No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Christopher W. Webb — PETITIONER
(Your Name)

vs.

Joe Allbaugh, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

– United States Appellate Court (10th Circuit) –
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher W. Webb #481150
(Your Name)

8607-SE-Flowermound Rd.
(Address)

Lawton, OK. 73501
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) Is it (a) Miscarriage of Justice / Actual innocence finding / violation of petitioners 5th/14th U.S. Amend(s) when (a) Trial Court has chosen to use it's discretion, and evaluates / determines the States' evidence as legally insufficient to warrant / support (a) conviction - After - defense motion for directed verdict / acquittal - THEN - the Trial Court without changing it's finding's as to the states evidence (or) any objections, introductions of other evidence, document's (or) argument's by the state - the - Trial Court abruptly denies the Motion For directed verdict, and refuses / fails to instruct the jury they may return (a) verdict of acquittal due to the State's failure to incriminate the defendant? SEE: U.S. Supreme Court Digest - L.Ed. - Crim. law § 32 (p. 243), Fong Foo V. U.S., supra (FN 11), U.S. V. Scott > 437 U.S., at 91, 98 S.Ct., at 2194 > (FN 7)... Note: Petitioner assert's there has never been (a) case in American Jurisprudence where (a) Trial Court denied the Motion For directed verdict / acquittal - After - evaluating / determining the states evidence legally insufficient to warrant / support (a) conviction, therefore the U.S. Court of Appeals (10th Cir.) has decided an important question of law ("Federal") that has not been, but should be, settled by the U.S. Supreme Court, or has decided an important Federal question in (a) way that conflicts with relevant decisions of the U.S. Supreme Court, also the Fed. Dist. Court - and - State Courts made these decisions / conflicts.

2) Does (double jeopardy) protection's trigger at the exact point of the proceeding's of (a) Trial Court's decision to evaluate the States' evidence as legally insufficient to warrant / support (a) conviction? Note: The petitioner assert's the Trial record clearly shows the above - stated situation occurred at his trial, and the U.S. Court of Appeals - (10th Cir.) failed / refused to consider this miscarriage of justice / actual innocence claim which is in conflict with relevant decisions of the U.S. Supreme Court, also the Fed. Dist. Court... and State Courts made these decisions / conflicts.

3) Is it a miscarriage of Justice / violation of petitioner's 5th / 14th Amend(s) for petitioner to be convicted, and have his conviction upheld by the reviewing Court's when the Trial Record clearly support's that the State - NEVER - EVEN - addressed the (Fourth Element) - namely - "without her consent" - of the crime charged at petitioner's trial? SEE: Jackson V. Virginia, 443 U.S. (1979) - RE: Every element of the crime charged must be proven beyond a reasonable doubt, and it must do more than raise a mere suspicion of guilt. Note: The petitioner assert's the U.S. Appellant Court (10th Cir.) has decided an important Federal question in a way that conflicts with relevant decisions of the U.S. Supreme Court. Also; the Fed. Dist. Court, and the O.C.C.A. ... made these decisions / conflicts.

4) May a conviction stand when the testimony of the prosecutrix has clearly been shown by the Trial Record to be obtained by threat, assault, coercion, and given under the influence of drugs - which in turn - magnifies such testimony as highly objectionable, tainted; by a corrupting influence - especially - when there has been no other evidence to corroborate such testimony - which clearly would be outside the bounds for a jury to weigh any credibility issues regarding such testimony? SEE: Mesareosh V. U.S., 352 U.S. 1, 1L Ed. 2d. 1, 77 S. Ct. (1956) ... Note: The petitioner assert's the U.S. Appellant Court (10th Cir.), Fed. Dist. Court, and the O.C.C.A. has decided a important Federal question in a way that conflict's with relevant decisions of the U.S. Supreme Court.

5) May a U.S. Court of Appeals (10th Cir.) uphold a state statute against a challenge that it violates the Federal Constitution - when it can clearly be shown the U.S. Court of Appeals (10th Cir.) decision is in conflict by the decision of the State Court of last resort regarding Okla. Stat. tit. 22 § 850? SEE: Freeman V. State - No. A-9631 (1940) -

Procedure Crim. Sect. 3090 - which clearly states in regard to O.S. tit. 22 § 850 - The procedural steps are "- If the evidence introduced by the State fails to incriminate the defendant, or as a matter of law is insufficient to show the defendant is guilty of the offense charged, it is not only the right, but the duty of the Trial Court to advise the jury to return a verdict of acquittal." SEE: Tamer V. Kentucky, 466, 341, 80 L.Ed. 2d. 346, 104 S. Ct. 1830 (1984) ... Note: The petitioner assert's the U.S. Court of Appeals / Fed. Dist. Court has decided an important Federal question in a way that conflicts with a decision by a State Court of last resort, and (vice / versa) a state Court of last resort has decided an important Federal question in a way that conflicts with the decision of a U.S. Court of Appeals (10th Cir.) ... therefore the U.S. Court of Appeals (10th Cir.) has so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

6) May a U.S. Court of Appeals (10th Cir.) and Fed. Dist. Court continue to refuse / fail to address on the merits petitioner's claims of a miscarriage of justice, and an actual innocence claim which would deny and disparage the relief petitioner seeks - although - these rights are so basic and fundamental, and so deeply rooted in our society to be truly 'essential rights' such as the right to petition to be free from double punishment / jeopardy - especially - when the Trial Court has essentially declared the petitioner to be factually / legally innocent? SEE: Kotteakos V. U.S., 328 U.S. 750, 90 L.Ed. 1557, 66 S. Ct. 1239, and U.S. V. Difrancesco, 449 U.S. 117-126-127 101 S. Ct. 426, 66 L.Ed. 2d 328 (1980) - Ex Parte Lange, 18 Wall. 163, 170, 21 L.Ed. 872 (874) pg. 81 ... The petitioner

-Questions Presented-

assert's the 10th Cir. Court of Appeals / Fed. East. Dist. Court have so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. SEE: Also- 9th Amend of the U.S. Const.

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:

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

1) Fong Foo V. U.S., supra (FN11) - Questions presented - page (1) - page (8) - Reasons for granting)
2) U.S. V. Scott > 437 U.S.; at 91, 98 S.Ct, at 2194 > (FN7) ... page (1) - page (8) as well
3) Jackson V. Virginia, 443 U.S. (1979) - page 2
4) Mesareosh V. U.S., 352 U.S. 1, 1L Ed. 2d 1, 77 S.Ct. (1956) - page (2)
5) Freeman V. State - No. A-9631 (1940) - Procedure Crim. Sect. 3090 - page (2,3)
6) James V. Kentucky, 466, 341, 80 L.Ed. 2d. 346, 104 S.Ct. 1830 (1984) - page (3)
7) Katteckos V. U.S., 328 U.S. 750, 90 L.Ed. 1557, 66 S.Ct. 1239 - page (3)
8) U.S. V. Difrancesco, 449 U.S. 117-126-127 101 S.Ct. 426, 66 L.Ed. 2d 328 (1980) - Ex Parte Lange, 18 Wall. 163, 170, 21 L.Ed. 872 (1874) pg. 87 - page (3) - page (8)
9) Webb V. Texas, 409 U.S. 95, 97-98, 93 S.Ct. 351, 353, 34 L.Ed. 2d. 330 (1972) - page 5-

STATUTES AND RULES

1) Okla. Stat. tit. 22 §850 - page 2
2) U.S. Fed. Rule 29(a) - Reason's for granting petition - page - 4
3) Rule 52(b) - Federal Crim. Procedure - Reasons for granting Writ - page - 10

OTHER

1) U.S. Supreme Court Digest - L.Ed. - Crim. law § 32 <p. 243> - page (1) and on page (2) of part (B) - reasons for granting writ

- Table of Authorities cited -

- CASES -	- Page Number -
10) Boyles V. State, 29 OKl. CR. 44, 453 (1925) - (Reasons For granting) - Part-B-	page's 5, 6
11) Plumley V. State - No. -A- 9697 (1940) " " " " "	page - 6
12) Dickey V. State OK. CR. No. A-9265 - (1937) " " " " "	page - 6
13) Ray V. State - OK. CR. - No. - A - 4353 (1924) - under Comp St. 1921, § 2713 -	page - 6
14) Revilla V. Gibson 283 F.3d 1203, 1212 (10th Cir. 2002) " " " " " -	page - 6
15) Bullock V. Carver, 297 F.3d 1036, 1055 (10th Cir. 2002) " " " " " -	page - 6
16.) Mayes V. Gibson, 210 F.3d 1284, 1293 (10th Cir. 2002) " " " " " -	page - 6
17) Cephus V. U.S. (1963, App. D.C.) 117 U.S. App. D.C. 15, "(324 F.2d 893)" -	page - 7
18) U.S. V. Martin Linen Supply Co. 97 S. Ct. 1349 (1977) - " " " -	page - 8
19) U.S. V. Byrne, 203 F.3d 671 (C.A. 9-2000) - " " " " -	page - 8
20) State V. Sperry, 149 Or. App. 690, 696, 945 P.2d 546, 550 (1997) " -	page - 8
21) Barber V. Jones, No. ciV-06-1260-W, 2007 WL 2027000, at *7 (W.D. Okla. July 10, 2007 -	page - 9
22) Smith V. Massachusetts, 543 U.S. 462, 465-67 (2005)) - " " " " -	page - 11
23) Smith V. State, 509 P.2d 1391, 1397 (OCCA) 1973 - " " " " -	page - 11
24) Carrier, 477 U.S. at 496, 91 L.Ed. 397, 106 S. Ct. 2639 - " " " " -	page - 12
25) Smith V. Murray, 477 U.S., at 537, 91 L.Ed. 2d 434, 106 S. Ct. 2661, U.S. -	page - 12
26) U.S. V. Mikaiajunas, 186 F.3d 490, 492-93 (4th Cir. 1999) - Citing U.S. V. Frady, 456 U.S. 152, 167-68 102 S. Ct. 1584, 71 L.Ed. 2d 816 (1982) -	page - 12
27) U.S. V. Maybeck, 23 F.3d 888, 891-92 (4th Cir. 1994). " " -	page - 12
28) Coleman V. Thompson, 501 U.S. 750, U.S. L.Ed. 640 (1991) " " -	page - 12
29) Forbrache V. State, 21 OKl. CR. 256, 206 P. 617 " " " " -	page - 15
30) Witt V. State, 29 OKl. CR. 357, 233 P. 788 " " " " -	page - 15
31) Cambron V. State, 86 OKl. CR. 437, 193 P.2d 888 " " " " -	page - 15
32) Maxwell V. State, 78 OKl. CR. 328, 148 P.2d 214, 217 " " " -	page - 15

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APPENDIX B - Order denying Writ of Habeas Corpus - Fed. East. Dist. -

APPENDIX C - Order denying petition for rehearing EN BANC - 10th Cir. -

APPENDIX D - * Note: Unable to obtain copy of State Appellate Court - Lost in route -

APPENDIX E - Order denying - Rule 60 (b) Motion -

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Appendix-I - Case law supporting petition -

* - On page (2) of - Appendix-B - the Hon. Court quotes verbatim the decision of the (O.C.C.A.) regarding the prosecutix testimony / insufficient evidence which petitioner raises in his Writ of Cert.

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 _____; 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 _____; 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 No Copy to the petition and is Lost in transfer/SEE: Appendix-B-page (2)-

[ ] reported at _____; 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 July 25, 2017.

[ ] 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: September 01, 2017, 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 05-03-13'.
A copy of that decision appears at Appendix No Copy. Case No. F-2012-101
Note: Last copy during transfers - unable to replace. SEE: Appendix-B-page-2-

[ ] 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

1) 5th Amendment to the U.S. Const.
2) 14th Amendment to the U.S. Const.
3) 9th Amendment to the U.S. Const.
4) Okla. Const. Art. 2 § 2 & 2 § 7
5) Okla. Stat. tit 22 § 850 - which states - "If, at any time after the evidence on either side is closed, the Court deems the evidence insufficient to warrant (a) conviction, it may advise the jury to acquit the defendant."

STATEMENT OF THE CASE

1) The Oklahoma Court of Criminal Appeals denied petitioner's direct appeal on 05-03-13'. The O.C.C.A. failed to rule on the merits the denial of petitioner's Motion for directed verdict/acquittal - even though their own Amendment's that were adopted/passed on (01-01-10') requires the O.C.C.A. to review (DE Novo) anytime (a) directed verdict/acquittal is denied. The petitioner's Atty. (Hoover) quoted the Trial Courts denial of the directed verdict/acquittal verbatim, and stated this denial after the Trial Court evaluated the State's evidence as legally insufficient is remarkable. therefore theres no possibility the O.C.C.A. could've missed the denial of the Motion when reviewing the complete Trial Record carefully. The O.C.C.A. ruled the element's were satisfied beyond (a) reasonable doubt regarding petitioner's insufficient evidence proposition, and stated the testimony of the prosecutrix satisfied those element's required - although - the evidence wasn't overwhelming.

2) The petitioner filed his Amended Petition for Writ of Habeas Corpus on 08/05/13 raising namely insufficient evidence / testimony evidence was insufficient to sustain conviction, and the denial of the directed verdict/acquittal. The Hon. Court denied petitioner's Writ on 08-22-16', however the Hon. Court failed to rule on the denial of the directed verdict/acquittal complaint, and petitioner filed (a) Rule 60 (b) Motion on 09-14-16' due to this failure. The petitioner further raised the denial of the directed verdict/acquittal, and testimony issues as (a) Miscarriage of Justice/actual innocence claim. On 01-20-17' the Hon. Court denied petitioner's Rule 60 (b) Motion, and ruled the failure to grant the Motion to acquit, and failure to instruct didn't violate petitioner's 5th, 14th U.S. Amend(s), and the testimony was sufficient to sustain the conviction and satisfied (all) the elements, however the Hon. Court failed to rule on the entirety of

- Statement of the Case -

petitioner's complaint regarding the Trial Court's evaluation as (a) miscarrige of justice/actual innocence claim that violates his 5th/14th Amend(s) due to the fact petitioner claimed he had already been acquitted; and the reviewing Court's Keep (Attaching jeopardy) by re-trying petitioner - over and over again in their Court's - however - rather than address the Trial Court's evaluation as legally insufficient in it's (entirety) through the lens of Rule 52(b)/Miscarrige of justice/or/ an actual innocence claim which would waive/excuse any procedural defaults/exhaustion issues - the - Hon. Court chose to ignore these claims altogether Knowing ruling on these claims would bring light/attention to the triggering of double jeopardy protection, and safeguard the petitioner from exhaustion requirements.

3) The petitioner Files his opening brief, and application for (a) C.O.A. on - 03-10-17' - and raised the same issues he raised in the Fed. Dist. Court along with the fact the issues in his Rule 60(b) shouldn't require (a) C.O.A. due to these issues not being (a) part of the Final judgment in the District Court. The 10th Cir. further failed to rule on the merits of petitioner's claims of (a) miscarriage of Justice/actual innocence claims - even - after the petitioner brought it to the attention of the 10th Cir Court that the Fed. Dist. Court failed to Rule on these issues, and the 10th Cir. Court is the one who informed petitioner by order of the Court the petitioner should raise these claims in his application brief for (a) C.O.A. The 10th Cir. Court denied petitioner's application for (a) C.O.A. on 07-25-17' - agreeing with the Fed. Dist. Courts opinion/order of petitioner's claims, and refused to consider petitioner's claim of - double jeopardy - although petitioner always raised his 5th/14th Amend(s) were denied/violated due to the Trial

-Statement of the Case-

Court's evaluation the states case was legally insufficient which triggers the double jeopardy protection rather or not the petitioner literally stated the exact words - double jeopardy - the - 10th Cir. Court reasoned it wasn't good enough to raise his 5th Amendment was denied / violated, and reasoned this claim is unexhausted - although the 10th Cir / Fed. Dist. Courts' both refused / ignored petitioner's constant feature of a miscarriage of justice / actual innocence claims - specifically due to the Trial Court's evaluation of the States evidence as legally insufficient to warrant / support a conviction - which - began a chain reaction that triggered the 5th Amendment) protection against double punishment / jeopardy...

4) The petitioner then filed his Motion for rehearing EN BANC - on - or about 08-03-17' - detailing with U.S.S. Court precedent's why the decision to deny petitioner's C.O.A. was error, and again reminded the Hon. Court they failed to rule on the merit's petitioner's claims of a) miscarriage of justice / actual innocence claims. The Hon. Court denied petitioner's Motion for rehearing EN BANC on - 09-01-17' - and - coincidentally - the - same three judges who denied petitioner a C.O.A. were the ones who deny petitioner a (EN BANC) rehearing - stating it was transmitted to all) judges in (active service) - and - any petition for polling is also denied.

REASONS FOR GRANTING THE PETITION

1) The petitioner assert's he is factually, and legally innocent, and the Trial Court record clearly corroborates this assertion. The petitioner further assert's the evidence proves the lower Federal/State Courts have impeded the presentation of petitioner's clear claim's of (a) miscarriage of justice/actual innocence complaint's, by not addressing these claims on the merit's, which have further prevented petitioner from prevailing on his - double punishment/jeopardy complaint's, and violates his 9th Amend as well.

2) The petitioner assert's his instant case is extraordinary/unique, and as addressed in (Question-1-) has never been debated upon before any Court of the U.S. - due - to the fact - there has never been (a) Trial Court choose to use it's discretion, and evaluate the state's evidence - then - determine the evidence legally insufficient to warrant/support (a) conviction - then - immediately refuse/deny the Motion for directed verdict/acquittal, and - therefore - it would be of vital importance to the public's interest to have this compelling legal (Federal) question decided by the Hon. Court - and - since there has never been such (a) case presented to this Court - it - would definitely be in aid of the Appellate Courts, Wherefore - the U.S. Court of Appeals (10th Cir.)/Fed. Dist. Court has decided an important Federal question of law that has not been, but should be, settled by the U.S. Supreme Court, or has decided an important Federal Question in (a) way that conflict's with relevant decisions of this Court. SEE: Part (B) - Reasin's for granting - for - support, and Appendix's A-I- Note: There decisions also conflict with other Cir. Courts.

3) The petitioner further assert's the U.S Appellant Court (10th Cir.), Fed. Dist. Court, and the O.C.C.A has decided (an) important Federal question in (a) way that conflict's with relevant decisions of this Court - namely - Mesareosh V. U.S, 352, U.S. 1, 1L Ed. 2d. 1, 77 S.Ct. (1956) - by - allowing (a) conviction to stand when the Trial Record clearly shows the testimony of the

-Reasons for granting the Petition-

prosecutrix was obtained by threat, assault, coercion, and relied upon prelim testimony that was given while under the influence of drugs - which-magnifies such testimony as highly objectionable, tainted-by-(a) corrupting influence-especially-when there has been no corroboration to support the allegation/charge-and-no jury should be allowed to weigh the credibility of such testimony. SEE: Part(B)-Reason's for granting- for detailed support, and Appendix's -A-I-

4) Finally-the petitioner assert's the U.S. Court of Appeals has chosen to uphold (a) state statute against (a) challenge that it violates the Federal Constitution-Even Though-the-10th Cir. Court's decision is in direct conflict with the decision of the state Court of last resort regarding Okla. Stat. tit. 22 § 850, which in Freeman V. State-No. A-9631-(1940)-Procedure Crim. Sect. 3090-clearly states "If the evidence introduced by the state fails to incriminate the defendant, or as a matter of law is insufficient to show the defendant is guilty of the offense charged, it is not only the (Right), but the (duty) of the (Trial Court) to advise the jury to return a verdict of acquittal." - Wherefore - clearly the O.C.C.A. has embodied the 14th Amend-due process-in their statute by judicial opinion. and the U.S. Court of Appeals (10th Cir.) / Fed. Dist. Court has decided an important federal question in a way that conflict's with a decision by (a) state Court of last resort, and (vice/versa) (a) state Court of last resort has decided an important Federal question in a way that conflict's with the decision of the 10th Cir. Court of Appeals. - therefore - the U.S. Court of Appeals (10th Cir.) / Fed. Dist. Court has so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. SEE: Part-B-Reason's for granting-for-detailed support, and Appendix's-A-I-

5) Lastly; petitioner assert's the Trial Record clearly support's that the state-NEVER-addressed the (Fourth Element)-namely-without her consent-of the crime charged at petitioner's trial, and to allow the

-Reasons for granting the Petition-

Conviction to stand would be (a) gross/manifest miscarriage of justice that violates the petitioner's substantial due process rights. SEE: Jackson V. Virginia, 443 U.S. (1979) - and - clearly the 10th Cir. Court / Fed. Dist. Court / and the State Court's has decided an important Federal Question in (a) way that conflicts with relevant decisions of this Court. SEE: Part-B- Reasons for granting-for- support, and Appendix's -A-I-

6) Wherefore; the petitioner assert's it would be of national interest to know (a) Court's evaluation the States evidence is legally insufficient to warrant / support (a) conviction is truly (a) acquittal; and the jury will be instructed to acquit by advise from the Court as procedural due process demands as (a) matter of common law - and - no person shall be convicted when (all) the element's of (a) crime charged hasn't been proven - much less - addressed - such (a) conviction-if-had-may not stand. and reviewing Court's shall do their duty, and address any miscarriage of justice claims (or) actual innocence claims on the merit's - and - reviewing Court's shall not reason on their own (a) state statute doesn't violate due process when (a) state Court of last resort has already held it is the right / duty of the defendant by judicial opinion, and lastly no person's conviction may stand on tainted testimony, and petitioner assert's that (a) Writ of Certiorari is the judicial tool / avenue to be used to hold lower Court's accountable for their error's, and petitioner's submitted petition calls for the exercise of this Hon. Court's supervisory power, for the following detailed reasons:

-PART-B- Reason's for granting-

1) As the Trial Record clearly shows when the state rested / closed it's case the defense moved for (a) directed verdict, and asked the Court to find the defendant not guilty on the basis of the evidence presented by the State.

The Trial Court responded: "Certainly if the jury were to believe her testimony beyond (a) reasonable doubt it wouldn't support (a) conviction. And it hasn't been corraborated by other evidence, so the Motion for directed verdict and/or (a) Motion of acquittal is denied." Note: At this point the state offered petitioner (a) 5yr. sentence with (a) reduced charge of agg. assault. The petitioner obviously didn't even consider the States offer, and decided not to testify due to the Trial Court's evaluation of the States evidence - especially - when the Court just informed petitioner - "Even if the jury believed her beyond (a) reasonable doubt it wouldn't support (a) conviction" - although - the Court erroneously denied the Motion - it must be noted the Court never changed it's mind/evaluation, and the state never introduced any other evidence, transcripts, or argument's to the contrary, therefore the petitioner was still under the (mistaken impression) he wasn't facing (a) conviction. SEE: Appendix-E- page 12) The petitioner - claimed this violated his 5th/14th U.S. Amendment's, and the Okla. Const. Art. 2 § 2/2 ¾ - and - asserted the Trial Court used it's discretion when it chose to evaluate the evidence, and no longer had discretion to deny the Motion, and couldn't reserve/deny the Motion in expectation the petitioner would testify (or) waive his motion for directed verdict. SEE: Appendix-E-page 11 - and - Appendix-B- motion for rehearing - page - 6-

Note: Okla. stat. tit. 22 § 850 - states "If at anytime after the evidence on either side is closed, the Court deems the evidence insufficient to warrant (a) conviction, it may advise the jury to acquit the defendant." - Note: This statute is very similar to Fed. Rule of Crim. Proc. 29(a) - which uses the word (MUST) rather than may. therefore - the petitioner asserted the context of (MAY) in the statute is defined as giving authorization/authority to the Court to grant an acquittal when

the Court deems the evidence insufficient - this - does not imply the Court still had discretion to granting the Motion (without) changing it's evaluation - which would render the statute unconstitutional - and - mis-lead the petitioner into believing he wasn't facing conviction, and alter his judgment as to rather to accept (a) reduced charge (or) even testify on his or behalf. SEE: Webb V. Texas, 409 U.S. 95, 97-98, 93 S.Ct. 351, 353, 34 L.Ed. 2d 330 (1972) - RE: Due to the Judges remarks - "evaluation" it effectively convinced the petitioner - in this instance - not to testify - or accept/consider (a) plea - which violates due process of law. The Fed. Dist. Court/10th Cir. Court has concluded the Trial Court still had discretion to deny the Motion, and that the "apparent inconsistency" doesn't violate petitioner 5th/14th Amendment's. SEE: Appendix A and E The petitioner - however - didn't rely on his own characterization of the statute - he - followed the rule of law, and searched Okla. Court of Criminal Appeals decisions to see how they interpreted this statute when (a) Trial Court evaluates/deems the states evidence as legally insufficient to warrant/support (a) conviction, and what - procedural steps should be followed - if - any. The leading case law from the (O.C.C.A.) is as follows: SEE: Freeman V. State No. A-9631 (1940) - Procedure Criminal, section 3090 - which states - "If the evidence introduced by the state fails to incriminate the defendant, or as (a) matter of law is insufficient to show the defendant is guilty of the offense charged, it is not only the (Right), but the (Duty) of the Trial Court) to advise the jury to return (a) verdict of acquittal." Note: 100% of the time when this advice has been given by the Trial Court the jury has voted to acquit. Next; SEE: Bayles V. State, 29 Okl. CR. 44, 453 (1925) - which states - "It is made the (Duty) of the Trial Court, when it deems the evidence insufficient to warrant/support (a) conviction, to advise the jury to acquit." SEE: Also for Further

support - Plunkey V. State - No. A-9697 (1940), Dickey V. State - OK. CR. - No. A-8265 (1937), and Key V. State - OK. CR. - No. -A-4353 (1924) under Comp St. 1921, § 2713. The petitioner asserts that it is very clear the O.C.C.A.'s has settled the question as to the procedure's / steps of due process to be taken as it is the (duty) of the Trial Court, and the (right) of the petitioner to have the jury advised they may acquit the petitioner whenever (a) Trial Court evaluates / deems the State's evidence as legally insufficient to warrant / support (a) conviction. Wherefore: the 10th Cir. Court / Fed. Dist. Court clearly have decided erroneously upon their own reasoning - without case law / precedent's - (a) - decision that's in direct conflict with the decision of (a) state Court of last resort. Remember: The 14th Amendment is paramount to (any) state rule of procedure, whether the same be embodied in (statute) (or) by judicial opinion, and it's the O.C.C.A.) who has ruled it's the (Right) of the petitioner, and the (duty) of the Trial Court - which clearly embodies the 14th Amend. / due process in the statute by judicial opinion. SEE: James V. Kentucky, 466 U.S. 341, 80 L.Ed. 2d. 346, 104 S.Ct. 1830 (1984) - which states - "State statutes don't take precedent over constitutional law - namely - the 14th Amendment - and - therefore the Judge - had to give the dutiful / requested instructions." Also, the following cases due to an improper state (statute) ruling to obtain habeas relief "when the alleged error was so grossly prejudicial (that it) fatally infected the trial, and denied the fundamental fairness that is the essence of (due process) a.) Revilla V. Gibson 283 F.3d 1203, 1212 (10th Cir. 2002), b.) Bullock V. Carver, 297 F.3d 1036, 1055 (10th Cir. 2002), and c.) Mayes V. Gibson, 210 F.3d 1284, 1293 (10th Cir. 2002.) The petitioner asserts the Trial Court greatly abused it's discretion, and committed (a) fatal error when denying the petitioner's Motion for directed verdict / acquittal - which was clearly an unreasonable,

unconscionable, and arbitrary action taken without proper consideration of the facts/law pertaining to the evidence he just deemed/determined legally insufficient to warrant/support (a) conviction, and although he just stated to the petitioner "Certainly if the jury were to believe her testimony "beyond (a) reasonable doubt" it wouldn't support (a) conviction," and it hasn't been corroborated by any other evidence" -he-then- sent the case to the jury without an instruction to acquit -is most definitely (a) gross/manifest miscarriage of justice; that 100% shows that in the context of the entire trial, the error in denying the Motion was so fundamentally unfair as to deny petitioner due process. Therefore; the petitioner assert's the U.S. Court of Appeals (10th Cir.)/Fed. East. Dist. Ct. has decided an important Federal Question of law that has not been, but should be, settled by this Court, or has decided an important Federal Question in (a) way that conflicts with relevant decisions of this Court; and further has decided an important Federal Question in (a) way that conflict's with (a) decision by (a) State Court of last resort, and vice/versa (a) State Court of last resort has decided an important Federal Question in (a) way that conflicts with the decision of the 10th Cir. Court/Fed. East. Dist. Court regarding (O.S. tit. 22 §850) which is (a) departure from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. SEE: Also; Lephus V. U.S. (1963, App D.C.) 117 U.S. App. D.C. 15, "(324 F.2d 893.)"

2) The petitioner next asserts once the Trial Court has chosen to use it's discretion, and deem such an evaluation with (a) specific degree of Clarity that the States evidence is legally insufficient to support/warrant (a) conviction, and never changed it's mind/evaluation (or)

considered any further evidence (or) objection from the State that it is well-established through relevant decisions by this Court that when such an evaluation at that exact point of the proceedings triggers double jeopardy protection; and is actually a True Acquittal. SEE: Fong Foo V. United States, supra (FN11); which clearly states "The District Court in (This Case) evaluated the government's evidence, and determined that it was legally insufficient to sustain a conviction." "The Court of Appeals concluded that this determination of insufficiency of the evidence triggered double jeopardy protection," and U.S. V. Scott does not overturn these precedent's; indeed, it clearly, plainly indicates that the category of acquittals includes "judgments ... by the Court that the evidence is insufficient to convict." > 437 U.S., at 91, 98 S. Ct., at 2194 > (FN7). SEE: Also; L.Ed. Digest 29, 31, 32 (p. 243) - Classified to U.S. Supreme Court Digest, Lawyers Edition - which states - "For double jeopardy purposes, a Courts evaluation of the evidence as insufficient to convict is (equivalent) to an acquittal," and further "It is very clearly the spirit of the instrument to prevent a 2nd punishment under judicial proceedings for the same crime, so far as the (common law) gave, and gives that protection." and double jeopardy protection extends to punishments that are not positively covered by the language of the 5th Amendment. SEE: U.S. V. Difrancesco, 449 U.S. 117, 126-127-101 S. Ct. 426, 66 L.Ed. 2d. 328 (1980) - Ex Parte Lange, 18 Wall. 163, 170, 21 L.Ed. 872 (1874) pg. 87, and U.S. V. Martin Linen Supply Co. 97 S. Ct. 1349 (1977) ... Remember; there are relevant cases where Court's have (orally) granted motions for directed verdicts/acquittals - and - then agreed to hear further arguments (or) consider additional transcripts - then - after further considerations denied the (orally) granted Motion (or) reserved their decision until after a jury verdict - SEE: U.S. V. Byrne, 203 F.3d 671 (C.A. 9-2000), and State V. Sperry, 149 Or. App. 690, 696, 945 P.2d 546, 550 (1997) -

however - the key ingredient missing in these cases are the fact those Court's never evaluated the States evidence as legally insufficient to warrant (a) conviction. Note: The Fed. East. Dist. Court never addressed the petitioner's claims of (a) miscarriage of Justice / actual innocence claims resulting from the Trial Court's evaluation, and only addressed the failure to instruct after filing of petitioner's Rule 60 (b) Motion, and relied / denied upon (Barber V. Jones, No. CIV.-06-1260-W, 2007 WL 2029000, at *7 (W.D. Okla. July 10, 2007) - unpublished - for their support - however - this case has absolutely no bearing / merit due to the obvious fact that case never involved the Trial Court evaluating the States case as legally insufficient to warrant / support (a) conviction, which comes after the fact the State had no legitimate argument to present in their response to petitioner's Rule 60 (b) Motion - which in turn left the Fed. East. Court to advocate for the State the above-stated meritless / valueless argument - which the (10th Cir. Court) agreed with as support to deny petitioner (a) C.O.A. The 10th Cir. Court also failed to rule on the merits petitioner's claims of (a) miscarriage of Justice / actual innocence claims due to the Trial Court's evaluation, and further refused to consider the (double jeopardy) issue reasoning petitioner never brought this issue to the Fed. East. Court's attention because petitioner never used the exact words (double jeopardy) when claiming his 5th / 14th U.S. Amend(s) were denied / violated and his rights under the Okla. Const. Art. 2 § 2 / 2 § 7. The petitioner assert's on page (11) - Appendix E - it's very clear he raised his 5th / 14th Amend(s) - Okla. Const. Art. 2/2 / and 2/7 were denied violated without making reference to other crimes (or) specific due process violations, and it's true petitioner never used the exact words (double jeopardy) in his complaint - however - petitioner raised the Court's evaluation in it's entirety - NOT - just the failure to instruct as (a) miscarriage of justice / actual innocence claim as well, and had the Fed. East. Court (or) the 10th Cir. Court addressed these

claims under those guidelines (or) Rule 52(b), and liberally construed petitioner claims there's no denying the reviewing Court's would've had no choice but come to the conclusion (double jeopardy) had triggered - and fully addressed this issue as well on the merit's - however - although the petitioner filed motions in both Court's (10th Cir / Fed. East.) for appointed counsel due to the fact this evaluation - then - immediate denial had never happened before in any Court in the U.S., and was in need of assistance to properly address this claim which is extra-ordinary / unique, and hasn't been debated by any Court (or) lawyer before - the - reviewing Court's chose to deny petitioner's Motions, and continued to refuse / fail to address this claim in it's entirety under (a) miscarriage of justice / or / an actual innocence claim - although petitioner had made (a) constant feature of these complaint's through-out his Rule 60(b) Motions (1,2), and his application for (a) C.O.A.s. Petitioner further asserted the reviewing Court's Rept (attaching jeopardy) by re-trying the petitioner in their Court's once the Trial Court had already declared the states evidence legally insufficient - thereby - common sense dictates for jeopardy to Reep attaching it must have had already triggered - which is covered by the fact the petitioner argued he had already been acquitted, and that his 5th / 14th Amend's had been denied / violated - therefore - the reviewing Court's (Federal) are further violating the petitioner's (9th Amend.) by disparging, and watering down the petitioner's essential rights under the Federal Constitution in order to uphold (a) conviction, and allow the petitioner to endure double punishment / unlawful incarceration - which is clearly (a) gross / manifest miscarriage of justice, that easily could've been avoided had the 10th Cir. Court not relied upon (a) mere technicality to even consider this claim - namely - "the absence of the exact words - double jeopardy" - although the substance of the complaint clearly paints (a) picture the petitioner's 5th / 14th Amend's / Okla. Const. Art. 2/2 and 2/7 had been concretely denied / violated.

The (10th Cir. Court) then claimed even if they considered the double jeopardy claim they would reject it based on (Smith V. Massachusetts, 543 U.S. 462, 465-67 (2005)) - however - again the 10th Cir. Court failed to realize the first reason (substance) that Court couldn't later deny the Motion for directed verdict/acquittal was due to the Court's evaluation the State's evidence was legally insufficient to warrant/support a conviction, and the next step (due process) that had to be followed at this point was to (formally) grant the Motion due to the Court's previous evaluation; therefore the Court did what every Court in American jurisprudence has always done - they followed the letter of the law (due process), and granted the Motion - which is fundamentally (Mandatory) - both - state/Federal when a Court has deemed/determined by evaluation the states case is legally insufficient to warrant/support a conviction. Wherefore - that's Court's decision to later deny the Motion was an abuse of discretion/double jeopardy violation, and had to be reversed. Again - this is why petitioner asserts double jeopardy protection triggers at the point the Court chooses to evaluate the states evidence as legally insufficient due to the fact the next step is to formally grant the Motion - which is essentially mandatory. Petitioner's instant case is the first time any Court has evaluated the States case as legally insufficient - and - then refuse/fail to (formally) grant the Motion for directed verdict/acquittal. The 10th Cir. Court next attempt's to claim under Oklahoma law since the petitioner put on evidence he waived his right to challenge the denial of his motion, and failed to renew it, and quoted "(Smith V. State, 509 P.2d 1391, 1397 (OCCA) 1973)" as their support. Again - the 10th Cir. Court fails/continues to comprehend the significance of the Trial Court's evaluation of the states evidence, and that Court's error/abuse of discretion in failing to formally grant the Motion - NOW - the 10th Cir. Court seeks to capitalize

on the Trial Court's error/abuse of discretion in order to reject petitioner's claims is an (out-right) biased/prejudicial abuse of judiciary power. Remember: A Trial Court can't deny (or) reserve (a) decision on (a) Motion for directed verdict/acquittal in expectation/hope the defense will put on evidence that may incriminate the defendant (or) defendant may testify, and incriminate himself (or) waive the right (or) renew his Motion - especially - after the Court had just deemed the States evidence legally insufficient. Then the 10th Cir. Court further hinted at the petitioner in vague terms regarding his ability to overcome exhaustion issues in the State Court. Note: Remember the Fed. Dist. Court had already addressed this issue in the States response in their Rule 60 (b) Motion decision - and - decided to address the part as to failure to instruct; therefore the 10th Cir. Court's allegation's are moot. Special Note: The O.C.C.A. failed to uphold their constitutional responsibilities; and refused to address the denial of the Motion for directed verdict/acquittal - which they themselves amended on 01-01-2010' to review (DE NOVO) anytime (a) Motion for directed verdict/acquittal is denied. The petitioner's Atty. on direct appeal did state verbatim the Court's evaluation, and denial as remarkable, and as (a) precaution the petitioner further raised this issue as (a) miscarriage of justice/actual innocence claim which would waive/excuse any procedural defaults/exhaustion requirement's - which is further support as to why the reviewing Court's fail to address these claims due to the triggering of double jeopardy protection, and continue to deny/review of these claims/(double jeopardy) by claiming their unexhausted. (SEE: Carrier, 477 U.S. at 496, 91 L.Ed. 397, 106 S.Ct. 2639, and Smith V. Murray, 477 U.S., at 537, 91 L.Ed. 2d. 434, 106 S.Ct. 2661, U.S. V. Mikaiajunas, 186 F.3d 490, 492-93 (4th Cir. 1999) - Citing U.S. V. Frady, 456 U.S. 152, 167-68 102 S.Ct. 1584, 71 L.Ed. 2d 816 (1982), U.S. V. Maybeck, 23 F.3d 888, 891-92 (4th Cir. 1994)... and - Also; Coleman V. Thompson, 501 U.S. 750, 115 L.Ed. 640 (1991)... Note: Cause/prejudice is Abundantly

Special Note: Had the Reviewing Court's upheld their constitutional duties, and addressed petitioner's claims under (a) Miscarriage of Justice / actual innocence claim - then- the (AEDPA) deference applicability would be moot as well to such bright line adjudications which prevent double punishment's / unlawful incarcerations of the Factually / legally innocent.

Wherefore; the petitioner asserts the 10th Cir. Court / Fed. Dist. East. Court, and the State Court's have decided an important Federal Question of law that conflict's with relevant decisions of this Court, and that has not been, but should be, settled by this Court, and has so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's judiciary / supervisory powers. SEE: Appendix H- pages 1-10 - and- Appendix - I - For Further detailed support. There decisions are also in conflict with other Circuit Appellate Courts.

3) The petitioner assert's the Trial Record clearly shows the State never addressed the (Fourth Element) of the crime charged at petitioner's Trial either by direct testimony (or) by reading the prelim transcripts onto the record. The (Fourth Element) is as follows: 'Without her Consent' - SEE: Jackson V. Virginia, 443 U.S. (1979) - RE: Every element of the crime charged must be proven beyond (a) reasonable doubt, and it must do more than raise (a) mere suspicion of guilt. The State only asked the prosecutrix if it was true if she woke up with the defendant's fingers in her vagina from the prelim record regarding the First Element. The State never asked the prosecutrix at trial if she ever gave consent / permission to the defendant at (any time) to do the alleged act. Note: The State knew how critical this element was to directly clarify for the record / jury - because- at petitioners prelim the State was absolutely certain to ask the prosecutrix if she ever gave the defendant consent / permission to place his fingers in her vagina. The state completely failed to address this critical element at petitioner's trial - therefore-

petitioner's conviction is truly (a) miscarriage of justice, and most definitely the evidence has to be insufficient as (a) matter of law. Remember: It could easily be assumed/implied the prosecutrix could've given consent (before) she fell asleep (or) after she woke up, and further the state never asked the prosecutrix what she did when she woke up - if - she - never gave consent - such as did you scream, yell - stop - or - run etc.? Maybe the State never asked these questions since the prosecutrix just testified the defendant never did anything that made her feel uncomfortable? Note: It's the State's responsibility/burden to address this element simply by asking the prosecutrix if she ever gave consent/permission, and it's not the duty/province of the jury to guess as to rather (or) not she ever gave consent before (or) after she fell asleep - it's clearly the State's responsibility to clarify (a) simple (yes (or) No) as to this element - so - the jury can weigh the credibility as to rather (or) not they believe the prosecutrix (or) the defendant. For Example: In theory let's say you fell asleep while John Doe was at your house, and when you woke up your car was gone/John Doe was at your house, and when you woke up your car was gone/along with John Doe. At trial you must state for the record/jury that you never gave consent/permission (before) you fell asleep for John Doe to take your car in order for the jury to decide who they believe as to this critical element - and - only - then may the jury debate as to innocence (or) guilt. Therefore; the petitioner assert's the 10th Cir. Court/Fed. East. Court/ and the State Courts have decided on important Federal Question in (a) way that conflicts with relevant decisions of this Court, and has so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. Very Important: SEE: Appendix - E - pages 6, 7, 8, 9, and 10 for the testimony at trial of the prosecutrix.

4) The petitioner assert's the testimony of the prosecutrix has clearly been shown by the Trial Record to be obtained by threat, assault, and

Coercion by P.A. investigator (David M. Cathey), and informed the prosecutrix he would have her put in jail, and there would be very bad consequences if she didn't appear, and testify for the State - and - further the testimony was without (a) narrative / quoted at the prelim while she was under the influence of drugs - which the State used as their evidence to the (first element) the allegation was true, impeached herself by denying the allegation was ↔ true, then - stated - it was - had sudden bursts of anger at the judge, jury, and prosecutor, was contradictory, inconsistent, unreasonable, and incredible, and finally denied her certificate for completing RE-Hab by the prosecutor until after she testified for the State to avoid (a) conviction herself, and wasn't corroborated by any other evidence - clearly magnifies such testimony as very highly objectionable, tainted, obtained by (a) corrupting influence, and clearly would be outside the realms of the province of the jury to weigh any credibility issues regarding such testimony, and you would wonder why the Trial Court stated "Certainly if the jury believed her testimony beyond (a) reasonable doubt - it wouldn't support (a) conviction" - especially - when the (Fourth Element) - 'without her consent' - wasn't even addressed at petitioner's trial by the State? SEE: Mesareosh V. U.S., 352 U.S. 1, 1L Ed. 2d. 1, 77 S. Ct. (1956) - which states - "the Government will (not permit) the conviction of (any person) on (tainted testimony)... SEE: Also; Fenbrache V. State, 21 OKL. CR. 256, 206 P. 617, Witt V. State, 29 OKL. CR. 357, 233 P. 788, Cambron V. State, 86 OKL. CR. 437, 193 P. 2d. 888 - and - Maxwell V. State, 28 OKL. CR. 328, 148 P. 2d 214, 217. Wherefore; the petitioner assert's the 10th Cir. Court / Fed. Dist. Court, and the O.C.C.A has decided an important Federal Question in (a) way that conflict's with relevant decisions of this Court, and has so far departed from the accepted, and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory powers.

— — — — — — — — — — —

5.) Wherefore, the petitioner prays the Hon. Court grant petitioner (a) writ of Cert. due to (all) the above reasons combined - especially - due to the extraordinary fact there has never/ever been (a) case until petitioner's instant case where (a) Trial Court took the very rare exception, and chose to evaluate the State's evidence as legally insufficient - then - denied the Motion for directed verdict/acquittal - which is (a) formality at that stage - and - has never happened in any Court - for - any case in all of American Jurisprudence. The petitioner further asks the Hon. Court to order petitioner released due to the obvious miscarriage of justice, or order any other measures the Hon. Court deems just, and appropriate. The petitioner further asserts in all his complaints his 5th/14th U.S. Amend(s) and his Okla. Const. Art. 2/2 and 2/7 were denied/violated.

Christopher Webb

Christopher W. Webb

11-20-17'

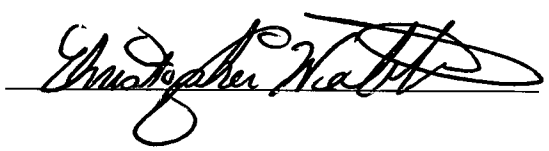
Respectfully

Pro Se

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11-20-17