No. 24-7068
24-7459

IN THE

SUPREME COURT OF THE UNITED STATES

Steven lee Vanzant — PETITIONER
(Your Name)

vs.

David Rogers, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven lee Vanzant
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Vol. 1
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QUESTION(S) PRESENTED

Whether, the united states Constitution's "Protection of Due Process of law" as guaranteed under the fourteenth Amendment, attach to;

The Ineffective Assistance of Counsel, on direct appeal, under the Sixth Amendments decision, in Strickland, supra as determined by this court, and the states denial of the right to a fair trial, the state pursued one line of investigation and prosecution and was willfully blind to the clear probability of the principle criminal actor.

QUESTION(S) PRESENTED

Whether the Oklahoma Court of Criminal Appeals, denial of Relief, Case No. F-2016-878, From the conviction and sentence, from the McIntosh County District Court, Case No. CF-2013-226, is unconstitutional? under the Fourteenth Amendment of the United States Constitution protection and guarantee of due process of law the trial was unconstitutional. The Defense counsel, under the Standard of representation, determined in Strickland v. Washington, 104 S.Ct. 2052, where defense counsel's representation fell below objective standards of reasonableness, the lack of preparation was deficient with material prejudice attached.

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

Strickland v. Washington, 104 S.Ct. 2052

Massaro v. U.S., 123 S.Ct. 1690

Brecheen v. Reynolds, 41 F.3d 1343

United States Constitution - under the Fourteenth Amendment

United States Constitution - under the Sixth Amendment

Franks v. Delaware, 98 S.Ct. 2674

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OTHER

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 A to the petition and is

[ ] reported at U.S. Court Appeals Tenth Circuit; 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 B to the petition and is

[ ] reported at U.S. Dist. Ct. Eastern Dist. OK; 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 C to the petition and is

[ ] reported at Oklahoma Court of Criminal Appeals; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ 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.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 9th 2024.

[✓] 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 10/9/24. A copy of that decision appears at Appendix _____.

[ ] 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

Petitioner was convicted of first degree murder, under Title 21 O.S. Sec. § 701.7, under a false probable cause affidavit, in violation of Franks v. Delaware, 98 S.Ct. 2674, where suborn perjury was used to establish a false foundation for the states case. Defense counsel, in clear violation of Strickland v. Washington, 104 S.Ct. 2052, where the objectively unreasonable performance in the failure to prepare for trial, and the clear failure to advocate during trial, in light of the exculpatory evidence that was available at the time of trial, Appellate Counsel failed to raise trial Counsel's Ineffectiveness. The deprivation of due process of law, Fourteenth Amendment.

STATEMENT OF THE CASE

After Petitioner's (13) day trial, the State laid out its evidence in support of guilt in closing argument. Throughout the argument, the State made a number of statements regarding unestablished facts. For example, prosecutors tried to make hay out of the fact only Petitioner & Ms. Kelsoe knew the alarm code & had keys to the home. (XIII, Tr.20). Their point being, of course, that *only* Petitioner could have entered the home that morning at 12:39 am, when the alarm was deactivated. The evidence does not show beyond a reasonable doubt he alone had access or was even there. Because Mr. Kennell testified he seen the house on fire at 3:00 am, he seen nobody coming or going from the house. He found an opened unlocked backdoor through which anyone could have entered the home. While checking in the house, an unknown man appeared from nowhere claiming to be a neighbor he ask if 911 was called, this man left and was never questioned. This should have been a main person of interest to law enforcement because he could have been the person who committed the crime or at least have seen the person that did do it. If this had been properly investigated when the facts showed that someone else was there that could have committed the crime. This alone could have proven Petitioners innocence.

Patty Webster, Ms. Kelsoe's sister, first told police she didn't have a key to Ms. Kelsoe's house. At trial, she testified she did have a key. (X, Tr.49).

As for Ms. Kelsoe's alarm, nothing shows Ms. Kelsoe did not deactivate it herself. She was certainly up at the time, as shown by her 12:23 am from the house phone at Checotah and message to Petitioner cell phone at Welty. Evidence also came from Petitioner and Ms. Kelsoe's sister Betty that Ms. Kelsoe often got up in the night to let out her cat, Sweetie. (XI, Tr.237; SE128).

When petitioner arrived at the Vanzant property at 7; 00 pm August 13 2012 He drove by his Brother Terry's trailer house (III.Tr. 22.), through Terry's property (Ste,Exh.127 pge 21 line 24-25) and parked in front of Larry's 24 foot travel trailer located 150 yards behind Terry's trailer house to unload the care package Debbie sent (Ste. Exh.127 pge.10 line 3.Ste. Exh.3 pge 6 line 14-16), You could clearly

see the Bronco from Larry's trailer and porch

Larry testified the last time he saw Steve was after 11:30 pm August 13, 2012 when Steve went to Larry's other trailer 300 ft. further away on the back side of the property.(VIII.20) after petitioner left Larry set the T.V to go off in 30 minutes to finished watching the program, then went to his (screen in) front porch .Where he slept because it was hot.. Larry testified he and his dogs would have seen and or heard if petitioner had left. before he had went to bed. (VIII, Tr.) . Specifically, after 11:30 pm August 13, 2012. When Steve was last seen .Realistically looking at these facts and being conservative, 11:35 pm would be a fair time if you had left Larry's to disarm the alarm at 12:39 as the D.A. claims (IV, Tr. 73, XIII, 118)..

Agent Titsworth testified it took 73 minutes to drive from Vanzant's property to the house. (Tr. VIII, 113) Using these times frames, leaving Larry's at 11:35 pm and disarming the alarm at 12:39 am is only 64 minutes of the 73 minutes. These facts alone provided by the State show there was NOT enough time to drive from Larry's to the house and disarm the alarm at 12:39 am on August 14, 2012. This is one of the several questionable time frames the D.A. manipulates to fit a theory. When actually the real facts dispute the D.A.'s theory.

There are 6 facts that make Agent Titsworth's time frames invalid.

FACT 1; Agent Titsworth testified he started his mileage and time FROM the VANZANT PROPERTY. (Tr. VIII, 113) Instead of starting where Petitioner had parked at on the back side of the property.(VIII.Tr.20 line 23-24) Which is approx. 1/4 mile on an unprepared road through the property where there are two (2) metal gates on hinges and one (1) wire-paneled drag gate you would have to open and close to leave Larry's(Ste. Exh 127 line 17-18.swron statement pge 7 line 12-20) Then, you have to drive through Terry's property to another gate at Don Vanzant's (Steve's father) private drive where Terrys trailer house is at on the front side of Terry,s property(VIII.tr 84-88),then to a blind section road where the Vanzant property starts where Agent Titsworth testified he had started his mileage and time frame from. (Tr. VIII, 113).You would have to add a minimum of 10 minutes to this small fact that was

left out of agent Titsworth,s time frame.

FACT 2; Larry testified it takes over 1 ½ hours from his travel trailer to Petitioners residence (despite the D.A.'s protests) (VIII, 30?).

FACT 3; Petitioner told Detective Hall during their interview (approx. 7:15 am, August 14, 2012) just hours after hearing of Debbie's death that it takes one and a half (1 ½) hours to drive from Larry's to the house because of **construction**. This is from a transcript of Detective Hall and Petitioner that was not openly presented at trial, This was found in Petitioner's case files Petitioner's father had received from my Direct Appeal attorney, Ms. Traci J. Quick at Norman, Oklahoma. (See exhibit???)

FACT 4; Petitioner left his residence at approx. 5:00 pm August 13, 2012 over 90 minutes later at 6:36 pm. A surveillance video at Welty, Oklahoma (SE 130) that you MUST PASS BY clearly shows the Petitioner driving an off white Ford Bronco going west toward the Vanzant property. (VIII, Tr. 97, SE 130) This same video that YOU MUST PASS BY does not show Petitioner or a Ford Bronco going east away from the Vanzant property toward the Petitioner's residence at any time August 13-14, 2012. Specifically after 11:30 pm August 13 in the time frame the D.A. claims Petitioner would have left to disarm the alarm at 12:39 am August 14, 2012. (SE 126, IV, Tr. 73) This shows over 90 minutes and Petitioner had not left the Vanzant property.

FACT 5; August 14, 2012 at approx. 5:00 am, after being informed of Debbie's death, Petitioner and Larry left Larry's travel trailer. A surveillance video at Love's Truck Stop in Okemah, Oklahoma shows them using the restroom and getting coffee at 5; 43 am and leaving at 5;53am.(VIII, Tr. 23-24, VIII, Tr. 108, XIII, Tr. 25) They arrived at Petitioners residence at 7:00 am. (VIII, Tr. 52).this shows 1hour and 7 minutes Agent Ttitsworth testified it took 30 minutes from the Vanzant property to the Loves truck stop(VIII.Tr) add these verified times together shows it took 1hour and 37 minutes from the Vanzant property at Welty to the petitioners house at Checotah.

FACT 6; August 14, 2012 at 5:15 pm. The evening after Debbie's death. I told Agent Jones during Petitioner's 3rd interview, that it takes 1 ½ HOURS TO DRIVE FROM LARRY'S TO PETITIONER'S

residence because of construction. Agent Jones concurs by saying pretty lengthy construction up there. (SE 127, Tr. 48)????

Agent Titsworth does not mention any construction on I-40 in his testimony or opening any gates from Larry.s. (VIII, Tr. 96, 112-113). It's evident and obvious the construction had finished and moved further east of Henryetta before he made his computation of the state's time frame on October 11 2012.(VIII.Tr. two months later after August 13 2012 the date in question the D.A claims petitioner left the Welty area the late evening before this homicide. Add a minimum of 10 minutes to open the gates and a minimum of 10 minutes for construction and where the Petitioner was parked on the backside of the Vanzant's property (VIII, Tr. 20, SE 127),is the contributing fact between the state's time frame of seventy three (73) minutes and the fact it takes at least ninety (90) minutes. Even if you left the front side of the Vanzant property at 11:35 pm to disarm the alarm at the house at 12:39 am is 64 minutes this is still less than the state's own time frame of 73 minutes(VIII.Tr).

Prosecutor's also focused on what they seemed to believe was their crown piece of evidence, the surveillance video from the Dewar City Hall in Dewar, OK showed an SUV traveling from east to west on Hwy 266 at 3:41 am on Aug, 14, 2012. (Tr.21; State's Ex. 146-147; Defense Ex.7). The State claimed Petitioner had traveled from his residence outside of Checotah and back to Welty. (XIII, Tr.21; VIII, Tr.102, 106,112-113). However, the time frames on the State's position do not match or add up to prove the guilt of this Petitioner. The D.A. insisted this was the petitioner leaving the house. Agent Titsworth testified its 22.5 miles and 22 minutes from the house to Dewar. This video was critical for the D.A. But the time when the fire in the house was set will prove the states theory and time frame is wrong. Testimony from MR Kennel that he seen fire coming from under the eve of the roof as he drove by.(III.Tr12). Looking at this fact from the time the fire had actually been set, plus the time for the fire to

Prosecutors also focused on what they seemed to believe was their crown piece of evidence, the surveillance video from Dewar City Hall in Dewar OK, showed a light color SUV traveling from east to west on hwy 266 at 3:41 am August 4, 2012 (Ste, Exh, 146-147 Tr. VIII 100 Def Exh 7). The state claimed that the petitioner left Welty OK after 11:30pm August 13, 2012 and returned to his residence at Checotah OK and disarmed the alarm at 12:39am August 14, 2012 (Tr. IV 73). Then left the residence at Checotah and drove by the video at Dewar City Hall at 3:41am (Tr. XIII 21)

However the states position of having no evidence and their own time frames does not match or add up to prove petitioner was at or left the residence at Checotah. Agent Titsworth testified it's 22 minutes from the house to the video at Dewar (Tr. VIII 107). This video was critical to the state's case. But the time when the fire was set will invalidate the state's time frame. Testimony from Ryan Kennell that he and three passengers seen fire coming from the roof of the house as they drove was towing a boat and went to the next section to turn around it was 3:00am. As they pulled in the drive way, he testified that they saw no one leave or enter the house (Tr. III 12) looking at the facts from the fire had been set in the house, plus the time it would take the fire to spread and burn through the ceiling to the point that flames could be seen coming from the roof from the hwy before 3:00am. Since there were no accelerants used to start the fire (Tr. V 69) it would take a minimum of 20minutes from the time the fire had been set (Tr. III 12). This shows the fire had been set before 2:40am.

Using common sense and if you just burglarized a house committed murder set the house on fire human natural instinct would be to leave the premises as fast and far as possible. Using this time and testimony of 22 minutes (Tr. VIII 113) and leaving from petitioners house at Checotah after the fire had been set at 2:20am adding 22 minutes would show you passing by the surveillance camera at Dewar City Hall at 3:02am August 14, 2012. This is a 39 minute time difference before a light color SUV is passing by the surveillance camera at Dewar City Hall at 3:41am

Because of the quality and distance from the video to this SUV you cannot read the license plate nor see if the driver is a male or a female or if there are any passengers. You cannot distinguish any emblems showing if it is a Ford, Dodge, Chevrolet, G.M.C, or any other type of SUV.

These facts were damming for the state they knew these facts of the time frame of 39minutes was more than questionable, and the video did not identify the driver and could not prove this SUV was a 1996 Ford Bronco Eddie Bauer Special Edition .Knowing this to be true the state started a campaign of -

The State further surmised that the timing on the video had to be right. According to the State, it took 22 minutes to get from Ms. Kelsoe's home to the Dewar City Hall. (VIII, 107; XIII, Tr.21). The State assumed Petitioner had to have left Ms. Kelsoe's home before the fire was called in at 3:14 am," (III Tr.6-10).But Mr Kennells testimony shows the fire started approx. 20 minutes before 3;00 am Prosecutors acknowledged that if Petitioner had left the home at 3:13 am, or anytime beforehand, he would have passed through Dewar sometime before 3:41 am; however, prosecutors opined and told jury in closing arguments that Petitioner must have taken some time after leaving the home to dispose of the .22 handgun used to shoot Ms. Kelsoe. (XIII, Tr.21). At this time the DA was grasping for straws at no time was there any proof that petitioner ever owned a .22 pistol and no testimony showing petitioner had been seen with one According to the states own evidence the projectile retrieved from the victim was

fragmented to the point it could only determine the weight was of a 22 caliber but could not prove if it came from a hand gun or from a rifle. That the DA has consistently told the jury through out the trial. While the video from Dewar City Hall shows a vehicle similar in appearance to Petitioner's, that is all it does. Although OSBI Agent Titsworth testified the video definitely showed a light-colored Ford Bronco, Eddie Bauer edition, his opinion clearly overstepped the limits of his expertise as well as the quality of the video. (III, Tr.141-42)(See Ground 3 herein). As defense counsel made clear, the SUV in the video also looked similar in body type to Chevy Blazers & Dodge Ram chargers. (VIII, Tr.137, 139; Def. Ex. 8-10).

Even if the defense had conceded the video showed a Ford Bronco, nothing shows it was Ms. Eddie Bauer Kelsoe's Ford Bronco. Knowing this to be true, the State attempted to track down all Ford Bronco owners Eddie Beaur in the state west of Checotah OK with ~~similar colored~~ Eddie Beaur Bronco's made in the years 1994-1996. OSBI Agent Turner com-piled a list of owners based on this criteria from records held at the DMV. (IX, Tr.85; State's Ex.189-190). Law enforcement then tried to contact each of those owners &, by trial, claimed they was able to eliminate all but 7 of the suspect vehicles from being in the video. (XI, Tr.106-107). While this displays a staggering effort on law enforcement's part to implicate Petitioner that is all it does. As defense counsel pointed out, the list of Eddie Beaur Ford Bronco owners did not include any out-of-state vehicles and only these type vehicles EAST of Checotah OK nor did it include any Ford Broncos manufactured before 1994 or after 1996. (IX, Tr.92). Agent Turner conceded she had no idea if the Bronco's body-type changed, nor could she say why the search was confined to 94-96 years' models only. (IX, Tr.97-98).

The fact that the Ford Bronco body type was the same from the 1980 through the 1996 models and because of the distance and the quality of the vedio theres no way you, could distinaquish any chara stic marks of tires wheels ,dents, scratches, faded or chip paint ,window tint, if it was 2 wheell or 4 wheell drive or if it was a regular Bronco or if it was a XL, XLT or a Eddie Beaur Edition the fact that the outside features of all the different models of the Bronco series are basically the same and the difference between the models were engine size, transmission type, gear ratio and interior which you can not tell [redacted] which of the many Bronco series is

~~The fact that the Ford Bronco body type was the same from 1980 through the 1996 models and~~ because of the distance and the quality of the video there.

. Prosecutors also maintained, based on computations taken by OSBI Agent Titsworth that it took 41 minutes to drive from the Dewar City Hall to I-40 to Hwy 62 to the York residence at Welty OK, a home to the south of Larry Vanzant's property. (VIII, Tr.96, 112-113). The York residence was key because Mr. York had a security camera set up facing the road past his house. That camera had clearly captured video of Petitioner's Bronco proceeding toward Larry Vanzant's home at 6:36 pm on Aug.13. (VIII, Tr.114; State's Ex.130-130A, 145). Apparently, the same camera also captured a blurry shot of a vehicle between 4:16-4:23 am, approx. 40 minutes after the video from the Dewar City Hall, on Aug.14, 2012, proceeding west toward the Vanzant property ~~north~~. (VIII, 123, 126).

This is a high traffic main asphalt road from Hwy. 48 through Welty to the Vanzant property. You can clearly see and identify multiple vehicles before and after this one unidentifiable vehicle the D.A. insists is Petitioner coming from Dewar at 3:41 am. Since you can't see this vehicle, the D.A. was relying on the time display on the Welty video. The "facts" that this video appears to be manipulated just to fit the D.A.'s theory is very obvious when viewing the time and date display on the video. First it's evident that the display on any video would show a precise time of 4:16 am. It would not display a time showing between 4:16 am and 4:23 am as the state presented in their evidence. If you used the time of leaving Dewar City Hall at 3:41 am to the video at Welty at 4:16 am is only 35 minutes despite their own evidence of 41 minutes. This shows that the D.A. manipulated this time frame by suggesting to the jury the time was between 4:16 am and 4:23 am just to make their timeline and theory of 41 minutes would appear right.

Even if you use the D.As theory it took 41 minutes to drive 41 mile. This would be hard to do even if it was a straight shot with no stops between Dewar and Welty But if you account for the time needed from Dewar city hall at 25 mph cross 2 railroad tracks stop at a stop signal light at junction Hwy 266 and 75.

Make a left turn go south on Hwy 75 approx. 3.5 miles at 35 mph through 3 more junctions with stop signal lights .Take a ¾ mile long loop type on-ramp go west on I-40 (with construction) approx. 27 miles. Take off ramp with stop sign turn right go north on Hwy 48 to stop sign. Then go north for 2 miles to stop sign at junction Hwy 48 and 56 drive 3 miles to stop sign at junction Hwy 48 and 62 drive 11 miles to Welty road turn left go west 1 ½ miles to Welty. Taking all this in consideration would be impossible to meet the DA s timelines theory. of 41 miles in 41 minutes

There were several surveillance videos that the state had acquired from Okmulgee, Okemah, Dewar, Welty OK and 3 videos from Fiesta Mart southwest of the house on I-40.only 2 of these videos were presented to the jury as evidence 1 from Welty OK and 1 from Dewar OK (St. Ex. 130-131) The Dewar city hall video does not show a Bronco going east at any time on August 13-14 , 2012. The video at Welty clearly shows a Bronco going west toward the Vanzant property at 6:36 pm on August 13,2012.It does not show a Bronco going east coming from the Vanzant property in the time frame needed to return to the house .The fact is, law enforcements believe of my supposed routes would require you to pass by one of these many cameras ,that 2 OSBI AGENTS testified after viewing these videos that the did not yield any images of a Bronco in any of the time periods in question .(Vol. XII Tr, 145-146, Vol, VIII Tr. 40-42 Vol. XII Tr, 197). These facts show petitioner had not left Larry's

In truth, law enforcement did little to track down additional surveillance videos once video was located that fit the State's narrative. For example, law enforcement did nothing to check videos in Henryetta, a town Petitioner would have had to pass through on his way to I-40 from Dewar. (VIII, Tr.134-135; XI, Tr.116). Nor did law enforcement do anything to retrieve video from various businesses along I-40. (VIII, Tr. 130).

I find this ludicrous of law enforcements that they did not check the many other videos in Henryetta ,Dewar and I-40. I believe that law enforcement had looked at other videos but they did not

depict a Bronco that would fit the states narrative. For example, when agent Titsworth was asked to checked videos in Henryetta, he stated he had not been asked to check other videos there. This same question was asked to other agents and other law enforcements personnel and they replied they had not been ask to perform that task. (Vol,VIII 134-135, Vol, Tr140-146, Vol, Tr, 100-135) the fact that there were other videos from Okmulgee, Okemah, Welty. Dewar, and the Fiesta Mart that were not presented as evidence because they did not fit the states narrative. When law enforcement was the ones who acquired all the videos. This makes the states actions appear very suspicious not checking for other videos in such a critical spot like Henryetta and not presenting all these videos at trial. To the jury

Another video on which the State relied, which was not admitted into evidence, was a video of Larry & Steven Vanzant at a Love's in Okemah. The 2 brothers had stopped at the Love's on their way to Checotah at 5:43 am on Aug.14. According to the prosecutors, the video depicts Petitioner carrying something in his left hand & heading toward the bathroom; when he leaves the bathroom, he has nothing his hands. The State concluded the video was evidence that Petitioner disposed of clothing that had Ms. Kelsoe's brain matter & blood on it. (XIII, Tr.25). This is an untenable conclusion for several reasons, the 1st of which is that Larry did not notice any blood on his brother's clothing. Larry did not even notice a smoky smell on his bro's clothes, which he certainly would have if Petitioner had been involved in setting a large fire with 4-5 points of origin throughout Ms. Kelsoe's home. (Tr. VIII, Tr.53-53).

When asked about his viewing of the Love's video, Agent Jones could not recall if it even depicted Petitioner with something in his hands. (VII, Tr.108). Moreover, Agent Jones did not believe the video did anything toward proving Petitioner's guilt. (Tr. VII, Tr.103). The Love's video, which the jury did not even see, does nothing for the State's case.

As additional evidence that Petitioner was guilty, prosecutors pointed to Petitioner's statements when he returned a call to the 911 operator the morning of Aug. 14, 2012, at 4:38 am. The prosecutor felt Petitioner did not seem upset by the news he received. In the conversation, which the prosecutor recounted in its entirety to the jury. Petitioner comes across as sleepy & disoriented, but nonetheless

troubled by the news. (XIII, Tr.23). For prosecutors to hang their hats on Petitioner's obvious con-fusion when hearing the initial news of the fire or his befuddled calls to his voicemail & to Ms. Kelsoe's sister soon thereafter, (Tr. XIII, Tr.24), as evidence of his guilt is nothing more than reliance on the "mere modicum of evidence" forbidden by Jackson. It simply cannot be enough to support a 1st degree murder conviction beyond a reasonable doubt.

The D.A. argues in closing arguments that there was evidence of an apparent breakdown in the relationship between Petitioner and the victim, his long-time girlfriend, Debbie Kelsoe. Which would, presumably, give Petitioner a motive to kill her. (Vol. XIII, Tr. ?) The D.A. cites to a statement made by Ms. Kelsoe's sister, Patty Webster that Petitioner told her he spent only six or seven nights with Ms. Kelsoe in the two years prior to her death. In fact, as the recording Ms. Webster made of her conversation with Petitioner on the subject makes clear, he said no such thing. Rather, he explained he was gone from Ms. Kelsoe's home about 60 to 70 percent of the time because he was working. (Vol. X, Tr. 80-81 [referenced recording WS30009]). From this statement, no rational juror could draw a legitimate inference that Petitioner's relationship with Ms. Kelsoe' had soured. Ms. Webster never liked Mr. Vanzant, and she believed from the very beginning that he had killed her sister. In fact, she testified that Petitioner had confessed he killed her sister but at the time of the confession the battery had fallen out of the recorder. (Vol. X, Tr. 11-146)This shows she had strong motivation, therefore, to misrepresent his statements or flat-out lie.

Not one witness described any fights between Petitioner and Ms. Kelsoe or presented any evidence that there was any discontent in their relationship. To the contrary, several witnesses described Petitioner and Ms. Kelsoe's relationship as a strong and happy one. Larry Vanzant, Petitioner's brother, described the relationship as such:

> His (Petitioner's) stuff didn't stink is the only way I can put it, and she loved him. She was kind of a strange person, but she loved him. And he had everything he wanted, that's all I know. (Vol. VIII, Tr. 68)

Similarly, Vernon McLemore, the operations manager for the Port of Muskogee, where Petitioner and Ms. Kelsoe moored their boat, testified Petitioner and Ms. Kelsoe got along well with each other. (Vol. VI, Tr. 108) He described how Petitioner and Ms. Kelsoe often spoke to him about their plans to sail "The Great Loop" and their shared excitement at the thought of such an adventure. (Vol. VI, Tr. 103-104) Even if it could be said Petitioner spent 60-70 percent of his time on the boat or working away as a mobile marine technician rather than at Ms. Kelsoe's and Petitioner's shared residence, such does not indicate an unhappy relationship. In fact, Mr. McLemore conceded he saw Ms. Kelsoe with Petitioner on the boat most weekends. (Vol. VI, Tr. 103) Thus, even if Petitioner was not always at Ms. Kelsoe's home, the two still spent a considerable amount of time together. Viewing this evidence in the light most favorable to the State, it in no way supports a reasonable inference that Petitioner's relationship with Ms. Kelsoe had in any way broken down.

Moreover, contrary to the State's argument, evidence of Petitioner's distress over Ms. Kelsoe's fate is replete in the record. Larry Vanzant testified Petitioner looked disheveled & upset when he woke him up to tell him about the fire. (VIII, Tr.50-51). As they drove toward Checotah in the Bronco, Larry became so worried about his bro's well-being, he took over the driving, despite the fact he did not have a valid license. (VIII, Tr.51-52). Petitioner's daughter, Misti, testified her father was devastated by Ms. Kelsoe's death, & she worried about his mental health. (IX, Tr.45, 55). Petitioner's good friend, Julie Stacy, also spoke of Petitioner's anguish after Debbie's death. She described him as depressed & deeply unhappy. (XII, Tr.205-207).

As for evidence of Petitioner's motive to kill Ms. Kelsoe, prosecutors claimed he inherited virtually everything under her will, (XIII, Tr.65-66); Defense Ex.6). Petitioner acknowledged to Agent Jones he knew about the will, but that he did not know what it said. However, he also told him Ms. Kelsoe had over $300,000 in debt, & that most of her real property was held in combination with her sisters. (State's Ex.129, 10:02-10:04; X.18).

Petitioner had discussed this with Ms Kelsoe's sisters' after the will was found the next morning [redacted]

this homicide, saying that because of Ms. Kelsoe's debt, he did not believe her estate was worth much at all. Petitioner also told the sisters that, even given Ms. Kelsoe's wishes for him to be the executor of the estate. That he did not believe he would be able to perform the duty as the executor of the estate, and all he wanted was his personal property he had acquired over the past 25 years and at this time he and the sisters agreed to turn the estate completely over to the family. (Vol. X, Tr. 81; Vol. XI, Tr.227; State's 195) There was no evidence, or testimony that I knew the context of the will.

In reality, Petitioner had more to gain through Ms. Kelsoe's life than her death. She paid his bills bought his clothes, and managed all of his finances. After her death and the fact, the petitioner had lost almost everything he owned including the cash that was in the house before it was robbed and set on fire. He did not even have enough cash to pay for an attorney to probate the will. (Vol. IX, Tr. 164; Vol. X, Tr. 107) Though he certainly could have inherited funds from her estate after the probate, he did not believe he would have much.[3] (Vol. IX, Tr. 190)

In this case, the prosecutor intentionally misrepresented the facts of this case in his closing arguments to the jury. The prosecutor told the jury that petitioner had been riding around with "brain matter and blood" on his clothing, despite there being absolutely NO evidence or testimony at trial that he did not notice any blood or brain matter on Petitioner's clothing.

The prosecution concluded there existed a "video" of petitioner disposing clothing that had brain matter & blood on them, but said video was never produced nor played at trail to support that highly prejudicial conclusion.

Lastly, petitioner told OSBI Agent Jones that he had lost control of his bowels & needed to clean himself up so he went to the bathroom. Agent Jones testified that he had no reason to disbelieve Petitioner's explanation of what had happened. Nevertheless. There is no evidence at all to support the State's prejudicial conclusion that petitioner was driving around with "brain matter & blood" on his clothes & went to the bathroom for the purpose of changing those clothes

In this case, the prosecution stated to the jury that Petitioner had pryed Debbie's (victim) fingers from her outstretched arm in order to take her ring. No evidence of this fact was ever presented during the trial. The only time this is mentioned during the trial is when the prosecution cross-examined the defenses' arson investigator on a hypothetical question. In response to said hypothetical question, the investigator stated after going back & forth several times, "Anything is possible."

In this case, the prosecution stated to the jury that Petitioner was guilty because of a breakdown in the relationship between Petitioner & his girlfriend of (8) years. Debbie (victim). The prosecution knew this statement to be false but used it anyways because the evidence was very WEAK.

The prosecution knew this statement to be false where the recording Debbie's sister Patty Webster made of her conversation with Petitioner on this subject makes clear; Petitioner said NO SUCH THING. Rather, he explained that he was gone from Debbie's home around 60-70-% of the time because he was working (Tr. X, 80-81 [referenced recording WS300009])

[3] Probate documents showed Debbie's estate was worth $897,694.20. After all of her debts and other expenses were paid, each of Debbies two sisters pocketed about $30,000. The assistant D.A. and the Kelsoe family's Attorney, Greg Stidhem, received $90,000. (Vol IX, Tr. 191; Vol. X, Tr.99; State's Exhs. 191, 192,194) the sisters received much more from Debbie's life insurance policy, which did not benefit Mr. Vanzant. Under the policy, each sister received &500,000. (Vol. IX, Tr. 187; Vol. X, Tr.62)

From this statement, NO rational juror could draw a legitimate inference that Petitioner's relationship with Debbie (Ms. Kelsoe) had in fact soured.

The prosecution was aware of this recording & the True Facts surrounding said conversation, but then elected to make these false & unfounded & inflammatory statements against Petitioner, to try & prove a motive to kill her.

In this case, the prosecution stated to the jury that petitioner was a " unemployed", when he knew this information to be false & inaccurate , thus inflammatory. In petitioner's statements to Detective hall & Agent jones during their interviews, Petitioner told them he was the acting Manager at the Marina & worked as a mobile mechanic for several years. Making $50.00 + $150.00 hr. The prosecution was attempting to "bolster" Patty's testimony that Petitioner was using Debbie for only Financial gain. Improper prosecutorial misconduct/comments to the jury during closing arguments adversely affected the outcome of the trial, as a matter f fundamental fairness & due process of law. Amends. 6, 14.

The U.S. Supreme Court held in Hall V. U.S., 14 S.Ct.22,150 U.S. 76 (1893):

> "The U.S. Supreme Court will hear issues involving improper comments by a prosecutor & where Prosecutor, & where prosecutor misconduct lies, a new trial will be granted".

In U.S. V. Young ,105 S.Ct.1038,470 U.s.1, 84 L.Ed.2d 1 (1985), it was held:

> "Defense counsel, like the prosecutor, must refrain from interjecting personal beliefs into presentation of the case & must not be permitted to make unfounded & inflammatory attacks on opposing counsel."

Young Further held:

> "Criminal conviction can only be overturned if it can be determined that prosecutor's comments & conduct affected fairness of the trial."

The State's first witness at trial was Ryan Kennell, who was part of the group of college students traveling home from Lake Eufaula that spotted the fire at Ms. Kelsoe's home (III Tr. 9-10). Mr. Kennell was with Destin Moore and a couple of female friends that morning, and the group drove past Ms. Kelsoe's home around 3:00 a.m. and noticed smoke and flames billowing from the roof (III Tr. 10-12). The Group drove to the next section to turn around and drove up to Ms. Kelsoe's driveway (III Tr. 12). One of the Group called 911, and the others ran ran toward the home (III Tr. 12, 14-15). The front door was locked, but one of the back doors was unlocked (III Tr. 12). Despite opening up the door and calling out for someone, no one answered, and the smoke was simply too thick to enter (III Tr. 12. 17).

About six (6) or seven (7) minutes later, a white male in his fifties approached them (Mr. Kennell could not recall if this man drove or walked toward them) (III Tr. 12-13,15). The man explained that he was a neighbor, and he talked with them about who lived at the home (III Tr. 12-13, 16017). After that, a law enforcement officer arrived, spoke with the group, and then allowed them to leave (III Tr. 13-14,16,18).

Defense counsel called Mr. Moore—one of the college students –as a witness (XII Tr. 173). Mr. Moore explained that he and his friends spotted a home on fire as they were traveling home from Lake Eufaula and stopped to help around 3:00 a.m. (XII Tr. 174). Mr. Moore further explained that one of the girls called (911, and he and Mr. Kennel ran to the House to see if anyone was inside (XII Tr. 174). A back door was unlocked, so they opened it and Hollered inside, but the smoke was thick and no one answered (XII Tr. 175). Just Minutes after they arrived, a man showed up (XII Tr. 175-76). Apparently, the man explained that he knew who owned/lived in the house, but the owner (or who ever lived there) was out of town (XII Tr. 175-76). The man

also apparently helped them check the car parked near the house, but it was locked (XII Tr. 175-76). Minutes later an officer arrived, as they were leaving Mr. Moore saw the man talking with the law enforcement officer, and it appeared that the man knew the officer (XII Tr. 176).

Defense Counsel also called Officer Richard Beaty as a Witness, the D.A. objected to use this witness (XII Tr. 179-180). Beaty Testified that he was working his shift as a Checotah Police Officer that night; At 3:00 a.m. he heard dispatch announce that a group of college students discovered a fire at a house west of town (XII Tr. 182-183). Officer Beaty Immediately responded to the scene (XII Tr. 182-183). There, he encountered the 4 college students and spoke to them. He called dispatch to let them know he was on scene (XII Tr. 182-183). This man evidently left before Officer Beaty arrived, Officer Beaty was asked if there were any other officers or personal had arrived at this time, he answered "no" not at this time it was just the reporting party and me and then he (Ike) had arrived in his personal vehicle (XII TR. 184).

Mr. Raymond (Ike) Webster a former Fire Chief and a present fire man of Checotah Fire Department for over 18 Years and the brother-in-law to Debbie Kelsoe, Testified he drove to Kelsoe's home in his truck parked and then talk to the officer already on the scene (IX Tr. 106-07) looking around he did not see Ms. Kelsoe's Ford Bronco or the petitioners truck so he believed no one was home (IX 108-09) Mr. Webster also Testified that he saw a truck, hauling a boat out onto the road. (IX Tr.107-08). Ike testified he did a size up of the scene he said he started looking around the house (IX Tr.108 line 6-24), he went on the east side of the house then around to the north side and checked for vehicles (IX Tr. 108 Line 3-25). After he didn't see these vehicles he called his wife and told her that her sister's house was on fire and after he made that call he started looking around the house (IX Tr. 109 line 8-14).-------

Officer Beaty was asked if Mr. Webster (Ike) had engaged in any activities around the house at all, Officer Beaty answered "No" (IX Tr. 185-186). Defense believed Mr. Webster was the neighbor that showed up at the scene as the fire was reported. This was entirely reasonable and supported by the evidence. Mr. Webster even admitted to being one of the first on scene, and Mr. Webster was technically Ms. Kelsoe's neighbor—he and Ms. Webster lived nearby (IX Tr. 106-10). Defense used this evidence to imply that Mr. Webster (the person they believed was the actual killer) was there so soon because he already knew about the fire after having set fire moments before (XIII Tr. 45-52).

The Trial court lacked "subject matter jurisdiction" to try/convict /sentence petitioner, due to the fact that the complaint/information is unverified, in violation of OK. Law/Constitution, which in turn violates Petitioner's rights to due process of law. Amend 14.

Article 2 § 17 of the Constitution, states in pertinent part:

> "No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment of indictment or by information.....Prosecutions may be instituted in courts not of record upon duly verified complaint."

Furthermore, Title 22 O.S.§ 303(B)(3) states:

> "A complainant verifies by oath, subscribed on ..... The complaint, that the complainant has read the information, knows the facts& contents thereof & that the facts supporting the criminal charge stated therein are true "

Furthermore, Title 22 O.S. § 303(B)(3) states:

> "A complainant verifies by oath, subscribed on.....the complaint, that the complainant has read the information, knows the facts & contents thereof & that the facts supporting the criminal charge stated therein are true."

Attached to the original post-conviction is Exhibit (A) which clearly indicates & shows that the information was NOT "verified," therefore the court not of record, which is the District Court of McIntosh County, lacked "subject matter jurisdiction" over the proceedings of this case.

Black's Law Dictionary definition of "verified" is as follows:

> "A formal declaration made in the presence of an authorized officer, such as a notary public."

The Information tells the truth. NO verification means a due process violation (due to the lack of "subject matter jurisdiction") that makes the entire process ineffective to safeguard the Petitioner's rights.

In Seal V. Bane, 162 P.2d 581 (Okl.Cr.App.1945) holds:

> "No judgment of Court is due process of law, if rendered without jurisdiction in court or without notice to party."

In Ex Parte Story, 203 P.2d 474 (Okl.Cr.1952), it was held:

> "He contends the court lost jurisdiction to pronounce a judgment & sentence by failure to accord him his statutory & constitutional rights, or that he was denied due process"

The Court must have jurisdiction to enforce any judgment & sentence or dismiss for lack of subject matter jurisdiction.

In Isenhower V. Isenhower, 666 P.2d 238, 241 (Okl.App.1983), it was held:

> "The jurisdiction necessary to empower a court to render a valid judgment is of 3 types: (1) Jurisdiction of the parties; (2) Jurisdiction of the general subject matter; (3) Judicial power to decide a particular matter & to render a particular judgment. If any of these 3 requisites is lacking, the purported judgment is a nullity and is void."

In U.S. V. Cook, 997 F.2d 1312 and 45 F.3d 388 (C.A.10, OK.1993) held:

> "We address this issue because jurisdictional issues are NEVER waived & can be raised on collateral attack."

In Joe V. U.S., 510 F.2d 1038, 1041 (C.A.10, 1975), it was held:

"We address this issue because jurisdictional issues are NEVER waived & can be raised on collateral attack."

In Joe V. U.S., 510 F.2d 1038, 1041 (C.A.10,1975), it was held:

"Subject matter jurisdiction is ALWAYS open to collateral attack."

Even in the U.S. Supreme Court, it is held that subject matter jurisdiction issues are NEVER waived nor forfeited, and MUST be addressed on their merits. See, U.S. V. Cotton, 122 S.Ct. 1781 (2002) and Arbaugh V. Y & H Corp., 126 S.Ct. 1235 (2006).

The Petitioner is not ONLY guaranteed due process of law but equal protection of the law under the 14th Amendment to the U.S. Constitution, which assures ALL of the citizens of this great country that our rights are NOT to be abridged by the Government. In this case, because the complaint/information was NOT signed and "verified" as required by the OK. Constitution, and because the trial court was NOT vested with "subject matter jurisdiction" in this case, Petitioner was denied due process of law under the 14th Amendment, as well as equal protection.

Now, the District Court's Order Denying Post-Conviction of March 21, 2019 is in "grave" error because it NEVER addresses this jurisdictional issue which can NEVER be waived nor forfeited but ALWAYS must be addressed. The district court simply misapplied the state procedural bar and denied the case.

The inmate that was helping me was moved to anther facility this is the 3rd time this has happend to me. I have not been able to find anyone who is able to do any kind of law work

So Im forced to do this on my own. Please take in account that Im 65 years old who finish the 10th grade has been a hands-on machanic all my life and has disability of Dyslexia makeing it near to impossible to use any type of digital screen like a computer. I have real issues trying to type my penmanship is fair If i write slow. So please bare with me and consider all of these challenge's that Im dealing with

A Humble inmate

Reasons for Granting Petition

Petitioner is actually and factually innocent of murder in the first degree. [illegible] the [illegible] testing of the evidence which is [illegible] due process [illegible].

The States case was based on Circumstantial evidence from videos and questionable time frames presented by the State as evidence [illegible] to [illegible] [illegible] and [illegible] where the victim's [illegible] false statements [illegible] the petitioner [illegible] before he made it to his residence near Checotah, OK. from his brother Larry's [illegible] 75 miles [illegible] OK. Causing a chain reaction to the leading investigator Detective Hall makeing the petitioner the one and only Suspect.

This is easy to prove by reading Petitioner and Detective Hall's interview [illegible] hours of Debbie [illegible] death. (EXH. [illegible]) After the family was immediately cleared Det. Hall included them in his investigation. There was [illegible] sessions [illegible] of the petitioner recorded by the family, and a overwhelming amount of statements and theories that Det. Hall encouraged the family to do, causing Det. Hall to ignore other most probable suspects.

This is a Violation of Due Process

The fact the Affidavit for Issuance of a Arrest Warrant made by Det. Hall [illegible] false statements Knowing and intentionally with reckless over disregard

for the truth was included by Det. Hall in the Affidavit Issuance of a Arrest Warrant, that the false statements was necessary to find probable cause that violates due process of law (see explanation on Exit-A)

The petitioner could not afford a attorney, does not have the education needed to read and understand the many orders needed for appeal which is petitioner to use different inmates (known as jail house lawyers) who would start out would not be able to finish because the petitioner on the inmate would be moved or transfered. Causing petitioner to make major mistakes, rushing to make deadlines.

Every prison the petitioner has been in, is under staff or not having qualified persons in the correct position, This is true and a fact that all the law-libraries the petitioner had been in, was inadequate. "enabling the petitioner to properly request for trial transcripts, evidence hearing, time extensions, due to these issues, and not filing the correct or wrong motions.

The truth or lack is the petitioner is not sure if this petition for writ of certiorari is correct.

But the petitioner does not have the knowledge the courts to have a access of the tools and knowledge on how to properly Address the Courts violates due process.