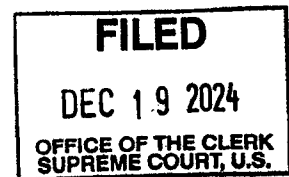


ORIGINAL

No. 24-6263



IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM S. HURT III - PETITIONER
(Your Name)

vs.

THE STATE OF OKLAHOMA - RESPONDENT(S)

ON PETITION ON A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

WILLIAM S. HURT III
(Your Name)

129 CONNER RD
(Address)

HOMINY, OK 74035
(City, State, Zip Code)

QUESTION(S) PRESENTED

- I. Whether the Oklahoma Court of Criminal Appeals (OCCA) violated Petitioner's statutory rights under the Oklahoma Post-Conviction DNA pursuant to Okla. Stat. tit. 22 § 1373.4 by denying access to potentially exculpatory DNA testing?
- II. Whether the Oklahoma Court of Criminal Appeals (OCCA) abused its discretion by violating Petitioner's Fourteenth Amendment Rights to be heard by issuing a premature order within Petitioner's timeframe to file his supporting brief? As stipulated by Rule 5.2 (C)(2) of *the Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Chapter 18 Appendix (2018).

LIST OF PARTIES

- ☒ 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:

Genter Drummond
Oklahoma Attorney General
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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

The Decision of the OCCA denying Petitioner's motion for DNA testing is not published but available at Case No. PC-2024-684 in the Oklahoma Court of Criminal Appeals.

JURISDICTION

The OCCA entered judgment on October 4, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATE COURTS:

The date on which the highest states court decided my case was on October 4, 2024.

A copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1 provides:

No state shall... deprive any person of life, liberty, or property without due process of law...

Oklahoma Constitution, Article II, § 7 and 20

Article II, §7

Due Process of Law: This section guarantees that no person shall be deprived of life, liberty, or property without due process of law. It underscores the principle that legal proceedings must be conducted

fairly and that individuals are entitled to notice and an opportunity to be heard.

Article II, § 20

Right to Appeal This section ensures that every citizen has the right to appeal in civil and criminal cases. It establishes that the law should provide a means to challenge judgments and decisions made in the lower courts, reinforcing the notion of fair legal procedures and the importance of judicial review.

Oklahoma Statute Annotated. Tit. 22 §1372. Biological Evidence preservation

A criminal justice agency having possession or custody of biological evidence from a violate felony offense, as defined by subsection F of Section 982 of Title 22 of the Oklahoma Statutes, shall retain and preserve the biological evidence for such period of time as any individual convicted of the crime remains incarcerated.

Oklahoma Statute Annotated. Tit. 22 §1373.4- Hearing-Testing

The court shall order DNA testing only if the court finds:

1. A reasonable probability that petitioner would not have been convicted if Favorable results had been obtained through DNA testing at the time of the Original Prosecution.
2. The request for DNA testing is made to demonstrate the innocence of the convicted person and is not made to unreasonably delay the execution of the sentence or the administration of justice;
3. One or more of the items of evidence the convicted person seeks to have tested still exist;
4. The evidence to be tested was secured in relation to the challenged conviction and either was no previously subject to DNA testing or, if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results; and
5. The chain of custody of the evidence to be tested is sufficient to establish that the evidence has not been substituted, tampered with, replaced or altered in any material respect or, if the chain of custody does not

establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence.

Oklahoma Statute Annotated. Tit. 22 §1373.7, Appeals.

An appeal under the provisions of the Post-Conviction DNA Act may be taken in the same manner as any other appeal.

Oklahoma Statutes Annotated. Tit 22. Ch. 18. Section V. Rule 5.2(C) (2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), provides in relevant part:

(C) (2) Petition in Error, Briefs and Record.

A Petition in error and supporting brief, WITH A CERTIFIED COPY OF THE ORDER ATTACHED must be filed with the Clerk of this Court. The petition in error shall state the date and in what District Court the Notice of Post-Conviction Appeal was filed. If the Post-Conviction appeals arises from a misdemeanor or regular felony conviction, **the required documents must be filed within sixty (60) days from the date the final order of the District Court is filed with the Clerk of the District Court.**

STATEMENT OF THE CASE

Petitioner was convicted of First Degree Murder in violation 21 Okl. St. Ann. § 701.7 in 2011 in Tulsa County, Oklahoma. The conviction arose from an investigation led by Detective Hill, during which crucial evidence and witness statements raised significant issues regarding the reliability of the case against Petitioner.

On the evening of May 16, 2010, at approximately 10:00 p.m., Officer William Toliver of the Tulsa Police Department was dispatched to Cheyenne Park following reports of gunfire North of Cheyenne (Tr. III 692). Upon his arrival, Officer Toliver was approached by Jarred Miller and Joseph Thomas, who reported witnessing the aftermath of the fatal shooting death of Marcus Lewis Jr., (Tr. III 692; Tr. III 693; Tr. III 701). During the night of the murder both witnesses gave homicide Detective, C.K. Hill and Kennedy, corroborating statements the night Marcus Lewis Jr. was murdered, in which both witnesses were unable to identify any possible suspects. Both witnesses told Detectives that they heard multiple gunshots and seen someone standing over the victim as they were arriving at the scene (Tr. III, 697,704,705). Detective Hill gathered those statements and during the night of the murder, Detectives was investigating the evidences and phones found at the scene, Det. Hill searched through a phone that was found in the park listed a item #9 at Petitioner's trial. Det. Hill found a photo in phone of a house who he believed might have been the owner. As Detective Hill drove around to find the house location he then received a call from the victim's father, as Mr. Miller and Mr. Thomas recanted their

statements and accused Petitioner and his Co-defendant, Jerlon Morgan, of being in a physical altercation at Cheyenne Park with the victim located in Tulsa, Ok. (Tr. III, 707).

Petitioner along with his co-defendant went to a joint jury trial to exclaim their innocence. During the joint jury trial petitioner presented his family members as witnesses in regards to his whereabouts during the time of the murder. Petitioner's twin sister, Willetta Hurt told the jury that she was on summer break from Oklahoma University and was with Petitioner on May 16, 2010, as they rode horses earlier that day and during the evening time both her and Petitioner got picked up by their mother, Earnestine Lafayette (Tr IV, 976-77). Mrs. Lafayette also testified that Petitioner came home with her and never left that night (Tr IV, 978-79). Petitioner's Co-defendant presented no defense, although they told Petitioner's jury in opening statement that they were presenting an alibi defense as well. Both Petitioner and his Co-defendant were found guilty on October 7, 2014 and received a Life Sentence. Tulsa District Judge, James Caputo, sentenced both defendants to Life in prison according to the jury's verdict.

- Petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals (OCCA). In an unpublished summary opinion, filed in May 17, 2013 Case no. CF 2011-1057.
- On June 12, 2013, Petitioner filed an application for Post-Conviction Relief in Tulsa County District Court. Petitioner did not have any legal assistance while he was housed at Davis Correctional Maximum Facility. Petitioner used his direct appeal brief to file his Post-Conviction Relief which was denied by Res Judicata. By order

filed August 6, 2013, the district court judge, Clifford Smith denied the requested relief. Petitioner did not file a post-conviction.

- On January 24, 2024, Petitioner filed a Petition for Writ of Habeas Corpus, using 28 U.S.C. § 2254 form. However, petitioner petition was stamped filed in Tulsa County District Court, which was delayed for three (3) years. Petitioner then filed a petition for habeas relief in Federal District Court. Petitioner reasserted two claims denied the petition and declined to issue a COA on December 20, 2019; Case No. 17-CV-005-JED-JFJ.

Petitioner's Post-Conviction DNA Timeframe on Appeal

Petitioner sought DNA testing under Oklahoma's Post-convict DNA Act, asserting that modern testing could yield exculpatory results.

- On June 14, 2024 Petitioner filed his Application for Post-Conviction DNA testing in the Tulsa County District Court.
- The State filed its response on to the application on July 17, 2024.
- Petitioner filed for appointment of representation by the system on August 12, 2024.
- The District Judge, Clifford Smith denied Petitioner's application for Post-Convict DNA testing during a hearing held on August 14, 2024. Petitioner requested legal assistance, which went ignored by the District Court.
- Petitioner filed his Notice of Post-Conviction DNA appeal within a timely manner on August 27, 2024.
- Petitioner then filed his Petition-in-Error, Forma Pauperis, and certified copy of the district court order of denial with the Oklahoma Court of Criminal Appeals on

September 6, 2024. Petitioner's supporting brief was received by the Clerk of the Appellants Court on October 7, 2024, but was not filed despite Petitioner's effort to timely submit his supporting brief within the sixty (60) days prescribed by Rule 5.2 (C)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title. 22, Ch.18, App.,(2018).

- The Oklahoma Court of Criminal Appeals affirmed Petitioner's Appeal on October 4, 2024.

The OCCA issued a premature order denying the request without full consideration of statutory criteria or constitutional implications.

SUMMARY OF ARGUMENT

State-created Post-Conviction DNA testing statutes with the Constitution's procedural due process guarantees. See *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 68-69 (2009). Fairness and truth are the foundation of our criminal justice system, E.g., *Coffin v. United States*, 156 U.S. 432, 456 (1895) (holding that it is "better that ten guilty persons escape than that one innocent suffer" (quoting 2 William Blackstone, Commentaries *358)). DNA testing carries out those principles by increasing the accuracy of criminal convictions. See *Osborne*, 557 U.S. at 62. All fifty states have enacted Post-Conviction DNA testing statutes. These statutes allow the wrongfully convicted to prove their innocence in an innocence claim or habeas petition. And, as this Court explained in *Osborne*, state-created post-conviction DNA testing statutes must be "fundamentally [a]dequate to vindicate the substantive rights provided." *Id.* at 69.

The implementation of Oklahoma Post-Conviction Statute that underlies the decision below falls short of that mark. Petitioner, William S. Hurt III, seeks access to evidence used to convict him in order to conduct DNA testing on that evidence, using technology that was not presented at his jury trial. Oklahoma has enacted a post-conviction DNA testing statute that, in theory, would allow Petitioner to test the evidence in his case. But the Oklahoma trial court denied Petitioner's motion for DNA testing of this evidence, and the Oklahoma Court of Criminal Appeals upheld that denial. They did so by denying Petitioner the opportunity to be heard, which undermined the fairness of his appeal with a premature order affirming his Post-

Conviction DNA Appeal. See. Okla. Stat. tit. 22 § 1373.7 —Appeals (An appeal under the provisions of the Post-Conviction DNA Act may be taken in the same manner as any other appeal.) The Oklahoma Court of Criminal Appeals reached that result within the timeframe for Petitioner to file his brief-in-support on the appellate record in the Court of Criminal Appeals of State of Oklahoma Case no. PC-2024-684 (Post-Conviction). Petitioner commenced his appeal by filing a Notice of Intent to appeal, formally notifying the court and relevant parties of his decision to seek appellate review of judgment entered against him. Petitioner also filed his Petition-in-Error, Forma Pauperis, and on September 6, 2024, within timeframe required by Rule 5.2 (C)(2), *Rules of the Oklahoma Court of Criminal Appeals*, Title. 22, Ch.18, App.,(2018) (providing twenty (20) days for the notice of appeal and sixty (60) days for the Petition in Error and Supporting Brief, WITH A CERTIFIED COPY OF THE ORDER ATTACHED). The district court denied Petitioner's Post-Conviction DNA on August 14, 2024 and the OCCA affirmed his appeal on October 4, 2024. The Appellate Court Clerk received Petitioner's supporting brief on October 7, 2024, which was within the allowable timeframe for filing his supporting brief along with the petition in error. However, due to procedural inconsistencies under Rule 3.15, *Rules of the Oklahoma Court of Criminal appeals*, Title 22. Ch.8 App. (2024), Petitioner's supporting brief was not included as part of the appellate record, thereby impacting the review process. See. Appendix D: Petitioner's timely filed brief-in-support.

Petitioner's propositions addresses the premature order issued by the Oklahoma Court of Criminal Appeals OCCA and argues that such action violated the

Petitioner's Constitutional rights to due process under the Fifth and Fourteenth Amendments. By issuing an order before the Petitioner was afforded the opportunity to file a supporting brief, the court deprived Petitioner of the opportunity to be fully heard and to present arguments supporting the materiality and potential exculpatory value of DNA evidence. Such decision requires a meaningful opportunity to demonstrate how the requested testing could affect the integrity of the conviction.

ARGUMENT

I.

POST-CONVICTION DNA TESTING STATUTES ARE BASED ON PRINCIPLES OF FAIRNESS AND ACCURACY THAT ARE FOUNDATIONAL FOR OUR JUSTICE SYSTEM.

Our Nation's justice system is founded on a longstanding commitment to protecting innocent people's liberty and punishing only those who are truly culpable. Post-Conviction DNA testing statutes are a modern reflection of those principles. But these statutes can support the principle of fairness and accuracy only if they are interpreted in a way that is consistent with Due Process.

A. Post-Conviction DNA Testing Statutes Reflect on Our Criminal Justice System's Concern for the Wrongfully Convicted.

"The central purpose of any system of criminal justice" is not just "to convict the guilty." But to "free the innocent." *Herrera v. Collins*, 506 U.S. 390, 398 (1993). Thus, although finality is important, its value is premised on the accuracy of criminal

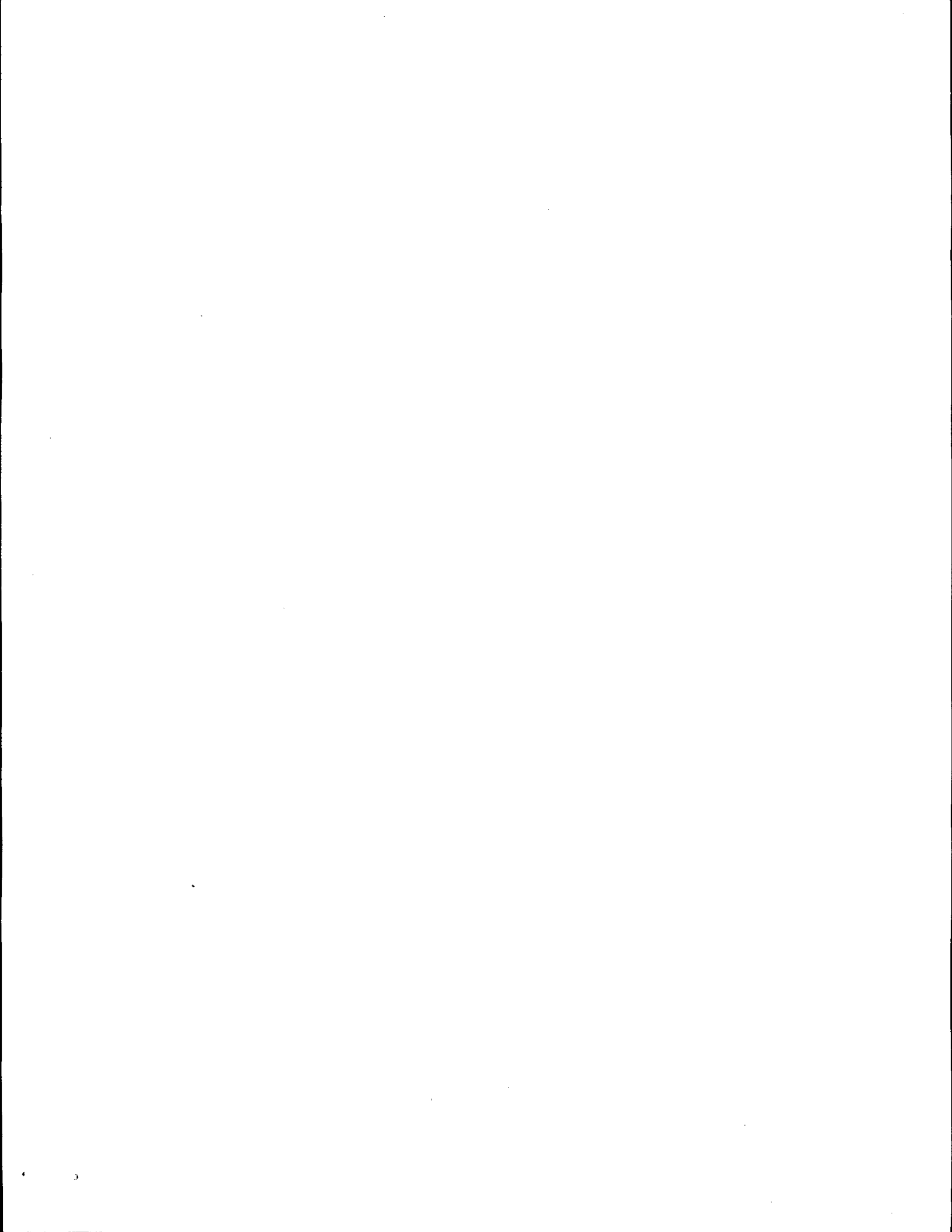
convictions. Compare, e.g., *Calderon v. Thompson*, 523 U.S. 538, 555-56 (1998) (“Finality is essential to both the retributive and the deterrent functions of criminal law.”), with e.g., *Kaufman v. United States*, 394 U.S. 217, 228 (1969) (“[C]onventional notions of finality in litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged.”).

Because of its accuracy, DNA testing has become an important tool for our criminal justice system. The current standard for forensic DNA testing is to either prove one’s innocence by using exculpatory DNA evidence which contradicts false testimony presented by the state’s witness or inculcate the prime suspect by matching DNA evidence with the corroborating testimony of the state’s witnesses. Petitioner seeks to use the DNA test method to test the evidence at issue here. DNA testing has “increase[ed] exponentially the reliability of forensic identification over earlier techniques” and is “qualitatively different from all that proceeded it.” *Harvey v. Horan*, 284 F.3d 298, 305 & n.1 (4th Cir. 2002) (Luttig, J., respecting the denial of rehearing en banc); cf. *Herrera*, 506 U.S. at 403 (noting that, ordinarily, “the passage of time only diminishes the reliability of criminal adjudication”).

Petitioner’s trial counsel, Kevin Adams, failed to request DNA testing to be presented at trial, despite the fact that the Former District Attorney, Ben Fu, had previously requested and obtained DNA samples from Petitioner’s, Co-defendant, Morgan. This oversight denied the jury opportunity to consider potentially exculpatory evidence, which could have impacted the outcome of the case. At the

beginning of Petitioner's joint trial on Oct 5, 2011 a motion in limine was held regarding the still pending results of the DNA test. See. (Tr. Trans. Vol II. Pg. 368), The district attorney at trial filed a motion in limine to exclude testimony regarding the late ordering of DNA testing and the absence of those results during the trial. As a result, the jury was prevented from hearing evidence about the significance of the DNA testing or the state's failure to timely provide results, which could have been critical to Petitioner's defense. Based on the state's initial efforts to present DNA testing during the original prosecution, the absence of such evidence at trial raises a significance question of whether the evidence was inconclusive or potentially exculpatory. The state's late ordering of DNA testing, combined with a motion in limine excluded any testimony about it, deprived the jury of critical information regarding reliability of the prosecution's case. The state's failure to present the testing results suggests a lack of conclusive findings that could strengthen their case, further emphasizing the materiality of Post-Conviction DNA testing. This is essential to ensuring the accuracy of the verdict and maintaining public confidence in the fairness of the judicial process.

Petitioner requested DNA testing on the evidence within a timely manner and should have been granted access to the evidence and the opportunity to present the court with witness testimony in regards to the whereabouts of the evidence in the possession of the custodian, Detective C.K. Hill, during Petitioner's evidentiary hearing held by District Court Judge, Clifford Smith. Petitioner requested counsel



prior to the hearing and was neither appointed nor assisted in overcoming a legal burden with higher standards than the district attorney request for DNA testing.

The Supreme Court case of *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed. 2d 490 (1995), established the background rule. There, the Court held that impeachment evidence known only to the police was subject to *Brady* disclosure. 514 U.S. at 438, 115 S.Ct. 1555. As the Court put it,

Any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to plea to substitute the police for prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.

Id. In other words, the police may not "help" the prosecution by keeping exculpatory evidence to themselves. See *U.S. v. Joselyn*, 206 F.3d 144, 154 (1st Cir. 2000) (prosecutors may be held accountable for information known to police investigators."); *Free v. Georgia*, 599 F.2d 65, 69 (5th Cir. 1979) (detective deliberately concealing witness). It is also clear that exculpatory evidence includes impeachment material about the criminal backgrounds of prosecution witnesses. See *Perdomo*, 929 F.2d at 970 (criminal history of key prosecution witnesses in Virgin Islands records was available to prosecution for *Brady* purposes). Mace, a police officer and member of the prosecuting team, had information about unlawful activity by a prosecution witness (himself) and did not turn it over. Thus, *Brady* and its progeny facially label this suppression a violation of due process.

Petitioner had no knowledge of the ownership of the evidence he sought to have tested. As proscribed in Okla. Stat. tit. 1373.2 (D) "the response shall include an

inventory of all the evidence related to the case, including the custodian of such evidence." Petitioner was informed by the state that the evidence was released to Detective C.K. Hill. Petitioner also sought to have the evidence, such as a ring (found on the victim's hand), key lanyard, and the contents inside of the victim's pockets to be tested, but was not given the opportunity to call Det. Hill as a witness during his evidentiary hearing to see if that evidence still exist, which become a violation of Petitioner's due process right to obtain exculpatory evidence.

A detective's failure to disclose preserved evidence introduced at trial undermines the integrity of the justice system, especially when such evidence is later sought for post conviction DNA testing. This failure violates Constitutional principles, statutory rights, and public favoring accuracy in criminal convictions.

Under *Brady v. Maryland*, 373 U.S. 83, 87 (1963) the prosecution, including law enforcement agents such as detectives, has a constitutional obligation to disclose exculpatory evidence material to the defense. The failure to disclose preserved evidence at trial impacts the fairness of the proceedings, especially if the evidence could have been subjected to DNA testing to establish innocence. The detective failure to disclose or preserve evidence necessary for DNA testing directly contravenes these obligations, particularly when the evidence could demonstrates its relevance, making the state's obligation to disclose it even stronger. The inability to access this evidence denies the Petitioner an opportunity to pursue testing that could prove innocence.

Given the materiality of DNA evidence and its capacity to exonerate the innocent, courts should rigorously enforce disclose obligations and grant access to

preserved evidence for post conviction testing. The principles of fairness, justice, and public trust demand no less.

By a premature order issued by the OCCA, Petitioner was not given the opportunity to dispute that the ring, key lanyard, and contents inside of the victim's pockets still exist as provided by Okla. Stat. tit. 1373.4 (A) (3); Also the preservation of evidence See Okla. Stat. tit. 1372. Biological Evidence Preservation. .

Petitioner requested DNA testing to present reliable evidence in support of his actual innocence claim, and not be excluded on speaking about DNA that's favorable to the defense. Petitioner submitted a request for DNA testing to the District Court, providing a Property Receipt BE880 from the Tulsa Police department. This receipt identified specific items and their corresponding items numbers that Petitioner sought to have tested. Petitioner argued that the DNA analysis of these was crucial to proving his innocence and demonstrating that he was not involved in the crime for which he was convicted. Petitioner requested DNA testing to prove his innocence and present a complete defense instead of making the assumption based on the state's theory that the items at the scene were involved in a physical altercation. DNA testing would have given the juries a reasonable possibility that Petitioner was not the perpetrator involved in the victim's death. To establish actual innocence, a petitioner demonstrates that, "in light of all evidence," "its more likely than not that no reasonable juror would have convicted him." *Schlup v. Delo*, 513 U.S. 298, 327-328, 115 S. Ct. 851, 867-868, 130 L.Ed.2d 808 (1995). *Slaughter v. State*, 2005 OK CR 6, 108 P.3d 1052.

The legislation and political discussion surrounding these statutes often focused on the importance of fairness in the adjudication of criminal cases. The legislative history of Oklahoma Post-Conviction DNA Statute, for example, explains that the Oklahoma legislature enacted Chapter 25 of the Oklahoma Code of Criminal Procedure to increase post-conviction access to DNA testing and remedy inconsistencies in how courts treated requests for DNA testing. See Okla. Sess. Law Serv. Ch. 317., H.B. 1068 POST-CONVICTION DNA ACT (May 24, 2013).

Although the various DNA testing statutes that have been enacted differ substantially, see Kathy Swedlow, *Don't Believe Everything You Read: A Review of modern "Post-Conviction" DNA Testing Statutes*, 38 Cal. L. Rev. 355, 358, 360 (2002), "all of the statutes have some common provisions," Cynthia E. Jones, *Evidence Destroyed, Innocence Lost: The Preservation of Biological Evidence Under Innocence Protection Statutes*, 42 AM. Crim. L. Rev. 1239-40 (2005). State DNA testing statutes tend to create the same procedural right, "permit[ing] a convicted prisoner to petition the court for DNA testing of the normal time period for post-conviction litigation under applicable court rules and local limitations. For example, "[t]o qualify for DNA testing under most innocence protection statutes, the prisoner's petition for testing must" show that (1) A reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution. (2) The request for DNA testing is made to demonstrate the innocence of the convicted person and is not made to unreasonably delay the execution of the sentence or administration of justice; (3) One or more of the items of

evidence the convicted person seeks to have tested still exists; (4) The evidence to be tested was secured in relation to the challenged convicted and either was not previously subject to DNA testing or, if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results; and (5) The chain of custody.

The OCCA relied on the district court's order denying Petitioner's Post-Conviction DNA proscribed in 22 O.S. § 1373 (A) (1) because Petitioner failed meet the criteria by not identifying any piece of evidence that if tested could change the outcome in his case. Petitioner requested and provided the district court with his property sheet obtained in his Trace Report to test the specific items listed on the property receipt related to Case No. 2010-1963, in the District Court of Tulsa County. Petitioner requested that all of the items listed in the property sheet [BE5880] to be tested because he was accused of being in a physical fight and there were multiple pieces of evidence left at the scene specifically a key-chain, phone (found in the park) and ring found on the victim's hand to be tested for DNA because it would have collected DNA from a suspect(s) as the victim fought back according to the witnesses. Without the DNA test Petitioner's jurors were left to speculate that the items belonged to the suspect at trial. The Post-Conviction DNA testing also provides Petitioner the opportunity to inculcate another suspect other than himself. Which would have left the jurors with a reasonable possibility that he did not commit the offense he's charged with.

B. State-Created Post-Conviction DNA Testing Statutes Must Be Fundamentally Adequate to Vindicate the Substantive Rights Provided.

This Court first recognized that state-created post-conviction DNA testing statutes must comport with procedural due process requirements in *Osborne*, 557 U.S. at 69. The defendant there had sued Alaska state officials in a civil rights action for violating his due process right to obtain evidence that was used to convict him of certain criminal offenses. He wanted the evidence that was used to convict him of certain criminal offenses. He wanted the evidence to perform DNA testing that was unavailable at the time of trial. The *Osborne* Court held that Alaska's procedures for post-conviction DNA testing, developed through the Alaska courts' interpretation of the state's constitution and post-conviction statute, were "not inconsistent with the 'traditions and conscience of our people' or with 'any recognized principle of fundamental fairness.'" 557 U.S. at 70 (quoting *Medina v. California*, 505 U.S. 437, 446, 448 (1992)). Although a petitioner must meet certain eligibility requirements under Alaska law obtained discovery and perform DNA testing namely, the petitioner must show that the DNA results were not discoverable at trial and would constitute clear and convincing evidence of the petitioner's innocence – those requirements were not "fundamentally inadequate" to vindicate a prisoner's substantive right to post-conviction relief on the basis of actual innocence. *Id.* at 69. This Court therefore held Alaska's procedural for post-conviction DNA testing to be consistent with due process.

But, in holding that Alaska's procedures were adequate, the *Osborne* Court provided important guidance on what procedures for post-conviction DNA testing would *not* be consistent with due process: those that are unfair to defendants. As the

Court explained, post-conviction DNA testing statutes, along with related post-conviction remedies, create a constitutionally protected liberty interest that is infringed where “the State’s procedures for post-conviction relief ‘offend[] some principle of justice so rooted in the tradition and conscience of our people as to be ranked as fundamental,’ or ‘transgresses any recognized principle of fundamental fairness in operation.” *Osborne*, 557 U.S. at 69 (quoting *Medina*, 505 U.S. at 446, 448). State-created post-conviction DNA testing statutes must be “fundamentally []adequate to vindicate the substantive rights provided.” *Id.*

Like any other process provided by Oklahoma, the State’s procedures for post-conviction DNA testing must be “essential[ly] fair[].” Even if the proceedings themselves are not constitutionally mandate. *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996). Of course, a state is under no obligation to provide a prisoner with particular mechanisms for post-conviction relief; this Court suggested that a state could even preclude a prisoner from taking a direct appeal from his conviction . *See McKane v. Durston*, 153 U.S. 684, 687 (1894). Where a state does create a mechanism for post-conviction relief, however, “the procedures used must comport with demands of Due Process [Clause].” *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). Thus, relying in part on procedural due process, this Court has held that a state that provides a direct appeal as of right must also afford a criminal defendant an adequate and effective opportunity to present his claims. See *e.g., Douglas v. California* , 372 U.S. 353, 358 (1963) (holding that a state must provide for the appointment of counsel on appeal to an indigent defendant); *Griffin v. Illinois*, 351 U.S. 12, 20 (1956) (holding that a state

must provide free trial transcripts). Where a state creates a process for post-conviction relief, therefore, the prisoner has a constitutionally protected liberty interest in fair, therefore, the prisoner has a constitutionally protected liberty interest in fair access to that process, so as to avoid rendering the process arbitrary or futile.

For that reason, even is the "fundamental adequacy" guaranteed by the Due Process Clause and described by the *Osborne* Court does not mean that DNA evidence must be stored indefinitely, See, e.g., *Arizona v. Youngblood*, 488 U.S. 514, 88 U.S. 51, 58, 109 S.Ct. 333, 102 L.Ed. 2d 281 (1988) (1988), or that every prisoner may access the DNA evidence collected in his case, see *Osborne* 557 U.S. at 68-70, "fundamental adequacy" does mean at least this much: when state law confers a liberty interest in proving a prison's innocence with DNA evidence, there must be an adequate system in place for the prisoner to access that evidence. An adequate system is one that does not "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," or "transgress[] any recognized principle of fundamental fairness in operation." *Medina*, 505 U.S. at 445, 448 (quoting marks omitted.)

II.

THE OKLAHOMA COURT OF CRIMINAL APPEALS VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENT BY ISSUING AN PREMATURE ORDER BEFORE PETITIONER WAS AFFORDED THE OPPORTUNITY TO FILE HIS SUPPORTING BRIEF.

Premature orders violated Due Process

Due Process under the Fifth and Fourteenth Amendment guarantees a meaningful opportunity to be heard. In *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783 (1914), the Supreme Court held that due process is the right to be heard “at a meaningful time and in a meaning manner.” Similarly, in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct 652, 94 L.Ed. 865 (1950), the court emphasized the necessity of procedural fairness, including adequate notice and the opportunity to respond.

By issuing an order before the Petitioner could file his supporting brief, the OCCA denied Petitioner the chance to present legal arguments and evidence essential to his case. This procedural irregularity violates the principle of fundamental fairness and renders the court's decision constitutionally infirm.

Petitioner filed his notice of Post-Conviction DNA appeal on Aug 27, 2024, in regards to his disagreement with the court's denial. Petitioner then proceeded with his appeal by submitting his Petition-in-Error, Forma Pauperis, and a certified copy of the District Court's order denying his Post-Conviction DNA testing on September 6, 2024, according to Rule 5.2(C) (2), *Rules of the Oklahoma Court of Criminal*

Appeals, Title 22, Ch. 18, App. (2018). Petitioner initiated his appeal to OCCA by following the procedural guidelines provided by Rules 5.2 (C)(2) to present a meaningful opportunity to present an appeal to dispute the denial by the district court's order issued on August 14, 2024. After Petitioner filed his Petition in Error, the Petitioner subsequently prepared and filed his supporting brief with the timeframe prescribed by Rule 5.2(C) (2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), to the Clerk of the Appellate Courts. The OCCA received Petitioner's supporting brief fifty-four (54) days after the district court order of denial. Petitioner's supporting brief was timely filed but rejected because of the premature order issued by the OCCA's order issued on October 4, 2024, which was within the time for Petitioner to file his supporting brief. By statutory tolling petitioner's due process rights were violated by a premature order during the time Petitioner mailed his supporting brief to the OCCA.

Rule 5.2 (C) (2) became updated and effective on February 5, 2018. This updated version changed the timeframe for Petitioner to file his appeal (providing twenty (20) days for the notice of appeal and sixty (60) days for the Petition in Error and Supporting Brief, WITH A CERTIFIED COPY OF THE ORDER ATTACHED).

The prior version of Rule 5.2(C) (2), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2008) - Appeal from final judgment required Petitioner to file his required documents within thirty 30 days. The OCCA violated Petitioner's due process rights by issuing a premature order prescribed by a prior

version of Rule 5.2 (C) (2), which caused Petitioner's appellate record to be incomplete without his supporting brief.

Petitioner signed and placed his supporting brief in the prison mail box on October 3, 2024 within the required timeframe. Also, the Clerk at the Appellate Courts received his supporting brief on the 7th of October, which was stamped and also within the timeframe to file his supporting brief, which should have been ruled upon based on the merits within Petitioner's supporting brief. Petitioner presented the OCCA with the following Propositions:

PROPOSITION I: THE DISTRICT COURT ABUSED ITS DISCRETION BY VIOLATING PETITIONER'S CONSTITUTIONAL AND STATUTORY RIGHTS TO COUNSEL FOR THE PURPOSE OF HIS POST-CONVICTION DNA HEARING.

PROPOSITION II: THE DISTRICT COURT ABUSED ITS DISCRETION DENYING PETITIONER MOTION BECAUSE THE STATE FAILED TO PRESUME SATIFIABLE CHAIN-OF-CUSTODY REQUIREMENTS OF SUBSECTION 22 O.S. § 1373.4 (A) (3) (5). THE ITEMS REQUIRED TO BE TESTED STILL EXIST AND IT HAS THE POTENTIAL TO ESTABLISH THE INTEGRITY OF THE EVIDENCE.

PROPOSITION III: THERE IS A REASONABLE PROBABILITY THAT THE JURY WOULD NOT HAVE CONVICTED PETITIONER OF FIRST-DEGREE MURDER HAD DNA TESTING BEEN AVAILABLE AT THE TIME OF HIS ORIGINAL PROSECUTION.

See. Appendix D: Petitioner timely filed brief in support.

Petitioner attempted to show due diligence in his appeal by providing the Appellate Courts with sufficient evidence to rebut the district court order denying his post-conviction DNA testing but by a prejudice premature order issued by the OCCA, Petitioner was not able to articulate his appeal as he sought to have DNA tested

included in his case and prove that there was a reasonable probability that he would not have been convicted during the time of his original prosecution. Petitioner cited relevant authority and his reasons as to the errors caused by the district's court ruling in his supporting brief that was received by the Clerk of the Oklahoma Court of Criminal Appeals within the required timeframe.

Premature Orders Prejudice Litigants and Impair Appellate Review

The Petitioner was prejudice by the premature order because it deprived Petitioner of the opportunity to fully present his case. The Supreme Court in *Evitts v. Lucey*, 469 U.S. 387, 393 (1985), underscored that effective appellate review is as fundamental aspect of due process. Without a supporting brief, the OCCA lacked critical arguments and authorities, resulting in an incomplete and potentially unjust adjudication.

Additionally, premature orders undermine the integrity of appellate proceedings by creating an incomplete record. In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437, 102 S.Ct. 1148, 1158, 71 L.Ed. 26 265 (1982), the court held that arbitrary procedural actions depriving a party of the opportunity to present their case violated due process. Here, the Petitioner's inability to file a brief left the OCCA without the full context necessary for a fair decision.

The right to file a supporting brief is fundamental to ensure due process, as protected by the Fifth and Fourteenth Amendments to the United States Constitution. Due Process guarantees that every litigant has a meaningful opportunity to be heard and to present their case in a fair and balanced manner.

Filing a brief is a critical procedural right that allows litigants to articulate their argument, respond to opposing claims, and present relevant legal authorities for the court's consideration. Denying this right undermines the fairness judicial proceedings, risks arbitrary decision making, and contravenes well established constitutional principles. Before the record was fully developed the OCCA affirmed Petitioner's post-conviction DNA appeal, which dismissed his valid claims. Petitioner has exclaimed his innocence throughout his court presenting and has appealed his case due diligently with little to no legal assistance.

Petitioner presented an alibi defense at his original jury trial to dispute the state witnesses' accusation that Petitioner was the shooter. After Petitioner had exhausted his original appellate claims, Petitioner then sought DNA testing to prove his innocence and to show that through DNA testing, Petitioner was not involved in a fight with the victim or the witnesses at Cheyenne Park the night of the murder. There were multiple pieces of items collected by the Detectives at the scene that were introduced at his jury trial on the state's behalf to show that there was a physical fight at the park. Unfortunately, the deceased victim, Marcus Lewis was fatally shot and could not speak on his own behalf to explain what happened the night he was killed. Petitioner has knowledge as to what happened the night of the murder because he was not there, and the detectives never attempted to interview the Petitioner or get his side of the story.

The OCCA violated Petitioner's due process rights to receive a comprehensive understanding of the issues before them, which was an opportunity for Petitioner to

clarify legal arguments and highlights relevant statutes and case citation, present evidence and procedural points that were not fully addressed, and address errors by the district court's order denying Petitioner's Post-Conviction DNA.

The OCCA affirmed order relied on *Wilson v. State*, 1987 OK CR 86, ¶ 12, 737 P.2d 1197, 1203. The ruling in *Wilson v. State*, Primarily emphasized adherences to procedural rules and importance of finality and litigation. While these principles are essential, applying them to justify a premature order — particularly in the context of post-conviction DNA testing undermines the broader principles of justice and due process.

In cases involving premature orders, the appellate court's decision forecloses the Petitioner's right to present a full and fair argument, violating procedural and substantive due process rights. Unlike *Wilson* where the emphasis was on procedural default, premature orders deny the Petitioner the opportunity to establish the materiality or relevance of evidence, such as DNA testing. This action conflicts with the Constitutional guarantee of a meaning opportunity to be heard. (See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

Post-Conviction DNA statutes, such as the Oklahoma Post-Conviction DNA Act, reflect a legislative intent to prioritize accuracy and fairness over strict procedural adherence. By issuing a premature order, the court circumvents the statutory framework designed to evaluate the merits of DNA testing requests, effectively nullifying the Petitioner's statutory rights. This is inconsistent with the

principles outlined *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed 2d 233 (2011), which recognized the importance of DNA testing for ensuring justice.

A premature order precludes the development of a full factual record necessary to evaluate the Petitioner's claim. This distinguishes the case from *Wilson*, where the procedural shortcomings were attributed to the Petitioner's failure to preserve issues. In Contrast, a premature order shifts the responsibility to the court by failing to allow sufficient time or opportunity for evidence to be presented, thereby violating the principles of fair adjudication.

The doctrine of actual innocence allow courts to set aside procedural barriers in the interest of justice (See *Schlup v. Delo*, 513 U.S. 298 (1995)). By issuing a premature order the court disregards this exception, potentially denying the Petitioner access to exculpatory DNA evidence that could demonstrate innocence. Unlike the procedural concerns in *Wilson*, cases involving DNA testing hinge on substantive claims of factual innocence, which require careful consideration.

The integrity of the justice system depends on public confidence that courts will prioritize truth and fairness over procedural technicalities. Premature orders, particularly in cases involving potential exoneration through DNA evidence, erode this confidence. Courts must ensure that procedural rules serve the overarching goal of justice, rather than obstructing it. This rationale undermines reliance on *Wilson* in contexts where fairness and accuracy are paramount.

While *Wilson v. State*, underscores the importance of procedural compliance, it is not applicable to cases involving premature orders that deny a petitioner the

opportunity to present arguments and evidence. Courts must balance procedural efficiency with the constitutional and statutory rights of individuals, particularly in cases where DNA evidence could exonerate the Petitioner. Premature orders violate this balance and undermine the fundamental principles of fairness and due process that form foundation of the justice system.

By facilitating these functions, brief uphold the adversarial system, ensuring that both sides of the dispute are adequately represented and considered.

Remedies for Procedural Violations

The OCCA's premature order must be violated, and the case reopened to allow the Petitioner to file his supporting brief. Courts have consistently recognized that correcting procedural irregularities is necessary to uphold due process. For instance, in *Armstrong v. Manzo*, 380 U.S. 545, 380 U.S. 545, 552, 85 S.Ct. 1187, 1192, 14 L.Ed. 2d (1965), the Court reversed a decision based on lack of meaningful participation, reaffirming that due process errors require corrective action to prevent injustice.

REASONS FOR GRANTING THE PETITION

A) The denial of DNA testing violates fundamental due process rights.

1. The Fourteenth Amendment's Due Process clause guarantees criminal defendants the opportunity to present all evidence material to their defense. The Court's premature order foreclosed this opportunity.

2. In *District Attorney's Office v. Osborne*, 557 U.S. 52 (2009), the supreme Court acknowledge the significance of state-level DNA testing statutes and emphasized that such mechanism must comport with principles of fairness. The Oklahoma Court's decision conflicts with this precedent.

B) Denial conflicts with statutory protections under Oklahoma Law

1. The Oklahoma Post-Conviction DNA Act (22 O.S. § 1371.2) explicitly permits DNA testing if the Petitioner demonstrates that evidence is relevant, preserved, and material to the case. Petitioner met these criteria.
2. The Oklahoma Court ignored its statutory mandate to assess these requirements thoroughly creating a conflict with established procedural safeguards.

C) The case presents a critical issue of national importance.

1. The denial of access to DNA testing effectively denies Petitioner the opportunity to uncover potentially exculpatory evidence. This injustice undermines confidence in the integrity of the judicial process.
2. Granting this writ will allow this court to address the broader implications of State level denials of DNA testing and provide guidance to lower courts.

D) Injustice resulting from premature Denial

The denial of access to DNA testing effectively denies Petitioner the opportunity to uncover potentially exculpatory evidence. This injustice undermines confidence in the integrity of the judicial process.

CONCLUSION

The premature order issued by the OCCA violated the Petitioner's due process rights by denying a meaningful opportunity to be heard, prejudice their case, and impairing appellate review. This court should vacate the order and remand the case to allow full adherence to constitutional principles of fairness and justice.

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari, vacate the Oklahoma Court of Criminal Appeals decision, and remand the case for reconsideration consistent with Federal Due Process standards and Oklahoma Statutory Law.

The petition for a writ of certiorari should be granted.

Date: 12/18/24

Respectfully submitted,

John S. Dineen
(signature)

AFFIDAVIT

STATE OF OKLAHOMA)

) SS:

COUNTY OF OSAGE)

I, William S. Hurt III, the Affiant, do solemnly swear on my oath that I give this sworn statement of my own free will, and I, being of sound mind and competent to testify in this matter, am over the age of eighteen (18), do state, to wit:

"That the Appendix of: Appendix A: Decision by the Oklahoma Court of Criminal Appeals, on Oct 4, 2024; Appendix B: Decision by the District Court of Tulsa County, on August 14, 2024; Appendix C: Petitioner's Petition in Error on September 6, 2024; Appendix D: Petitioner's timely filed Brief in Support; Appendix E: Petitioner's OCCA docket sheet Case No. PC-2024-084; Appendix F: Rule 5.2(c)(2) Rules of the OCCA.
are true and correct.

Anything further, Affiant sayeth not."

William S. Hurt III
Affiant's Signature

NOTARY'S STATEMENT

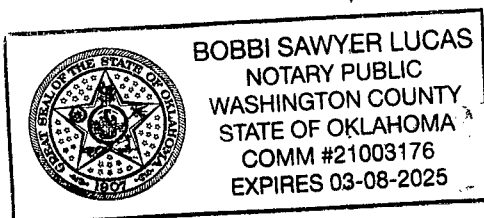
STATE OF OKLAHOMA)

) SS:

COUNTY OF OSAGE)

This instrument was acknowledged, signed, and sworn to before me on this 18th day of December 2024, by William S. Hurt

Bobbi Sawyer Lucas
NOTARY PUBLIC



My commission expires: 03-08-2025