No.

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY WAYNE HOLT,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

James L. Hankins, Okla. Bar. Assoc. 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, Oklahoma 73034
Phone: 405.753.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

This is a sexual assault case involving a speedy trial issue where the State brought Petitioner to trial seven years after the alleged crime. The delay was largely attributable to the discovery violations by the State on multiple occasions. By the time the case went to trial, the chief accuser had died and was thus unavailable for in-person cross-examination at trial (the State presented to the jury her prior hearsay statements and preliminary hearing testimony). The Oklahoma Court of Criminal Appeals held that this delay not only was not presumptively prejudicial, but that the death of the chief accuser prior to trial actually benefitted the accused. The questions presented are:

1. Does a delay of seven years from alleged criminal act to trial trigger the presumption of prejudice under *Doggett v. United States*, 505 U.S. 647 (1992)?

2. Under the factors articulated by this Court in *Barker v. Wingo*, 407 U.S. 514 (1972), is the pre-trial death of the chief accuser in a sexual assault case sufficiently prejudicial for a Sixth Amendment violation?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

In the

SUPREME COURT OF THE UNITED STATES

JEREMY WAYNE HOLT,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Jeremy Wayne Holt petitions respectfully for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals.

OPINION BELOW

The Oklahoma Court of Criminal Appeals decided this case by written, but unpublished, opinion filed April 3, 2025. *See* attached Appendix.

JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered April 3, 2025. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment to the United States Constitution provides, in part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

The 6th Amendment to the United States Constitution provides, in part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]

STATEMENT OF THE CASE

On October 26, 2016, the State filed a felony Information accusing Holt of a single count of Sexual Abuse of a Child Under 12. O.R. 1.

Preliminary examination was held in two sessions before the Hon. Stuart L. Tate, on February 23, 2017, and April 10, 2017. At the conclusion of the State's evidence, the trial court overruled the defense demurrer and bound Holt over for trial. P.H. Tr. II at 35.

Jury trial commenced on April 17, 2023, before the Hon. Burl O. Estes. At the conclusion of the evidence, the jury found Holt guilty and assessed punishment at 25 years/$500.00 fine. Tr. 588; O.R. 342.

Holt was sentenced formally on June 21, 2023, in accordance with the recommendation of the jury. Sent. Tr. 12-13.

Holt filed Notice of Intent to Appeal and Designation of Record on June 21, 2023. O.R. 368. On April 3, 2025, the Oklahoma Court of Criminal Appeals affirmed the conviction.

STATEMENT OF THE FACTS

Since this Petition presents an issue of speedy trial, the pre-trial procedural history is important. The alleged offense occurred on April 1, 2016, and the complaining witness, D.M., was interviewed by police the same day. O.R. 1; Tr. 243.

However, the State did not file the criminal charge until over *six months* later on October 26, 2016. O.R. 1. Once that was accomplished, jury trial did not start until April 17, 2023. This is a delay of *six years and six months* from the time of the filing of the charge–and *seven years* since the actual alleged crime.

How did this happen?

The mother of the complaining witness took her immediately–that very morning– to the police station where D.M. was interviewed by Deputy Kling. Tr. 228, 243; State Exhibit 7. Thus, there was no delay at all regarding notice of the alleged crime. The State was aware that it happened the day it allegedly happened.

There is no indication in the record why the State dilly-dallied for six months before filing the charge. However, once it was filed the case proceeded like it normally. Preliminary hearing was held on February 23, 2017, which was four months after the charge was filed.

Defense counsel (Mr. Shoemake) filed a motion for a continuance of a scheduled hearing on July 17, 2017, based on a scheduling conflict. O.R. 35. This motion was granted by the then-judge Hon. M. John Kane (who would be appointed to the Oklahoma Supreme Court), who set the hearing for August 4, 2017. O.R. 45. Again, nothing unusual about this so far.

The case was set for jury trial on October 9, 2018. O.R. 50. However, a court minute indicates that the case was continued by agreement for pre-trial set March 12, 2019, at which time a trial date would be set. O.R. 51.

A court minute filed March 12, 2019, indicated that further pre-trial was set and that jury trial was set for September 30, 2019, although there is no indication as to why it was continued again. O.R. 52. In fact, the parties showed up at the pre-trial on August 27, 2019, and announced ready for

the September 30, 2019, trial date. O.R. 53.

As far as criminal cases go, this was getting to be on the long side already for a case filed in 2016. But on September 18, 2019, defense counsel filed a motion to continue trial based on discovery violations by the State. O.R. 84. Despite a comprehensive discovery request filed by the defense on October 28, 2016 (O.R. 16), the State had failed to turn over the videos of the forensic interview of D.M. with Hastings. O.R. 84. The State only did so on September 6, 2019. O.R. 84.

Counsel stated in his motion that the defense was unaware of the existence of the video of the forensic interview until the pre-trial on August 27, 2019. O.R. 84.

This is a case filed on October 26, 2016, and the State had just provided the forensic interview to the defense on or about September 6, 2019–nearly three years later and about 30 days prior to trial.

As bad as that is, it was about to get even worse.

There were actually *two* forensic interviews with the complaining witness, D.M.: 1) the one by Deputy Kling that occurred on the day of the incident (State Exhibit 7); and 2) the forensic interview by Hastings of D.M. and her sister, P.D., that happened later (State Exhibit 23).

When defense counsel filed his motion three years into this case when it was set for trial, the discovery violation was that the State had failed to turnover the video of the forensic interview *by Hastings*. It was about to get worse because the State had still never turned over the original video of the interview conducted by Deputy Kling on the very day of the alleged incident.

That was discovered later as we will see.

But back to the time line, defense had filed a motion on September 18, 2019, to continue the trial because the State had not provided the Hastings video.

In the meantime, the assigned judge had become unavailable and it was assigned to the Hon. Jennifer McAffrey. O.R. 90. A hearing was held by telephone on September 25, 2019, at which the State, having caused the problem by withholding discovery, objected to the continuance; but Judge McAffrey granted the motion citing her schedule "as well as the discovery concerns presented by the defense" and continued the trial to January 28, 2020. O.R. 96.

The case was at this point getting almost four years into this litigation.

A court minute filed on January 21, 2020, shows that the case was continued again on motion of the defense, but does not cite a reason (over the objection of the State once again). O.R. 163. So, the trial was continued to a pre-trial conference for May 1, 2020. O.R. 163.

The record shows that this case was again moved for unknown reasons but on August 7, 2020, a court minute was entered with a solid jury trial date of October 19, 2020. O.R. 173.

This prompted the State to set a child-hearsay reliability hearing, which was scheduled for Wednesday, October 14, 2020–just five days prior to trial on Monday. O.R. 175 (State motion for reliability hearing); O.R. 181 (order setting hearing).

Finally, the parties assembled before Judge McAffrey for the reliability hearing on October 14, 2020. Various arguments were held and the State presented testimony from Tonya Kantola (Holt), Deputy Kling, and Michelle Hastings. Mot. Tr. 10/14/2020 at 13, 32, and 44.

It was after the conclusion of the live testimony that an extraordinary thing occurred.

During the testimony of Deputy Kling, it became apparent that the defense had never been provided a copy of *his* forensic interview with D.M.–the one that had occurred the very day of the incident. Judge McAffrey asked, "And just so that I'm clear, does the defense have or do you know if you've ever had Officer Kling's interview? Mot. Tr. 10/14/2020 at 57. Answer by Mr. Reynolds:

"No, ma'am." *Id.*

Judge McAffrey asked him again and he responded, "I have never seen that interview. We have two separate discs that were given to us by the State and those discs are identical." *Id.* 57-58.

Thus, the parties just found out in open court–on October 14 2020, just five days prior to the trial and nearly four years to the day after the Information had been filed–that the State had never provided the forensic interview of D.M. conducted by Deputy Kling that had occurred on the same day of the incident. The State simply gave the defense two discs which were the same thing–the interviews of D.M. and P.D. conducted by Hastings. *Id.* 58.

This prompted Judge McAffrey to opine, "I guess that I'm just surprised that a 2016 case it's never occurred to either side but particularly the defense, what sounds to be the chief and initial forensic interview has never been reviewed by you or your client." *Id.* 58-59.

Defense counsel responded that the case had been continued twice because of discovery issues with the State in failing to provide the forensic interviews of Hastings, and also failing to provide 48 pages of counseling notes, and now counsel has found out that the State had not provided the most important piece of evidence in the case:

> So here we are yet again on the eve of trial, third time that the Government has–it comes out that they don't have everything that the Government intends to use at trial, the third time. We have requested it. We've asked for it. We asked for it on two separate occasions. They say they gave it to us. We take it and see what we have.

Id. 60-61. The State responded that with regard to the videos, "I don't know what happened. I am sick." *Id.* 62 ("I am sick about the fact that they did not have the other disc.") The prosecutor acknowledged that it was the State's mistake and apologized. *Id.* ("I haven't had this happen before and again I apologize because I will agree that this is a discovery violation by the State[.]"); 78

(prosecutor acknowledged that the Kling video was inadvertently not provided to the defense).

When Judge McAffrey expressed "shock and disappointment" that defense counsel had never reviewed the forensic interview, defense counsel responded that he had to accept what the State had given to him as representing all the videos available (which was duplicate copies of the Hastings video); and more importantly clarified that Deputy Kling stated in his report that he had interviewed D.M., not that he had recorded it, so the defense had *no notice* of that and simply concluded that what the State provided was all it had. *Id.* 65-66; 77 (court asks whether the incident report makes any reference to the fact that the interview was recorded, defense counsel responded, "It does not. As we have sat here and listened to it, I was searching the report for any clue that it did and it did not."); 78 (same).

Defense counsel told the court that pressing to trial would "punish my client because I don't see how we're going to have adequate time to review that, not only for purposes of the reliability hearing today but for purposes of its evidentiary value writ large prior to the 19th." *Id.* 68.

Judge McAffrey then made this observation:

> The question is what can we do, if anything, to properly proceed to try this 2016 case in the year 2020. It truly boggles my mind that we are potentially discussing not doing it. I recognize that this discovery issue is serious and I don't want to minimize it and I don't want to jeopardize the defendant's rights by compelling him to go to trial if his attorney is telling me that he's not going to be able to be adequately prepared and do the best job he can in putting his defense forward. So I recognize that.

Id. 68-69. A brief recess was had for the defense to at least review the video, and defense counsel stated that he had insufficient time to prepare for trial on Monday. *Id.* 72.

The State observed that "it does take a while for things to get to trial in Osage County." *Id.* 75.

After discussing scheduling options and conflicts, the court and the parties arrived at a new, first-up trial date of January 25, 2021–with Judge McAffrey stating that even a couple of weeks delay is "making my skin crawl." *Id.* 90; O.R. 213.

So, the 2016 case was moved into the new year of 2021.

A court minute reflects that the trial was again continued, this time by Judge Burl Estes, on motion of defense counsel and agreement of the parties to a pre-trial date of July 13, 2021. O.R. 242. The record is unclear why Judge McAffrey was reassigned.

Another court minute states that the parties have agreed to continue the case for trial on February 8, 2022. O.R. 244.

Incredibly, another court minute filed on August 19, 2022, states cryptically that the trial had been continued to April 17, 2023, "due to discovery issues and scheduling conflicts" although it was not clear what these issues or conflicts were exactly. O.R. 248.

On October 25, 2022, D.M. died. O.R. 251.

Thus, the odyssey of this case finally ended with the jury trial held April 17, 2023–just six months *after* the death of D.M. Although D.M. had testified at a preliminary hearing and gave forensic interviews, she was unavailable for cross-examination at trial because of the length delay in the prosecution.

REASONS FOR GRANTING THE WRIT

In analyzing the speedy trial claim raised by Holt, the Oklahoma Court of Criminal Appeals utilized the "balancing test" of factors set forth by this Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *See* Appendix at 3. The length of the delay factored into Holt's favor. *Id.* 4.

As to the reason for the delay, the OCCA stated that this Court (and the federal circuit courts

of appeals) places the burden on the State to provide an explanation for the delay. *See* Appendix at 4 (*citing Barker*, 407 U.S. at 531; *Jackson v. Ray*, 390 F.3d 1254, 1261-62 n.3 (10th Cir. 2004)). The OCCA held that as to this second factor, the State had once again failed to explain sufficiently that the delay could not be attributable to it. *See* Appendix at 4.

However, as to prejudice, the OCCA acknowledged the "presumptive prejudice" arising out of a lengthy delay "is always a factor to be considered in applying [*Barker*]." Appendix 7 *(citing Doggett v. United States*, 505 U.S. 647, 655-56 (1992)). But, the court failed to accord any presumption of prejudice at all at the seven year delay from the State's notice of the allegation to the jury trial.

In fact, the OCCA held: "Nothing in this case indicates that Appellant suffered any prejudice at all"–even though the accuser had died before trial and Petitioner was unable to cross-examine her before the jury. As to this, the OCCA indicated that this actually *helped* Holt because a "live sexual assault victim would have been more damning in this case." Appendix at 9.

Something has gone seriously wrong in the Oklahoma courts and this Court should grant the writ to determine whether the analysis of the Oklahoma Court of Criminal Appeal comports with this Court's understanding of the speedy trial provision of the Sixth Amendment, including whether: 1) a delay of seven years from crime to trial is lengthy enough to trigger a presumption of prejudice under *Doggett*; and 2) whether the death of the chief accuser prior to trial as a result of the delay attributable to the State is sufficiently prejudicial under *Barker* to require relief. *See Dickey v. Florida*, 398 U.S. 30 (1970) (finding prejudice where witnesses died or were unavailable).

CONCLUSION

For the reasons stated above, the Petitioner prays respectfully that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals.

DATED this 2nd day of July, 2025.

Respectfully submitted,

James L. Hankins, Okla. Bar No. 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, Oklahoma 73034
Telephone: 405.751.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

COUNSEL FOR PETITIONER