsel must focus on significant issues and not waste the court's time with a shotgun approach. "Appellate counsel need not raise every non-frivolous issue." *Coddington v. State*, 259 P.3d 833, 836, 2011 OK CR 21. Ms. Herron targeted the admission of the Facebook posts, prosecutorial misconduct, the Stand Your Ground motion, and effectiveness of counsel, which were substantial issues. In contrast, nothing that Barnett raises in his brief for PCR equals the kind of issues that Ms. Herron argued on his behalf. Given this level of advocacy on appeal, Barnett offers nothing in his arguments here, which will now be reviewed specifically, that warrants relief. It is Barnett's burden to set forth

sufficient facts and law which allow a court to fully assess appellate counsel's deficient performance. *Fields*, 946 P.2d at 270. Barnett has not done so.

Barnett is unspecific as to what his attorney should have done that would have been sufficiently compelling to obtain an acquittal at trial. Speculative and conclusory allegations of ineffectiveness are inadequate. *Knapper v. State*, 473 P.3d 1053, 1063, 2020 OK CR 16. The deficiency of Barnett's application is especially clear in light of the representation he received from Mr. Lollman, and assisted by Mr. Jones, at trial. (*See* Lollman Affidavit attached to State's response as **Exhibit 5** at Paras. 4-5.) Mr. Lollman is a highly experienced attorney. (*Id.* at Paras. 1-3.) He and Barnett communicated regularly throughout the proceedings. (*Id.* at Paras. 5, 8, 10.)[7] Barnett never indicated to Lollman that he was dissatisfied with Lollman or that he thought Lollman had failed to present a defense adequately. (*Id.* at Para. 10.) Similarly, Barnett conferred with Nicole Herron, who represented him on appeal, about the issues to be raised before the OCCA, and he appeared to understand that process and to be satisfied with the representation he received on appeal. (*Id.* at Para. 11.)

[7]When a defendant claims that he received ineffective assistance of counsel, he puts communications between himself and his attorney directly in issue, and thus by implication waives the attorney-client privilege with respect to those communications. *United States v. Pinson*, 584 F.3d 972, 977-78 (10th Cir. 2009); *Griffin v. United States*, 2022 WL 3224605 at *1-2 (W.D.N.Car. Aug. 9, 2022) (unpublished); *Lewis v. United States*, 2022 WL 2918601 at *3 (N.D. Iowa July 25, 2022) (unpublished); *Cvjeticanin v. United States*, 2021 WL 2261589 at *1 (D.N.J. June 3, 2021) (unpublished); *Rosemond v. United States*, 378 F.Supp.3d 169 at n. 7 (E.D.N.Y. 2019) ("Although courts are naturally hesitant to permit an attorney to disclose communications otherwise protected by the attorney-client privilege, courts are 'unanimous' that an attorney is permitted to do so to defend against an ineffective assistance of counsel claim.")

Mr. Lollman and Barnett made important decisions together about how the case should be handled, including whether to assert self-defense and whether Barnett should testify at trial. (*Id.* at Para. 10.) As noted above, Mr. Lollman advocated strongly to exclude evidence about the TU investigation of Barnett's internet postings. (*Id.* at Paras. 7-8.) He was successful in his efforts. Mr. Lollman advocated for the giving of a self-defense instruction. (*Id.* at Para. 9.) He was successful.

In short, Barnett does not meet his burden of showing that his trial counsel performed ineffectively. Nor has he shown prejudice, for he does not explain how any aspect of Mr. Lollman's advocacy, if done differently, would have altered the outcome of a trial. Moreover, he does not demonstrate that any potential issue on appeal was a "dead-bang winner" or even one of some merit, compared to those issues that were raised. His arguments now warrant no relief, and appellate counsel was not obligated to make them on appeal. *See Bench v. State*, 504 P.3d 592, 599, 2021 OK CR 39 (appellate counsel was not ineffective for failing to raise a baseless claim).

Barnett asserts that his attorneys had a conflict of interest, in part because Corbin Brewster, the chief public defender, had allegedly once handled some legal issue for himself and George Barnett, and partly because the trial and appellate attorneys worked in the same office.[8] Barnett does not explain, however, why

[8]For a sample of Barnett's varying allegations about the purported conflicts of interest, *see, e.g.*, **F-9424** at 7: "I am going to sue the Public Defender[']s Office for legal malpractice in federal court soon. I am listing Corbin Brewster, Nicole Herron, Jason Lollman and Caleb Jones as Defendants. I think this creates a conflict of interest." **F-6662** at 2: "This case has so many errors from both my ineffective counsel due to their conflict of interest, that conflict being the University of Tulsa . . . ."

Brewster's alleged earlier work was a conflict with Mr. Lollman and Ms. Herron representing him at trial and on appeal. He also completely fails to explain how the conflict affected anything in the handling of the shooting case. Moreover, the fact that trial and appellate counsel worked together in the same public defender's office is insufficient, in and of itself, to prove a conflict. *Fields*, 946 P.3d at 271; *Pickens v. State*, 910 P.2d 1063, 1069, 1996 OK CR 6.

Barnett never objected to the Public Defenders' representation. In the absence of such an objection, he must demonstrate an actual conflict, not just the possibility of one. *Id. See also Cuyler v. Sullivan*, 446 U.S. 335, 348-350 (1980) (possibility of conflict is insufficient to impugn a conviction; an actual conflict must have adversely affected the defense attorney's performance); *Livingston v. State*, 907 P.2d 1088, 1091-92, 1995 OK CR 68 (actual conflict exists where the interests of attorney and defendant diverge with respect to a material factual or legal issue or course of action, such as where counsel is unable to cross-examine state witness effectively because counsel also represented that witness); *Perry v. State*, 764 P.2d 892, 896, 1988 OK CR 252

F-6670 at 5: "My former attorney Mari Riera from the Tulsa County Public Defender[']s Office told me there was a conflict due to Corbin Brewster representing my husband and I against the University of Tulsa."
F-6786 at 1: "My Public Defenders finally withdrew because of their conflict of interest with the University of Tulsa."
F-5163 at 3: "and of course the Public Defender having two conflicts of interest the University of Tulsa and Corbin Brewster[']s client, my husband George Barnett."
F-1604 at 2: "Corbin Brewster represented my husband George Barnett prior to us filing the lawsuit against the University of Tulsa. Corbin had a conflict of interest and the public defender[']s office should have withdrawn but failed to do so."
Barnett does not explain what the attorneys' conflict with TU entailed.

(speculations about possibility of conflict rather than demonstrating actual conflict is insufficient); *Workman v. Mullin*, 342 F.3d 1100, 1107 (10th Cir. 2003) (actual conflict exists only if counsel was forced to make choices advancing interests to the detriment of his client). Barnett offers no evidence of an actual conflict, where his interests diverged from some other duty of loyalty owed by his counsel at trial or on appeal.

United States v. Soto Hernandez, 849 F.2d 1325 (10th Cir. 1988), is instructive. Soto was charged with drug offenses. He hired an attorney, Lackmann, who had previously represented one Perez in a child custody case. Soto's defense was that he was coerced into trafficking by Perez. After conviction, he claimed that Lackmann operated under a conflict of interest, since he had previously represented Perez. The Tenth Circuit disagreed, noting that the earlier Perez litigation in which Lackmann appeared as counsel was totally unrelated to Soto's drug case. Lackmann's representation of Perez did not carry over to the time of Soto's trial, nor was the representation connected to the Soto case. Nothing indicated that Lackmann was actively representing conflicting interests at the time of Soto's trial. *Id.* at 1328-29.

Similarly here, Barnett has not established that any public defender was actively representing his husband at the time of the shooting trial. Moreover, the interests of the two men were aligned in their dealings with TU and in their dealings with both the shooting and the TU threats cases. George Barnett, though called as a witness by the State at preliminary hearing and at trial in the shooting case, provided testimony that was useful to the defense. Further, he testified in support of Barnett being released on bond. Barnett, therefore, has not established an active conflict of interest that requires

the reversal of the judgment in this case.

In sum, Barnett has failed to demonstrate that his trial and appellate attorneys provided inadequate representation, that he was prejudiced by anything they did in representing him, that any aspect of representation that he now raises would result in a different result, or that principles of *res judicata* do not apply to his application for PCR. He does not warrant relief.

G. Mental Competency

In his more recent filings, Barnett has raised the specter of his mental competency at the time of the shooting and throughout the proceedings up to the jury's verdict. He claims to be afflicted with a host of mental problems which place him, he says, within the ambit of *Pate v. Robinson* and *Drope v. Missouri*. For example, Barnett states that he was "suffering from Depression, Bi-Polar Disorder, Detachment Disorder, anxiety, post traumatic stress disorder, ADD, ADHD, rapid bi-polar depression and several other things." (F-1674 at 2.) None of his arguments and allegations about his competence, or lack thereof, require the undoing of the jury verdict in this case.

The constitutional guarantee of due process of law includes the right to be tried only when one is sufficiently competent to understand the nature of the charges and to assist counsel in preparing a defense. *Nolen v. State*, 485 P.3d 829, 845, 2021 OK CR 5. The constitutional requirements are codified in OKLA. STAT. tit. 22, § 1175.1. *Id.* The law presumes competence, requiring the defendant to prove his incompetence by a preponderance of evidence. *Id.*

Mental competency claims can be of two types, procedural and substantive. A procedural competency claim is based on the trial court's alleged failure to hold a competency hearing, or an adequate competency hearing. *Id.* A substantive competency claim is founded on the allegation that an individual was tried and convicted while, in fact, incompetent. *Id.* A defendant need not, however, be competent during an appeal. *Id.* at 852. Nor need he be competent during post-conviction relief proceedings. *Cf. Ryan v. Gonzalez*, 578 U.S. 57 (2013) (involving federal habeas corpus proceedings brought by state prisoners).

As *Pate* and *Drope* both explain, competency is an issue as to which a court must be vigilant throughout the course of criminal proceedings. *Drope*, 420 U.S. at 181. But in all cases, there must be sufficient cause for a court to be alerted to the issue. In Oklahoma, the law provides that a defendant, his attorney, or the district attorney may file an application for a determination of competency that states "facts sufficient to raise a doubt as to the competency of the person." § 1175.2(A). A court may initiate a competency determination without an application "if the court has a doubt as to the competency of the" defendant. *Id.* The trigger, therefore, is "a doubt." No examination and no post-examination competency hearing is required unless the trial court first makes the threshold finding that there is a doubt as to the defendant's present competency. *Frederick v. State*, 37 P.3d 908, 922, 2001 OK CR 34.

In this case, there was no "doubt" to trigger an inquiry into Barnett's competency. In his motion for emergency bond reduction filed August 7, 2019 (F-0060), Barnett explained that he expected to produce new evidence to support his

release. The new evidence included "medical evidence from Defendant's physician expressing the Defendant, in his doctor's opinion, is not a threat. His doctor has been treating him for 10 years and knows a lot more about him than any tainted testimony presented by law enforcement." (F-0060 at 2.) This preview of the medical evidence whispered nothing of Barnett's purported incompetency at the time of the shooting or in the criminal proceedings.

At the bond hearing on **August 14, 2019**, before Judge Keeley, Barnett's then-counsel, Brendan McHugh, presented two witnesses on his behalf. The first, Christopher Fogleman, was a bondsman who testified that he was prepared to make bonds in the amount of $75,000 and $1 million for Barnett. He related nothing that raised a question about Barnett's competency which, presumably, would be a substantial factor to a bondsman posting a bond over $1 million. Barnett's husband, George William Barnett, III, also testified and never mentioned anything that suggested Barnett was incompetent or of questionable mental capacity.

On **August 26, 2019**, when the court was ready for the preliminary hearing and yet Barnett's counsel did not appear on time, Judge Keeley instructed Barnett not to say anything while everyone waited for word from Mr. McHugh. Barnett accordingly said nothing.

On **September 24, 2019**, in # 3570, the Court had a lengthy discussion with Barnett about his assets in the context of determining whether he was entitled to court-appointed counsel. *See Transcript of Proceedings Held September 24, 2019, Before the Honorable Tracy Priddy*, available in the Court file for # 3570. Barnett explained why

he had no bank accounts, that his doctor had provided a letter that he was not a threat, and what the charges were that he was facing: "The charges that they are alleging against me are very serious." (*Id.* at 3.) He stated that he claimed "stand your ground self-defense" and expressed confidence that he would be granted immunity accordingly. (*Id.*) He understood that he should not say too much in court: "I am aware it can be used against me, yeah." (*Id.* at 4.) He discussed the status of properties and businesses that he owned and operated, and told the Court, "We had 25 employees." (*Id.* at 5.) He explained that he was "the bread winner in my family. My husband is not able to make any money because I am the one who makes it." (*Id.* at 7.) He had a marijuana grow business and a carpet cleaning business, neither of which his husband could continue alone. (*Id.*) "If I had bond, I would be able to get out and work and pay for my attorneys." (*Id.* at 9.) Barnett repeatedly told the Court that he understood that at some point he might need to reimburse the cost of a public defender. (*Id.* at 11.) He expressed his thanks for the Court's "kindness and understanding." (*Id.*) He inquired whether the Court had jurisdiction to issue a writ of prohibition, or whether that would "go to the criminal court of appeals?" (*Id.* at 12.) He informed the Court that he intended to have his attorney file for such a writ. (*Id.* at 13-14.) At no point during the hearing did Barnett express to the Court that he did not understand what was happening, that he was incompetent, that he wanted to be evaluated mentally, or that he felt that he could not proceed because of his mental or physical condition.

On **January 2, 2020**, in # 3570, the Court held a substantial hearing on the

Stand Your Ground issue. *See Transcript of Proceedings Held January 2, 2020, Before the Honorable Tracy Priddy* ("1/2/20 T"), available in the Court file for # 3570. Barnett testified at length about the shooting of the process server. (*Id.* at 5-30.) Again, neither he nor his attorney expressed any qualification to his competence. His testimony was cogent, on track with the questions from both sides, and clear. He stated that he was armed with his husband's 9mm gun, and that he used it because he felt like his "life was in imminent peril of death." (*Id.* at 9-10.) He discharged the firearm at the man he saw through the front door of his residence. (*Id.* at 11.) Then Barnett called 911. (*Id.*) On cross-examination, Barnett admitted that he did Google research to determine whether he could legally shoot a process server that he considered to be trespassing. (*Id.* at 16.) He had filed lawsuits. (*Id.*) He had used process servers. (*Id.*) He absolutely wanted to know whether he could shoot a process server through Googling the question. (*Id.* at 18.) He reviewed video and audio tapes of the incident; "Everything is captured on there that I am aware of." (*Id.* at 19.) He reviewed the videos before he was arrested, at the bond hearing, and at the preliminary hearing. (*Id.* at 21.) He reiterated on cross that he shot at the man and thought he hit him in the left elbow. (*Id.* at 25-26.) His testimony covered other details about the shooting. Suffice it to say that Barnett's memory and explanation appeared to be clear, although if not altogether true. There was no hint of incompetence in his testimony, no suggestion of such by the attorneys present, and no remark by the Court that raised any doubt about Barnett's ability to understand the nature of the case or to assist his counsel in his defense.

On **January 3, 2020**, in # 3570, the Court concluded the Stand Your Ground hearing and denied Barnett's request for immunity. *See Transcript of Proceedings Held January 3, 2020, Before the Honorable Tracy Priddy* ("1/3/20 T"), available in the Court file for # 3570. In the arraignment portion of the hearing, Barnett acknowledged to the Court that he wished to plead not guilty to the charge. (*Id.* at 17.) He also signaled that he understood the State was withdrawing its original proposal to resolve the case and that he needed no additional time to consider the situation. (*Id.* at 17-18.) He indicated that he wanted to be present for the *Allen* hearing. (*Id.* at 19.)

On **January 24, 2020**, in # 3570, Barnett was present for another bond hearing, this time before Judge Priddy. *See Transcript of Proceedings Held January 24, 2020, Before the Honorable Tracy Priddy*, available in the Court file for # 3570. Mr. Lollman explained that "we believe we have a case that he acted in self-defense on his own property. And that is going to be our defense at trial." (*Id.* at 4; *see also* at 12: "our defense is self-defense.") Counsel noted that Barnett had no disciplinary actions taken against him in jail. (*Id.*) Barnett was willing to stipulate to any conditions of release. (*Id.* at 5.) In this context, Mr. Lollman explained:

> Mr. Barnett in the past six months, or seven months, or however long he has been in custody, has gotten on medication to treat his bipolar disorder. He has stabilized and he is willing to comply with whatever conditions, if the Court should choose to impose those, necessary. That would include making sure that he takes his medication, making sure that he, you know, remains under house arrest, making sure that he has an ankle monitor. He will do those things.

(*Id.* at 14.) This brief mention of his bipolar disorder is the only allusion to any mental

issue for Barnett, and nothing in Mr. Lollman's statement hints that Barnett did not understand the proceedings or could not assist his counsel in formulating a defense. In short, nothing happened in the hearing that would raise a red flag to the Court that Barnett's competency was in doubt.

On **March 4, 2020**, in # 3570, Barnett testified before the jury in his own defense. (TT III at 97-155.) He was the only witness called on behalf of the defendant. Before Barnett testified, the Court examined him about his decision to do so. (*Id.* at 97-100.) Under oath, Barnett told the Court that he understood the charge and range of punishment involved in the case. (*Id.* at 98.) He said he understood his rights and the procedures. (*Id.* at 98-99.) As to his state of mind, the Court engaged in the following colloquy with Barnett:

> THE COURT: All right. Are you under the influence of anything today, Mr. Barnett, that would affect your judgment or your thinking?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: Are you taking any medications today –
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: – that would affect your judgment or your thinking?
>
> THE DEFENDANT: No, ma'am. Just Life Savers.
>
> THE COURT: Okay. I know that you had a discussion with your counsel about what this means to you, correct?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: However, whose decision ultimately is it to take the stand in this matter?

THE DEFENDANT: Mine.

THE COURT: Okay. Has anyone forced you to take the stand?

THE DEFENDANT: No, ma'am.

THE COURT: Has anyone promised you or coerced you in any way to take the stand to testify today?

THE DEFENDANT: No, ma'am.

THE COURT: All right. Do you need any further time to discuss or think about your decision?

THE DEFENDANT: No, ma'am.

THE COURT: All right. *Anything further that we need to take up on the record before we call the jury back in?*

MR. LOLLMAN: Not on the record, Your Honor.

THE COURT: All right. We'll bring the jury in.

(*Id.* at 99-100; emphasis added.) Apart from thoroughly exploring Barnett's state of mind, the Court invited comments about anything further that needed to be considered. No one said anything about Barnett's competence – not his counsel, not the prosecution, not the Court, and not Barnett himself. The flow of the colloquy itself demonstrated that Barnett was entirely competent on the verge of testifying.

Barnett's testimony in trial, like his previous statements in and out of court, was clear and responsive. He admitted to being nervous – "A little bit." (*Id.* at 102.) Nothing more. He admitted to making the statement in State's Exhibit 20 that "the best process server is a dead one." (*Id.* at 104.) He stated that he deleted the statement hours later. (*Id.*) He admitted making the Google search shown in State's Exhibit 21.

(*Id.* at 105.) He made the search "what their capacity was, if they [process servers] are just a normal citizen trying to serve paper work or if they have some sort of special law enforcement powers granted to them, what they can and cannot do." (*Id.* at 105-106.) Barnett stated that he shot the man in his front yard. (*Id.* at 109: "I shot him.") The door glass broke "and then I apparently hit the person that I was aimed at." (*Id.* at 110.) After he shot the man, Barnett called 911 and called for his husband. (*Id.* at 111.) He was scared, terrified, and frantic; he felt like his life flashed before his eyes. (*Id.* at 112.) They unloaded the gun, as the police were on their way. (*Id.* at 114.) He had an anxiety attack and went to the hospital, then went to the TPD detective division downtown. (*Id.* at 115.) He spoke to the news and embellished some things, and expressed regret for shooting Ian Napier. (*Id.* at 115-16.) He had run for governor and received threats in the past. (*Id.* at 117.)

When asked about the Stand Your Ground law on cross-examination, Barnett responded:

> A. It is a law in the state of Oklahoma that states something to the effect of if you are met with force or an unlawful, forceful felony is taking place you have a right to stand your ground and meet force with force and the law presumes you have acted in – not in good faith. There is another word for it. But you acted within reason in using force against a person even if it turns out later you did not – the person did not have any reason for you to use force against them.
>
> Q. Wow, you know that pretty well.
>
> A. Well, I screwed it up a lot, but it is to that effect.
>
> Q. You have Googled it, correct?

A. I did, but I didn't take a screenshot, so forgive me.

Q. But you have Googled it and you are familiar with stand my ground law, correct?

A. It is stand your ground, not stand my ground.

(*Id.* at 130-131.) In other words, Barnett was entirely comfortable jousting with Assistant District Attorney Mark Collier. He said that he was sorry he shot Napier – he did not deny having shot him. (*Id.* at 140.) He would not have shot him if he knew then what he knows now. (*Id.* at 144.) Barnett shot Napier "because I was scared. Q: You meant to shoot him? A: Same answer." (*Id.* at 146.)

Nowhere in the record of the trial is there any hint that Barnett was incompetent at the time of the offense or during any of the proceedings through the verdict.

On **May 22, 2020**, in # 3570, when the Court sentenced Barnett, he made a statement to the Court. (Sent. T. at 16-17.) He stated, "I am very sorry for shooting and wounding Mr. Ian Napier." (*Id.* at 16.) Again, "From this mistake I fired one single shot and I hit Ian Napier." (*Id.*) He asked for probation. (*Id.* at 16-17.) At no time during the sentencing proceedings did anyone, including Barnett himself, suggest to the Court that his competency was impaired.

From September 2019 to May 2020, the Court observed and conversed with Barnett, and watched him testify. Not once has anyone associated with the defense or the State raised any question about his competency, nor has the Court ever expressed a doubt about his competency. In particular, Mr. Lollman, who was familiar with competency proceedings in general, never thought that Barnett's competency was in

question or needed evaluation. (*See* Lollman Affidavit, **Exhibit 5** to State's response, at Paras. 9, 11.) The record has nothing in it from medical or psychological or social counseling personnel to suggest that his mental faculties were impaired. Thus, there was never a reason for the Court to "doubt" and, therefore, make a determination of, Barnett's mental competency. Hence, there was no reason for him to be afforded hearings on the matter, and his due process rights were not denied. He has no claim of procedural competency error.

Caselaw supports the proposition that Barnett's claim of incompetency should be rejected. In *Davison v. State*, 478 P.3d 462, 2020 OK CR 22, the defendant was sentenced to death for the murder of his girlfriend's infant son. On appeal, Davison argued that the trial court erred by denying his counsel's repeated mid-trial requests for a hearing to determine his competency to stand trial. 478 P.3d at 480. He raised a claim of procedural due process, alleging that the trial court failed to give proper weight to facts that met the necessary threshold to suspend the ongoing trial for at least a hearing on the application made by his attorney as required by § 1175.3(A)-(C). *Id.* The OCCA acknowledged the *Drope* admonition that trial judges must be alert to circumstances that suggest a defendant is incompetent to stand trial. *Id.* at 480-81. Reviewing the record for an abuse of discretion, the OCCA recognized that Davison's counsel alerted the trial court to delusional behavior. The trial judge questioned Davison, learning that he thought God would grant him an acquittal and that his dead brother was communicating with him. Defense counsel renewed the applications for determination of competency at least two more times. *Id.* at 481. The trial judge

rejected the applications, finding that there was nothing to suggest that Davison was incompetent in any way. *Id.* The OCCA agreed. "The trial court reasonably concluded that the facts raised insufficient doubt of present competence to suspend the proceedings." *Id.* Further, the OCCA rejected that premise that Davison was denied any required "hearing" on his various applications. "The court duly entertained these requests, denying them only after assuring itself that the facts were insufficient to doubt that Appellant was presently competent. This procedure was proper . . . ." *Id.* at 482.

In *Gilbert v. State*, 951 P.2d 98, 1997 OK CR 71, the appellant was sentenced to death for murder and convicted of other serious crimes. On appeal, Gilbert argued that the trial judge erroneously refused to order a competency evaluation, claiming that his counsel had raised a doubt that would trigger such a hearing. The OCCA rejected the argument. The determination of whether a sufficient doubt has been raised regarding a defendant's competency is left to the trial judge, based upon the particular facts and circumstances of each case. 951 P.2d at 104. "The trial court is not required to give controlling effect to the opinions of experts, but may rely on the opinion of lay witnesses and the court's own observations of the defendant." *Id.* Gilbert's counsel filed an incompetency motion, alleging that the defendant did not understand enough to assist in the defense. *Id.* The trial court heard testimony from a defense investigator suggesting that Gilbert did not fully understand the proceedings and had difficulty focusing on issues. *Id.* The OCCA agreed with the trial court that this was not enough, citing cases which explained that having been treated for mental conditions in the past, or a nervous condition, or having been in a special education program in school, was

not enough. *Id.* at 105. Two psychologists and a psychiatric professor gave testimony

> that Appellant was diagnosed as having an attention deficit disorder, post-traumatic stress disorder, and borderline personality disorder. None of this testimony, or Appellant's drawing of a picture during trial, is sufficient to raise a doubt as to Appellant's ability to consult with counsel or understand the nature of the proceedings against him. At most, it showed Appellant had difficulty paying attention during trial and suffered from emotional problems.

951 P.2d at 106. The trial court determined there was no doubt as to Gilbert's competency to be sentenced.

> The court based this finding on its reading of the recorded statement made by Appellant to a detective in New Mexico and his personal observations of Appellant during the preliminary hearing, arraignment, pre-trial motion hearings, and trial. The court made note of Appellant's conversations with counsel, responses to law enforcement officials who accompanied him to and from the courtroom, his responses to other court officials, and his responses in the instant hearing. Based on the evidence before it, the court did not err in finding that there was no doubt as to Appellant's competency to be sentenced. The evidence was sufficient to show that Appellant knew the nature of the crime with which he was charged, the range of punishment and that he was capable of assisting his attorney with his defense.

Id. at 107.

In *James v. Gibson*, 211 F.3d 543 (10th Cir. 2000), the defendant raised a procedural competency claim. *Id.* at 550. The Tenth Circuit explained that James had to establish a "bona fide doubt as to his competency" at time of trial as a predicate to the claim. *Id.* at 551. Evidence of irrational behavior, demeanor at trial, and prior medical opinion regarding competence were relevant to that inquiry. *Id.* The record did not support such a finding. Although James had a schizoid personality which slightly affected his ability to make decisions, medical testimony otherwise established

his competency. *Id.* James testified in both stages of his murder trial, and "he responded coherently, logically, and responsively to the questions asked." *Id.* "Moreover, the trial court, having ample opportunity to assess Mr. James' ability to understand the proceedings and assist counsel, did not indicate any concerns about his competency." *Id.* at 552. Consequently, James' procedural competency claim failed and his murder death sentence was affirmed.

In this case, *no one* suggested to the Court that Barnett was incompetent to stand trial, and *no one* proposed a defense based on his incompetence/insanity at the time of the offense with which he was charged. *No* facts presented themselves to the Court that would have alerted it to his incompetence – because Barnett *was* competent. He demonstrated that repeatedly with his verbal engagements with Ian Napier, with 911, with police, with reporters, with judges, with lawyers, and with the jury.[9]

Thus, *Pate* and *Drope* are inapposite here. In both of those cases, the trial courts

[9] *See also United States v. Grist*, 299 F. App'x 770 (10th Cir. Nov. 6, 2008) (unpublished: in post-conviction proceedings, defendant failed to establish procedural or substantive competency claims due to lack of bona fide doubt about his competency); *Wallace v. Ward*, 191 F.3d 1235, 1243-44 (10th Cir. 1999) (no bona fide doubt as to defendant's competence); *Rogers v. Gibson*, 173 F.3d 1278, 1290-91 (10th Cir. 1999) (defendant did not establish "bona fide doubt" as to competency); *Walker v. Attorney General*, 167 F.3d 1339, 1345-47 (10th Cir. 1999) (despite "grievous and lamentable life history," revealing "a history of serious mental disease that was apparently difficult to diagnose and to treat effectively", the evidence, "deplorable as it is," did not raise a doubt about competency at trial and procedural competency claim failed); *Castro v. Ward*, 138 F.3d 810, 817-818 (10th Cir. 1998), in which the Tenth Circuit held that, even though Castro had been psychologically evaluated in a parallel case in Kay County, the judge in Noble County did not err in determining that there was no doubt about Castro's competency and by not ordering a competency hearing.

were repeatedly alerted to facts that raised substantial doubts about the mental capacity of the defendants. In both of those cases, the Supreme Court noted that the defendants had substantial histories of psychosis and aberrant behavior that the trial judges had improperly discounted. Here, in contrast, the Court has been presented with no medical information at any time that substantiates any claim of incompetence, nor was even anecdotal evidence presented that would undercut the presumption – and fact -- that Barnett was able to understand the nature of the charge for which he was tried and his ability to assist his attorney in defending the case.

Because Barnett cannot establish a procedural competency claim, he necessarily cannot establish a substantive competency claim. *Walker*, 167 F.3d at 1347. A defendant raising a substantive claim of incompetency is entitled to no presumption of incompetency and must demonstrate his incompetency by a preponderance of the evidence. *Grist*, 770 F. App'x at *8.[10] He has failed to do so, for the reasons already reviewed as to the procedural claim. Further, whether he was competent or not is immaterial to the period in which his appeal was pending. *Nolen*, 485 P.3d at 852.

Even if the Court were to find that a doubt was raised sufficiently to have triggered a competency hearing, the relief appropriate here would be a retrospective determination of competency, not the outright dismissal of the case and release of Barnett. *See, e.g., Smith v. State*, 306 P.3d 557, 569, 2013 OK CR 14 ("There are also

[10] In *Grist*, the Tenth Circuit noted that the defendant's answers to court at arraignment were appropriate, he never expressed doubt or confusion, no one interacting with him expressed any doubt about his ability to understand proceedings, and doctors reported him to be competent. *Id.*

times where a defendant's competency must be evaluated retroactively – after he has been convicted and sentenced."). In that instance, the testimony of participating counsel, other persons who dealt with Barnett during the course of the proceedings, and the record of his testimony and filings, all of which are available, would enable a judge or jury to assess whether Barnett was competent during the proceedings – which he obviously was. *See, e.g., Tate v. State*, 896 P.2d 1182, 1187-88, 1189-90, 1995 OK CR 24 (in death-penalty murder case, retrospective hearing sufficient to find defendant competent where trial court defense counsel, police officers dealing with defendant near time of crime, and prosecutors testified about defendant's competency); *Littlejohn v. State*, 989 P.2d 901, 906, 1998 OK CR 75 ("It is well established by this Court that a defendant's trial testimony may be considered in a retrospective competency proceeding."); *Boltz v. State*, 806 P.2d 1117, 1121-22, 1991 OK CR 1 (same). But the Court does not find that such a doubt was present, and no retrospective determination of competency is necessary in this case. Even Barnett himself admits that no retrospective determination can be made because based on his own words, he "is now competent", despite not having received any additional treatment or care since he was first arrested in both of his cases as he's been in custody.

Accordingly, Barnett's arguments based on incompetence at the time of the offense or during the criminal proceedings is without merit and should be denied. Furthermore, any claim for incompetence is one that, even if true, could have and should have been raised in his initial appeal, which it was not. He is, therefore, procedurally barred from asserting this claim through Post Conviction Relief.

H. Jurisdiction and *McGirt*

Barnett asserts that the Court lacked jurisdiction in this case based on *McGirt*. His allegations of Indian status are vague and insubstantial, and inadequate to fulfill the requirements of a valid *McGirt* claim.

A person meets the definition of "Indian" for the purposes of criminal jurisdiction if that person "(1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government." *United States v. Prentiss*, 273 F.3d 1277, 1280 (10th Cir. 2001); *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012). The first part of the test can be shown by a Certificate of Degree of Indian Blood issued by the U.S. Bureau of Indian Affairs. *See Davis v. U.S.*, 192 F.3d 951, 956 (10th Cir. 1999). In order to satisfy the second requirement of this definition, the defendant or victim must be affiliated with a Tribe that is recognized by the federal government.[11] The second prong of "whether an individual is recognized by an Indian tribe or the federal government" is considered under the following four factors:

> (1) tribal enrollment; (2) government recognition formally and informally through receipt of assistance reserved only to Indians; (3) enjoyment of the benefits of tribal affiliation; and (4) social recognition as an Indian through residence on a reservation and participation in Indian social life."

[11] *See United States v. Antelope*, 430 U.S. 641, 646 n.7 (1977) ("members of tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act"); *State v. Daniels*, 16 P.3d 650, 654 (Wash. Ct. App. 2001); *see also State v. Sebastian*, 701 A.2d 13, 24 n. 28 (Conn. 1997) ("most recent federal cases consider whether the tribe to which a defendant or victim claims membership or affiliation has been acknowledged by the federal government").

United States v. Drewry, 365 F.3d 957, 961 (10th Cir. 2004) (quoting *United States v. Lawrence*, 51 F.3d 150 (8th Cir. 1995).

Finally, the defendant must establish membership in or affiliation with a Tribe *as of the time of the offense*. In *Parker v. State*, 2021 OK CR 17, ¶ 36, 495 P.3d 653, the OCCA stated the person "must still show that *at the time of the offense*, he or she was recognized as an Indian by a tribe or by the federal government." *Id.* (emphasis added). In *United States v. Zepeda*, 792 F.3d 1103, 1113 (9th Cir. 2015), the Ninth Circuit explained the reason why the date of offense was the relevant point in time for a determination of Indian status:

> In a prosecution under the [Indian Major Crimes Act], the government must prove that the defendant was an Indian at the time of the offense with which the defendant is charged. If the relevant time for determining Indian status were earlier or later, a defendant could not "predict with certainty" the consequences of his crime at the time he commits it. *Apprendi v. New Jersey*, 530 U.S. 466, 478, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000). Moreover, the government could never be sure that its jurisdiction, although proper at the time of the crime, would not later vanish because an astute defendant managed to disassociate himself from his tribe. This would, for both the defendant and the government, undermine the "notice function" we expect criminal laws to serve. *United States v. Francisco*, 536 F.2d 1293, 1296 (9th Cir.1976).

Zepeda, 792 F.3d at 1113; *See also, Goforth v. State of Oklahoma*, 1982 OK CR 48, 644 P.2d 114, 116 ("Absent such recognition, we cannot hold that the appellant is an Indian under federal law, since such a determination at this point would allow the appellant to assert Indian heritage only when necessary to evade a state criminal action."). Although tribal enrollment is not the only way a person can establish they are an "Indian" under the four-factor analysis set forth in *Drewry*, 365 F.3d at 960-61,

Barnett has failed to provide any other evidence related to these factors, indicating that he had any personal affiliation or involvement with any federally recognized tribe at the time of the offense.

For purposes of criminal jurisdiction, Indian blood is not enough: There must be some personal link to the tribe. *See Parker v. State*, 2021 OK CR 17, ¶ 42, 495 P.3d 653 (noting that "the test is whether a tribe recognized the defendant . . . . The primary factors courts examine for recognition *personally link* a defendant to a particular tribe" and holding that evidence of descent from relatives who were enrolled in a tribe was not enough to establish said personal link) (emphasis added). The factors set forth in *Drewry* are often also referred to as the *St. Cloud* factors. In *St. Cloud v. United States*, 702 F.Supp. 1456, 1461 (D.S.D. 1988), the U.S. District Court for the District Court of South Dakota noted the reason for both prongs of *Rogers* to be present:

> However, Indian blood alone is not enough to warrant federal criminal jurisdiction because jurisdiction over Indians in Indian country does not derive from a racial classification but from the special status of a formerly sovereign people. *United States v. Antelope*, 430 U.S. 641, 646, 97 S. Ct. 1395, 1398-99, 51 L. Ed. 2d 701 (1977); F. Cohen, Handbook of Federal Indian Law 19 (1982 ed.). The second prong of the *Rogers* test in essence probes whether the Native American has a sufficient non-racial link to a formerly sovereign people.

As discussed above, the relevant analysis for who is an "Indian" pertains specifically to the date of the offense. To hold otherwise would subject all the parties to uncertainty—a defendant would never know the consequences of his crime, no sovereign nation could be certain of jurisdiction, and a defendant or petitioner could choose which sovereign has jurisdiction by simply obtaining (or renouncing) tribal

membership. *See Parker*, 495 P.3d at 666; *Zepeda*, 792 F.3d at 1113. In the absence of proof of enrollment at the date of offense, a person may provide prima facie evidence showing other forms of recognition which establishes a non-racial link to the tribe. Because Barnett has not shown that he was enrolled as a citizen of a federally recognized tribe at the time of the offense in this case or provided any evidence that he was personally affiliated with such a tribe at the time of the offense, his motion for dismissal based on lack of jurisdiction under *McGirt* should be and is denied.

I. PCR Proceedings – No Need for a Hearing

There is no constitutional or statutory right to an evidentiary hearing on PCR applications. *Berget*, 907 P.2d at 1083, 1087-88. Because the matters involved in this case are set forth fully in the pleadings, no hearing is necessary to make an adjudication. § 1083 of the Act; *Romano*, 917 P.2d at 14-15, 17; *Berget*, 907 P.2d at 1087-88. There is no genuine issue of material fact which prevents a finding that the State is entitled to judgment as a matter of law. *Logan*, 293 P.3d at 978.

IV. CONCLUSION

Based on the arguments and authorities presented to the Court, the Court finds that Petitioner's Application for Post-Conviction Relief, and all other motions and requests for relief filed in this case by or on behalf of Barnett subsequent to his conviction and sentence being affirmed by the Oklahoma Court of Criminal Appeals, should be and are **denied**.

Done this 21 day of July, 2023.

DAVID GUTEN
DISTRICT JUDGE OF TULSA COUNTY

CERTIFICATE OF MAILING/DELIVERY

I certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was mailed to:

Christopher J. Barnett
DOC # 857048
James Crabtree Correctional Center
216 N. Murray Street
Helena, OK 73741-1017

And I further certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was hand delivered to:

Erik Grayless
Meghan Hilborn
Kevin C. Leitch
Assistant District Attorneys
Tulsa County District Attorney's Office
800 County Courthouse
500 S. Denver Ave.
Tulsa, OK 74103

DON NEWBERRY
TULSA COUNTY COURT CLERK

BY: Alana Higgins
DEPUTY COURT CLERK

PC-2023-705 Appendix C

CF2019 3570

CF2019 3495

Christopher Barnett
DLM # 1263543
300 N Denver Ave
Tulsa, OK 74103

Brady Letter from Defense Attorney Jason Lollman

Dear Chris:

I received your letter dated 11/30/2022 and reviewed the attached documents. The State's discovery did not include Exhibits F (TCSO letter dated 10/25/2018) and H (emails between Matthew Hewett and AUSA Joel-lyn A McCormick) but Exhibit I appears to be a transcript of testimony from trial and Exhibit J appears to be a treatment note from 2020, which was after the trial. So it would not have been included in our discovery. I hope this helps.

Take care,

Jason D. Lollman

DISTRICT COURT
FILED
MAY 12 2023
DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Copy to DA & Judge

Appendix D

ORIGINAL

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

CHRISTOPHER J. BARNETT — APPELLANT

OCCA Case Number: PC-2023-705

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG 31 2023
JOHN D. HADDEN
CLERK

VS. Tulsa County Case Number: CF-2019-3570

STATE OF OKLAHOMA — APPELLEE

AMENDED PETITION IN ERROR FOR DENIAL OF POST CONVICTION RELIEF

This petition is prepared pro-se, without the assistance of counsel and should be liberally construed, citing Haines V. Kerner 404 U.S. 519 92 S.Ct 594 30 L.Ed 2d 652.

Appellant is currently incarcerated at the James Crabtree Correctional Center, 216 North Murray Street, Helena, Oklahoma 73741. Pursuant to a State Court Judgment from the District Court of Tulsa County, State of Oklahoma.

Pursuant to a Plea of not guilty, Appellant was convicted by jury trial of Assault and Battery with a Deadly Weapon and received a sentence of 32 years.

On or about the 30th day of June, 2022 the appellant filed an Application for Post-Conviction Relief in the District Court of Tulsa County presenting the following grounds:

Proposition One: The State of Oklahoma withheld and suppressed evidence in violation of Brady V. Maryland, violating the due process rights of the appellant under the 14th amendment. The State of Oklahoma did not turn over a variety of evidence in this case, case number CF-2019-3570 until November 2022. In the evidence that the State of Oklahoma turned over, was law enforcement reports from the United States Marshalls Service as well as Federal Bureau of Investigation which investigated the appellant of making threats against the States lead witness in CF-2019-3570. The USMS and FBI was told by The University of Tulsa, [States Lead Witness] that appellant had never threatened them. This could have been used to impeach the testimony of The University of Tulsa, however the appellant could not do this because he was not given copies of the reports until November 2022. The State of Oklahoma had this in their possession since 2018, but did not turn it over until 2022.

The State of Oklahoma also withheld a material piece of evidence that would have allowed the petitioner to impeach the States witness, Ian Napier. When Ian Napier went to the hospital, he told the staff that he suffers from obcessive compulsive disorder and has outburst if others cause him to go a different way. The State did not turn this evidence over until November 2022. This is no doubt a Brady Violation under Brady V. Maryland, Bagley and Giglio.

I'd like to give this court an example of how this information could have been used.

"Ladies and Gentlemen of the jury, you have heard the States case, now we are going to tell you ours. Ian Napier suffers from a mental health disorder called Obsessive Compulsive Disorder and Ian Napier told the Hospital that he suffers from this and the exact quote he told them is "Has outburst if others cause him to lose control and go a different way". Now I need you to ask yourself why a home owner with no criminal history is just going to shoot someone for no reason what so ever? I'm going to tell you why. Ian Napier as you heard on the audio was trying to gain entry to the home, he was trying to get the homeowners to open the door...you heard the audio...open the door...open the door....think about how scary this is for anyone, to be at home, in the safety and comfort of your home at 9pm at night, a stranger shows up, he never says who he is or why he is there. He is told to leave

and yes, the home owner tells him....leave now or your going to be dead...that's a home owners right. The defendant didn't know who this was and he was definitely frightened. Now Ian Napier didn't get his way, he finally went to leave as we witnessed on the video ...but he lost control because he didn't get his way, so he turned around to go back and solve things and then went to pull his gun and he rightfully got shot and he deserved that...because he was committing criminal felony acts...he was brandishing a firearm and trespassing. We also obtained a copy of the protective order from his former wife where she filed for an emergency protective order... she describes Ian Napier as mentally unstable; he loses control easily and he is extremely violent. Ask yourself this... would the home owner be here right now on trial if Ian Napier would not have been shot? Would Ian Napier be on trial instead? Who knows, but the home owner is alive and well and its clear, the home owner didn't break any laws and stood his ground, and exercised his constitutional right to defend his home and family against those breaking the law and trying to illegally gain entry to his home."

The State of Oklahoma also did not make text messages available from me to counsel where counsel was told someone tried to break into my house. This message was sent to Brendan McHugh, my attorney. This would have been used to prove self-defense, along with the treatment note if we had been presented with it.

The State also did not turn over the false threats called into the Oklahoma Attorney Generals Office by The University of Tulsa where The University of Tulsa continued to call in false threats against the appellant, claiming the appellant was threatening them. The appellant was illegally arrested, but not charged due to these false threats. OK ASS AG Jeb Joseph told us on the record in the civil suit against The University of Tulsa that The University of Tulsa and their law firm Hall Estill had called in these false threats. The Oklahoma Attorney Generals Office has refused to turn over this evidence, which I would have used to impeach The University of Tulsa at my trial, but the right of confrontation was denied to me because of this serious brady violation.

Proposition Two. The Tulsa County District Attorney, Steve Kunzeweiler violated Napue V. Illinois when he allowed the States Lead Witness, Ian Napier to give false

perjured tainted testimony to the court and Jury. Ian Napier told the Court and Jury that he announced himself at the home of the appellant and also told the appellant that he was there on "Official Business". This is not harmless error and requires reversal because The Jury was under the impression that this man was shot because he was a process server, however the TCDA had access to the audio and video and no where on the audio does Ian Napier tell anyone that he is there on official business, he does not announce himself and he doesn't say who he is. Because the TCDA had this information in their possession, the TCDA knew that the testimony of Ian Napier was perjured and he failed to correct this false testimony and it infected the jury so bad, that I did not receive a fair trial. There was no evidence to support that this man was shot because he was a process server. On the audio, he never identifies himself or says who he is. The only thing Ian Napier does is continue to demand that the innocent homeowner open his door... Ian Napier demanded that the home owners open their door at 9pm at night. This was scary and even the appellant testified to the jury that he was frightened. The TCDA also committed another Napue Violation by falsely telling the Jury that the appellant had feigned a heart attack. There is no evidence to support this, but the TCDA continued to present false evidence to the jury. This is not harmless error because it affected the credibility of the appellant and it denied the appellant a fair trial under Napue. The jury was also told by Steve Kunzeweiler that I was a politician, I'm a liar and I cannot be trusted with anything I say because I'm a politician. I ran for Governor of Oklahoma as the first openly gay republican. I believed Oklahoma has/had major issues and I ran for office with great intentions to clean up the corruption and also referenced the corruption of the TCDA.

Ian Napier told the jury he could not hear the appellant when the appellant told him that he was trespassing and to leave now. Ian Napier heard the appellant tell him to leave now or he was going to be dead. A home owner has the right to defend himself and the appellant tried in good faith to scare this man away, because he would not tell him who he was and after the appellant told Ian Napier he was trespassing, Ian Napier refused to leave. Ian Napier told the Tulsa Police that he could hear a drawer inside the home open. The TCDA did not correct this perjured testimony by Ian Napier nor did counsel. This affected the trial as well. This is a Napue Violation because it is clear that Ian Napier could hear the appellant, but he was told to leave and he was trespassing. Ian Napier

refused these commands of the home owner. The TCDA knew that this was perjured but did not correct it because it would further their goal of obtaining a conviction at all costs.

The TCDA also committed another Napue Violation by telling the Jury that Ian Napier was shot because he was a process server. Again, there is no proof of this because the appellant had no idea who Ian Napier was and he did not announce himself. The TCDA used a altered Facebook where the appellant allegedly asked if he could legally shoot a process server, some six months prior. This does not prove intent. Ian Napier did not announce himself or say anything other than open the door. There is no way the appellant knew that Ian Napier was a process server and the TCDA knew this, but continued to lie to the jury to obtain a wrongful conviction, denying the appellant due process and committing multiple Napue Violations.

Proposition Three: Ineffective Assistance of Counsel: Counsel was ineffective for failing to make a complete record and failing to correct the perjured tainted testimony of Ian Napier as well as Steve Kunzeweiler telling the Jury that the appellant had feigned a heart attack. There is no evidence that the appellant feigned a heart attack. Counsel also failed to object to various things through out the trial and even stipulated to evidence submitted by the State from Facebook without even so much as asking the appellant if he authored the facebook posts in question. Counsel never asked the petitioner if he authored the Facebook posts and stipulated to their authenticity without the approval of the appellant, depriving the petitioner of due process. Counsel should have demanded authentication of the Facebook posts, but did not. Counsel was also ineffective for failing to file a writ of prohibition to challenge the judge's denial of stand your ground immunity. Counsel was not prepared for this trial as evidenced by failing seek a new trial when the State of Oklahoma used information from CF-2019-3495 which was obtained in violation of the 4th amendment and violated Franks V. Delaware. Counsel allowed the State of Oklahoma to use all statements made by petitioner in CF-2019-3495 to convict him in CF-2019-3570. The Statements were made in violation of Miranda as the appellant was not mirandized until three days after his arrest and the statements were not made knowingly or voluntarily because the arrest was made in violation of the fourth amendment.

Counsel did not file a suppression motion or ask the court to stay proceedings. Counsel did not file for a Franks Hearing or do anything in CF-2019-3495. Counsel was deficient for ignoring the illegally obtained evidence in CF-2019-3495. A fourth amendment violation is a big deal, but because counsel did not investigate this case, and how the State illegally obtained the information, I was deprived of a fair trial and the effective assistance of counsel under the 6th and 14th amendments.

The State of Oklahoma obtained the video used to convict the petitioner from the illegal arrest in CF-2019-3495 at the trial in CF-2019-3570. If there is ever a Franks Hearing that will decide the validity of an invalid search and arrest warrant, CF-2019-3495 is the case for it. The Police Officer made 22 misrepresentations to the Judge/Magistrate to obtain probable cause for the arrest of the petitioner. Had the Police Officer been honest and included all of the 22 omissions, Officer Justin Beal could never have obtained a warrant for the arrest of petitioner. The search warrants were also obtained in violation of Franks V. Delaware. These were all errors of ineffective assistance of counsel. During the Post-conviction relief hearing, Judge Guten told me that counsel was not ineffective and appeals counsel could have raised these issues through due diligence in the direct appeal. Trial Counsel did not know about the brady violations until November 2022. Trial Counsel provided a letter to Petitioner which stated that the State did not make this evidence available to us. I asked the court to allow me to bring a motion for ineffective assistance of counsel, and appeals counsel, but Judge Guten ignored this in my filing. The letter from former counsel, presented to Judge David Guten proves the Brady Violations.

Appellant also references again the TCDA telling the jury that the appellant is a politician and is a liar. This was inappropriate and counsel should have objected. They did nothing. The appellant did not receive a fair trial because the TCDA brought out the hate that everyone has for politicians. This, along with everything else that the TCDA lied about, including feigning a heart attack inflamed the jury and harmed me. Appellant did not fake a heart attack. The TCDA knew that the appellant was being treated for anxiety/panic disorder as evidenced by the legal prescriptions that the state obtained when the appellant

was illegally arrested in CF-2019-3495. There is zero evidence that I faked a heart attack. This harmed me.

Appellant cites United States V. Vayner in support of this argument. Just because you are presented with a facebook post that has the appellants picture and name, does not mean they wrote it. This is IAC and IAAC.

Proposition Four: Ineffective Assistance of Appeals Counsel: Appeals counsel was ineffective for not bringing up the Napue Violations of Ian Napier and the TCDA. Appeals Counsel was not acting as the counsel guaranteed to him under the 6th amendment. Appeals Counsel failed to review all of the evidence and see that Napue Violations had taken place. The Napue Violations took place when Ian Napier lied on the Stand and neither the Tulsa County District Attorney nor trial counsel Jason Lollman corrected this perjured, tainted testimony by Ian Napier. The next procedural safeguard in place to protect my rights was appeals counsel and appeals counsel failed. This is not harmless error and requires reversal and a new trial.

Appeals Counsel could not have found out about the Brady Violations for the direct appeal because the Brady Violations were discovered in November 2022. I was told by Public Defender Mari Rierra that Appeals Counsel only goes by what is in the record and would not have had any reason to look in CF-2019-3495. I do not have any reason to doubt Ms. Rierra's assertion and I cannot find any information about two cases on the law library. I've asked for counsel to assist me and its been denied to me by the court.

Judge Guten said on July 19, 2023 that I could have brought all of these claims in my direct appeal with due diligence, but we can't bring a claim when the state withholds and suppresses evidence and turns it over three years later, in November 2022. This was an erroneous finding by Judge Guten.

I request that the OCCA settle this matter. I should not be punished for ineffective assistance of appeals counsel and the State should not be rewarded for allowing tainted

perjured testimony to go uncorrected or to violate the fourth amendment to obtain a wrongful conviction.

To be clear, the conviction in CF-2019-3570 could not have been obtained without the state violating Franks V. Delaware and my 4th amendment rights to be free from unlawful search and seizure. In this case, with all of the research I have done, the good faith exception does not apply to the 4th amendment violations. I have asked for a Franks hearing in CF-2019-3495 since November 2022 and I've recently filed a WRIT OF MANDAMUS to compel Judge David Guten or any Judge to hold a hearing on the matter so I may be heard and obtain relief. Appeals Counsel was also ineffective for failing to properly raise the issue of trial counsel stipulating to Facebook posts without going over everything with petitioner. Petitioner did not ever stipulate to the Facebook post as being written or authored by him. This also has harmed the petitioner because the State now claims that all Facebook posts, including the Facebook posts in CF-2019-3495 have been authenticated, yet the State of Oklahoma claims the trials were kept completely separate. Appellant cites United States V. Vayner in support of this argument. Just because you are presented with a Facebook post that has the appellants picture and name, does not mean they wrote it. This is IAC and IAAC. Again, appellant reminds this court that the video used in the trial of CF-2019-3570 was illegally obtained in the arrest of CF-2019-3495. The warrant for the probable cause was obtained in violation of Franks V. Delaware and police officer Justin Beal, along with all the other police officers, made material misrepresentations to obtain probable cause for the search and arrest warrants of the appellant.

Proposition Five: The State of Oklahoma illegally obtained the cell phones of the petitioner and did not turn over a complete dump of the phones. In addition to illegally obtaining the cell phones, the State of Oklahoma did not obtain a warrant to search the cell phones. The petitioner has no discovery in his discovery about who viewed the cell phones, any warrants or anything regarding his cell phones, other than a memo from the Sapulpa Police Department telling Erik Greyless that they could not get into my phones. The phones were sent to the secret service and I don't know what happened from there. The State read all of my privileged emails to my attorneys as well as text messages.

Proposition Six: Judge David Guten violated Rule 15 and continued to rule and did not allow appellant to exhaust rule 15. Additionally, appellant filed a motion for certified copies of court orders and proceedings for the purpose of filing a WRIT for extraordinary relief and Judge David Guten denied this to the appellant. Appellant filed a request for in camera hearing to disqualify Judge David Guten in both cases, CF-2019-3495 and CF-2019-3570 on April 11, 2023. Judge Guten denied the in-camera request and continued ruling on July 19, 2023. Judge Guten did not memorialize the denial of the request to recuse. Appellant filed a Writ of Mandamus to disqualify Judge David Guten in the OCCA, case number MA-2023-640. The OCCA denied relief because the appellant did not submit a certified court copy showing Judge Guten denied relief. The appellant reviewed OSCN and did not see that Judge Guten memorialized the decision to deny the rule 15. This court should vacate the denial of post conviction relief from Judge Guten because he violated Rule 15.

Proposition Seven: Judge Guten denied the appellant access to the courts when he denied the appellants motion for certified court orders and proceedings.

Proposition Eight: The Faretta Hearing held by Judge Tracy Priddy was held in violation of Rule 15. Judge Priddy made several rulings that pertained to both this case and CF-2019-3495. Appellant seeks that this court vacate the Faretta hearing because it was held by a challenged Judge, violating the due process rights of the appellant under the 5th and 14th amendments. The appellant cites Miller Dollarhide V. Tal and Clark V. Board of Education in support of this proposition.

Proposition Nine: The appellant did not have access to his discovery in prison because most of the discovery is electronic. The appellant was promised by Judge Guten that he would be able to view his discovery. This deprived the appellant of being able to bring a proper petition in error for denial of post conviction relief. The prison will not allow the appellant to view any of his discovery and warden Carrie Bridges has said she is taking out the computers from the law library.

Proposition Ten: Judge Guten stated that the appellant had fired three of his attorneys. This is a lie. The Tulsa Public Defenders office was never appointed to represent the appellant. Brian Martin was never appointed the represent the appellant for PCR but was appointed in the 3495 case. Brian Martin had a conflict of interest and was appointed by a challenged judge during a rule 15. Brian Boeheim was appointed, I filed a bar complaint against him because he was not communicating with me, he fired me, withdrew and then I fired him days later. I asked to be heard on counsel and Judge Guten made me pro-se, despite me asking for counsel for post conviction relief. Judge Guten ruled with bias.

Proposition Eleven: Judge Guten is biased towards the appellant. The appellant was told during the hearings in both cases on July 19, 2023 by Judge Guten that he [Judge Guten] believed that appellant was threatening Judges and harassing them. I deny these allegations. I filed for relief citing the sexual affair of Judge Doug Drummond and Judge Michelle Keely. I also brought up that Judge April Siebert ruled to harm me because the company I worked for, Transparency for Oklahomans, labeled Judge Siebert a liberal lesbian. Judge Siebert ruled to harm the petitioner because he is a republican gay man and did not agree with Judge Siebert's liberal gay agenda. This no doubt irked Judge Guten. Judge Guten also made several other comments that were not true. Appellant filed in his PCR app that Judge Drummond was having an affair with Judge Michele Keely. This is true. Judge Drummond also was sleeping with a Judge with the last name of Keele who signed one of the warrants for my arrest in CF-2019-3495. I published this information on

the TFO website and the judges acted to silence me, violating my rights under the 1st and 14th amendments.

Proposition Twelve: Appellant filed a motion requesting DNA testing citing the Post-Conviction Procedure act. Judge Guten denied this motion. The appellant is innocent, maintains his innocence and the DNA on the gun and the ammunition will prove what this. The appellant was not tested for gun powder residue and the state did not pull finger prints off the gun. I did not shoot the gun, so my DNA and prints will not be on it. I am entitled to relief and the state does not want to do the test because it will prove my innocence.

Proposition Thirteen: The Jury trial was infected by the allegations brought by the State that I threatened to commit a mass shooting at The University of Tulsa in CF-2019-3495. The cases were not separate and the police officers referenced these charges. I'm still awaiting trial on these charges and I am innocent. The State of Oklahoma is prosecuting me for free speech. The TCDA committed another Napue Violation because there is no evidence that I was going to do such a terrible thing, but the Jury knew about this and found me guilty not because of a shooting at my home, but because they believed I was going to commit a school shooting. The DA knew/knows these allegations are false but continued to spread them, including giving media interviews. They took away my ability to defend myself and they kept on telling the media these lies. At the hearing on July 19, 2023 the Tulsa DA Erik Greyless told the court that the trials were separate, but this is a lie because the DA told the jury I was dangerous and they believed this because of the arrest in CF-2019-3495. There is no evidence to support I am dangerous.

Proposition Fourteen: Factual Innocence, the appellant brings a claim for factual innocence because the information the State withheld in violation of Brady V.

Maryland would have been used to prove that the petitioner did not shoot Ian Napier because he was a process server and that the petitioner had no idea who Ian Napier was. Had the appellant been given this information, he could have proven his innocence and proven that this was self defense. When this is coupled with the Napue violations, these is no doubt that this is a wrongful conviction and was obtained in violation of the 14th amendment. Appellant did not receive due process or a fair trial because of all these errors.

Proposition Fifteen: Referring this court again to proposition Two, the OCCA ruled in the direct appeal that the appellant had immediately began to threaten the alleged victim, Ian Napier with threats to kill him. This is untrue and the appellant requested to supplement the record so this could be corrected, but Judge Guten denied this. Ian Napier was told to leave four times and the first time the appellant told him to leave, he told Ian Napier that he was trespassing and to leave now. The OCCA believed that Ian Napier was engaged in legal business and announced himself and was there legally. Any legal business Ian Napier was engaged in was ended immediately when he was told he was trespassing and to leave now. Telling someone that is demanding that you open your door to leave now or their going to be dead is not a crime. He did not leave. He kept demanding that the appellant open the door. Ian Napier was trespassing and was attempting to break into the home of the appellant and also brandished a fire arm. The TCDA had an agreement according to Jason Lollman not to prosecute Ian Napier. Ian Napier broke the law and the TCDA agreed not to prosecute him as long as he testified against me. The TCDA did not turn over this information, lied, misled the jury, the OCCA and everyone. This requires a new trial.

Ian Napier told the jury he could not hear the appellant when the appellant told him that he was trespassing and to leave now. Ian Napier heard the appellant tell him to leave now or he was going to be dead. A home owner has the right to defend himself and the

appellant tried in good faith to scare this man away, because he would not tell him who he was and after the appellant told Ian Napier he was trespassing, Ian Napier refused to leave. Ian Napier told the Tulsa Police that he could hear a drawer inside the home open. The TCDA did not correct this perjured testimony by Ian Napier nor did counsel. This affected the trial as well. This is a Napue Violation because it is clear that Ian Napier could hear the appellant, but he was told to leave and he was trespassing. Ian Napier refused these commands of the home owner.

Proposition Sixteen: The Petitioner has a constitutional right to a cold detached neutral judge. This was denied to the petitioner when Judge David Guten ignored the rule 15 procedure to harm the petitioner. Judge David Guten showed his bias through the hearing in CF-2019-3570 and CF-2019-3495 by telling the petitioner on the record that he believes ***he is threatening Judges, harassing and intimidating them***. Petitioner denies these allegations. The petitioner had filed a motion to change the venue so he could receive a fair trial. The petitioner was denied this by Judge David Guten with no ability to be heard. Judge Guten said Judge Priddy ruled on this, but again, Judge Priddy ruled in violation of Rule 15 and all of her rulings must be vacated according to Clark v. Board of Education and Miller Dollarhide V. Tal. The Petitioner has a plain legal right to a cold detached neutral judge under both the Oklahoma Constitution and the Federal Constitution. The petitioner specifically cites Okla. Const. Art 2. §6 which provides "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay or prejudice." Judge David Guten is prejudiced towards the petitioner because petitioner published the home addresses and extremely personal information about Judges on the website petitioner was associated with, www.transparencyforoklahomans.com . Petitioner received information from people that work in the court house that placed hidden cameras in the Judges Chambers, along with key loggers and listening devices. Among the information the Petitioner published, information about Judge David Guten involving domestic

abuse/strangulation/ sexual assault and groping. The petitioner also published a sex tape of another current sitting judge, having sex with a well-known attorney in their chambers. This Judge usually rules in favor of this attorney, violating due process for both parties because of bias. See Fort V. State.

The petitioner also published information about Judge April Siebert and TFO titled her "A liberal lesbian" because she is a lesbian and married to a woman who works at the FBI. It is important to note that the petitioner is gay and has no problem with Judge Siebert being gay, but she ruled to harm the petitioner because he did not agree with the liberal gay agenda that she supports.

Petitioner published information about every Judge in Tulsa County. Of Course, Judge Guten is going to say he doesn't know anything about this or that he is not biased when he actually is. Just because he says he is not biased does not mean he is. The Tulsa District Court knows I published this information. From the inception of this case, vindictive prosecution has been alleged, and even the motion I filed seeking relief, Judge Guten denied it. The appearance of bias to too much and I cannot receive a fair trial because of it, in Tulsa County. I need a Judge who is not from Tulsa County. I asked for a non-jury trial and I cannot receive it from a Judge who I wrote about. To be clear, I did not have anything to do with the people who placed cameras, listening devices or key loggers in the chambers of the Judges or the Tulsa County District Attorney's Offices. I only published the information given to me because it proved corruption. Its irony when Judges are sentencing people to long prison sentences for drugs, yet they themselves are doing illegal drugs in their chambers. I also published information about the sexual affair of Judge Michelle Keely with Judge Doug Drummond. This affair has been going on for twenty years.

Judge Guten was very upset about this and without a doubt, he knows I have proof. I never thought I'd be wrongfully convicted in CF-2019-3570 or be arrested on frivolous charges in CF-2019-3495, but the State of Oklahoma and the Tulsa

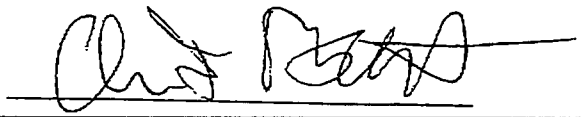
District Court is actually getting away with this. I urge this court to put an end to it. I broke no laws by publishing the information about Judges & others in the Tulsa County District Attorney's Office. The Judges having sex in their chambers, doing cocaine, carrying on affairs, they are all public employees, elected officials and using tax payer funds for this and it is of interest to the public and I have a first amendment right to publish the information and bring it to the attention of the public. TFO also received proof that Judges in Tulsa County were accepting bribes and having ex-parte communications. Citing Rippo V. Baker 580 US 285 137 S.CT 905 "Risk of bias is too high to be constitutionally tolerable." In this case, the risk is beyond constitutionally tolerable.

Proposition Seventeen: Cumulative Error and Plain Error: Due to the due process violations of the State of Oklahoma I was denied due process. This caused both Cumulative error and plain error in my trial, along with the ineffective assistance of counsel and appeals counsel.

Conclusion:

The appellant seeks that this court order a new trial because of all the errors, mainly the Napue violations, the brady violations and the other issues brought forth in this petition. Please grant the appellant relief as soon as possible. Appellant did not receive a fair trial and was deprived of due process.

Respectfully Submitted:



August 29, 2023

Christopher J. Barnett Pro-Se 857048

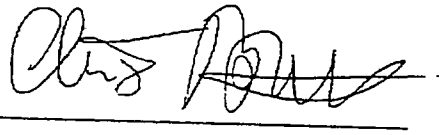
Date:

216 North Murray Street

Helena, Oklahoma 73741

VERIFICATION

I, Christopher J. Barnett, the above-named petitioner in this case, state under the penalties of perjury that everything in this answer/petition/motion is true and correct to the best of my knowledge. This filing is not frivolous and is made in good faith. This filing is an attempt to access the courts for the wrongs against me.



August 29, 2023

Christopher J. Barnet, Petitioner DOC# 857048
216 North Murray Street
Helena, Oklahoma 73741

PRISON MAILBOX RULE CERTIFICATE OF SERVICE/MAILING

Petitioner by his signature above pursuant to 28 USC 1746 (or state analogue) declares under penalty of perjury that on the date stated above he placed a copy of this pleading in the prison outgoing mail receptacle, with sufficient US postage attached, addressed to:

The Oklahoma Court of Criminal Appeals 2100 North Lincoln Blvd, Oklahoma City Oklahoma 73105

Tulsa Court Clerk, 500 South Denver Avenue Suite 200 Tulsa Oklahoma 74103

Ok Ct of Criminal Appeals

Chris Barnett - petitioner

v

State of Oklahoma - Respondant

PC 2023 705

Motion to Reconsider

I, Chris Barnett Received The mandate from the OCCA in PC 2023 705. The OCCA Failed to Address Judge Guten Ruling in violation of Rule 15, Judge Guten Not Addressing the NAPUE Claims or Brady Claims I ~~declared~~ Detailed in my July 2023 Filing. Judge Guten Ruled in violation of Rule 15.

Please Read my Arguments. The OCCA Fails to Address these Issues which Require Relief., Please Reconsider. This is a wrongful conviction and Judge Guten is Biased towards me.

Respectfully Submitted

Christopher Jr Barnett

216 N Murray St

Helena, Ok 73741

Chris Barnett 12-18-2023

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

Chris Barnett, Petitioner, v. STATE OF OKLAHOMA, Respondent,	**No. PC-2023-705** **(Post Conviction)** Filed: 08/22/2023 Closed: 12/11/2023 Appealed from: TULSA County District Court

PARTIES

arnett, Chris, Petitioner
TATE OF OKLAHOMA, Respondent

ATTORNEYS

Attorney	Represented Parties
Barnett, Chris #857048 216 N. Murray St Helena, OK 73741	Barnett Chris
Tulsa County District Attorney 500 S Denver Ave W#900 Tulsa, OK 74103	STATE OF OKLAHOMA

EVENTS

None

LOWER COURT COUNTS AND OTHER INFORMATION

Count	Case Number	Statute	Crime	Sentence	Judge	Reporter
-	CF-2019-3570	-			Guten, David	

DOCKET

Date	Code	Description

07-31-2023 [**DOOA**]

DATE OF ORDER APPEALED

08-22-2023 [**CASE**]

POST CONVICTION INITIAL FILING

08-22-2023 [**PAUP**]

PAUPER AFFIDAVIT FOR BARNETT, CHRIS

08-22-2023 [**PAY**]

RECEIPT # 87033 ON 08/22/2023.
PAYOR: CHRIS BARNETT TOTAL AMOUNT PAID: $ 0.00.
LINE ITEMS:
$0.00 ON POST CONVICTION INITIAL FILING.

08-22-2023 [**TEXT**]

ISSUE CERTIFICATE OF APPEAL

08-22-2023 [**PETF**]

PETITION IN ERROR
Document Available (#1056217954) TIFF PDF

08-22-2023 [**TEXT**]

CERTIFIED COPY OF DIST COURT ORDER DENYING PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF AND OTHER POST-CONVICTION FILINGS- S/HON. DAVID GUTEN
Document Available (#1056217955) TIFF PDF

08-22-2023 [**TEXT**]

LETTER FROM PETITIONER W/ATTACHMENTS
Document Available (#1056217956) TIFF PDF

08-25-2023 [**NTCP**]

NOTICE OF COMPLETION OF RECORD ON APPEAL
Document Available (#1056220074) TIFF PDF

08-25-2023 [**RODC**]

RECORD ORDERED FROM DISTRICT COURT
Document Available (#1056220075) TIFF PDF

08-31-2023 [**TEXT**]

AMENDED PETITION IN ERROR FOR DENIAL OF POST-CONVICTION RELIEF
Document Available (#1056218266) TIFF PDF

08-31-2023 [**TEXT**]

GRIEVANCE DECISION FROM REVIEWING AUTHORITY
Document Available (#1056220190) TIFF PDF

08-31-2023 [**TEXT**]

NOTICE TO THE COURT
Document Available (#1056220189) TIFF PDF

09-01-2023 [**ORGR**]

17 VOL. ORIGINAL RECORD - 2899 PAGES; 4 UNDER SEAL ENVELOPES AND 10 ENVELOPES

09-05-2023 [**TEXT**]

LETTER FROM PETITIONER
Document Available (#1056220223) TIFF PDF

09-05-2023 [TEXT]

LETTER FROM PETITIONER
DUPLICATE ENTRY
Document Available (#1056218325) TIFF PDF

09-05-2023 [RCCT]

RECORD TO COURT

09-07-2023 [TEXT]

PETITIONER'S COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(STYLED "UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA")
Document Available (#1056220805) TIFF PDF

09-11-2023 [TEXT]

LETTER FROM PETITIONER W/ATTACHED DOCUMENTS
Document Available (#1056220281) TIFF PDF

09-11-2023 [BFSP]

BRIEF IN SUPPORT OF INEFFECTIVE ASSISTANCE OF COUNSEL
Document Available (#1056220282) TIFF PDF

09-22-2023 [TEXT]

PETITIONER'S AMENDED PETITION IN ERROR
Document Available (#1056508412) TIFF PDF

09-22-2023 [TEXT]

PETITIONER'S AMENDED PETITION IN ERROR
Document Available (#1056508376) TIFF PDF

09-22-2023 [TEXT]

PETITIONER'S AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(STYLED "UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA")
Document Available (#1056508772) TIFF PDF

10-18-2023 [TEXT]

PETITIONER'S MOTION TO AMENDED AND FOR REHEARING
Document Available (#1056509901) TIFF PDF

10-26-2023 [TEXT]

PETITIONER'S NOTICE OF CHANGE OF ADDRESS
Document Available (#1056510097) TIFF PDF

10-30-2023 [TEXT]

PETITIONER'S PETITION FOR WRIT OF MANDAMUS TO RECUSE JUDGE DAVID GUTEN DUE TO BIAS
Document Available (#1056510947) TIFF PDF

11-15-2023 [TEXT]

PETITIONER'S MOTION TO SUPPLEMENT INFORMATION TO THE COURT FOR PETITION IN ERROR
Document Available (#1057019054) TIFF PDF

11-29-2023 [TEXT]

PETITIONER'S NOTICE OF CHANGE OF ADDRESS
Document Available (#1057020946) TIFF PDF

12-06-2023 [TEXT]

PETITIONER'S NOTICE OF CHANGE OF ADDRESS
Document Available (#1057021114) TIFF PDF

12-07-2023 [TEXT]

~~AMENDED PETITON FOR POST-CONVICTION RELIEF - TENDERED FOR FILING~~
** NOT ADDRESSED IN ORDER 12/11/2023 **
** CODE CHANGED **

12-11-2023 [OPIN]

JE: ORDER; ROWLAND PJ, HUDSON VPJ, LUMPKIN J, LEWIS J, MUSSEMAN J; COPIES TO HON. DAVID GUTEN, DIST COURT CLERK AND ATTORNEYS; ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF; PETITIONER HAS FAILED TO DEMONSTRATE AN ABUSE OF DISCRETION BY THE DIST COURT. THEREFORE, THE DIST COURT'S ORDER DENYING POST-CONVICTION RELIEF IS AFFIRMED. PETITIONER'S MOTION TO SUPPLEMENT PETITION IN ERROR FILED 10/19/2023, AND 11/16/2023, ARE DENIED.
Document Available (#1057021179) TIFF PDF

12-11-2023 [1003]

AFFIRMED (ORDER)

12-11-2023 [MAND]

MANDATE ISSUED
Document Available (#1057021181) TIFF PDF

Ok Ct of Criminal Appeals

Chris Barnett - petitioner PC 2023 705

v.

State of Oklahoma - Respondant

Motion to Reconsider

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