

24-5853 ORIGINAL

FILED

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Chad William Reed — PETITIONER
(Your Name)

vs.

STATE OF OKLAHOMA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OKLAHOMA COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Chad William Reed
(Your Name)
L.A.R.C.
P.O. Box 260
(Address)

Lexington, Oklahoma 73051
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Is it a Miscarriage of Justice for a Prosecutor to Knowingly Commit a Nape Violation to Deny a Citizen his Second Amendment Right of Self-Defense and Fourteenth Amendments Due Process and equal treatment of Oklahoma's Justifiable Homicide law and Oklahoma's "stand your ground" law's Immunity Clause.
2. Is it a Miscarriage of Justice for a Appellate Counsel to Completely Violate the 6th Amendment and deny his client representation in a Direct Appeal for failing to bring forth the prosecutor's Intentional Nape Violation.
3. Miscarriage of Justice Schlup Claim - Petitioner is Innocent of the Sustainable offense of murder because this 2nd Amendment Self defense Justifiable Homicide falls into a "Perfect" self defense situation and under the Rule of Substantive law of the 14th Amendment Petitioner is guilty of No Crime.
4. Do Procedural Bars Apply if:
 - A. The State Waived the procedural bar when it failed to file a objectional motion in response to the Post Conviction and Plead the Procedural Bar.
 - B. The State District Court Judge was without Jurisdiction to apply the Procedural Bar in this case because the State Waived that Procedural Defense.
 - C. If This Petitioner is Asserting a Miscarriage of Justice Claim because he is Innocent of the Substantive offense of Murder.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Reed v. State, NO: F-2008-449, Oklahoma Court of Criminal Appeals, Judgement entered September 25, 2009.

Reed v. State, NO: CRF-2006-581, State District Court of McCurtain County, Judgement entered June 27, 2013

Reed v. State, NO: P.C.-2013-698, Oklahoma Court of Criminal Appeals, Judgement entered Oct. 17, 2013

Reed v. Bryant, NO: CIV-13-542 RAW-KEW, U.S. District Court of E.D. Oklahoma, Judgement entered 3-7-2017

Reed v. Bryant, NO: 17-7021, U.S. Court of Criminal Appeal for 10th Circuit, Judgement entered August 23, 2017

Reed v. State, NO: CRF-2006-581, State District Court of McCurtain County, Judgement entered March 4, 2024

Reed v. State, NO: P.C.-2024-324, Oklahoma Court of Criminal Appeals, Judgement entered July 8th, 2024

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	<i>Decision of the State Court of Appeals</i>
APPENDIX B	<i>Decision of the State Trial Court</i>
APPENDIX C	<i>Decision of the State Court of Appeals</i>
APPENDIX D	
APPENDIX E	
APPENDIX F	

Table of Authorities Cited

Cases	Federal	Page Number
D. Columbia v. Heller, 554 U.S. 570 (2008)		4, 13
Evitts v. Lucey, 469 U.S. 387 (1980)		11
Gray v. Nethurand, 518 U.S. 152 (1996)		18
Hoots v. Allbrook, 785 F.2d 1214 (4th cir. 1986)		10,
McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010)		4, 13
Mickens v. Taylor, 535 U.S. 162 (2009)		11
Moore v. Marr, 254 F.3d 1235 (10th cir. 1989)		10
Mulaney v. Wilbur, 421 U.S. 684 (1975)		8
Murray v. Carrier, 477 U.S. 478 (1986)		17
Napue v. Ill., 360 U.S. 264 (1959)		8, 10, 15, 16
N.Y. Rifle & Pistol Ass. Inc. v. Bruen, 597 U.S. 1 (2022)		4
Pacho v. Habit, 62 F.4th 1233 (10th cir. 2023)		17
Patterson v. New York, 432 U.S. 197 (1977)		8
McQuiggin v. Perkins, 569 U.S. 383 (2013)		18, 19
Schlup v. Delo, 513 U.S. 298 (1995)		18
Strickland v. Washington, 466 U.S. 668 (1984)		10,
U.S. v. Agurs, 427 U.S. 97 (1976)		8
United States v. Tucker, 716 F.2d 576 (9th cir. 1983)		10
Welch v. United States, 578 U.S. 120 (2016)		18
White v. Ragen, 324 U.S. 760 (1945)		8, 15
Winship, 397 U.S. 358 (1970)		8, 17
U.S. v. Gradwell, 243 U.S. 476, 485 (1917)		13

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the State District Court court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 8, 2024.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2nd Amendment right to bear Arms for Self defense

6th Amendment right to effective assistance of Counsel

14th Amendment right to Due Process and equal treatment of the law

Oklahoma Statute 21 O.S. § 733 Justifiable Homicide in relevant 21 O.S. § 733 Section (A) (2).

Oklahoma Statute 21 O.S. § 1289.25, Oklahoma's "Stand Your Ground" law in relevant Part Section (D), (F), and (G).

Oklahoma Post Conviction Act 22 O.S. § 1080, et al., in relevant part sections 1083 sections (A) and (B). and 1086

Oklahoma Statute 21 O.S. § 701.7 in relevant Part section A

Other Authorities

"Every Intentional Killing is with malice aforethought unless under circumstances sufficient to constitute (1) Justification, (2) excuse, or (3) mitigation." Rollen M. Perkins & Ronald N Boyce
Criminal law 58 (3d ed. 1982)

"Perfect" Self defense doctrine of substantive criminal law; "If a defendant proves a defense of "Perfect" Self defense to a Murder Charge, "His homicide is justified and he is guilty of No Crime - Not Murder, Not Manslaughter, but No Crime." 2 Wayne R LaFare & Austin W. Scott, Jr, Substantive Criminal law § 7.11 (a), at 271 (1986).

Oklahoma Jury Instructions (OUJI)

OUJI - CR 8-50 Defense of Self defense - when defense not available

OUJI - CR 8-51 Defense of Self defense - Defense Reestablished

OUJI - CR-8-52 Defense of Self defense - No duty to Retreat

OUJI - CR 8-53 Defense of Self defense - Aggressor defined

STATEMENT OF THE CASE

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, Ill, 561 U.S. 742 (2010), and *New York Rifle & Pistol Ass. Inc. v. Bruen*, 597 U.S. 1 (2022), This Court Ruled that the Second Amendment Right to bear Arms covers self defense.

This Petitioner exercised his second Amendment right to self defense And Prosecutors knowingly committed Napue violations and used Perjured testimony to violate this Petitioner's Right to the 14th Amendment's Due Process and equal treatment of Oklahoma's Justifiable Homicide law and Stand Your Ground law Immunity. And this Honorable Court's ruling in *Heller*, *McDonald*, and *Bruen*'s Second Amendment right of Self defense.

This is a straight forward Napue violation that the Oklahoma Courts Judges are trying to hide behind a Procedural Bar so they won't have to correct the Prosecutorial misconduct and correct this Miscarriage of Justice.

1. Napue Violations

A. Prosecutors in this case committed a Napue Violation for knowingly using Coached/perjured testimony of state witness Patricia Hollingsworth to:

- 1.) Make Petitioner out to be the aggressor, and
 - 2.) So the State could receive a certain set of Jury Instructions, and
 - 3.) So the State would not have to disprove self defense Justifiable Homicide beyond a reasonable doubt as is required under Oklahoma's self defense law, and
 - 4.) Deny Petitioner a full and complete defense under Oklahoma's self defense laws under the 14th Amendment's due Process and equal treatment of the law.
- facts

Hollingsworth originally told the Police in her Written Statement "I was in the Kitchen." (see P.C. Exh# 2, at page 27)

Then Hollingsworth gave another statement at the Sheriff's office, she stated

"She went in Chad's bedroom and got some clothing and then walked to the Kitchen to get a drink. She stated she could hear Chad and Hendrix talking but did not know what they were talking about. Hollingsworth then stated she heard Hendrix say "I'll shoot you in the fucking head." She then heard a shot. She stated she saw Chad standing in the Hall by Hendrix's door with a gun in his hand. She stated Reed told her to call 911 and that he had just shot his grandmother. Hollingsworth then called 911. (see Post Conviction Exh #3, at page 28)

Then at trial the state presented the perjured testimony of State witness Hollingsworth with the following:

Hollingsworth testifies she is in the Northeast bedroom and hears Hendrix start the argument with Petitioner about the dog on the bed then Reed moved from the Northeast bedroom to right in front of the door of Hendrix's bedroom. (the Southeast bedroom) and continues the argument. As she walks down the hallway toward the Kitchen with her back to Reed standing in front of Hendrix's bedroom door. Then hears Hendrix yell to Reed "I'll Blow your fucking head off!" then I heard a gunshot. I was at the end of the hallway in the living Room almost to turn into the Kitchen. She stated she turned around and seen Chad standing in the Hallway with his gun in his hand in front of Hendrix's doorway and Reed told her to call 911 I shot my grandma. And that Reed told her a second time to call 911. (Transcripts page 262 thru 268) ~~Reed told her to call 911 I shot my grandma. And that Reed told her a second time to call 911.~~

Petitioner has presented the reliable evidence of OSBI Agent Stan Florence's diagram of the house which clearly shows if when Hollingsworth was in the Kitchen getting a drink she couldn't see anything And she had already stated in her statements that she "could hear" Reed and Hendrix talking but don't know what they were talking about.

Petitioner's Defense was that he fired his weapon in self defense. The State had no evidence to disprove self defense as is required by Oklahoma law, see *Moham v. State*, 2005 OK CR 28, 126 P3d 1412 (OCCA 2005).

The only way to overcome Petitioner's self defense claim was to move the only eyewitness to the shooting out of the kitchen where she already to the Police she was getting a drink and that she could hear Reed and Hendrix talking but didn't know what they were talking about. To bring into the Northeast bedroom where she could hear what the Argument was and during the argument Reed moved to be in front of the doorway of Hendrix's bedroom! All so the State could claim that Reed was the aggressor and under Oklahoma law the aggressor can't claim self defense.

State Prosecutor Tim Webster capitalized on this coached/perjured testimony of State's witness Hollingsworth by making the following argument to the jury "Chad Reed was the aggressor in this confrontation. He is the one who came to her.... The State must prove self defense. The State has met that burden that were required to meet and in doing that we have met the burden that he was not acting in self defense. Self defense was not available to him he was the aggressor." (Transcript 508-510)

Then this Perjured testimony the Prosecutor committed fraud upon the Court and had Judge Brock give a set of 4 OK. Uniform Jury Instructions to the jury when there is conflicting evidence of whom the aggressor is. OUI CR 8-50, OUI CR 8-51, OUI CR 8-52, OUI CR 8-53.

Now OSBI Agent Cliff Fielding testified as to the story Petitioner told him that happened that Night, "As he [Reed] was leaving his

bedroom walking past Hendrix bedroom door and stopped to say good night to Hendrix (because they were going to a Motel to be Intimate) And Hendrix started a argument over Hollingsworth's dog being on the bed. And Infurated Hendrix when Reed asked what the difference between thier dog being on the bed and Hendrix dogs being on the bed (she owned 2 pomeranians) At that time Hendrix told Reed he needed to leave or else she was going to shoot him. Reed said Hendrix produced a gun out of her purse at pointed it at Reed and according to Reed he could see the finger being pulled but the gun didn't go off. Reed felt like he was in fear for his life. According to Reed Hendrix then "flipped the safety off" and pointed the gun back at Reed. (When Reed was gathering things to go to the motel he had retrieved his pistol to take with him because of problems of family members stealing his firearms so it was in his back pocket) At that time Reed drew his weapon from his back pocket and fired one time grazing Hendrix in the side of the head (she lived 12 hrs after the shooting). Reed starting screaming for Hollingsworth to call 911 to get the sheriffs office and ambulance that he had just shot grandma. Hollingsworth said "What!" Reed then again told Hollingsworth to call 911.

Hendrix was setting up while shot and fell back onto the gun which was found underneath her with the safety in the "off" position which clearly shows that Hendrix committed a overt act that immediatly placed Reed into danger of great bodily harm or death. (Transcripts 454 thru 456). Defense at trial entered Defense Exh^{#1} which show Hendrix gun that was recovered from underneath her with the safety "off" position (see P.C. exh^{#1}, page 26). Had state's witness Hollingsworth not committed Perjury at trial and just told the story she told the police the night the shooting happened Reed would not have been convicted because the state would had to had to disprove self defense beyond a reasonable doubt As is Required by the 14th Amendment

due Process and equal treatment of the law and this honorable Courts Rulings in *Winship*, 397 U.S. 358 (1970), *Mulaney v. Wilbur*, 421 U.S. 684 (1975), and *Patterson v. New York*, 472 U.S. 197 (1977). "A conviction secured by the use of perjured testimony known to be such by the prosecuting Attorney is a denial of Due Process." *White v. Ragen*, 324 U.S. 760 (1945). see Also *U.S. v. Agurs*, 427 U.S. 97, 112-13 (1976) "We conclude that the prosecutor's argument to the jury capitalized on the perjured testimony reinforced the deception of the use of false testimony and thereby contributed to the deprivation of Due Process." And "Due Process demands that the state avoid soliciting perjured testimony and imposes an affirmative duty upon the state to disclose false testimony which goes to the merits of the case or the credibility of the witness."

Napue v. Illinois, 360 U.S. at 269, 79 S.Ct at 1177.

B. Napue violation of States Witness Wyva Denise Clause

This justifiable homicide happened November 21st, 2006, Then in July of 2007, 9 month after the shooting. O.S.B.I. Agent Cliff Fielding stated at trial "Hendrix's family member came to my office and asked me if Wyva Clouse had been interviewed because she had pertinent information in this case." (Transcripts page 457)

Now states Witness Wyva Clouse came forth with the bought and paid for Perjured testimony, "Chad Reed came by my house two days before the shooting mad and upset at Hendrix for using him for a check and stated angrily That Reed said he wanted to shoot Hendrix in the head multiple times." (Transcripts page 189 thru 190).

Petitioner was originally charged with second Degree Murder then because of states witness Wyva Clouse coming along with her perjured testimony at preliminary Hearing. Petitioner

Petitioner Presents New evidence to the Court, a affidavit from state witness Wyva Denise Clouse's Cousin Terry Burnett Watson who states:

"I was staying with my cousin Wyva Clouse and her husband Dennis Clouse before and after the Homicide involving Chad Reed and Dorothy Hendrix."

"I never heard Chad say anything threatening about Ms Hendrix."

"Sometime after the Homicide, I remember Wyva getting a phone call and then a lady came to visit her. Wyva had me go to the barn when the lady was close to the House. The lady was at the house for thirty or forty five minutes and then she left. A Few days later, Wyva told me that Chad Reed's aunt had paid her to lie about what Chad said before the Homicide. Wyva also told me that she hoped she would not get into trouble and that Chad would get what he deserved." (see P.C. Exh#10, at page 42)

Petitioner also presented the affidavit of Denise Clouse whom is Wyva Clouse's Husband whom states: "I never heard Chad [Reed] threaten his grandmother, specifically I never heard him say he was going to shoot her." (see P.C. Exh#12, page 44) ~~Exh#12~~

The Oklahoma Court of Criminal Appeals in their Summary Opinion in this case used nothing but state witness Hollingsworth and Clouse's testimony to sustain the Petitioner's Conviction, for 1st Degree Murder. (P.C. Exh#13, page 45 thru 48)

"A Conviction secured by the use of perjured testimony known to be such by the prosecuting attorney is a denial of Due Process." White v. Regan 324 U.S. 760 (1945).

"Due Process demands that the state avoid soliciting perjured testimony, and imposes an affirmative duty upon the state to disclose false testimony which goes to the merits

of the case or the Credibility of the Witness." see *Napue v. Ill.*, 360 U.S. at 269, 79 S.Ct. at 1177.

This Court Can not let family members pay people to make a self defense shooting into 1st Degree Murder and Not say that its not a Miscarriage of Justice.

Furthermore it cant let Prosecutors put on the Perjured testimony of States Witness Hollingsworth to deny this Petitioner his affirmative defense of self defense and not Call it a Miscarriage of Justice.

2. Petitioner Received Ineffective Assistance of Appellate Counsel

This Petitioner's Appellate Counsel, Cary Piron, was made aware of the Napue violations in this case and failed present them on direct Appeal therefore violating his obligations of the 6th Amendment right to provide effective assistance of Counsel as laid out in *Strickland v. Washington*, 466 U.S. 668 (1984). And Petitioner is supposed to have Counsel who is a advocate not file cookie cutter briefs. When told Appellate Counsel could have expanded the record and brought forth these Napue violations committed by the prosecutors in this case and Impeach States Witness Hollingsworth and Cloues testimony. see *Hoots v. Allbrook*, 785 F.2d 1214, 1221 (4th Cir 1986) "Counsel must ordinarily investigate methods for impeaching prosecution witness"; *United States v. Tucker*, 716 F.2d 576, 585-87 (9th Cir. 1983) "Counsel's failure to impeach witness with Prior Inconsistent statements was Ineffective assistance of Counsel"; and *Moore v. Mann*, 254 F.3d 1235, 1241 (10th Cir. 1989) "Counsel's failure to Impeach a Key prosecution witness is the kind of representation that falls outside wide range of professionally competent assistance." Petitioner therefore has meet the Cause and Prejudice standard.

Prejudice suffered by the Petitioner is the fact States Witness Hollingsworth testimony made Petitioner out to be the aggressor, it defrauded the Court into giving Incorrect Jury Instructions, and denied this Petitioner a full and Complete defense of Oklahoma Justifiable Homicide statute, 21 O.S. 733, and Therefore Denied this Petitioner Due Process and ~~also~~ equal treatment of the law that is guaranteed by the 14th Amendment of the U.S. Constitution, and

The Perjured testimony of ~~a~~ States Witness Clause Caused Petitioner's Justifiable homicide to be turned into a 1st Degree Murder Case, therefore Violating the Due Process of the 14th Amendment.

"Prejudice presumed when assistance of Counsel 'denied' entirely or during a critical stage of the proceedings," *Mickens v. Taylor*, 535 U.S. 162, 166 (2002).

The Due Process clause of the 14th Amendment guarantees the right to effective assistance of Counsel on a first appeal in state Court, see *Evitts v. Lucy*, 469 U.S. 387, 394-99 (1980).

3. Miscarriage of Justice Schlup Claim.

This Case is a 2nd Amendment Right to bear Arms for Self-defense Case, Not Murder. Petitioner is Innocent of the Sustainable offense of Murder because this second Amendment Self defense Justifiable Homicide falls into a "Perfect" Self defense situation and under the rule of substantive law of the 14th Amendment, Petitioner is guilty of No Crime.

The OK Court of Criminal Appeals set forth the parameters for the elements of self defense in the Case of Donna Lee Bechtel. (Ms. Bechtel shot her

unarmed husband as he laid in bed and she claimed self defense. Petitioner shot Hendrix whom was armed with a firearm and was trying to shoot Petitioner while she was sitting up in her bed. The O.C.C.A. stated in Bechtel:

"When a person is in a place he has a right to be, and is not the aggressor in bringing on the conflict, and is assaulted by another person in such way as to place him in danger of death or great bodily harm, person assaulted is not bound to retreat but, on the contrary, may stand his ground and repel danger in which he is placed with such force as would repel the attack, and protect his person from great bodily harm, when it is necessary such person may even take the life of assailant when necessary to protect himself from receiving deadly assault or receiving great bodily harm." Bechtel v. State, O.C.C.A., 840 P2d 1 (1992), sec 21 O.S. § 733(B).

The facts of this case are:

- A. Petitioner lived at the residence with Ms Hendrix, the hallway where Mr. Reed was standing was clearly a place he had a right to be,
- B. Mr. Reed was not the aggressor in this case (the state had to put on the perjured testimony of state witness Hollingsworth to make Reed out to be the aggressor) and Hendrix started the conflict.
- C. Hendrix assaulted Reed in a way that placed him in danger of death or great bodily harm. Hendrix's gun was found with the safety in the "off" position so there is clearly evidence that Hendrix committed the said overt acts that caused Reed to fear for his life from great bodily harm or death.
- D. Reed had no duty to retreat, he could clearly stand your ground and repel danger.
- E. Reed fired his weapon 1 time in self defense, to keep from receiving bodily harm.
- F. Reed immediately yelled for Hollingsworth to call 911 for help.

This clearly shows Reeds shooting of Hendrix falls within all of the parameters laid out in the O.C.C.A.'s ruling in Bechtel. Therefore it clearly falls into the "Perfect" Self-defense, and under the rule of substantive law, "if a defendant proves a defense of "perfect" Selfdefense to a Murder Charge, "his homicide is justified, and he is guilty of NO Crime - Not Murder, Not Manslaughter, but no Crime." 2 Wayne R. LaFare & Austin W. Scott, Jr., Substantive Criminal Law § 7.11 (a), at 271 (1986) Oklahoma's Stand Your Ground law, 21 O.S. § 1289.25, section (D) mirrors the O.C.C.A.'s Ruling in Bechtel's parameters for self defense under OK statute 21 O.S. § 733 Justifiable Homicide. Once the "Stand your grounds" law under 21 O.S. § 1289.25 Section (D) parameters are met, Oklahoma's "Stand your ground" Immunity Clause kick in under 21 O.S. § 1289.25 section (F) "A person who uses defensive force, as permitted pursuant to the provision of subsection A, B, D and E of this section is justified in using such defensive force and is immune from criminal prosecution As used in this subsection the term "criminal prosecution" includes charging and prosecuting the defendant."

This Court has stated "The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the Defendants subjected to them." U.S. v. Gradwell, 243 U.S. 476, 485 (1917).

This Court stated in Heller and repeated in McDonald, "individual self defense is the central component of the Second Amendment right," McDonald, 561 U.S. at 767, 130 S.Ct. 3020 (quoting Heller, 554 U.S. at 599, 128 S.Ct. 2783.)

The OCCA in their summary opinion used nothing but states witness Patricia Hollingsworth and states witness Wyva Denise Clouse's testimony to sustain the conviction the conviction on direct Appeal in this case.

Petitioner has presented new reliable evidence that proves Witness Hollingsworth and Clouse's testimony was perjured and will clearly cause a Reasonable Jury not to convict Petitioner on Retrial.

A. States Witness Hollingsworth Perjured testimony; Evidence the Jury has not heard.

1. Hollingsworth wrote in her written statement "I was in the Kitchen." (P.C. Exh[#] 2, page 27);

2. Statement given to Sgt. Kevin Willis at McCurtain Co Sheriff's Office: She.... then walked to the Kitchen to get a drink. She stated she could hear Chad and Hendrix talking but didn't know what they were talking about. Hollingsworth then stated she heard Hendrix say "I'll shoot you in the fucking head." She then heard a shot and stated she seen Chad standing in the Hallway by Hendrix's door. (P.C. Exh[#] 3, page 28)

B. Hollingsworth's Perjured testimony as presented at trial:

(Now Hollingsworth is no longer in the Kitchen getting a drink of Water but ~~was~~ has Now moved to being in the Northeast bedroom)

"I was in the Northeast bedroom gathering Items so we could go to a motel. As I left the bedroom Chad was still in the Northeast bedroom and I heard Hendrix start a Argument with Chad over the Dog being on the bed and during the argument Chad moved to be in front of Hendrix and Continued the argument by asking Hendrix what the difference was in my dog being on the bed and her dogs being on the bed (Hendrix owned 2 pomeranians).

Hendrix said "I'll blow your fucking head off!" then I heard a shot." (Transcripts page 263 thru 268, P.C. Exh[#] 4, page 29 thru 33)

Now thru her Perjured testimony she can see and Hear everything!
And that during this argument she now hears Chad moved into front
of Hendrix doorway! All so the state can claim Reed was the aggressor!
C. New Reliable evidence not heard by a jury, D.S.B.L. Agent Stan Floresces
diagram of the House which clearly shows If State's Witness Hollingsworth
was in the Kitchen getting a drink of water, like she wrote in
her written statement, she Couldn't see anything! ~~And she had already~~
~~seen the defendant~~ (see P.C. Exh #5, page 34) And she had already
told McCurtain County S.D. Sgt. Kevin Willis "she could hear Chad and Hendrix
talking but didn't know what they were talking about." (P.C. Exh #3, page 28)

Now Prosecutor Webster capitalized on this perjured testimony by making the
following arguments to the jury, "Chad Reed was the aggressor in this confrontation
He is the one who came to her... The State has met the elements its
required to meet, ... And we have met that burden that were required to meet
and in doing that we have met the burden that he was not acting in
self defense. Self defense was not available to him he was the aggressor." (Transcripts
508 thru 510)

Thru this perjured testimony, the Prosecutor committed fraud upon the
Court and had Judge Brock give a set of 4 uniform Jury Instructions
to the jury when there is conflicting evidence of whom the aggressor is:
OUJI CR 8-50, OUJI CR 8-51, OUJI CR 8-52, OUJI CR 8-53.
"Conviction secured by the use of perjured testimony known to be such by
the prosecuting attorney is a Denial of Due Process." White v. Regan, 324 U.S. 760
(1945). "Due Process demands the state avoid soliciting perjury." Napue v. Ill, supra.,

360 U.S. at 269, 79 S.Ct. at 1177.

C. Perjured testimony of Wyva Clouse: Newly Presented evidence not heard by a jury.

After trial and before sentencing in this case, Trial Counsel filed a motion for a new trial with a affidavit of Terry Burnett Watson with one sentence: Saying "Wyva Clouse told me Chads family (Hendrix's family) had paid her to lie and get Chad Convicted of murder." Judge Brock denied the motion for a New Trial and sentenced Petitioner to life with parole.

Now states witness Wyva Clouse testified at trial "That Reed came by my House two days before the shooting of Hendrix and Angela repeated multiple times that he wanted to shoot hendrix in the head for using him for a check all his life." (Transcript page 186-189)

Petitioner Was originally only charged with Second degree murder but when Clouse came along with her perjured testimony Petitioner's charges were increased to 1st Degree murder at preliminary Hearing.

Appellate Counsel Cary Pisons went and obtained a more detailed affidavit before he filed the direct Appeal and Terry Burnett Watson said he didn't want to jeopardize his plea agreement with Mecklenburg County DAs office and would not talk until after he was sentenced in his case. Mr. Watson was sentenced in April 2008 and Petitioner's trial was in February 2008. (see PoC, Exh[#] 10, page 42) The deceased in this case happens to also be the Court Clerks in laws!

In Mr. Watson affidavit which states Petitioner "never said anything about threatening about Hendrix," and "Some time after the Homicide, I remember Wyva getting a phone call and then a lady came to visit her." "Wyva told me

that Chad Reed's aunt had paid her to lie about what Chad had said before the Homicide." This Clouse's own Cousin telling on her perjured testimony

Even Clouse's own Husband & Denise Clouse gave a affidavit that a Jury has never heard. Mr. Clouse states:

"I never heard Chad threaten his grandmother, specifically I never heard him say he was going to shoot her." (P.C. Exh #11, at page 44 at 3)

Even the OK Court of Criminal Appeals had a Issue with Clouse's testimony in their Summary opinion in this case at Note #7 by stating "jurors could have wholly disregarded Clouse's testimony, reviewed the other evidence, and found beyond a reasonable doubt that Reed shot the victim intending to kill her." If that's true, give Petitioner a new trial without this Perjured testimony.

This Court is required to do credibility choices on cases of Innocence. This Petitioner is Innocent of the sustainable offense of Murder. This Court recognizes a narrow rule to have procedurally barred or defaulted claim ruled on the merits when the applicant can demonstrate actual Innocence of the sustainable offense, *Murray v. Carrier*, 477 U.S. 478, 496 (1986), *Pacheco v. Habibi*, 62 F.4th 1233 (10th Cir. 2023) "The Core of actual Innocence, for the purpose of the actual-Innocence gateway to habeas, review of a state's procedurally defaulted claim is that prisoner is imprisoned for conduct that was not prohibited by law." The Second Amendment right to self defense is not prohibited by law. The elements of 1st degree murder in Oklahoma 21 O.S. 870.17 is unlawfulness homicide. Well Justifiable Homicide under OK law 21 O.S. 873 is not unlawful when committed in self defense. "Due process protects accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute crime which he is charged." *Winship*, 397 U.S. 358 (1970).

"A credible showing of actual innocence may allow a prisoner to pursue his Constitutional claims on the merits notwithstanding the existence of a Procedural bar to relief."

Perkins, 569 U.S. at 392.

This Court has "consistently reaffirmed the existence and importance of the exception for fundamental miscarriage of Justice." Schlup, 513 U.S. at 321. "The gateway should open only evidence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless Constitutional error." Perkins, 569 U.S. at 401. The actual innocence standard is designed to "ensure that Petitioner's case is truly 'extraordinary' while still providing a petitioner a meaningful avenue by which to avoid a manifest of Injustice." Schlup, 513 U.S. at 327.

Actual Innocence requires a petitioner to present "new reliable evidence - whether it be exculpatory ~~to~~ scientific evidence, trustworthy eyewitness accounts, or other critical physical evidence - that was not presented at trial," Schlup, 513 U.S. at 324.

The Schlup Court did not precisely define what it meant by "new reliable evidence... that was not presented at trial," 513 U.S. at 324.

This case is a tragedy but it is still a self-defense shooting.

4. Procedural Bars do not apply to this case because:

A. The state waived the procedural bar when it failed to file a response/objection to the Post Conviction as is required by the Oklahoma Post Conviction Act 22 O.S. § 1083 (A) and plead the procedural bar. And this Court has said its waived when the state does not plead Procedural bar affirmative defenses. see Welch v. United States, 578 U.S. 120-138 (2016) and Gray v. Netherland, 518 U.S. 152, 165-66 (1996).

- B. The State District Court Judge violated Due Process of the 14th Amendment and did not have subject matter jurisdiction to Impose a Procedural bar until the State filed a answer to the Post Conviction and plead the Procedural bar, because the OK Post Conviction Act 22 O.S. § 1083 (B) "when a Court is satisfied, on the basis of the application, the answer or motion of the respondent, and the record, that the applicant is not entitled to Post Conviction relief and no purpose would be served by any further proceedings, it may order the application dismissed or grant leave to file an amended application, see 22 O.S. § 1083 - Response by the State - Disposition of Application section (B).
- C. This Petitioner filed his Claims under the Miscarriage of Justice Doctrine and this Court has said "A credible showing of actual innocence may allow a prisoner to pursue his Constitutional claims on the merits not with standing the existence of a procedural bar to relief", Perkins, 569 U.S. at 392.
- For these reasons Procedural Bars do not apply in this case and this Court must Grant Certiorari to stop this Miscarriage of Justice.

Reasons For Granting the Petition

This Honorable Court has stated in Heller, McDonald, and Bruen that the Second Amendment's right to bear arms covers Self defense. And this Court must adopt the "Perfect" Self defense doctrine to Protect United States citizens from Prosecutors who want to take that Second Amendment right away. In this Case the State committed multiple Napa violations to Commit fraud on the Court to take away this Citizens right of Self defense under the Second Amendment's right to bear Arms.

The use of perjured testimony in this case violated this Petitioner's Due Process and the State has a duty under Nure to correct But Instead they are trying to hide this Prosecutorial misconduct behind a Procedural Bar. This Petitioner is Innocent of the Sustainable offense and it is a Miscarriage of Justice to convict a Citizen for protecting him self.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chad William Reed

Date: October 3rd, 2024