

No. 25-

IN THE
Supreme Court of the United States



TREMANE WOOD,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPENDIX VOLUME 2 OF 3

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FILED

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

MAY 20 2025

**JOHN D. HADDEN
CLERK**

TREMANE WOOD,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

PCD Case No. PCD-2024-879

Capital Postconviction Proceeding

Postconviction No. PCD-2022-550

Postconviction No. PCD-2017-653

Postconviction No. PCD-2011-590

Postconviction No. PCD-2005-143

Direct Appeal Nos. D-2004-550; D-2005-171

Tenth Circuit Court of Appeals No. 16-6001

U.S. District Court, Western District of

Oklahoma No. 5:10-cv-829-HE

**PETITIONER'S SUPPLEMENTAL BRIEF FOLLOWING REMANDED EVIDENTIARY
HEARING ON *BRADY/NAPUE* CLAIMS**

DEATH PENALTY CASE

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On May 5, 2025, the trial court filed findings of fact and conclusions of law (“FFCL”) on the eight issues remanded by this Court pertaining to Petitioner Tremane Wood’s claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), in an Order cut-and-paste verbatim from the State’s proposed factual findings and legal conclusions (“State’s PFFCL”) including typos and other obvious errors in the State’s brief. (*Compare, e.g.*, FFCL at 3, 31 (adopting State’s PFFCL descriptions of exhibits “57 through 59” as admitted into evidence and citing exhibit “84-3”), *with* E.H. Tr. 04/07/25 A.M. at 6–7 & E.H. Tr. 04/09/25 A.M. at 42–43 (showing exhibits 58 and 84-3 were never offered or admitted into evidence).) The trial court’s wholesale adoption of the State’s clearly erroneous characterization of the record below and the law, including by ignoring evidence¹ proving that trial prosecutors Fern Smith and George Burnett suppressed material benefits to Brandy Warden *and* another witness against Mr. Wood, and by applying a sufficiency-of-the-evidence test of materiality under *Brady* and *Napue* that the Supreme Court has squarely rejected, is an abuse of discretion and violates Mr. Wood’s rights under the Eighth and Fourteenth Amendments to the U.S. Constitution disentitling that decision to deference from this Court. *See Commonwealth v. Williams*, 732 A.2d 1167, 1176 (Pa. 1999) (“We cannot, however, in this post-conviction case involving a review of the propriety of a death sentence, condone the wholesale adoption by the post-conviction court of an advocate’s brief. This is

¹ In compliance with this Court’s 10-page limitation, this supplemental brief discusses only a fraction of the evidence developed below proving Mr. Wood’s *Brady* and *Napue* claims. For a detailed discussion of the totality of the evidence presented at the evidentiary hearing which renders the trial court’s FFCL clearly erroneous and an abuse of discretion because they are inconsistent with the “logic and effect of the facts presented,” *Barkus v. State*, 2024 OK CR 25, ¶ 4, 556 P.3d 633, 637 (Lumpkin, J., concurring) (quoting *Marshall v. State*, 2010 OK CR 8, ¶ 24, 232 P.3d 467, 474), Mr. Wood respectfully refers the Court to his proposed findings of fact and conclusions of law which he incorporates herein by specific reference. *See* Petitioner’s Proposed Findings of Fact and Conclusions of Law (“Petitioner’s PFFCL”), *Wood v. State*, Case No. CF-2002-46 (Okla. Dist. Ct. Apr. 28, 2025).

particularly so where it is alleged that the advocate, here the government, withheld material discovery at trial . . .”); *State v. Griffin*, 848 S.W.2d 464, 471 (Mo. 1993) (en banc) (“The judiciary is not and should not be a rubber-stamp.” (citing *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656–57 & n.4 (1964))); *Flying J Inc. v. Comdata Network, Inc.*, 405 F.3d 821, 830 & n.3 (10th Cir. 2005) (“The court’s wholesale adoption of one party’s proposed findings of fact and conclusions of law provides little aid on appellate review, . . . particularly in the likely event that the adopted submission takes an adversarial stance.”) (internal citation omitted).

On this Court’s de novo review of the totality of the evidence now in the record before it, *Brady* and *Napue* require that Mr. Wood’s convictions and death sentence be set aside.

- I. **Burnett testified that the prosecution’s full agreement with Brandy Warden was not in the plea agreement, but rather in an undisclosed cooperation memorandum that the trial court obtained from Warden’s casefile—objectively proving that Burnett and Smith violated *Brady* and *Napue*.**

Midway through Burnett’s testimony on April 9, 2025, additional evidence of the full scope of Brandy Warden’s agreement with Oklahoma County prosecutors came to light through a previously undisclosed cooperation memorandum. On direct examination, Burnett testified that the prosecution’s plea agreement with Warden in the Oklahoma County murder case memorialized the full extent of the prosecution’s agreement with Warden. (E.H. Tr. 04/09/25 A.M. at 20–21; Pet. Ex. 7.) The plea agreement states that Warden pled guilty to Accessory to Murder After the Fact and Conspiracy to Commit Robbery in exchange for a recommended 45-year sentence concurrent to a 10-year sentence and truthful testimony against her co-defendants in the Oklahoma County murder case. (Pet. Ex. 7.) Burnett testified that he always put the full extent of his agreement with cooperating witnesses in the four corners of the plea agreement. (E.H. Tr. 04/09/25 A.M. at 21.)

Mr. Wood’s counsel then confronted Burnett with evidence that his plea agreement with

another prosecution witness, Coleman Givens, did not reflect the full extent of the prosecution's agreement with Givens to postpone until after he testified and then dismiss and downgrade Givens' pending felonies after Mr. Wood was sentenced to death in exchange for Givens' testimony against Mr. Wood. (Pet. Exs. 82-3, 84-1, 84-2, 84-4, 84-6, 85-1, 85-3.) Burnett then testified that the prosecution's full agreement with Warden was not in the plea agreement. Rather, it was in a "cooperation memorandum," which Burnett testified is different and distinct from the "plea agreement" in evidence as Petitioner's Exhibit 7. (E.H. Tr. 04/09/25 A.M. at 36-37.) Burnett then explained that he in fact had not included the entire agreement with Warden in the plea agreement:

Q. [Bass] Now, you previously testified that you always put the full extent of your agreement with cooperating witnesses in the four corners of the written plea agreement, correct?

A. [Burnett] **No.**

Q. [Bass] You did not previously testify to that?

A. [Burnett] **No, not in the plea agreement. It's in a memorandum.**

...

Q. [Bass] So is it your testimony today that Ms. Warden's cooperation agreement as distinct from her written plea agreement may have information about her agreement that is not in the written plea agreement?

...

A. [Burnett] **Her cooperation memorandum has conditions of her testimony. And there's a summary of that in her plea agreement that she'll agree to testify. . . . The plea agreement just has a statement about cooperating I think. You know, there were other things that she had to do in the memorandum.**

(E.H. Tr. 04/09/25 A.M. at 36-37 (emphasis added).)

After the trial court inquired of counsel for Mr. Wood and the State and learned that neither had ever seen Warden's "cooperation memorandum," the trial court recessed and obtained a copy from Warden's casefile at the Oklahoma County Public Defender's Office, which had represented Warden in the Oklahoma County murder case. The cooperation memorandum was then admitted into evidence as the court's exhibit 1. (See E.H. Tr. 04/09/25 A.M. at 38; Court's Ex. 1; E.H. Tr. 04/09/25 P.M. at 4-5.) The cooperation memorandum shows that on February 4, 2003—eight

months before Warden's deferred sentence was set to expire—Smith, Burnett, Warden, and Warden's attorney Janet Cox all signed and agreed that Warden would receive “a term of 35 years in the Oklahoma Department of Corrections” in exchange for Warden's interview with Oklahoma County District Attorney Investigator Glenn Ring and Warden's truthful testimony against “one or all co-defendants” in the Oklahoma County murder case. (Court's Ex. 1.)

Under Oklahoma law at the time, Warden would have been statutorily ineligible to obtain a modification of the 45-year sentence reflected in the plea agreement to conform to the 35-year sentence Smith and Burnett secretly promised her in the cooperation memorandum had her Payne County deferred sentence been accelerated to a felony conviction. 22 O.S. § 982a(A) (2003) (“Any time within twelve (12) months after a sentence is imposed . . . , the court imposing sentence . . . may modify such sentence . . . by directing that another penalty be imposed, if the court is satisfied that the best interests of the public will not be jeopardized. *This section shall not apply to convicted felons who have been in confinement in any state prison system for any previous felony conviction during the ten-year period preceding the date that the sentence this section applies to was imposed.*” (emphasis added)).

Burnett testified that when he told Mr. Wood's jury that Warden's deal was for 45 years, when in fact her actual deal as shown by the cooperation memorandum was for 35 years, that was because of his “ability to say something stupid to a jury” and he “made a mistake probably, best I can tell.” (E.H. Tr. 04/09/25 P.M. at 34–35.) When the trial court asked Burnett why he later objected to Warden's requested modification² of her 45-year sentence to 35 years' imprisonment,

² Ten days after Mr. Wood was sentenced to death, on April 15, 2004, Warden's modification hearing occurred and an Order was filed in Mr. Wood's case modifying Warden's sentence from 45 years down to 35 years. (State's Ex. 2-F.) Nowhere in that Order does it reflect that Oklahoma County prosecutors objected to Warden's request for modification. *Id.* Then, four days later, on April 19, 2004, a second Order modifying Warden's sentence from 45 years down to 35 years was

which the cooperation memorandum shows Warden was promised all along, Burnett testified “[b]ecause of what we’re doing here today. . . . somebody thinks there’s some wink-wink deal, and then all of a sudden you’re in a mess, just like we’re in here today. And I’m sure that’s why I threw a fit at that deal.” (E.H. Tr. 04/09/25 P.M. at 36–38.)

Despite Burnett’s candor and its own investigation that turned up the previously-undisclosed cooperation memorandum, the trial court concluded “that no other benefits were extended to [Warden], outside of those she testified to at Petitioner’s trial.” (FFCL at 36.) The trial court relegated the cooperation memorandum to a footnote and dismissed the discrepancy between it and Warden’s plea agreement by relying on “unknown reasons.” (FFCL at 27 n.21.) But Burnett made those reasons plain during the hearing. The record establishes that the 35 years promised in the cooperation memorandum was the prosecutors’ *actual* deal with Warden, just as Burnett testified; it was the sentence Warden *actually* received in an off-the-record modification hearing a week-and-a half after Mr. Wood was sentenced to death; and its fulfillment required prosecutors to ensure Warden’s Payne County deferred sentence was not accelerated to a felony conviction.

The prosecutors’ suppression of their actual deal with Warden violates *Brady*; and their solicitation of Warden’s false testimony about her deal and the benefits she received and was promised in exchange for her testimony against Mr. Wood violates *Napue*. (See Petitioner’s PFFCL at 85–107.) The record does not support the trial court’s conclusion to the contrary.

II. Probative evidence demonstrates the trial prosecutors’ plan to sanitize the felony records of prosecution witnesses, to file plea agreements that did not document their full agreement with prosecution witnesses in exchange for testimony against Mr. Wood, and then to conceal those benefits from Mr. Wood’s trial counsel and the jury.

The trial court also ignored evidence proving that Smith and Burnett sanitized the felony

filed and included for the first time language indicating that the modification was granted “over strenuous objection of the State,” which was underlined and initialed by Burnett. (Court’s Ex. 2.)

record of Coleman Givens, another prosecution witness who testified against Mr. Wood at the first phases of his capital trial; filed a plea agreement that did not document their full agreement with Givens; and concealed those benefits from Mr. Wood's trial counsel and the jury. (Pet. Exs. 82-3, 84-1, 84-2, 84-4, 84-6, 85-1, 85-3.) 12 O.S. §§ 2401–03, 2404(B). Burnett intervened in Givens' pending felony cases, arranged to postpone the preliminary hearing conferences in both of those felony cases until after Givens testified against Mr. Wood, and then dismissed one of Givens' pending felonies entirely and downgraded the second felony to a misdemeanor 3 months after Mr. Wood was sentenced to death. (Pet. Exs. 84-4, 84-6, 85-3; E.H. Tr. 04/09/25 A.M. at 29–30 (Burnett identifying his signature on the Givens' filings and testifying that in December 2003 he had both of Givens' pending felonies continued until after Givens' anticipated testimony against Mr. Wood in March 2004.) The plea agreement that Burnett filed in Givens' consolidated felony cases conferring these significant benefits after Mr. Wood was sentenced to death did not document the prosecutors' full agreement with Givens, nor were these benefits disclosed to Mr. Wood's trial counsel. (Pet. Ex. 85-3 at 2; E.H. Tr. 04/09/25 A.M. at 24.)³

³ While Burnett's name and signature appear on the court documents releasing Givens' on a recognizance bond, postponing his pending felony cases until after he testified against Mr. Wood, and dismissing and downgrading Givens' pending felonies after he testified against Mr. Wood, Smith testified that she and Burnett "worked very closely" together on Mr. Wood's case over several years. (E.H. Tr. 04/08/25 P.M. at 31.) Burnett testified that to the "[b]est of my recollection [Givens] must have been Fern Smith's witness because I don't remember . . . dealing with him." (E.H. Tr. 04/09/25 P.M. at 24.) Smith's notes in evidence as State's Ex. 4-A do not document the benefits Givens was promised and received in exchange for his testimony against Mr. Wood. Nor do Smith's notes document the undisclosed cooperation memorandum which Burnett testified was the prosecution's full agreement with Warden promising her 35 years' imprisonment. In *Cargle v. Mullin*, the Tenth Circuit noted—in an Oklahoma County death penalty case prosecuted by Smith and Bob Macy the year before Mr. Wood's trial—that the prosecutors "omit[ted] any reference to the [prosecution witness's] deferred sentence in the written plea agreement, which furthermore represented that it was the parties' entire agreement," and had "represented in its motion in limine that 'the deferred sentence is not included in [the prosecution witness's] agreement to testify.'" 317 F.3d 1196, 1215 n.17 (10th Cir. 2003).

That Burnett and Smith sanitized Givens' felony record, suppressed the benefits he received and was promised, and concealed his true incentives for testifying against Mr. Wood is relevant to and probative of their plan to do the same with Warden, a witness whose testimony and credibility was far more important to their death penalty case against Mr. Wood.

III. Former Payne County Assistant District Attorney Tom Lee testified that there was a “standing agreement” between the Oklahoma and Payne County District Attorney’s Offices to accelerate (or withhold accelerating) the deferred sentence of a Payne County defendant in order to aid (or to avoid jeopardizing) the Oklahoma County District Attorney Office’s prosecutions.

Former Payne County Assistant District Attorney Tom Lee testified that when Warden was being prosecuted for first-degree murder and related crimes in Oklahoma County, his office had a standing agreement with the Oklahoma County District Attorney’s Office to pursue or forego accelerating a defendant’s deferred sentence to either help or not jeopardize the prosecution of those defendants in Oklahoma County. (E.H. Tr. 04/07/25 A.M. at 70–73, 79–80.) Lee testified that he did not recall writing the note, “Let’s hold off for a while on the application,” on the probation violation report recommending acceleration of Warden’s deferred sentence, but confirmed he wrote it. (E.H. Tr. 04/07/25 A.M. at 83; Pet. Ex. 15.) He testified that he was not making a final decision on accelerating Warden’s sentence when he wrote the note. (E.H. Tr. 04/07/25 A.M. at 69.) He also testified that while he did not expect to speak with someone at the Oklahoma County District Attorney’s Office before deciding whether to accelerate Warden’s deferred sentence, “if someone from Oklahoma County would have called and requested an action on our part as to going forward with acceleration our office would have assisted them and complied with that request.” (Evid. Hr’g Tr. 04/07/2025 A.M. at 70.)

The trial court’s finding that Lee would have remembered a conversation over 20 years ago with the Oklahoma County District Attorney’s Office *about Warden’s deferred sentence* is

not supported by the record. (FFCL at 11.) Lee testified that when he spoke to the investigators at the Oklahoma Attorney General's Office in January 2025 about Warden's Payne County felony larceny case, he did not remember Warden's case and had "zero memory of anything about that case" "[o]ther than [Warden's] name." (E.H. Tr. 04/07/2025 A.M. at 71–72.) By contrast, he testified that "in this case if Oklahoma County would have called me *about Mr. Wood's case* I would have remembered it." (E.H. Tr. 04/07/2025 A.M. at 74 (emphasis added)).

The evidence shows that Lee's initial decision to hold off on accelerating Warden's deferred sentence is consistent with his testimony that in such cases, in accordance with the standing agreement between the Oklahoma and Payne County District Attorney's Offices, a decision to accelerate would depend on whether it would jeopardize the first-degree murder prosecution of Warden in Oklahoma County. The evidence also shows that Burnett and Smith did not disclose this "standing agreement" to Mr. Wood's defense.

IV. Smith's and Burnett's knowing solicitation of false testimony from Warden and Givens about the benefits they received and were promised in exchange for their testimony against Mr. Wood, and suppression of the full agreements with Warden and Givens are material under *Napue* and *Brady*.

Once a defendant has proved that prosecutors knowingly solicited false testimony or knowingly allowed it to go uncorrected, the materiality standard under *Napue* requires "a new trial . . . so long as the false testimony 'may have had an effect on the outcome of the trial.'" *Glossip v. Oklahoma*, 145 S. Ct. 612, 626–27 (2025). "[T]his materiality standard requires the *beneficiary* of the constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Id.* at 627 (cleaned up) (emphasis added) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). Since Mr. Wood has shown that the prosecutors knowingly solicited or failed to correct Warden's false testimony about her full agreement in violation of *Napue*, the State must prove beyond a reasonable doubt that this constitutional error was harmless

at the first stage and penalty phase of Mr. Wood's trial. In *Glossip* and *Chapman*, the Supreme Court instructed that a constitutional error is not "harmless" if "it 'in any reasonable likelihood [could] have affected the judgment of the jury,'" *Glossip*, 145 S. Ct. at 626–27, or "contribute[d] to petitioners' convictions" and death sentence, *Chapman*, 386 U.S. at 26.

Based on the totality of the evidence now before this Court, the State has not proved beyond a reasonable doubt that the *Napue* errors in Mr. Wood's case were harmless at both phases of his trial. The Supreme Court has instructed that *Napue*'s materiality analysis "requires a 'cumulative evaluation' of all the evidence, whether or not that evidence is before the Court in the form of an independent claim for relief." *Glossip*, 145 S. Ct. at 630. Here, the totality of the evidence before this Court, including the evidence that the prosecutors sanitized the felony record of prosecution witness Coleman Givens and concealed from Mr. Wood's trial lawyer and the jury Givens' true incentives for testifying against Mr. Wood, "reinforce [the] conclusion that the *Napue* error here prejudiced the defense." *Id.* at 629–30.

The totality of the evidence also shows that the prosecution's suppression of the cooperation memorandum in which they secretly promised Warden 35 years' imprisonment and ensured her Payne County deferred sentence was not accelerated to a felony conviction is material under *Brady* at each stage of Mr. Wood's trial. Warden was the prosecution's key witness at both phases. As Burnett testified, Warden's testimony gave the prosecution the "certainty of a conviction." (E.H. 04/08/25 P.M. at 77; Tr. 04/01/04 at 128–83, 186–204.) Her testimony gave the prosecution its only direct evidence incriminating Mr. Wood in Wipf's murder and in the pizza restaurant robbery that supported the continuing threat aggravator at the penalty phase. (Tr. 04/01/04 at 128–83, 186–204.) Her testimony provided the prosecution with its only evidence of Mr. Wood's motive for the crimes—Warden testified that she knew he "wanted money." (Tr.

04/01/04 at 151.) And her testimony allowed prosecutors to present the jury with a theory of the case in which Warden was a “go-along girl[]” with no prior felony convictions who committed the crimes under Mr. Wood’s manipulation and control. (E.H. 04/08/25 P.M. at 95; Tr. 04/01/04 at 137–39; 146–52; Tr. 04/02/04 at 152–53, 161–64, 187, 198–99; Tr. 04/05/04 at 5, 130, 134.) Cf. *Glossip*, 145 S. Ct. at 620–21 (finding *Napue* error material where prosecution witness provided the only direct evidence incriminating Glossip in the murder, even though other circumstantial evidence incriminated Glossip; provided the only evidence of Glossip’s motive for the crime; and where prosecution crafted its theory of the case around portraying witness as someone under Glossip’s control).

At both stages of Mr. Wood’s trial, “[t]hat theory was an important part of the prosecution’s case and featured prominently in its opening and closing statements.” *Glossip*, 145 S. Ct. at 628. Prosecutors told the jury that Warden was not some “big conspirator” but rather was a girl who “know[s] one rule, you do what Tremane told you to do.” (Tr. 04/02/04 at 152–53.) They told the jury that Warden had no felony convictions before Mr. Wood pressured her into participating in these crimes that cost her “45 years of her life.” (Tr. 04/02/04 at 161–64, 187, 198–99.) They told the jury that “the story that Brandy Warden testified in this courtroom is the right one.” (Tr. 04/02/04 at 161–65.) And they told the jury that Mr. Wood deserved the death penalty because he is “different from people like you and me. He manipulates women. He manipulated, I submit to you, Brandy into doing the things that she did and now she is serving 45 years in prison.” (Tr. 04/05/04 at 134.)

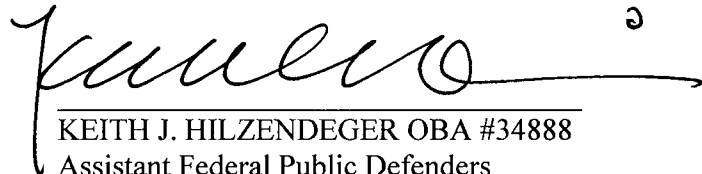
On the record now before this Court, there can be no confidence that Mr. Wood “received a fair trial resulting in a verdict worthy of confidence,” *Harris v. State*, 2019 OK CR 22, ¶ 38, 450 P.3d 933, 950, or that his death sentence is a just result.

Respectfully submitted:

May 20, 2025

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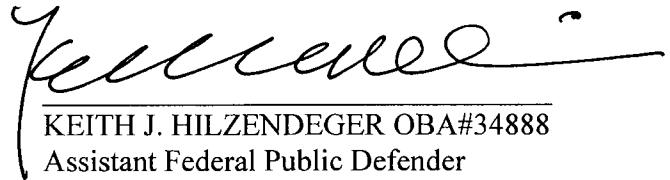
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A handwritten signature in black ink, appearing to read "Hilzendeger", with a long horizontal flourish extending to the right. A small, handwritten number "2" is located above the end of the signature.

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CERTIFICATE OF SERVICE

I certify that on May 20, 2025, I caused an original and 10 copies of the foregoing Petitioner's Supplemental Brief Following Remanded Evidentiary Hearing on *Brady/Napue* Claims to be filed in this Court by delivering them to the Clerk of this Court on this same date, with one of the copies deposited with the Clerk of this Court being for service on the Oklahoma Attorney General.



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COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 29 2025

JOHN D. HADDEN
CLERK

Case No. D-2005-171

Appellee.

Before this Court is the State of Oklahoma's request to set an execution date in this case. On June 12, 2025, the State filed a Notice Regarding Execution of Death Warrant pursuant to this Court's Order.¹ See 22 O.S.2021, § 1001.1. In said notice, the State advised this Court that September 11, 2025, would be an appropriate date for the execution of Appellant's death warrant.

However, in addition to Appellant's objection, State's response, and Appellant's reply filed of record in this case, the Presiding Judge of this Court received an *ex parte* email communication from the State of Oklahoma requesting this Court instead set execution

¹ *In Re: The Setting of Execution Dates in Richard Eugene Glossip, et al.*, Nos. D-2005-310, D-2006-126, D-2000-886, D-2005-1081, D-2007-660, D-2000-1609, D-2008-319, D-2008-595, D-2005-171, D-2007-1055, D-2009-702, D-2007-825, D-2003-1186, D-2008-43, DC-2009-1113, D-2008-57, D-2008-657 (Okla. Cr. May 7, 2024) (unpublished) (*In Re Execution Dates*).

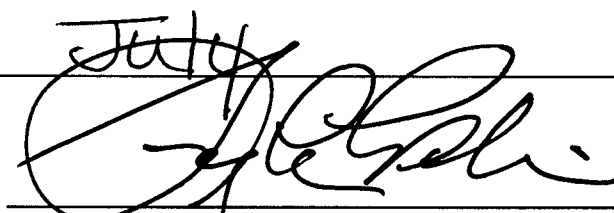
approximately thirty days further out from the originally requested September 11, 2025.

The above referenced communication and the Presiding Judge's responses are governed by Rule 2.9, Title 5, Ch. 1, App. 4, and will therefore be provided to all parties in their entirety on or before 5 p.m., ten days from the date of this order, unless good cause is shown that a later date would be necessary due to an ongoing emergency. Said good cause should be demonstrated to this Court on or before 5 p.m., seven days from the date of this order. Said filing should be proffered under seal and will be released to all parties at the same time as the aforementioned *ex parte* communication.

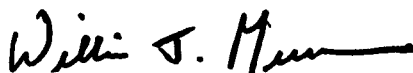
IT IS SO ORDERED.

WITNESS MY HAND AND THE SEAL OF THIS COURT this

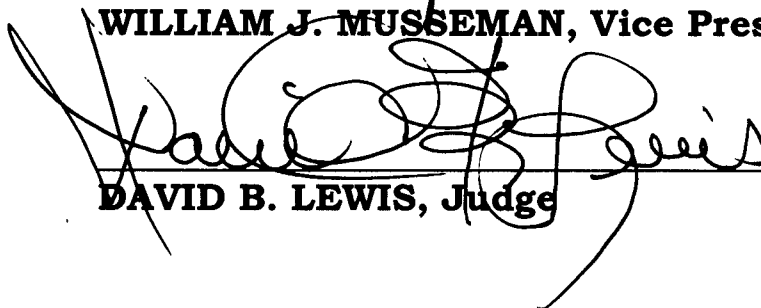
29 day of July, 2025.



GARY L. LUMPKIN, Presiding Judge



WILLIAM J. MUSSEMAN, Vice Presiding Judge



DAVID B. LEWIS, Judge

James R Winchester

JAMES R. WINCHESTER, Justice²

Richard Darby

RICHARD DARBY, Justice³

ATTEST:

John D. Hadden

Clerk

² The Honorable James Winchester, Justice of the Oklahoma Supreme Court, sitting by assignment.

³ The Honorable Richard Darby, Justice of the Oklahoma Supreme Court, sitting by assignment.

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FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 7 2025

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In addition to Appellant's objection, State's response, and Appellant's reply filed of record in this case, the Presiding Judge of this Court received an *ex parte* email communication from the State of Oklahoma requesting this Court instead set an execution date approximately thirty (30) days further out from the originally requested September 11, 2025, date.

The above referenced communication and the Presiding Judge's responses are governed by Rule 2.9, Title 5, Ch. 1, App. 4. As a result, this Court issued an order setting date for disclosure unless good cause was shown by the State. *See Order, Wood v. State*, No. D-2005-171 (Okl. Cr. July 29, 2025). This Court has since received the State's Renewed Request for Execution Date, the State's sealed Response to Show Cause Order, and Appellant's Notice of Intent to Respond to Renewed Request for Execution Date.

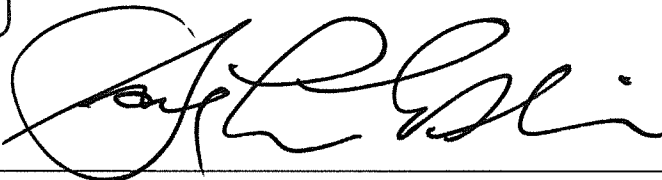
This Court finds insufficient cause to delay providing the contents of the *ex parte* communications and subsequent motion filed under seal. Therefore, this Court will release the *ex parte* communications and the State's response, under seal, on Friday, August 8, 2025, to Appellant's defense counsel: Jon M. Sands, Federal Public Defender, District of Arizona, or designated representative for personal review.

The *ex parte* communication and State's Response are included as attachments to this Order. The Court Clerk is directed to file one copy of the above cited materials under seal in the appellate records of this case, D-2005-171, and PCD-2024-894. The Clerk is also directed to have a second envelope of the material under seal, addressed to Appellant's defense counsel for them to pick up from the Clerk by 1:00 p.m. Friday, August 8, 2025.

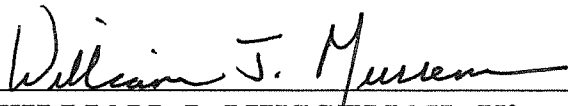
Appellant's counsel shall have ten (10) days from August 8, 2025, to respond. Appellant's execution date will be set once these issues are resolved.

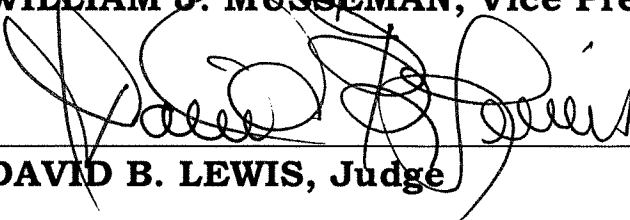
IT IS SO ORDERED.

WITNESS MY HAND AND THE SEAL OF THIS COURT this 7
day of August, 2025.

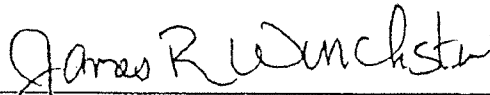


GARY L. LUMPKIN, Presiding Judge

 CIP/DIP
Separate writing
WILLIAM J. MUSSEMAN, Vice Presiding Judge



DAVID B. LEWIS, Judge

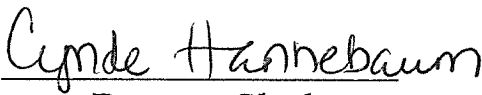


JAMES R. WINCHESTER, Justice²



RICHARD DARBY, Justice³

ATTEST:



Deputy Clerk

² The Honorable James Winchester, Justice of the Oklahoma Supreme Court, sitting by assignment.

³ The Honorable Richard Darby, Justice of the Oklahoma Supreme Court, sitting by assignment.

MUSSEMAN, V.P.J., CONCURRING IN PART/DISSENTING IN PART:

I wholly concur with the unanimous Court in disclosing the *ex parte* emails and State's Response to Show Cause Order proffered under seal. In doing so, the Court recognizes its duty under Rule 2.9, Title 5, Ch. 1, App. 4, and discharges that duty. However, I must depart from the added steps the Court takes to seal these records from public disclosure.

The default position in Oklahoma is that court records are open to the public absent a specific exception. *See Nichols v. Jackson*, 2001 OK CR 35, ¶ 10; 51 O.S.2021, § 24A.1 *et seq.*; Rule 2.7, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025). This Court's order provides no analysis, nor engagement, with these provisions. Instead, this Court departs from the default of public disclosure, accepts and maintains the seal on the State's Response to Show Cause Order, and files under seal the *ex parte* emails.

In review of the State's request to maintain these records under seal, I would find the State has failed to meet its burden of proof and the balance of interests involved favor public disclosure. As a result, I must respectfully concur in part and dissent in part.

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF
OKLAHOMA

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 7 2025

TREMANE WOOD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. D-2005-171;
PCD-2024-879

ORDER

The Clerk of the Appellate Courts is hereby directed to deliver the materials in the sealed envelope herein attached only to counsel for Appellant, Jon M. Sands, Federal Public Defender, or his designated representative. The designated representative is to contact the Marshal of the Court of Criminal Appeals at **405-556-9606 prior to picking up the sealed materials. The sealed materials are to be picked up no later than Friday August 8, 2025, by 1:00 p.m.**

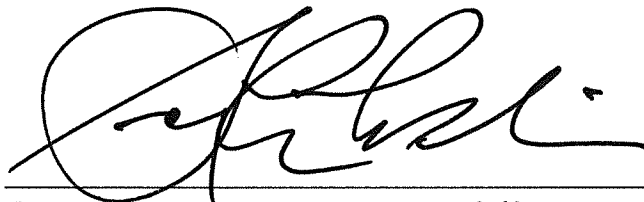
The Clerk of this Court is ordered to electronically notify defense counsel of this Order.

The Clerk is further ordered to obtain a signature of receipt from the individual picking up the sealed envelope.

IT IS SO ORDERED.

WITNESS MY HAND AND THE SEAL OF THIS COURT this 7

day of August, 2025.

A handwritten signature in black ink, appearing to read "Gary L. Lumpkin", written over a horizontal line.

GARY L. LUMPKIN, Presiding Judge

ATTEST:

Cyndee Hannebaum
Deputy Clerk

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF
OKLAHOMA**

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG - 7 2025

TREMANE WOOD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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**No. D-2005-171;
PCD-2024-879**

**** FILED UNDER SEAL ****

Copy for defense counsel

Judge Gary L. Lumpkin

From: Judge Gary L. Lumpkin
Sent: Wednesday, July 16, 2025 7:50 PM
To: Gentner Drummond
Cc: Judges (CCA)
Subject: Re: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

General Drummond:

Thank you. However, I need to clarify that the Court cannot take any action or make any decisions based on proffered ex parte communications. The Court currently has before it the State's request for an execution date and a filing by the defendant opposing the setting of an execution date. The only matters the Court can consider are those matters properly filed before the Court. My previous reply was merely to determine if something was going to formally be presented to the Court that would require its action prior to 23 July. If there is a formal, properly filed request presented, even a request to file a matter under seal, the Court will consider and take appropriate action based on what is filed in the case. At this time this ex parte notification is not pending before the Court.

GLL

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Wednesday, July 16, 2025 1:28 PM
To: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Subject: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

You don't often get email from gentner.drummond@oag.ok.gov. [Learn why this is important](#)
Judge Lumpkin:

Thank you. We do not need the Court to consider setting the date before your July 23 conference. Regarding the execution date, my team believes a date one month beyond our original September 11 request would be sufficient to permit sensitive parts of the investigation to be completed before we submit the information to the Board.

Finally, because three members of the Arizona Federal Public Defender's Office represent Mr. Wood in this Court, I want to clarify that the public defender with whom Mr. Wood is communicating via the cell phones is not one of these three individuals.

Thank you again for considering this request.

Gentner

Gentner Drummond
Oklahoma Attorney General
gentner.drummond@oag.ok.gov
918.581.2173 Tulsa (Amber)
405.522.2975 Oklahoma City (Kathy)

From: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Sent: Tuesday, July 15, 2025 6:40:39 PM
To: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Subject: Re: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

General: We are scheduled to discuss setting execution dates at our conference on 23 July. We are all attending summer judicial conference this week. I will need to share this email with other judges to have a discussion on 23 July. Is that timing OK or is this something that will need attention prior to that time? Please let me know. As you are aware Woods attorney has filed an objection to setting execution date and that is reason we need to discuss at conference. I will await your response prior to discussing with other judges so I will know if the 23 July discussion with them will be soon enough or if the situation requires earlier discussion. Thank you.

GLL

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Tuesday, July 15, 2025 3:01 PM
To: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Subject: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

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Judge Lumpkin:

I have an active investigation issue that I wish to address with you so as to protect the integrity of the investigation while balancing our duty to fully brief the Pardon & Parole.

My office has requested an execution date of September 11, 2025, for Mr. Wood. This request has not yet been granted. Since making that request, we have discovered an ongoing and extensive criminal activity that is, at my request, the subject matter of an OSBI investigation.

Given the anticipated September 11 date, we anticipate that our briefing schedule to the Pardon & Parole Board will be July 30, 2025. To properly inform the Board, we would have need to disclose what we now know:

1. DOC has recovered three cell phones from Wood while on H-Unit, from which he has ordered one "hit" on a prisoner, engaged in illegal texting with his public defender and a county judge's clerk, contains videos of drug use while in DOC, contains photographs of Wood holding numerous \$100 bills, and records drug transactions outside the prison system.
2. To accomplish these acts, it is more likely than not that Wood is working in collusion with prison personnel.

To this end, I ask that we not set Wood's execution for September 11, 2025. I am happy to drop by to discuss this request in person tomorrow or to discuss telephonically. Thank you in advance for your indulgence in this request.

Gentner

Gentner Drummond
Oklahoma Attorney General
gentner.drummond@oag.ok.gov
918.581.2173 Tulsa (Amber)
405.522.2975 Oklahoma City (Kathy)

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IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

TREMANE WOOD,	)	
	)	
Appellant,	)	Case No. D-2005-171
	)	
v.	)	CAPITAL CASE
	)	
	)	<u>FILED UNDER SEAL</u>
THE STATE OF OKLAHOMA,	)	<u>AND EX PARTE</u>
	)	
Appellee.	)	

STATE OF OKLAHOMA'S RESPONSE TO SHOW CAUSE ORDER

COMES NOW, Appellee, the State of Oklahoma, by and through undersigned counsel, and respectfully asks this Court to refrain from releasing the instant filing, as well as: 1) the email communications referenced in this Court's July 29, 2025, Order, attached as "Exhibit A"; and 2) the attached law enforcement affidavits, affixed hereto as "Exhibit B" and "Exhibit C," respectively, to opposing counsel and the public until after the date designated by the Oklahoma Pardon and Parole Board ("the Board") for submission of the clemency packets in this case. In support of this request, the State submits the following.

BACKGROUND

1. On June 12, 2025, pursuant to this Court's May 7, 2024, Order regarding the procedure for setting execution dates,¹ the State filed a *Notice*

¹ *In Re: The Setting of Execution Dates in Richard Glossip, et al.*, Nos. D-2005-310, D-2006-126, D-2000-886, D-2005-1081, D-2007-660, D-2000-1609, D-2008-319, D-2008-595, D-2005-171, D-2007-1055, D-2009-702, D-2007-825, D-2003-1186, D-

Regarding Execution of Death Warrant, requesting an execution date of September 11, 2025, for the defendant, Tremane Wood. To date, this request remains pending.

2. Subsequently, in preparing for the defendant's anticipated request for executive clemency, the State discovered evidence, on a contraband cell phone confiscated from the defendant, showing that he has been engaging in ongoing criminal activity while in prison. Indeed, while mere possession of the cell phone in prison is a felony, 57 O.S.2021, § 21, a review of the contents of the defendant's cell phone revealed evidence of illegal activities far beyond the simple possession of the phone, including likely collusion with other inmates, prison personnel, and outside associates to commit various crimes including, as examples, the distribution of narcotics and solicitation of violence against other inmates. While the State initially requested the Oklahoma State Bureau of Investigation ("OSBI") to investigate these criminal activities, it was ultimately decided that certain portions of the investigation would be conducted by the OSBI while other portions would be handled by the Oklahoma Attorney General's Office. That investigation is active and ongoing.

3. Because of the potentially wide-ranging scope of this ongoing investigation and the necessity that the State's knowledge of the defendant's criminal dealings with other individuals remains confidential, the State

2008-43, DC-2009-1113, D-2008-57, D-2008-657 (Okla. Crim. App. May 7, 2024) (unpublished).

subsequently sent an *ex-parte* e-mail to the Presiding Judge of this Court to request an execution date approximately thirty days from the originally requested date of September 11, 2025, in order to allow the investigation to continue without danger of its disclosure to anyone suspected of being involved. (See Exhibit. A).

4. The potential disclosure, and its threat of compromising the investigation, stems from the executive clemency proceedings before the Board that would follow the setting of the defendant's execution. "The Chairperson of the Board will schedule a clemency hearing within three (3) business days of receiving the notice of the setting of an execution date by the Oklahoma Court of Criminal Appeals, or as soon thereafter as practical." Okla. Admin. Code § 515:10-3-1. Furthermore, "[t]he clemency hearing will be scheduled on or before the twenty-first calendar day preceding the scheduled execution date, unless otherwise directed by the Chairperson." Okla. Admin. Code § 515:10-3-1. Although no strict test applies for defining the scope of information to be considered by the Board, in the State's experience, the Board finds a capital defendant's behavior while incarcerated to be a relevant factor in deciding whether to recommend clemency. Thus, the State needed to disclose to the Board the evidence of illicit activities found on the defendant's phone without compromising the investigation in its infancy. Based on the Board's schedule and historical practices in scheduling clemency hearings and clemency packet due dates, the State anticipated that—with a September 11 execution date—its

clemency packet and appendix (containing evidence of the defendant's illegal activities) would be due on July 30 and the clemency hearing would be held on August 13. A later execution date would allow for a later packet due date and a later clemency hearing date, permitting the investigation to proceed in confidence before the State's clemency packet and hearing presentation would inevitably reveal the extent of its knowledge of the illegal activities occurring on death row with the clear implication that these activities were being investigated.

5. On July 29, 2025, this Court issued an Order finding that the above-referenced email communications are subject to Rule 2.9, Title 5, Ch. 1, App. 4. *See 7/29/2025 Order*. This Court directed the State to show cause as to why these email communications should not be disclosed "to all parties in their entirety on or before 5 p.m., ten days from the date of this order," *i.e.*, Friday, August 8, 2025. *Id.* More specifically, the Order specified that disclosure of these communications, as well as the instant response to the show cause order, would occur "unless good cause is shown that a later date would be necessary due to an ongoing emergency." *Id.*

ARGUMENT AND AUTHORITY

For the reasons below, the State respectfully requests that this Court, (1) keep the email communications and the instant response under seal and (2) not disclose the email communications and the instant response to the defendant's counsel until after the clemency packet submission date, which will be set by the Board. Below, the State demonstrates good cause for both requests

and explains why it specifically requests a disclosure date of after the Board's designated clemency packet submission date. Alternatively, the State requests that, even if the email communications and instant response are disclosed to the defendant's counsel on August 8, 2025, the documents nevertheless remain under seal from the public until after the Board's designated clemency packet submission date.

1. **The email communications and instant response should remain under seal until after the Board's designated clemency packet submission date.**

The Oklahoma Open Records Act provides that all court records, including court filings, are available to the public unless they fall within a statutorily prescribed exception in the Act or are otherwise identified by statute as confidential. See *Nichols v. Jackson*, 2001 OK CR 35, ¶ 10, 38 P.3d 228, 231; 51 O.S.2021, § 24A.30. However, the Oklahoma Legislature has carved out a provision in the Act that provides for the sealing of a court record based upon a compelling privacy interest that "outweighs the public's interest in the record," so long as the court enters a public order that:

1. Make[s] findings of fact which identify the facts which the court relied upon in entering its order;
2. Make[s] conclusions of law specific enough so that the public is aware of the legal basis for the sealing of the record;
3. Utilize[s] the least restrictive means for achieving confidentiality;
and

4. [Is] . . . narrowly tailored so that only the portions of the record subject to confidentiality are sealed and the remainder of the record is kept open.

51 O.S.2021, § 24A.30; *see also* Rule 2.7(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025).

Moreover, the Act specifies that, in the context of law enforcement records, aside from the delineated categories outlined in 51 O.S.2021, § 24A.8(A), “law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interests of an individual outweighs the reason for the denial.” 51 O.S.2021, § 24A.8(B)(1); *cf.* 51 O.S.2021, § 24A.8(A)(10)(b)(12) (permitting law enforcement agencies to withhold from public inspection or release recordings that “would materially compromise an ongoing criminal investigation or criminal prosecution”).

Here, the sealing of the email communications and instant response is justified based on a compelling privacy interest that outweighs the public’s interest in these documents. *See* 51 O.S.2021, § 24A.30. As attested to by two agents involved in the investigation, the disclosure of these documents, prior to the submission of clemency packets to the Board, would materially compromise their investigation. (*See* Exhibit B, Affidavit of OSBI Agent David Gatlin; Exhibit C, Affidavit of Oklahoma Attorney General’s Office Agent Stephanie Burk). Indeed, the Legislature has indicated that protecting the integrity of an ongoing criminal investigation is a compelling interest justifying the withholding of documents from the public. *See* 51 O.S.2021, § 24A.8(A)(10)(b)(12) (permitting

law enforcement agencies to withhold from public inspection or release recordings that “would materially compromise an ongoing criminal investigation or criminal prosecution”).

Courts across the country agree with this conclusion. *See, e.g., Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 430-31 (4th Cir. 2005) (“Even if petitioners correctly assert that the existence of an ongoing investigation will not always justify a sealing order, under the circumstances of this case, the documents presented to the court demonstrate that the government’s interest in continuing its ongoing criminal investigation outweighs the petitioners’ interest in having the document opened to the press and the public.”); *Virginia Dep’t of State Police v. Washington Post*, 386 F.3d 567, 579 (4th Cir. 2004) (“We note initially our complete agreement with the general principle that a compelling governmental interest exists in protecting the integrity of an ongoing law enforcement investigation.”); *N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst*, 163 A.3d 887, 906 (N.J. 2017) (“[T]he danger to an ongoing investigation would typically weigh against disclosure of reports while the investigation is underway, particularly in its early stages. Early disclosure will often be inimical to the public interest.” (quotation marks omitted)); *United States v. Valenti*, 987 F.2d 708, 714 (11th Cir. 1993) (“[W]e hold that the district court properly denied the *Times*’s emergency motion to unseal as a necessary means to achieving the government’s compelling interest in the protection of a continuing law enforcement investigation.”); *Times Mirror Co. v. United States*, 873 F.2d 1210, 1211 (9th Cir.

1989) (“We affirm, holding that members of the public have no right of access to search warrant materials while a pre-indictment investigation is under way.”); *In re Search Warrant for Secretarial Area Outside Off. of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (“The government has demonstrated that restricting public access to these documents is necessitated by a compelling government interest—the ongoing investigation.”); *In re Sealed Search Warrant*, 622 F. Supp. 3d 1257, 1262 (S.D. Fla. 2022) (“Protecting the integrity and secrecy of an ongoing criminal investigation is a well-recognized compelling governmental interest.”); *Forbes Media LLC v. United States*, 548 F. Supp. 3d 872, 877-78 (N.D. Cal. 2021) (“In contrast to the post-investigation materials at issue in [the case relied on by the petitioners], the documents petitioners seek to have unsealed here are related to ongoing criminal matters, which have historically remained shielded from public view.”).

The email communications, as well as the affidavits attached to the instant response, identify the specific individuals subject to the investigation, which would be especially detrimental to the investigation. *See, e.g., In re Search Warrant for Secretarial Area Outside Off. of Gunn*, 855 F.2d at 574 (finding that the government had identified a compelling interest outweighing disclosure where, *inter alia*, the documents in question identified the subjects of the investigation). Moreover, it is not possible to redact the email communications and the instant response in a fashion that would allow their disclosure without compromising the investigation. *Cf.* 51 O.S.2021, § 24A.30(4) (requiring the

sealing to be narrowly tailored). The very fact that an investigation of crimes on death row is ongoing would necessarily alert the subjects of the investigation, given the discrete number of inmates and personnel on death row.

For these reasons, the State respectfully asks that this Court maintain the email communications and the instant response under seal until after the Board's clemency packet submission date.

2. The email communications and instant response should remain *ex parte* until the Board's designated clemency packet submission date.

Regarding *ex parte* communications, the Oklahoma Code of Judicial Conduct provides that:

(A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.

Rule 2.9, Title 5, Ch. 1, App. 4. As recognized by this Court, this rule permits *ex parte* communications where good cause is shown based on an ongoing emergency. *See* 7/29/2025 Order.

Here, for essentially the same reasons discussed above, good cause exists to withhold disclosure of the *ex parte* communications and the instant response to the defendant's counsel until after the Board's designated clemency packet submission date. Disclosing these documents to the defendant's counsel would necessarily mean disclosure to the defendant and then from him to others incarcerated, or working, on death row—that is, the subjects of the investigation. This would compromise the investigation, as explained in the attached affidavits. (*See* Exhibit B; Exhibit C). The reasoning of the previously cited courts that protecting the integrity of an ongoing criminal investigation is a compelling interest applies equally here. *See, e.g., Media Gen. Operations, Inc.*, 417 F.3d at 430-31; *Virginia Dep't of State Police*, 386 F.3d at 579; *N. Jersey Media Grp., Inc.*, 163 A.3d at 906. For the same reasons that protection of the investigation's integrity prevents public disclosure, so should it prevent disclosure to the defendant's counsel.

To be sure, the threshold for withholding a record from the public is likely lower than the threshold for withholding it from a party to the case. *Cf. United States v. Barnwell*, 477 F.3d 844, 850-51 (6th Cir. 2007) ("The due process clause of the Fifth Amendment grants criminal defendants the right to be present at all stages of the trial where his absence might frustrate the fairness of the

proceedings. . . . An *ex parte* communication between the prosecution and the trial judge can only be justified and allowed by compelling state interest.” (quotation marks omitted, alteration adopted)).

Here, however, there are no ongoing trial proceedings involving the defendant; his conviction and death sentence are long final with all ordinary appeals exhausted. The current ongoing investigation is entirely separate from, and irrelevant to, his post-conviction proceedings. There is no prejudice to the defendant or his attorneys in maintaining the *ex parte* status of the documents at issue until after the clemency packets in this case are submitted to the Board. Indeed, as previously stated, to the extent the defendant may argue that fairness requires that he receive the documents prior to his clemency hearing, the State’s proposed disclosure date ensures that he will be. Furthermore, the crux of the State’s request in the email communications—that the defendant’s execution be delayed—will undoubtedly not be objectionable to him.

Beyond any duty counsel might feel to disclose to the defendant that he is the subject of a criminal investigation, the State has additional reason to believe that disclosure to the defendant’s counsel would compromise the investigation. While the State has no current evidence that the defendant’s current counsel had knowledge of the defendant’s contraband cell phone or how it facilitated his criminal activity while in prison, there is evidence that one of the defendant’s former attorneys does. This individual was with the Arizona Public Defender’s Office and may still be a federal public defender employed with the Arizona

Federal Public Defender's Office. Regardless of where this individual is currently employed, there is reason to believe she has continuing contact with the defendant's current attorneys, who recently called her to testify as a witness on behalf of the defendant during the most recent evidentiary hearing in April 2025.² Moreover, there is also evidence on the phone that the defendant has communicated with an Oklahoma County court clerk.³ These two individuals are both currently part of the pending investigation at issue. Release of the documents at issue to the defendant and his counsel would likely result in immediate disclosure of same to these individuals.

In sum, the State submits that these unusual circumstances warrant a finding by this Court that good cause exists to keep the instant filing and email

² Specifically, this former attorney testified that she represented the defendant during federal habeas proceedings and as of August 2022, had rejoined the Arizona Federal Public Defender's Office and was still employed there. (See 4/7/25 AM Tr. 18-19, filed in OCCA Case No PCD-2024-879). Moreover, the overall nature of this attorney's evidentiary hearing testimony was largely foundational and not material to the Oklahoma County District Court's findings and conclusions issued in the defendant's pending post-conviction case. See Order of Findings of Fact and Conclusions of Law" ("Findings & Conclusions") filed in OCCA Case No. PCD-2024-879.

³ As previously stated, the pending criminal investigation does not pertain to the defendant's current attorneys and to date, the State is not aware of any evidence indicating that the cell phone communications between the Oklahoma County clerk and the defendant affected the District Court's decision in the pending post-conviction proceedings. See *generally* Findings & Conclusions, filed in OCCA Case No. PCD-2024-879. Given that the clerk's communications with the defendant are very friendly, and the District Court found that the evidence did not support the defendant's allegations, it appears extremely unlikely that these communications had any impact on the proceedings below.

communications confidential from the defendant's counsel for the duration of the period requested.

3. **The email communications and the instant response should not be disclosed to the defendant's counsel and the public until after the Board's designated clemency packet submission date.**

As noted above, the State believes that releasing the instant response and/or any attachments thereto, including the email communications, after the clemency packets in this case are submitted is necessary. Once the State submits its clemency packet to the Board, it will be clear from the information submitted therein regarding Wood's illicit activities on death row that there is an investigation underway. The clemency packet will be public record, making confidentiality of the contents of this response, its attachments, and the email communications no longer necessary. Moreover, releasing these documents after the clemency packet is made public, but before Wood's clemency hearing, would protect the overall sensitive nature of the pending criminal investigation while also preserving the defendant's ability to respond to the adverse information in his clemency hearing.

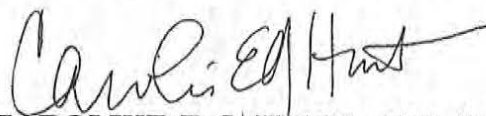
CONCLUSION

WHEREFORE, the State respectfully requests that this Court enter an Order temporarily sealing the instant pleading and the attached exhibits, including the *ex parte* email communications, and withholding the same from the defendant's counsel until after the clemency packet submission date, as designated by the Board. To facilitate a prompt release of the instant response

and its attachments by this Court, the State will duly inform this Court of the Board's designated clemency packet due date, once it is set. Moreover, the State is contemporaneously filing a public request for an execution date thirty days from September 11, 2025 to ensure opposing counsel is aware of this requested timeline without the State disclosing the specific reasons behind this request.

Respectfully Submitted,

**GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA**



**CAROLINE E.J. HUNT, OBA #32635
DEPUTY ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
(405) 522-4423
(405) 522-4534 (Fax)
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-3921
(405) 522-4534 FAX**

COUNSEL FOR THE STATE

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Thursday, July 17, 2025 9:27 AM
To: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Cc: Garry Gaskins <Garry.Gaskins@oag.ok.gov>; Caroline Hunt <caroline.hunt@oag.ok.gov>
Subject: Termane Wood (OCCA Case No. PCD-2024-879)

Judge Lumpkin:

Thank you for your prompt reply, Unfortunately, my office making any filing—even under seal—on this matter will likely tip off Mr. Wood as to nature of the investigation. We would rather have a September 11 execution date than compromise the investigation through providing Mr. Wood notice of the investigation.

Gentner

Gentner Drummond

Attorney General

313 NE 21st Street

Oklahoma City, OK 73105

(405) 522-2975

From: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Sent: Wednesday, July 16, 2025 7:50:24 PM
To: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Cc: Judges (CCA) <judges@okcca.net>
Subject: Re: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

General Drummond:

EXHIBIT A

Thank you. However, I need to clarify that the Court cannot take any action or make any decisions based on proffered ex parte communications. The Court currently has before it the State's request for an execution date and a filing by the defendant opposing the setting of an execution date. The only matters the Court can consider are those matters properly filed before the Court. My previous reply was merely

to determine if something was going to formally be presented to the Court that would require its action prior to 23 July. If there is a formal, properly filed request presented, even a request to file a matter under seal, the Court will consider and take appropriate action based on what is filed in the case. At this time this ex parte notification is not pending before the Court.

GLL

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Wednesday, July 16, 2025 1:28 PM
To: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Subject: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

You don't often get email from gentner.drummond@oag.ok.gov. [Learn why this is important](#)

Judge Lumpkin:

Thank you. We do not need the Court to consider setting the date before your July 23 conference. Regarding the execution date, my team believes a date one month beyond our original September 11 request would be sufficient to permit sensitive parts of the investigation to be completed before we submit the information to the Board.

Finally, because three members of the Arizona Federal Public Defender's Office represent Mr. Wood in this Court, I want to clarify that the public defender with whom Mr. Wood is communicating via the cell phones is not one of these three individuals.

Thank you again for considering this request.

Gentner

Gentner Drummond
Oklahoma Attorney General
gentner.drummond@oag.ok.gov
918.581.2173 Tulsa (Amber)
405.522.2975 Oklahoma City (Kathy)

From: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Sent: Tuesday, July 15, 2025 6:40:39 PM
To: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Subject: Re: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

General: We are scheduled to discuss setting execution dates at our conference on 23 July. We are all attending summer judicial conference this week. I will need to share this email with other judges to have a discussion on 23 July. Is that timing OK or is this something that will need attention prior to that time? Please let me know. As you are aware Woods attorney has filed an objection to setting execution date and that is reason we need to discuss at conference. I will await your response prior to discussing with other judges so I will know if the 23 July discussion with them will be soon enough or if the situation requires earlier discussion. Thank you.

GLL

From: Gentner Drummond <Gentner.Drummond@oag.ok.gov>
Sent: Tuesday, July 15, 2025 3:01 PM
To: Judge Gary L. Lumpkin <GLumpkin@okcca.net>
Subject: [EXTERNAL]: Termane Wood (OCCA Case No. PCD-2024-879)

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Judge Lumpkin:

I have an active investigation issue that I wish to address with you so as to protect the integrity of the investigation while balancing our duty to fully brief the Pardon & Parole.

My office has requested an execution date of September 11, 2025, for Mr. Wood. This request has not yet been granted. Since making that request, we have discovered an ongoing and extensive criminal activity that is, at my request, the subject matter of an OSBI investigation.

Given the anticipated September 11 date, we anticipate that our briefing schedule to the Pardon & Parole Board will be July 30, 2025. To properly inform the Board, we would have need to disclose what we now know:

1. DOC has recovered three cell phones from Wood while on H-Unit, from which he has ordered one "hit" on a prisoner, engaged in illegal texting with his public defender and a county judge's clerk, contains videos of drug use while in DOC, contains photographs of Wood holding numerous \$100 bills, and records drug transactions outside the prison system.
2. To accomplish these acts, it is more likely than not that Wood is working in collusion with prison personnel.

To this end, I ask that we not set Wood's execution for September 11, 2025. I am happy to drop by to discuss this request in person tomorrow or to discuss telephonically. Thank you in advance for your indulgence in this request.

Gentner

Gentner Drummond
Oklahoma Attorney General
gentner.drummond@oag.ok.gov
918.581.2173 Tulsa (Amber)
405.522.2975 Oklahoma City (Kathy)

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IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

TREMANE WOOD

Appellant,

- v. -

STATE OF OKLAHOMA,

Appellee.

Case No. D-2005-171

AFFIDAVIT

I, Agent David Gatlin, being duly sworn, hereby depose and state:

1. Your affiant is a certified and commissioned law enforcement officer in and for the State of Oklahoma and has been so employed for approximately eighteen (18) years. Your Affiant is currently employed as a Lieutenant with the Oklahoma State Bureau of Investigation (OSBI). Additionally, your Affiant previously served with the District 3 and the District 6 Drug Task Forces.
2. On June 27, 2025, I was assigned to conduct an OSBI criminal investigation regarding Tremane Wood's use of a contraband cell phone(s) to communicate with two (2) individuals: (1) Megan McWilliams, a clerk for the Honorable Susan Stallings, Oklahoma County District Judge; and (2) Robin Konrad, previous counsel for Wood's habeas proceedings related to the current judgment and sentence.
3. As part of my investigation, I have reviewed communications between Wood and Ms. McWilliams. I have worked to confirm the identity of Ms. McWilliams given information contained in Wood's contraband cell phone(s). To date, I have not conducted an interview with Ms. McWilliams

**EXHIBIT
B**

regarding her communications with Wood. I anticipate conducting such interview within the next 30 days.

4. As part of my investigation, I have reviewed communications between Wood and Ms. Konrad. I have obtained subpoenas to confirm Ms. Konrad's identity given information contained in Wood's contraband cell phone(s) from Verizon Wireless. I am currently waiting for the subpoenaed information to return. Currently, I plan to travel to and interview her next week, regarding the investigation your Affiant is currently working.
5. Currently, I do not believe that Ms. McWilliams, Ms. Konrad, or Wood are aware of my criminal investigation. Should the State's communications with this Court be disclosed prior to my interviewing Ms. McWilliams and/or Ms. Konrad, it could materially compromise my ability to obtain truthful responses from either person as I anticipate Wood telling one or both women of my investigation. Further, any advanced warning to Ms. Konrad could be materially detrimental to my investigation, as she resides outside the State of Oklahoma and is therefore more difficult to interview.
6. For these reasons, I respectfully request that the State's *ex-parte* email communications and Response to Show Cause Order remain undisclosed for 30 days, so that I may conduct interviews of Ms. McWilliams and Ms. Konrad without interference.

David Gatlin
Lieutenant DAVID GATLIN
Oklahoma State Bureau of Investigation

SWORN BY ME ON THIS 1st DAY OF AUGUST, 2025.

Carissa Sanford
Notary Public



My Commission Expires: 2/26/27

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

TREMANE WOOD
Appellant,

- v. -

STATE OF OKLAHOMA,
Appellee.

Case No. D-2005-171

AFFIDAVIT

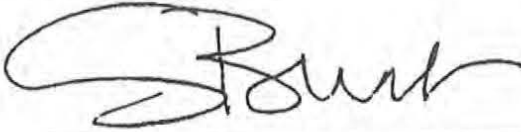
I, Agent Stephanie Burk, being duly sworn, hereby depose and state:

1. I am employed with the Oklahoma Attorney General's Office as a Law Enforcement Agent and have held said position for the previous 22 months.
2. Additionally, I was previously employed as an Internal Affairs Investigator at the Oklahoma County Detention Center for 16 months; a Fugitive Apprehension Agent/Investigator with the Oklahoma Department of Corrections, Office of Inspector General, for 15 years; and a Probation and Parole Officer with the Oklahoma Department of Corrections for 6 years. I have completed over 1500 hours of training relevant to my investigative career.
3. On or about July 23, 2025, I was assigned to conduct a criminal investigation regarding Tremane Wood's use of a contraband cell phone(s) to engage in ongoing criminal activity, specifically his potential colluding with other inmates, prison personnel, and outside associates to commit various crimes.
4. My office is still reviewing the copious amount of data collected from Wood's contraband cellphones and confirming the identities of his associates, inside and outside of DOC. Based on the reviewed data, I believe maintaining the confidentiality of my investigation is paramount to the integrity of said investigation and preservation of potential evidence. To date, I have not begun conducting interviews of any known associates

EXHIBIT
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or any Oklahoma State Penitentiary personnel; however, I anticipate beginning such interviews as soon as next week, August 4, 2025, or the week of August 11, 2025. My goal is to complete the sensitive portions of the investigation prior to the subject of the investigation becoming public knowledge.

5. Currently, I have no knowledge Wood, his associates, or OSP personnel are aware of my office's criminal investigation. Should the State's communications with this Court be disclosed this early into the investigation, it could materially compromise my ability to discover further evidence of criminal activity.
6. For these reasons, I respectfully request that the State's *ex parte* email communications and Response to Show Cause Order remain undisclosed for 30 days, so that I may fully investigate Wood's use of contraband cell phones to coordinate criminal activity inside and outside of prison.

 8/1/2025

AGENT STEPHANIE BURK, BADGE #315
OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

SWORN BY ME THIS 1st DAY OF August, 2025.



Notary Public

My Commission Expires:

2/26/27





ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 28 2025

TREMANE WOOD,

Appellant/Petitioner,

vs.

STATE OF OKLAHOMA,

Appellee/Respondent.

Case Nos. D-2005-171; PCD-2024-879

****FILED UNDER SEAL****

**MOTION TO RECUSE THE HONORABLE PRESIDING JUDGE GARY LUMPKIN
IN CASE NUMBERS D-2005-171 AND PCD-2024-879**

DEATH PENALTY CASE

****FILED UNDER SEAL****

JON M. SANDS

Federal Public Defender
District of Arizona

KEITH J. HILZENDEGER OBA #34888

AMANDA BASS CASTRO ALVES*

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Attorneys for Petitioner Tremane Wood

**Admitted Pro Hac Vice*

INTRODUCTION

With utmost respect, Petitioner/Appellant Tremane Wood, through undersigned counsel, requests the recusal of the Honorable Presiding Judge Gary L. Lumpkin from participating in Case Numbers D-2005-171 and PCD-2024-879. Presiding Judge Lumpkin's *ex parte* email exchange with Attorney General Drummond about rescheduling Mr. Wood's execution for a date later than the September 11 date the State had publicly requested ran afoul of Oklahoma's Code of Judicial Conduct, which requires a judge to *promptly* disclose *ex parte* communications to the parties. Judge Lumpkin instead waited two weeks after receiving Attorney General Drummond's *ex parte* request to notify Mr. Wood and his counsel about the fact of the communications, and waited another *nine days* to reveal the substance of those communications to Mr. Wood. During this time, Judge Lumpkin invited Attorney General Drummond to explain whether his rescheduling request was time-sensitive and revealed to the Attorney General information about the private deliberations of the Court. This course of conduct demonstrates Judge Lumpkin's actual bias in this matter in favor of the State and against Mr. Wood—all while this Court is considering whether to grant Mr. Wood a new trial based on constitutional violations committed by the Oklahoma County District Attorney. At the very least, this course of conduct would lead an objective observer to reasonably question Judge Lumpkin's impartiality in Mr. Wood's case.

This Motion is brought pursuant to Rule 3.10 of this Court's Rules, Rule 2.11 of the Oklahoma Code of Judicial Conduct, the Eighth Amendment and Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the corresponding provisions of the Oklahoma Constitution. Rule 3.10, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025); Rule 2.11, *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4 (2025); U.S. Const. amends. VII, XIV; Okla. Const. art. II, §§ 7, 9.

BRIEF IN SUPPORT

I. Statement of Facts

On June 12, 2025, the State of Oklahoma filed a notice in this Court requesting that it “schedule Tremane Wood’s execution on or after September 11, 2025.” Notice Regarding Execution of Death Warrant at 2, *Wood v. State*, No. D-2005-171 (Okla. Crim. App. June 12, 2025).

On June 13, 2025, Mr. Wood filed an objection to the State’s request that this Court set his execution date before it has resolved his pending challenges in PCD-2024-879 to his convictions and death sentence under *Brady v. Maryland*, 373 U.S. 83 (1963), *Napue v. Illinois*, 360 U.S. 264 (1959), and the Oklahoma Constitution’s corresponding due process guarantees. Objection to Scheduling Execution Date and, Alternatively, Request for Stay of Execution Pending Resolution of *Brady/Napue* Claims at 1, 5–8, *Wood v. State*, No. D-2005-171 (Okla. Crim. App. June 13, 2025). Mr. Wood also requested, alternatively, that the Court temporarily stay his execution date while it adjudicates the constitutionality of his convictions and death sentence. *Id.* at 9–20.

On June 20, 2025, the State filed its response to Mr. Wood’s objection and alternative stay request, in which it argued that this Court’s duty to set Mr. Wood’s execution date is “nondiscretionary.” State of Oklahoma’s Response to Appellant’s Objection to Scheduling Execution Date and/or Alternative Request for Stay of Execution at 4–7, *Wood v. State*, No. D-2005-171 (Okla. Crim. App. June 20, 2025).

On June 23, 2025, Mr. Wood filed his supporting reply, rendering the matter fully briefed—or so he thought. Reply in Support of Objection to Scheduling Execution Date and, Alternatively, Request for Stay of Execution Pending Resolution of *Brady/Napue* Claims, *Wood v. State*, No. D-2005-171 (Okla. Crim. App. June 23, 2025).

On July 15, 2025, unbeknownst to Mr. Wood or his counsel, Attorney General Drummond emailed Presiding Judge Lumpkin accusing Mr. Wood of participating in “an ongoing and extensive criminal activity that is, at [the Attorney General’s] request, the subject matter of an OSBI investigation.” Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 15, 2025 3:01 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Attorney General Drummond informed Presiding Judge Lumpkin that if this Court were to set Mr. Wood’s execution date for September 11 as his Office had publicly requested, “[t]o properly inform the [Pardon and Parole] Board, we would have need to disclose what we now know[,]” but needed more time to build the criminal case against Mr. Wood in order to “fully brief the Pardon & Parole.” *Id.* Attorney General Drummond then told Presiding Judge Lumpkin, “To this end, I ask that we not set Wood’s execution for September 11, 2025. I am happy to drop by to discuss this request in person tomorrow or to discuss telephonically.” *Id.* (emphasis added).

Later that day, Presiding Judge Lumpkin responded to Attorney General Drummond *ex parte* and disclosed that the Court was “scheduled to discuss setting execution dates at our conference on 23 July” because “Woods attorney has filed an objection to setting execution date.” Ex parte Email from Judge Gary L. Lumpkin to Gentner Drummond (July 15, 2025 6:40:39 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Presiding Judge Lumpkin stated, “I will need to share this email with other judges to have a discussion on 23 July. Is that timing OK or is this something that will need attention prior to that time?” *Id.* Presiding Judge Lumpkin then told Attorney General Drummond, “I will await your response prior to discussing with other judges so I will know if the 23 July discussion with them will be soon enough or if the situation requires earlier discussion.” *Id.*

The next day, on July 16, 2025, Attorney General Drummond responded to Presiding Judge

Lumpkin's inquiry, "We do not need the Court to consider setting the date before your July 23 conference." Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 16, 2025 1:28 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Attorney General Drummond stated that an execution "date one month beyond our original September 11 request would be sufficient to permit sensitive parts of the investigation to be completed before we submit the information to the Board." *Id.*

That evening, Presiding Judge Lumpkin wrote to Attorney General Drummond, "I need to clarify that the Court cannot take any action or make any decisions based on proffered ex parte communications." Ex parte Email from Judge Gary L. Lumpkin to Gentner Drummond (July 16, 2025 7:50:24 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Presiding Judge Lumpkin stated that his "previous reply was merely to determine if something was going to formally be presented to the Court that would require its action prior to 23 July." *Id.* He then advised Attorney General Drummond, "If there is a formal, properly filed request presented, even a request to file a matter under seal, the Court will consider and take appropriate action based on what is filed in the case." *Id.*

The next morning, on July 17, 2025, Attorney General Drummond responded to Judge Lumpkin, "Unfortunately, my office making any filing—even under seal—on this matter will likely tip off Mr. Wood as to nature of the investigation. We would rather have a September 11 execution date than compromise the investigation through providing Mr. Wood notice of the investigation." Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 17, 2025 9:27 AM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025); Response to Show Cause Order (Sealed & Ex Parte), Ex. A, *Wood v. Oklahoma*, No. D-2005-171 (Okla. Crim. App. Aug. 1, 2025).

It was not until July 29, 2025—two weeks after the Attorney General sent his initial *ex parte* email to Presiding Judge Lumpkin—that the Court alerted Mr. Wood’s counsel to the fact of these *ex parte* communications. Order, *Wood v. Oklahoma*, No. D-2005-171 (Okla. Crim. App. July 29, 2025). On August 7, 2025, this Court ordered that contents of those *ex parte* communications be disclosed to Mr. Wood’s counsel. Order, *Wood v. State*, No. D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025).

This motion follows.

II. Argument and Legal Authorities

“Due Process guarantees ‘an absence of actual bias’ on the part of a judge.” *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). But that is not all. The Supreme Court has held that “even if there is no showing of actual bias in [a] tribunal . . . due process is denied by circumstances that create the likelihood or the appearance of bias.” *Peters v. Kiff*, 407 U.S. 493, 502 (1972).

Because “[b]ias is easy to attribute to others and difficult to discern in oneself[,]” the Supreme Court’s precedents adopt an “objective standard that, in the usual case, avoids having to determine whether actual bias is present.” *Williams*, 579 U.S. at 8. Instead, that objective test “asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” *Id.* (internal quotation marks omitted). Where the appearance of bias may exist in the eyes of an objective, non-judicial observer, due process requires recusal.

This rule, while “stringent[,]” plays an important role in advancing public confidence in the criminal justice system. *In re Murchison*, 349 U.S. at 136. Although it “may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of

justice equally between the contending parties,” it is nevertheless the case that “to perform its high function in the best way, ‘justice must satisfy the appearance of justice.’” *In re Murchison*, 349 U.S. at 136 (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)). *Williams* recognized that:

A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and the reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself.

579 U.S. at 15–16.

To advance this objective, Oklahoma has adopted Rule 2.11 of the Code of Judicial Conduct which provides, in relevant part, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]” Rule 2.11(A), *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4 (2025); *see also Fort v. State*, 2022 OK CR 12, ¶ 12 (reaffirming Rule 2.11(A) and the due process requirement that courts must “employ[] an objective analysis when considering claims of judicial bias”).

A judge’s disqualification is required upon the appearance of partiality not only to maintain public trust, but to guard against every person’s natural inclination to overestimate their ability to remain impartial in all circumstances: “Problematic is the fact that judges do not stand outside of the judicial system; they are intimately involved in the process of obtaining justice. Judges who are asked to recuse themselves are reluctant to impugn their own standards.” *United States v. Jordan*, 49 F.3d 152, 156–57 (5th Cir. 1995); *see also Texaco, Inc. v. Chandler*, 354 F.2d 655, 657 (10th Cir. 1965) (per curiam) (“Litigants are entitled . . . to a judge whose unconscious responses in the litigation may be struck only in the observing presence of all parties and their counsel.”).

Importantly, the need for disqualification due to the potential for actual bias or the

appearance of bias is not just a matter of best judicial practices. The Supreme Court has explained that whatever rules and standards other sources may impose, “[t]he Due Process Clause demarks only the outer boundaries of judicial disqualifications.” *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986). The Due Process Clause, in other words, establishes a “constitutional floor,” *Bracy v. Gramley*, 520 U.S. 899, 904 (1997), and can require disqualification without proof of actual bias. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 883 (2009); *see also Fort*, 2022 OK CR 12, ¶ 12 (explaining that “showing actual, subjective bias, is very difficult and thus th[e] [Supreme] Court employs an objective analysis when considering claims of judicial bias under a due process standard.”); *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam) (“The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable.”); *Hurles v. Ryan*, 752 F.3d 768, 789 (9th Cir. 2014) (“Hurles need not prove actual bias to establish a due process violation, just an intolerable risk of bias.”).

Respectfully, and as Mr. Wood will explain, Presiding Judge Lumpkin’s reaction to the *ex parte* communication from Attorney General Drummond deviates from the rules of judicial conduct that govern all judges in Oklahoma. His reaction demonstrates actual bias against Mr. Wood and in favor of the State, or—at the very least—creates a “likelihood or the appearance of bias” that is too high to be constitutionally tolerable. *See Rippo*, 580 U.S. at 287; *Peters v. Kiff*, 407 U.S. 493, 502 (1972).

Under Rule 2.9 of the Code of Judicial Conduct, “[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except” in circumstances not present here. Rule 2.9(A), *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4

(2025). That Rule also provides that “[i]f a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.” Rule 2.9(B), *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4 (2025).

Attorney General Drummond’s initial *ex parte* email to Presiding Judge Lumpkin “address[ed] substantive matters.” See Rule 2.9(A), *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4 (2025). The email’s subject line is Mr. Wood’s PCD-2024-879 case number where his constitutional challenges to his convictions and death sentence under *Brady*, *Napue*, and the Oklahoma Constitution are still pending. Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 15, 2025 3:01 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). In that email, Attorney General Drummond assumed that this Court would eventually deny Mr. Wood’s pending *Brady/Napue* claims and invited the Court to collude with the State behind undersigned counsel’s backs to postpone Mr. Wood’s September 11 execution date—the date the State had publicly requested—so the State would have more time to gather evidence to use against Mr. Wood in his clemency proceedings. Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 15, 2025 3:01 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Attorney General Drummond’s email also undermined the publicly stated position of the State with respect to this Court’s duty to schedule an execution date. Publicly, the State said this duty was mandatory; privately, however, Attorney General Drummond invited this Court to exercise its discretion in a manner that furthered the Attorney General’s investigation into Mr. Wood’s alleged criminal conduct. Compare State of Oklahoma’s Response to Appellant’s Objection to Scheduling Execution Date and/or Alternative Request for Stay of Execution at 4–7, *Wood v. State*, No. D-2005-171 (Okla. Crim. App. June 20, 2025) with

Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 15, 2025 3:01 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). And Attorney General Drummond's *ex parte* email also contained serious allegations of criminal wrongdoing against Mr. Wood. *See id.* Attorney General Drummond's allegations of criminal wrongdoing could have only one effect—to influence the Court's consideration of Mr. Wood's pending *Brady/Napue* claims in PCD-2024-879, and his objection in D-2005-171 to the State's request to schedule his execution date before those constitutional challenges are resolved.

Attorney General Drummond went on to state, "To this end, I ask that we not set Wood's execution for September 11, 2025. I am happy to drop by to discuss this request in person tomorrow or to discuss telephonically." Ex parte Email from Gentner Drummond to Judge Gary L. Lumpkin (July 15, 2025 3:01 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025) (emphasis added). The Attorney General's use of "we" and his proposal for further *ex parte*, off-the-record discussion with Presiding Judge Lumpkin about timing Mr. Wood's execution to advantage the State's case against Mr. Wood at a clemency hearing reveals that the Attorney General was acting under the assumption that decisions in this capital case can be made through secret arrangements between his Office and this Court to the exclusion of Mr. Wood and his counsel.

Upon receiving this unauthorized, *ex parte* email, Presiding Judge Lumpkin did not, as Rule 2.9 requires, "make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond." Rule 2.9(B), *Code of Judicial Conduct*, Title 5, Ch. 1, App. 4 (2025). Rather he did exactly what the Rule forbids: he replied to the Attorney General's request by disclosing to the Attorney General information about the Court's internal decision-making process that he did not also disclose to Mr. Wood: "We are

scheduled to discuss setting execution dates at our conference on 23 July” because “Woods attorney has filed an objection to setting execution date.” Ex parte Email from Judge Gary L. Lumpkin to Gentner Drummond (July 15, 2025 6:40:39 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Presiding Judge Lumpkin also revealed a willingness to accommodate the Attorney General’s request for the Court to discuss the merits of his *ex parte* email communication at its July 23 conference and invited a further *ex parte* response: “I will need to share this email with other judges to have a discussion on 23 July. Is that timing OK or is this something that will need attention prior to that time?” *Id.* Presiding Judge Lumpkin reiterated, “I will await your response prior to discussing with other judges so I will know if the 23 July discussion with them will be soon enough or if the situation requires earlier discussion.” *Id.*

More than six hours after Attorney General Drummond responded to that email, Presiding Judge Lumpkin stated that his “previous reply was merely to determine if something was going to formally be presented to the Court that would require its action prior to 23 July” and “clarif[ied] that the Court cannot take any action or make any decisions based on proffered *ex parte* communications.” Ex parte Email from Judge Gary L. Lumpkin to Gentner Drummond (July 16, 2025 7:50:24 PM), *Wood v. State*, No. D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Respectfully, Presiding Judge Lumpkin’s characterization of his first email does not cure the actual bias against Mr. Wood evidenced in his first email response to the Attorney General. In that first email, Presiding Judge Lumpkin clearly indicated his willingness to present Attorney General Drummond’s informal *ex parte* request to the other judges on this Court as part of their discussion about scheduling Mr. Wood’s execution date: “I will need to share this email with other judges to have a discussion on 23 July. Is that timing OK or is this something that will need attention prior to that time? Please let me know.” Ex parte Email from Judge Gary L. Lumpkin to

Gentner Drummond (July 15, 2025 6:40:39 PM), *Wood v. State*, D-2005-171; PCD-2024-879 (Okla. Crim. App. Aug. 7, 2025). Presiding Judge Lumpkin’s “clarification” email does not change the fact that his initial response was to indulge the Attorney General’s request and strategize with the State about timing Mr. Wood’s execution to advantage the State’s case against him at a clemency hearing.

Presiding Judge Lumpkin’s failure to adhere to the requirements of Rule 2.9 of the Code of Judicial Conduct and his initial response to Attorney General Drummond’s unauthorized, *ex parte* email demonstrate his actual bias in favor of the State and against Mr. Wood. At the very least, an appearance of bias and partiality arose when Presiding Judge Lumpkin engaged in an *ex parte* email conversation with the Attorney General about substantive matters and took more than two weeks to notify Mr. Wood’s counsel that such communications had occurred. In similar circumstances, the Oklahoma Supreme Court has held that a judge’s “refusal to disqualify was an abuse of discretion.” *Miller Dollarhide, P.C., v. Tal*, 2007 OK 58, ¶ 20. Because an objective observer could reasonably question Presiding Judge Lumpkin’s impartiality under these circumstances, the risk of bias is simply too high to be constitutionally tolerable, and Presiding Judge Lumpkin’s recusal is required. *Peters*, 407 U.S. at 502; *Rippo*, 580 U.S. at 287; *Fort*, 2022 OK CR 12, ¶ 12.

III. Conclusion

Respectfully, and based on the foregoing, Mr. Wood requests the recusal of Presiding Judge Lumpkin from participation, discussion, and involvement in Case Numbers D-2005-171 and PCD-2024-879.

/ / /

Respectfully submitted:

August 18, 2025

JON M. SANDS
Federal Public Defender
District of Arizona

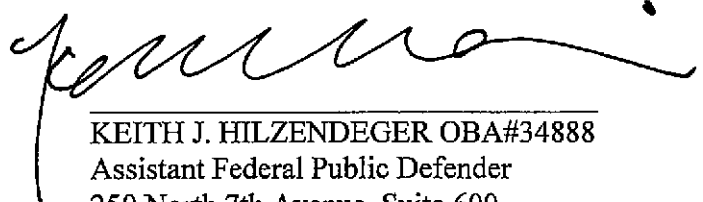
KEITH J. HILZENDEGER OBA #34888
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Keith_Hilzendeger@fd.org
Attorneys for Petitioner Tremane Wood
**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that on August 18, 2025, I caused an original and 20 copies of the foregoing Motion to Recuse the Honorable Presiding Judge Gary Lumpkin in Case Numbers D-2005-171 and PCD-2024-879 with the Court to the United States District Court for the Western District of Oklahoma to be filed under seal in this Court in case numbers D-2005-171 and PCD-2024-879 by delivering them to the Clerk of this Court on this same date in an envelope marked "Confidential," with one of the sealed copies deposited with the Clerk of this Court in a separate envelope marked "Confidential" being for service on the Oklahoma Attorney General.



KEITH J. HILZENDEGER OBA#34888
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
Keith_Hilzendeger@fd.org
Attorney for Petitioner Tremane Wood

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF
OKLAHOMA**

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG 28 2025

TREMANE WOOD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. D-2005-171;
PCD-2024-879

**ORDER UNSEALING DOCUMENTS AND DENYING APPELLANT'S
MOTIONS TO RECUSE THE HONORABLE GARY LUMPKIN IN
CASE NOS. D-2005-171 AND PCD-2024-879 and FOR SANCTIONS
AGAINST THE OFFICE OF THE ATTORNEY GENERAL.
APPELLANT'S MOTION FOR AUTHORIZATION OF LIMITED
DISCLOSURE OF THE STATE'S *EX PARTE* COMMUNICATIONS
WITH THE COURT TO THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA IS FOUND MOOT.**

On June 12, 2025, the State of Oklahoma filed with this Court a Notice Regarding Execution of Death Warrant pursuant to this Court's Order.¹ See 22 O.S.2021, § 1001.1. In the Notice, the State advised

¹ In Re: The Setting of Execution Dates in Richard Eugene Glossip, et al., Nos. D-2005-310, D-2006-126, D-2000-886, D-2005-1081, D-2007-660, D-2000-1609, D-2008-319, D-2008-595, D-2005-171, D-2007-1055, D-2009-702, D-2007-825, D-2003-1186, D-2008-43, DC-2009-1113, D-2008-57, D-2008-657 (Okl. Cr. May 7, 2024) (unpublished) (In Re Execution Dates).

this Court that September 11, 2025, would be an appropriate date for the execution of Appellant's death warrant. Appellant's objection to the notice was filed June 13, 2025, with the State's response to that objection filed June 20, 2025, and Appellant's reply filed June 23, 2025.

On July 15, 2025, the Presiding Judge of this Court received an *ex parte* email communication from the State of Oklahoma requesting this Court instead set an execution date approximately thirty (30) days further out from the originally requested September 11, 2025, date. On July 29, 2025, this Court notified the parties that the above communication and the Presiding Judge's response would be provided, under seal, to the parties within ten (10) days of the Order. On August 7, 2025, this Court ordered the contents of the *ex parte* communications be disclosed, under seal to Appellant's counsel. On August 8, 2025, that information was picked up by Appellant counsel's designated representative.

On August 18, 2025, Appellant's counsel filed the following motions under seal: 1) Motion to Recuse the Honorable Gary Lumpkin in Case Nos. D-2005-171 and PCD-2024-879; 2) Motion for Sanctions Against the Office of the Attorney General; 3) Motion to Authorize Limited

Disclosure of the State's *Ex Parte* Communications with the Court to the United States District Court for the Western District of Oklahoma; and 4) Objection to the State's Renewed Request to set Execution Date.

In the first of these motions, filed pursuant to Rule 3.10, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2025); Rule 2.11 of the *Oklahoma Code of Judicial Conduct*, Title 5, Ch. 1, App.4 (2025); U.S. Const. amends. VII, XIV; Okla. Const. art. II, §§ 7, 9, Appellant requests the recusal of the Honorable Presiding Judge Gary L. Lumpkin from participating in Case Nos. D-2005-171 and PCD-2024-879. Appellant argues the Presiding Judge's *ex parte* communications with Attorney General Drummond violated the Oklahoma Code of Judicial Conduct requiring a judge to promptly disclose *ex parte* communication to the parties. Appellant asserts the Presiding Judge's conduct regarding the disclosure of the *ex parte* communications requires disqualification as it would lead an objective observer to reasonably question the Presiding Judge's impartiality in Appellant's case. Having thoroughly reviewed Appellant's motion, the law, and record in this case, we find recusal of the Presiding Judge is not warranted.

In the first of the series of emails, the Attorney General informed the Presiding Judge, in part, that cell phones had been recovered from Appellant which purported to direct a “hit” on another prisoner. In light of this, the Attorney General requested a delay in the scheduling of Appellant’s execution and offered additional discussion. The Presiding Judge’s response to the Attorney General sought to gather information about the apparent emergency and potential timing of the Court’s actions. The Attorney General responded that no action need be taken before the Court’s next scheduled conference. The Presiding Judge responded that the Court would not consider an *ex parte* request without a formal filing to this Court.

After presentation of the matter to conference, the Court promptly provided for the disclosure of the *ex parte* communications to Appellant while providing the State an opportunity to demonstrate a continued emergency. See Rule 2.9, *Oklahoma Code of Judicial Conduct*, Title 5, Ch. 1, App.4 (2025) (providing that *ex parte* communications regarding matters for “scheduling, administrative, or emergency purposes” which do not address substantive matters, are not prohibited, when the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and gives

the parties an opportunity to respond). After disclosure, the Court provided Appellant an opportunity to response in compliance with Rule. 2.9.

The *ex parte* communications in this case concerned only matters of scheduling the setting of an execution date following the resolution of all pending filings in Appellant's case, and were shared with the other judges assigned to the case. The *ex parte* communications did not address the merits of any pending matters before this Court. There is nothing in the conduct of the Presiding Judge, or any other judge assigned to the case, which would call his impartiality into question and warrant disqualification pursuant to Rule 2.11, *Oklahoma Code of Judicial Conduct*, Title 5, Ch. 1, App.4 (2025).

Further, we find Appellant's claim that the Presiding Judge's recusal is warranted under the Due Process Clause of the United States Constitution is not supported in the law or by the record. Appellant has failed to objectively demonstrate "the likelihood of bias on the part of [the Presiding Judge] is too high to be constitutionally tolerable." *Williams v. Pennsylvania*, 579 U.S. 1, 4 (2016) (citations and internal quotations omitted). Rather, the Presiding Judge and

the Court balanced the duties imposed on the State under 22 O.S.2021, § 1001.1; this Court's previous order regarding scheduling of executions (see footnote 1); and the requirements of Rule 2.9. Appellant's Motion is denied.

Appellant also moves for Sanctions Against the Office of the Attorney General for his "unethical, abusive, and prejudicial litigation conduct" in these proceedings as evidenced by his *ex parte* communications with this Court. Appellant asserts his request is grounded "in the Court's inherent authority to sanction abusive litigation conduct", pursuant to *Winters v. City of Oklahoma City*, 1987 OK CR 63, 740 P.2d 724; the *Oklahoma Rules of Professional Conduct*, Rule 3.5, Title 5 O.S. Ch. 1 App.3-A; U.S. Const. amends. VIII, XIV; and Okla. Const. art. II, §§ 7, 9. Specifically, Appellant argues that "at a minimum" sanctions should include: 1) public censure of the *ex parte* conduct of the Oklahoma Attorney General's Office in these proceedings; 2) disqualification of the Oklahoma Attorney General's Office from representing the State in these proceedings; 3) staying these proceedings pending the appearance of new counsel to represent the State in the proceedings; 4) ordering the State to make available to a digital forensics expert retained by Appellant all of the digital

evidence which the State attributes to him for independent forensic examination; and 5) staying these proceedings to afford Appellant sufficient opportunity to respond to the State's prejudicial *ex parte* allegations in this and any future clemency proceedings. Based on our review, the motion is denied.

In the Motion to Authorize Limited Disclosure of the State's *Ex Parte* Communications with the Court to the United States District Court for the Western District of Oklahoma, Appellant states that in 2010 the United States District Court for the Western District of Oklahoma appointed the Federal Public Defender for the District of Arizona to represent Appellant under 18 U.S.C. § 3599. Under this authority, the aforementioned counsel have represented Appellant before this Court and the District Court of Oklahoma County in connection with pending post-conviction matters.

Appellant further informs this Court that his counsel from the Arizona Federal Public Defender's Office has developed a conflict of interest that now requires counsel to seek the federal district court's leave to withdraw. The conflict-of-interest stems from the alleged actions of Robin Konrad, who is not a member of Appellant's legal team but until recently was an employee of the Federal Public Defender's

Office. Appellant asserts that on August 18, 2025, counsel requested the United States District Court for the Western District of Oklahoma, *ex parte* and under seal, to withdraw and replace counsel for Appellant due to the conflict of interest. Appellant asserts counsel informed the federal district court of their filing with this Court seeking permission to file the State's sealed *ex parte* communication with this Court, which they received previously *ex parte* and under seal with the federal district court, in order to supplement their motion to withdraw and replace counsel.

Based upon this Court's Order unsealing the above materials, Appellant's Motion to Authorize Limited Disclosure of the State's *Ex Parte* Communications with the Court to the United States District Court for the Western District of Oklahoma is now moot.

Finally, in his Objection to the State's Renewed Request to set Execution Date, Appellant asks this Court to decline the State's request to schedule his execution date prior to the resolution of pending matters, including the motions discussed above and the Fifth Application for Post-Conviction Relief. Appellant's execution date will not be set by this Court until all pending matters are resolved.

THIS COURT FINDS THAT no emergency conditions remain requiring the further sealing of the materials in this case. Because the required disclosures pursuant to Rule 2.9, *Oklahoma Code of Judicial Conduct*, Title 5, Ch. 1, App.4 (2025) have been completed, **IT IS THEREFORE ORDERED** that the previously sealed materials should be publicly filed of record in this case.

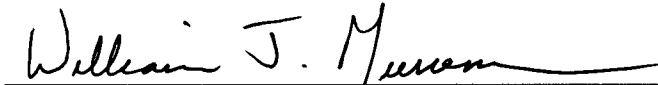
THIS COURT FURTHER FINDS the issuance of this Order resolves all pending matters before this Court except Case No. PCD-2024-879 and the setting of an execution date, and the Clerk of this Court shall open and spread of record the contents of the sealed envelopes.

IT IS SO ORDERED.

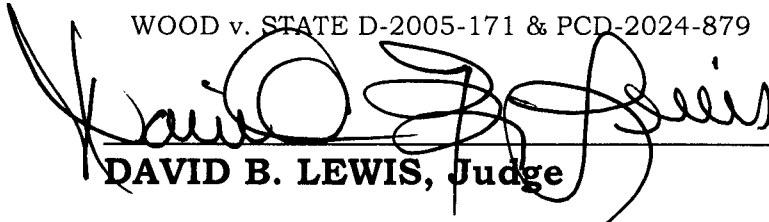
WITNESS MY HAND AND THE SEAL OF THIS COURT this 28
day of August, 2025.



GARY L. LUMPKIN, Presiding Judge



WILLIAM J. MUSSEMAN, Vice Presiding Judge



DAVID B. LEWIS, Judge



JAMES R. WINCHESTER, Justice²



RICHARD DARBY, Justice³

ATTEST:



Deputy Clerk

² The Honorable James Winchester, Justice of the Oklahoma Supreme Court, sitting by assignment.

³ The Honorable Richard Darby, Justice of the Oklahoma Supreme Court, sitting by assignment.

IN THE DISTRICT COURT OF PAYNE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,
Plaintiff,

vs.

BRANDY LYNN WARDEN
DOB: [REDACTED]-81, SSN: [REDACTED]-9946
Defendant.

While acting together and conjointly with Sheneda
Davis,

Case no. CF-2000-202

Punishment:

Up to 5 years

COVER 15 MAR 2002

COUNT CLERK

DEPUTY

INFORMATION

FOR:

COUNT 1- LARCENY FROM A HOUSE

In the name and by the authority of the State of Oklahoma, Robert L. Hudson, District Attorney of Payne County on his official oath gives this Honorable Court to know and be informed that in Payne County, State of Oklahoma, BRANDY LYNN WARDEN, did then and there unlawfully, willfully and knowingly commit the crime(s) of:

COUNT 1- LARCENY FROM A HOUSE

That is to say, the said defendant, on or about the 10th day of March, 2000, and in the County and State aforesaid, then and there being, did unlawfully, willfully, intentionally and feloniously, enter into a certain house located at Rt 4 Box 235, occupied by and in possession of Tim Chamberlin, and did then and there take, steal and carry away certain personal property of value, to-wit: Gateway computer system, Serial No. 0011856047, with monitor, keyboard, mouse and camera, an Aiwa stereo system with sound and five (5) speakers, Sony Playstation with controllers, Sony Playstation video game Die Hard II and a .45 caliber Llama pistol, Serial No. B95129, with the unlawful, larcenous and felonious intent then and there on the part of the said defendant to deprive the owner thereof permanently and to convert the same to her own use and benefit, in violation of Title 21, OSA, Section 1723, contrary to the form and the statute made and provided and against the peace and dignity of the State of Oklahoma.

DATED this 15th day of MARCH, 2000.

ROBERT L. HUDSON
DISTRICT ATTORNEY

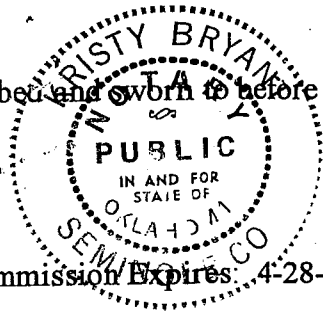
By: Katherine E. Thomas
ASSISTANT DISTRICT ATTORNEY

STATE OF OKLAHOMA, COUNTY OF PAYNE, SS:

KATHERINE E. THOMAS, being of lawful age being first duly sworn, deposes and says that he/she has read the above and foregoing information, knows the allegations and statements therein contained, and that the same are true.

Katherine E. Thomas
Assistant District Attorney

Subscribed and sworn to before me this 15th day of MARCH, 2000.



Kristy Bryant
Notary

My Commission Expires: 4-28-2002

WITNESSES ENDORSED FOR THE STATE OF OKLAHOMA

Noel Bagwell, Payne Co. Sheriff's Dept., Stillwater, Ok
Tim Chamberlin, Rt 4 Box 235, Stillwater, Ok
Tracy Rhinehart, Rt. 4 Box 235, Stillwater, Ok
Tony Osborn, Payne Co. Sheriff's Dept., Stillwater, Ok
R.B. Hauf, Payne Co. Sheriff's Dept., Stillwater, Ok
Linda Wood, c/o Payne Co. Sheriff's Dept., Stillwater, Ok
Wal-Mart Employee, c/o Payne Co. Sheriff's Dept., Stillwater, Ok

Form 13.10. Uniform Plea of Guilty - Summary of Facts

IN THE DISTRICT COURT OF Payne COUNTY
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Plaintiff,

v.

Brandy Lynn Warder

Defendant.

SS# [REDACTED] 1946 D.O.B. [REDACTED] 81
3032 N. W. 45th Street
Oklahoma City, OK 73112
(Home Address)

Case No. CF2000-202

[NOTE: The trial judge shall ensure the defendant is sworn either prior to completing the Summary of Facts or prior to inquiry by the Court on the Plea. If the defendant is entering a nolo contendere, or other type guilty plea, correct by pen change where term "guilty" used.]

(Effective Date 11-1-95)

DEPUTY

FILED
COURT CLERK
JUN 23 AM 10:58

PLEA OF GUILTY
SUMMARY OF FACTS

Part A: Finding of Fact, Acceptance of Plea

1. Is the name just read to you your true name?

Circle
Yes No

If no, what is your correct name? _____

I have also been known by the name (s): _____

2. (a) Do you wish to have a record made of these proceedings by a Court Reporter?

Yes No

(b) Do you wish to waive this right?

Yes No

3. Age: 19 Grade completed in school: 12th

4. Can you read and understand this form?

(If the answer above is no, Addendum A is to be completed and attached.)

Yes No

5. Are you currently taking any medications or substances which affect your ability to understand these proceedings?

Yes No

6. Have you been prescribed any medication that you should be taking, but you are not taking?

Yes No

If so, what kind and for what purpose? _____

7. Have you ever been treated by a doctor or health professional for mental illness or confined in a hospital for mental illness?

Yes No

If yes, list the doctor or health professional, place, and when occurred: _____

8. Do you understand the nature and consequences of this proceeding?

Yes No

9. Have you received a copy of the Information and read its allegations?

Yes No

10. A. Do you understand you are charged with:

1) Larceny from a House
2) _____
3) _____
4) _____

Statutory Reference
21 O.S. 1723

☒ Yes No
☐ Yes No
☐ Yes No
☐ Yes No

Or additional charges: List any additional charges on a separate sheet and label as
PLEA OF GUILTY ADDENDUM B.

Are you charged after former conviction of a felony?

Yes ☒ No

If yes, list the felony (ies) charged: _____

Do you understand the range of punishment for the crime(s) is/are: (List in same order as in No. 9 above.)

1) Minimum of 0 to a maximum of 5 yrs and/or a fine of \$ _____
2) Minimum of _____ to a maximum of _____ and/or a fine of \$ _____
3) Minimum of _____ to a maximum of _____ and/or a fine of \$ _____
4) Minimum of _____ to a maximum of _____ and/or a fine of \$ _____

☒ Yes No
☐ Yes No
☐ Yes No
☐ Yes No

Or additional charges: List any additional punishments on a separate sheet, with additional Crimes and labeled as PLEA OF GUILTY ADDENDUM B.

Read the following statements:

You have the right to a speedy trial before a jury for the determination of whether you are guilty or not guilty, and if you request, to determine sentence. (If pleading to capital murder, advise of procedure in 21 O.S. § 701.10 (B)). At the trial:

11. You have the right to have a lawyer represent you, either one you hire yourself, or if you are indigent a court appointed attorney.
12. You are presumed to be innocent of the charges.
13. You may remain silent or, if you choose, you may testify on your own behalf.
14. You have the right to see and hear all witnesses called to testify against you and the right to cross-examine them.
15. You may have your witnesses ordered to appear in court to testify and present evidence of any defense you have to these charges.
16. The state is required to prove your guilt beyond a reasonable doubt.
17. The verdict of guilty or not guilty decided by a jury must be unanimous. However, you can waive a jury trial and, if all parties agree, the case could be tried by a Judge alone who would decide if you were guilty or not guilty and if guilty, the appropriate punishment.

Do you understand each of these rights?

☒ Yes No

Do you understand by entering a plea of guilty, you give up these rights?

☒ Yes No

Do you understand that a conviction on a plea of guilty could increase punishment in any future case committed after this plea?

☒ Yes No

Is Sherry L. Beyer your lawyer?

☒ Yes No

Have you talked over the charge (s) with your lawyer, advised him/her regarding any defense you may have to the charges and had his/her advice?

☒ Yes No

App. 344a

18. Do you believe your lawyer has effectively assisted you in this case and are you satisfied with his/her advice?

☒ Yes ☐ No

19. Do you wish to change your plea of not guilty to guilty and give up your right to a jury trial and all other previously explained constitutional rights?

☒ Yes ☐ No

20. Is there a plea agreement?

Youthful Offender - In Community

What is your understanding of plea agreement?

Court 1: 3 yrs deferred
So hrs Community Service; Doc 2 yrs, Court costs,
testify against Sherada Davis, Restitution @ 1845.00

☒ Yes ☐ No

21. Do you understand the Court is not bound by any agreement or recommendation and if the Court does not accept the plea agreement, you have the right to withdraw your plea of guilty?

☒ Yes ☐ No

22. Do you understand that if there is no plea agreement the Court can sentence you within the range of punishment stated in question 11?

☒ Yes ☐ No

23. Do you understand your plea of guilty to the charge (s) is after: (check one)

☒ Yes ☐ No

- (☒) no prior felony convictions
(☐) one (1) prior felony conviction
(☐) two (2) or more prior felony convictions

List prior felony convictions to which pleading: _____

24. What (is) (are) your plea (s) to the charge (s) (and to each one of them)?

Guilty
☒ Yes ☐ No

25. Did you commit the acts as charged in the Information?

State the factual basis for your plea (s) (attach additional page as needed, labeled as ADDENDUM C): _____

26. Have you been forced, abused, mistreated, or promised anything by anyone to have you enter your plea (s)?

Yes ☒ No

27. Do you plead guilty of your own free will and without any coercion or compulsion of any kind?

☒ Yes ☐ No

28. If you are entering a plea to a felony offense, you have a right to a Pre-Sentence Investigation and Report which would contain the circumstances of the offense, any criminal record, social history, and other background information about you. Do you want to have the Report?

☒ Yes ☐ No

29. (a) Do you have any additional statements to make to the Court?
(b) Is there any legal reason you should not be sentence now?

Yes ☒ No
Yes ☒ No

HAVING BEEN SWORN, I, the Defendant whose signature appears below, make the following statements under oath:

(1) Check one:

- ☒ (a) I have read, understood, and completed this form.
☒ (b) My attorney completed this form and we have gone over the form and I understand its contents and agree with the answers.
See Addendum "A".
☐ (c) The Court completed this form for me and inserted my answers to the questions.

(2) The answers are true and correct.

- (3) I understand that I may be prosecuted for perjury if I have made false statements to this court.

Brandylle Jordan
DEFENDANT

Acknowledge this 23 day of June, 2000.

Donald L. Worthington
Notary Public/Deputy Court Clerk/Judge

30. I, the undersigned attorney for the Defendant, believe the Defendant understands the nature, purpose, and consequence of this proceeding. (S) He is able to assist me in formulating any defense to the charges (s). I am satisfied that the Defendant's waivers and plea (s) of guilty are voluntarily given and he/she has been informed of all legal and constitutional rights.

Shirley J. Boyce
ATTORNEY FOR DEFENDANT

31. The sentence recommendation in question 18 is correctly stated. I believe the recommendation is Fair to the State of Oklahoma.

32. Offer of Proof (Nolo contendere plea) _____

[Signature]
ASSISTANT DISTRICT ATTORNEY

THE COURT FINDS AS FOLLOWS:

33. A. The Defendant was sworn and responded to questions under oath.
- B. The Defendant understands the nature, purpose, and consequences of this proceeding.
- C. The Defendant's plea (s) of _____ is/are knowingly and voluntarily Entered and accepted by the Court.
- D. The Defendant is competent for the purpose of this hearing.
- E. A factual basis exists for the plea (s) (and former conviction (s), if applicable).
- F. The Defendant is guilty as charged: (check as appropriate)
() after no prior felony convictions.
() after one (1) prior felony conviction.
() after two (2) or more prior felony convictions.
- G. Sentencing or order deferring sentence shall be: imposed instant (); or continued until the 27 day of Oct, 2000, at 9:00 A.m.
If the Pre-Sentence Investigation and Report is requested, it shall be provided to the Court by the 7 day of Oct, 2000.

DONE IN OPEN COURT this 23 day of June, 2000.

Court Reporter Present

Donald L. Worthington
JUDGE OF THE DISTRICT COURT

Deputy Court Clerk

NAME OF JUDGE TYPED OR PRINTED

Part B: Sentence on Plea

Case No. CF-2000-202
State v. Brady Lynn Warden
Date: June 23, 2000

[NOTE ON USE: Part B to be used with the Summary of Facts if contemporaneous with the entry of plea or may be formatted as a separate sentencing form if sentencing continued to future date.]

THE COURT SENTENCES THE DEFENDANT AS FOLLOWS:

TIME TO SERVE

1. You are sentenced to confinement under the supervision of the Department of Corrections for a term of years as follows: (list in same order as in question No. 10 in Part A)

2. The sentence (s) to run (concurrently/consecutively) _____
or NOT APPLICABLE _____

DEFERRED SENTENCE

1. The sentencing date is deferred until _____, 20____ at _____m.
2. You (will / will not) be supervised. The terms set forth in the Rules and Conditions of Probation found in Addendum D shall be the rules you must follow during the period of deferment.

SUSPENDED SENTENCE or SUSPENDED AS TO PART

1. You are sentenced to confinement under the supervision of the Department of Corrections for a term of years as follows:

to be suspended as follows:

(a) ALL SUSPENDED YES _____ NO _____

(b) Suspended except as to the first _____ (months) (years) of the term (s) during which time you are to be held in the custody of the Department of Corrections, the remainder of the sentence (s) to be suspended under the terms set forth in the Rules and Conditions of Probation found in Addendum D.

2. The sentence (s) to run (concurrently / consecutively) _____
Or NOT APPLICABLE _____

FINES AND COSTS

You are to pay a fine (s), costs, fees, and/or restitution to the _____ County District Court Clerk as set out in Addendum E which is attached and made a part of this Order. [NOTE ON USE: District Courts may develop and utilize schedules for payment of fines and costs as appropriate for each district and attach as Addendum E.]

ADDENDUM "A"
CERTIFICATE OF DEFENSE COUNSEL

As the attorney for the defendant, Brandy Lynn Warden, I certify that:

1. The Defendant has stated to me that he/~~she~~ is (~~able~~/unable) to read and understand the attached form, and I have: (check appropriate option)

 ✓ determined the Defendant is able to understand the English language.

 _____ determined the Defendant is unable to understand the English language and obtained _____ to interpret.
2. I have read and fully explained to the Defendant the allegations contained in the Information in this case.
3. I have read and fully explained to the Defendant all of the questions in the Plea of Guilty/Summary of Facts and answers to the questions set out in the Summary of Facts are the Defendant's answers.
4. The the best of my knowledge and belief the statements and declaration made by the Defendant are accurate and true and have been freely and voluntarily made.

Dated this 23rd day of June, 2008.

Sh. L. Boyer
Attorney for the Defendant

"NOTICE OF RIGHT TO APPEAL"

Sentence to Incarceration, Suspended or Deferred:

To appeal from this conviction, or order deferring sentence, on your plea of guilty, you must file in the District Court Clerk's Office a written Application to Withdraw your Plea of Guilty within ten (10) days from today's date. You must set forth in detail why you are requesting to withdraw your plea. The trial court must hold a hearing and rule upon your Application with thirty (30) days from the date it is filed. If the trial court denies your Application, you have the right to ask the Court of Criminal Appeals to review the District Court's denial by filing a Petition for Writ of Certiorari within ninety (90) days from the date of the denial. Within ten (10) days from the date the Application to Withdraw Plea of Guilty is denied, Notice of Intent to Appeal and Designation of Record must be filed pursuant to Oklahoma Court of Criminal Appeals Rule 4.2 (D). If you are indigent, you have the right to be represented on appeal by a court appointed attorney.

Do you understand each of these rights?

Yes No

Do you want to remain in the county jail ten (10) days before being taken to the place of confinement?

Yes No

Have you fully understood the questions that have been asked?

Yes No

Have your answers been freely and voluntarily given?

Yes No

I ACKNOWLEDGE UNDERSTANDING OF RIGHTS AND SENTENCE IMPOSED.

Brandy Warden
Defendant

I, the undersigned attorney, have advised the Defendant of his appellate rights.

Shirley L. Boyce
Attorney for Defendant

Done in open court, with all parties present, this _____ day of _____, 20____.

Court Reporter Present

Judge of the District Court

Deputy Court Clerk

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA

Plaintiff

VS

CRF -

CRF -

CRF -

2000-202

JIA

DEPUTY CLERK

00 JUN 23 AM 10:58

PAYNE COUNTY, OKLA

Brandy Lynn Warden

Defendant

APPLICATION FOR DEFERMENT OF FURTHER PROCEEDINGS OR SUSPENDED SENTENCE

RULES OF PROBATION

I, Brandy Lynn Warden, have entered a plea of guilty no contest or have been convicted of the crime (s) of (list each crime and case number):

CF-2000-202 Larceny from a House

I respectfully request the Court defer further proceedings or suspend all or part of my sentence. I further request that I be placed on probation under the supervision of the Oklahoma Department of Corrections.

I AGREE TO FOLLOW THE RULES AND CONDITIONS OF PROBATION LISTED BELOW:

1. I will not violate any city, state, or federal law. (All arrests must be reported to your probation officer within 24 hours.)
2. I will not use or possess any alcoholic beverages, including 3.2 beer, nor will I visit or frequent places where alcoholic beverages are exclusively sold or used.
3. I will not have in my possession, use, sell, distribute, or have under my control any narcotics except as prescribed by a licensed physician.
4. I will not own, purchase, possess, use, sell, or have under my control any deadly weapon, firearm, or destructive device. Nor shall I travel in a vehicle in which a deadly weapon, firearm, or destructive device is present. Nor will I be in the company of any person possessing the same.
5. I will submit written monthly reports to the probation officer on the date so specified by the officer.
6. I will report in person as required by my probation and parole officer.
7. I will at all times keep the probation officer informed of my address and whereabouts. I will not change address without prior approval of my officer. I understand that the responsibility for contact between the probationer and the probation officer rests with the probationer, not the officer.

8. I will maintain full time employment, attend school on a full time basis or any combination of the two, while under supervision. I must be able to show a means of support for myself and those I am responsible for. I will provide proof of employment or employment search to my probation officer each month while under supervision. I will not change employment without first consulting with my officer.
9. I will submit to any rehabilitative, medical, psychological or substance abuse program as directed by the court and/or probation officer and I will submit to urinalysis testing as directed by my probation officer.
10. I will not leave the State of Oklahoma without written permission from the probation officer and/or the court. I will not leave the county of supervision for more than 24 hours without prior approval of probation officer.
11. I will submit to immediate searches of my person, vehicle, or residence at any time, day or night, without a warrant. I understand and agree that being on probation means I am under the control of the Department of Corrections to the same extent as if I were in jail or prison.
12. I will allow the probation officer to visit me at my home, place of employment, or elsewhere and carry all instructions he/she may give me.
13. I will avoid associating with persons on parole or probation, or persons with criminal records. I will also avoid communication with inmates of any penal institution unless my supervising officer obtains written permission for such contact.
14. I will take any tests directed by my probation officer to determine my reading and writing skills and will participate in any literacy program designed to improve my reading and writing skills as directed by my probation officer.
15. I will complete _____ hours of community service within _____ days from this date. I will report to the Payne County Community Service Sentencing Program located in the Sheriff's Office, Room 106, prior to leaving the courthouse today.
16. I will pay all court costs, restitution, fines, victim's compensation fees as ordered by the court.
17. I will pay probation fees of \$40.00 per month.
18. I will report to the Probation and Parole Office located at 211 N. Perkins Rd., #23, Stillwater, Oklahoma (405) 377-3418, immediately upon sentencing or release from confinement.
19. I will complete the following special conditions of probation:

I have read this application carefully. I have discussed it in detail with my attorney. I have a complete understanding of the rules and conditions. I understand what will happen to me if I fail to follow or complete any rule or condition of probation.

I specifically understand the consequences for the failure to follow or complete the rules or conditions of probation may include:

1. Advancement of the Deferment of Further Proceedings, which could result in a judgment of guilty and being sentenced to a term of imprisonment of fines not exceeding the maximum provided by law.
2. Revocation of my suspended sentence.
3. Jail time or other sanctions ordered by the court.

I hereby waive extradition to the State of Oklahoma from any jurisdiction in or outside the United States where I may be found. I also agree that I will not contest any effort by any jurisdiction to return me to the State of Oklahoma.

Dated this 23rd day of June, 19 2000.

Athy L. Boyer
Attorney for Defendant

Brandy Warden
Defendant

[Signature]
District Attorney

Donald L. Worthington
Judge

IN THE DISTRICT COURT OF PAYNE COUNTY
STATE OF OKLAHOMA
JUDICIAL DISTRICT NO. 9

FILED
COURT CLERK
DISTRICT COURT, OKLA

00 NOV -7 AM 10:35

LISA S. LAMBERT
COURT CLERK

DEPUTY

THE STATE OF OKLAHOMA

Plaintiff,

vs.

BRANDY LYNN WARDEN

DOB: [REDACTED]-81; SSN: [REDACTED] 2714

Defendant.

CF-2000-202

JUDGMENT AND SENTENCE - DEFERRED

NOW, on this 27th day of October, 2000, the same being a judicial day of said Court, and the time duly appointed for judgment in the above entitled cause, and said cause coming on for judgment, and the defendant, BRANDY LYNN WARDEN, being personally present in open Court with her attorney, Sherri Boyce, and having been legally charged with the offense of LARCENY FROM A HOUSE and having been duly arraigned thereon, and having duly and properly entered her plea of GUILTY to the crime of LARCENY OF A HOUSE as charged in the Information and after having been duly advised of her rights and the effect of such plea; and the defendant having filed her written application requesting that this Court defer imposition of judgment and sentence with probation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the plea of GUILTY to the crime of LARCENY FROM A HOUSE as charged in the Information be accepted and the Clerk is requested to so note the same on the docket, and for sufficient cause shown the application for deferment of imposition of sentence be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the imposition of judgment and sentence against the defendant be DEFERRED during the good behavior of said defendant, and that she be placed on probation with the Department of Corrections of the State of Oklahoma for a period of THREE (3) YEARS until the 24th day of October, 2003, unless sooner called up, and that the defendant be under the supervision of the Department of Corrections, and that the defendant pay the accrued and accruing costs of this prosecution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that as a special condition of the probation the defendant be ordered to pay restitution in the sum of \$1,845.00 at the rate of \$50.00 per month commencing November 15, 2000, with like payments each 15th thereafter until paid in full.

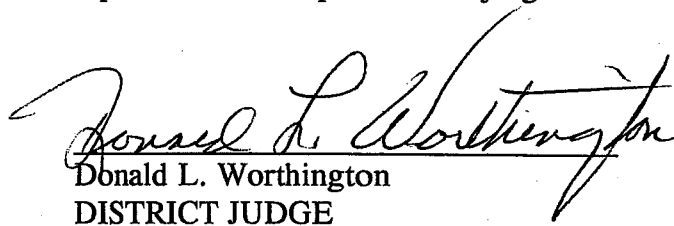
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that as a special condition of the probation the defendant report to the Payne County Court Clerk on this

date to file a **payment** plan, and to pay all fines, costs and fees accordingly.

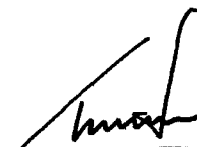
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that as a special condition of the probation the defendant be ordered to complete fifty (50) hours of community service within six (6) months under the supervision of Alvie Morris of the Payne County Sheriff's Office.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the deferment of judgment and sentence be in accordance with the rules of this Court and the rules of the Department of Corrections of the State of Oklahoma and the statutes of the State of Oklahoma and shall be further conditioned upon the payment within a reasonable time of the costs of this action by said defendant in such manner as may be directed by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that in the event the terms of the probation herein provided, or any of the conditions hereinbefore enumerated be breached or broken by the defendant, a warrant shall issue for her arrest, and she shall be brought before this Court for revocation of probation for imposition of judgment and sentence.


Donald L. Worthington
DISTRICT JUDGE

Approved as to form:



Tom Lee
ASSISTANT DISTRICT ATTORNEY

Case no. CF-2000-202

EXHIBIT 1: Additional Findings of the District Court of Payne County

I. Original Charges

(a copy of the information may be attached instead)

Please list any additional charges on a separate attached sheet

<u>Offense</u>	<u>Statute Citation</u>
See JAS	

II. Prior Felony Convictions Used for Enhancement

Please list any additional convictions on a separate attached sheet

<u>Offense</u>	<u>Date</u>	<u>Statute Citation</u>

III. Prior Charge(s) For Which Order Deferring Sentence Was Entered

Please list any additional charges on a separate attached sheet

<u>Offense</u>	<u>Date</u>	<u>Statute Citation</u>

IV. Prior Felony Convictions Not Used For Enhancement

Please list any additional convictions on a separate attached sheet

<u>Offense</u>	<u>Date</u>	<u>Statute Citation</u>

V.

If the defendant plead guilty to multiple counts, did the offense(s) arise from the same transaction?

Circle
Yes ☐ No ☒

VI. Other Enhancers Used to Determine Placement on Matrix

1. Did the offender ~~commit~~ the current offense with the use of a firearm within the immediate possession and control of the offender? Yes Circle No No
2. Was the victim of the offense over 62 years of age, under 12 years of age, or disabled by reason of mental or physical illness to such an extent that the victim lacked the ability to effectively protect his or her property or person? Yes No
3. Did the offender in the commission of the offense maim or torture the victim? Yes No
4. Did the offender commit a Schedule N-2 or N-3 drug offense in, on, or within 1,000 feet of real property comprising of a public or private elementary or secondary school; public or private college, university, or other institution of higher education; recreation or public park (including state facilities); public housing project; or in the presence of any child under 12 years of age? Yes No
5. Did the offender commit a Schedule N-2 or N-3 drug offense by using or soliciting the services of a person less than 18 years of age, providing the offender was at least 18 years of age at the time of the offense? Yes No
6. If the controlling offense was a property or drug offense, what was the total amount involved in that offense (e.g., the value of the property involved; the amount of money stolen, embezzled, or obtained by fraud; or the amount of drug proceeds utilized)? \$ 1485.00
7. If the controlling offense was a drug offense, what was the predominant drug and what was the amount of the drug (specify, grams, ounces, etc)? Drug: _____ Quantity: _____

VII. Offender Characteristics

(A copy of the pre-sentence investigation may be attached instead.)

Gender Circle
Male Female

Race Circle
White Black Hispanic Asian Native American

This Exhibit shall not be admitted into evidence in any future prosecutions.

Certified this 27 day of Oct, 2000.

[Signature]
Attorney for the State

Attorney for Defendant

[Signature]
JUDGE OF THE DISTRICT COURT

OKLAHOMA DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE

Date 1-17-02

-CASE REPORT-

TO: HONORABLE DONALD L WORTHINGTON

X District Attorney Payne County
X File

Name Warden, Brandy Lynn Race/Sex W/F DOB █-81
Case & DOC# CF-00-202 DOC# 375158 Crime Larceny from House
Date of Sentencing 10-27-00 Date Released/Paroled
Sentence Length 3 years Type Case Deferred Discharge Date 10-24-03

TYPE OF REPORT: VIOLATION REPORT

VIOLATION OF RULES AND CONDITIONS OF PROBATION

Ms. Warden has violated the following rules of her probation:

- Rule #1 I will not violate any city, state or federal law. (All arrests must be reported to your probation officer within 24 hours.)
- Rule #5 I will submit written monthly reports to the probation officer on the date so specified by the officer.
- Rule #6 I will report in person as required by my probation and parole officer.
- Rule #8 I will maintain full time employment, attend school on a full time basis or any combination of the two, while under supervision. I must be able to show a means of support for myself and those I am responsible for. I will provide proof of employment or employment search to my probation officer each month while under supervision. I will not change employment without first consulting with my officer.
- Rule #12 I will allow the probation officer to visit me at my home, place of employment or elsewhere and carry out all instructions he/she may give me.
- Rule #13 I will avoid associating with persons on parole or probation, or persons with criminal records. I will also avoid communication with inmates of any penal institution unless my supervising officer obtains written permission for such contact.

On 01-07-02, Ms. Warden was charged in Oklahoma County case CF 2002-46 alleging she committed the following offenses:

Count 1-Murder in the 1st Degree

Count 2-Robbery with Firearms

Count 3-Conspiracy to Commit Felony to-wit: Robbery With Firearms

Ms. Warden is currently in Oklahoma County Jail pending disposition of these offenses. This is a violation of rule 1.

FILED
COURT CLERK
PAYNE COUNTY OKLA

02 JAN 18 AM 9:16

CLERK
DEPUTY

**VIOLATION REPORT
WARDEN, BRANDY
PA CF 2000-202**

PAGE 2

Ms. Warden signed a Verification of Orientation form on 3-19-01 which instructed her to report and submit a written report and employment verification on the first working Monday of each month. Ms. Warden failed to report in December 2001. This is a violation of rules 5, 6 and 12. A copy of the Verification of Orientation form is attached.

Ms. Warden indicated she was working for McDonald's on McElroy in Stillwater on her last report on 11-12-01. This officer was advised she wasn't working there anymore. She failed to advise this officer of her employment change. This is a violation of rule 8.

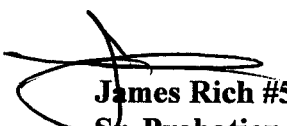
Ms. Warden was with Termane Wood and Zjaiton Wood during the commission of the new felony in Oklahoma County. Termane and Zjaiton both have criminal records. This is a violation of rule 13.

SUMMARY/RECOMMENDATION

Ms. Warden was living with her children at 2900 E. 6th Lot 11 in Stillwater, OK before her arrest in Oklahoma County. Her employment at McDonald's had been terminated without this officer's knowledge.

This officer respectfully recommends Brandy Warden's deferred sentence be accelerated due to the above mentioned violations.


David Hamilton
Team Supervisor


James Rich #522
Sr. Probation and Parole Officer
211 N. Perkins Rd. #23
Stillwater, OK 74075
(405) 377-3418 office
(405) 377-3533 fax

OKLAHOMA DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE

Date 1-17-02

-CASE REPORT-

FILED
02 JAN 18 AM 9:16

TO: HONORABLE DONALD L WORTHINGTON

X District Attorney Payne County
X File

Name Warden, Brandy Lynn Race/Sex W/F DOB █-81
Case & DOC# CF-00-202 DOC# 375158 Crime Larceny from House
Date of Sentencing 10-27-00 Date Released/Paroled
Sentence Length 3 years Type Case Deferred Discharge Date 10-24-03

TYPE OF REPORT: VIOLATION REPORT

VIOLATION OF RULES AND CONDITIONS OF PROBATION

Ms. Warden has violated the following rules of her proba

LET'S HOLD OFF
FOR A WHILE
ON THE APP-
LICATION.
Tamm

- Rule #1 I will not violate any city, state or federal law within 24 hours.) to your probation officer
- Rule #5 I will submit written monthly reports to the p specified by the officer.
- Rule #6 I will report in person as required by my prol
- Rule #8 I will maintain full time employment, attend two, while under supervision. I must be able responsible for. I will provide proof of empl each month while under supervision. I will my officer. any combination of the for myself and those I am to my probation officer but first consulting with
- Rule #12 I will allow the probation officer to visit me carry out all instructions he/she may give m 1-18-02 ment or elsewhere and
- Rule #13 I will avoid associating with persons on parole or probation with criminal records. I will also avoid communication with inmates of any penal institution unless my supervising officer obtains written permission for such contact.

On 01-07-02, Ms. Warden following offenses:

- Count 1-Murder
Count 2-Robbery
Count 3-Conspiracy

Ms. Warden is currently rule 1.

Wayne - Sapulpa
Tyner 0105

States witness
Pg on Acc. after fact

Brandy Warden
F-00-202

918-248-5026
State Test. Flying for

Warden Wood

itted the

violation of

AGREEMENT

This agreement entered into this 4th day of February, 2003, between, BRANDY WARDEN, and WES LANE, Oklahoma County District Attorney, by and through his agents and employees.

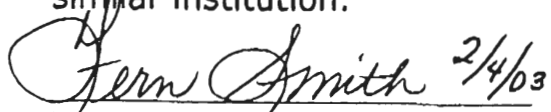
WHEREAS, pursuant to plea negotiations in Case No. CF-2002-46, wherein BRANDY WARDEN is charged with the crimes of Count I, Murder in the First Degree; Count II, Robbery with Firearms; and Count III, Conspiracy to Commit a Felony, occurring on or about the 1st day of January, 2002, the State of Oklahoma, hereby offers BRANDY WARDEN a term of 35 years in the Oklahoma Department of Corrections. The nature of the charge relating to that term of years is not specified at this time.

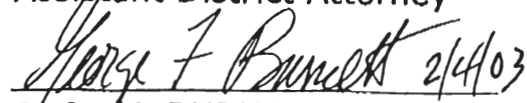
This offer is conditioned upon BRANDY WARDEN's interview this date, to be conducted by the Office of the District Attorney, with Investigator Glenn Ring. Counsel shall be present during the interview. This interview is to be taped.

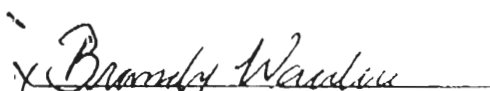
It is understood that the information and statement made by BRANDY WARDEN to Investigator Glenn Ring cannot be used against her in the event of a jury trial and/or the District Attorney determines that her statement would not provide additional information relating to the death of the victim in this case.

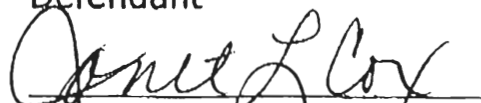
It is further conditioned upon the truthfulness of the statements made and BRANDY WARDEN's agreement to testify truthfully at the time of jury trial against one or all co-defendants.

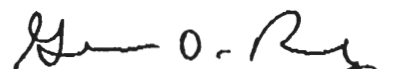
It is further understood that in the event the offer of the State of Oklahoma is accepted, as set forth herein, BRANDY WARDEN, will not be held in custody, pending further proceedings, in the Oklahoma County Detention Center, but will be placed in protective custody at a similar institution.


FERN SMITH
Assistant District Attorney


GEORGE BURNETT
Assistant District Attorney


BRANDY WARDEN
Defendant


JANET L. COX, OBA 1968
Attorney for Defendant


App. 360a

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,
Plaintiff,

CASE NO. CF-02-46

vs

CASE NO. _____

CASE NO. _____

CASE NO. _____

CASE NO. _____

CASE NO. _____

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA

FEB 20 2013

BRANDY LYNN WARDE

Defendant,

SSN: [REDACTED]

- 2714

by PATRICIA PRESLEY

COURT CLERK

DOB: [REDACTED]

1/81

Deputy

ADDRESS: Chicago

PLEA OF GUILTY AND SUMMARY OF FACTS

1. IS THE NAME JUST READ TO YOU YOUR TRUE NAME?
IF NO, WHAT IS YOUR CORRECT NAME? _____

YES NO

I HAVE ALSO BEEN KNOWN BY THE NAME(S): _____

2. MY LAWYER'S NAME: JANET COX

3. YOU HAVE A RIGHT TO HAVE A RECORD MADE OF THESE PROCEEDINGS BY A
COURT REPORTER DO YOU WAIVE THAT RIGHT?

YES NO

4. AGE: 21 HIGHEST GRADE COMPLETED IN SCHOOL: 8th

5. CAN YOU READ AND UNDERSTAND THIS FORM?
(IF THE ANSWER IS NO - COMPLETED ADDENDUM "A" MUST BE ATTACHED)

YES NO

6. ARE YOU CURRENTLY TAKING ANY MEDICATION OR SUBSTANCES WHICH AFFECT
YOUR ABILITY TO UNDERSTAND THESE PROCEEDINGS? TRAZEDONE

YES NO

7. HAVE YOU BEEN PRESCRIBED ANY MEDICATIONS THAT YOU SHOULD BE TAKING, BUT YOU
ARE NOT TAKING THEM AT THIS TIME?
IF SO - WHAT KIND AND FOR WHAT PURPOSE? _____

YES NO

8. HAVE YOU EVER BEEN TREATED BY A DOCTOR OR HEALTH PROFESSIONAL FOR MENTAL
ILLNESS OR CONFINED IN A HOSPITAL FOR MENTAL ILLNESS?

YES NO

IF YES, LIST THE DOCTOR OR HEALTH PROFESSIONAL, PLACE AND WHEN THIS OCCURRED:

9. DO YOU UNDERSTAND THE NATURE AND CONSEQUENCES OF THIS PROCEEDING?

YES NO

14. READ THE FOLLOWING STATEMENT:

4527 10/27/12

YOU HAVE THE RIGHT TO A SPEEDY TRIAL BEFORE A JURY FOR THE DETERMINATION OF WHETHER YOU ARE GUILTY OR NOT GUILTY AND IF YOU REQUEST, TO DETERMINE SENTENCE.

AT THE TRIAL:

- (1) YOU HAVE THE RIGHT TO HAVE A LAWYER REPRESENT YOU, EITHER ONE YOU HIRE FOR YOURSELF OR IF YOU ARE INDIGENT, THE COURT WILL APPOINT ONE FOR YOU.
- (2) YOU ARE PRESUMED TO BE INNOCENT OF THE CHARGES.
- (3) YOU MAY REMAIN SILENT OR IF YOU CHOOSE, YOU MAY TESTIFY ON YOUR OWN BEHALF.
- (4) YOU HAVE THE RIGHT TO SEE AND HEAR ALL WITNESSES CALLED TO TESTIFY AGAINST YOU AND THE RIGHT TO CROSS-EXAMINE THE WITNESSES.
- (5) YOU MAY HAVE YOUR WITNESSES ORDERED TO APPEAR IN COURT TO TESTIFY AND PRESENT EVIDENCE OF ANY DEFENSE YOU HAVE TO THESE CHARGES.
- (6) THE STATE IS REQUIRED TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT.
- (7) THE VERDICT OF GUILTY OR NOT GUILTY DECIDED BY A JURY MUST BE UNANIMOUS. HOWEVER, YOU CAN WAIVE A JURY TRIAL AND, IF ALL PARTIES AGREE, THE CASE CAN BE TRIED BY A JUDGE ALONE WHO WOULD DECIDE IF YOU WERE GUILTY OR NOT GUILTY, AND SET THE APPROPRIATE PUNISHMENT.

DO YOU UNDERSTAND EACH OF THESE RIGHTS?

☒ YES ☐ NO

15. DO YOU UNDERSTAND BY ENTERING A PLEA OF GUILTY, YOU GIVE UP THESE RIGHTS?

☒ YES ☐ NO

16. DO YOU UNDERSTAND THAT A CONVICTION ON A PLEA OF GUILTY COULD INCREASE THE PUNISHMENT FOR ANY FUTURE CRIME COMMITTED AFTER THIS PLEA?

☒ YES ☐ NO

17. HAVE YOU TALKED OVER THE CHARGE(S) WITH YOUR LAWYER, ADVISED HIM / HER REGARDING ANY DEFENSE YOU MAY HAVE TO THE CHARGE(S) AND HAD HIS / HER ADVICE IN THE MATTER?

☒ YES ☐ NO18. DO YOU BELIEVE YOUR LAWYER HAS EFFECTIVELY ASSISTED YOU IN THIS CASE AND ARE YOU SATISFIED WITH ~~HER~~ HER ADVICE?☒ YES ☐ NO

19. DO YOU WISH TO CHANGE YOUR PLEA OF NOT GUILTY TO GUILTY AND GIVE UP YOUR RIGHT TO A JURY TRIAL AND ALL THE OTHER PREVIOUSLY EXPLAINED CONSTITUTIONAL RIGHTS?

☒ YES ☐ NO

20. IS THERE A PLEA AGREEMENT?

☒ YES ☐ NO

WHAT IS YOUR UNDERSTANDING OF THE PLEA AGREEMENT?

AND PLEA OF GUILTY

IN EXCHANGE FOR TRUTHFUL TESTIMONY¹ REGARDING EVENTS OCCURRING ON OR ABOUT DEC 31 ~~AND~~ 2001, AND JAN 1, 2002 - STATE AGREES TO AMEND CT1 TO ACCESSORY OF MURDER I (AFTER THE FACT), 21 O.S. § 175(5) AND RECOMMEND 45 YEARS TO DO. STATE AGREES TO DISMISS CTS 2 ~~AND~~ TO TESTIFY AGAINST CO-DEFENDANTS + CT COSTS ALL PREVIOUS ~~AND~~ TO TESTIFY TRUTHFULLY. INCLUDES App. 363a + CAAPS + VCA. ~~AND~~ STATEMENTS MADE TO GLEN RING IN A TAPED INTERVIEW CONCERNING CLEVELAND CO ROBBERY

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21. DO YOU UNDERSTAND THE COURT IS NOT BOUND BY ANY AGREEMENT OR RECOMMENDATION AND IF THE COURT DOES NOT ACCEPT THE PLEA AGREEMENT, YOU HAVE THE RIGHT TO WITHDRAW YOUR PLEA OF GUILTY? YES NO

22. DO YOU UNDERSTAND THAT IF THERE IS NO PLEA AGREEMENT THE COURT CAN SENTENCE YOU WITHIN A RANGE OF PUNISHMENT STATED IN QUESTION 13? YES NO

23. DO YOU UNDERSTAND YOUR PLEA OF GUILTY TO THE CHARGE(S) IS AFTER:



NO PRIOR FELONY CONVICTIONS, OR



ONE (1) PRIOR FELONY CONVICTION, OR



TWO (2) OR MORE PRIOR FELONY CONVICTIONS.

YES NO

24. WHAT IS / ARE YOUR PLEA(S) TO THE CHARGE(S) (AND TO EACH ONE OF THEM)?

GUILTY

25. DID YOU COMMIT THE ACTS CHARGED IN THE INFORMATION?

YES NO

STATE THE FACTUAL BASIS FOR YOUR PLEA(S):

I ADMIT IN OKLAHOMA COUNTY ON JANUARY 1, 2002,
I PARTICIPATED W/ LARITA BATEMAN, TREMAINE WOOD,
AND ZERATON WOOD FOR THE PURPOSE OF COMMITTING
THE CRIME OF ROBBERY W/ A DANGEROUS WHICH RESULTED
IN THE DEATH OF RONNIE W/ PF INCLUDING PURCHASE
OF A MASK, RENTING MOTEL ROOM, AND OBTAINING MONEY
FROM VICTIM UNDER FALSE PRETENSE TO ENGAGE IN
PROSTITUTION

26. HAVE YOU BEEN FORCED, ABUSED, MISTREATED OR PROMISED ANYTHING BY ANYONE TO HAVE YOU ENTER YOUR PLEA(S)?

YES NO

27. DO YOU PLEAD GUILTY OF YOUR OWN FREE WILL AND WITHOUT ANY COERCION OR COMPULSION OF ANY KIND?

YES NO

28. IF YOU ARE ENTERING A PLEA TO A FELONY OFFENSE, YOU HAVE THE RIGHT TO HAVE A PRE-SENTENCE INVESTIGATION REPORT, WHICH WOULD CONTAIN THE CIRCUMSTANCES OF THE OFFENSE, ANY CRIMINAL RECORD, SOCIAL HISTORY AND OTHER BACKGROUND INFORMATION ABOUT YOU. DO YOU WANT TO HAVE THIS REPORT?

YES NO

29. DO YOU HAVE ANY ADDITIONAL STATEMENTS TO MAKE TO THE COURT?

YES NO

30. IS THERE ANY LEGAL REASON YOU SHOULD NOT BE SENTENCED NOW?

YES NO

HAVING BEEN SWORN, I THE DEFENDANT, WHOSE SIGNATURE APPEARS BELOW, MAKE THE FOLLOWING STATEMENTS UNDER OATH:

- (1) CHECK ONE: ☐ I HAVE READ, UNDERSTOOD AND COMPLETED THIS FORM AND ALL THE ANSWERS TO THE QUESTIONS IN THIS SUMMARY OF FACTS ARE MY ANSWERS .
- ☒ MY ATTORNEY COMPLETED THIS FORM AND WE HAVE GONE OVER THE FORM AND MY ATTORNEY INSERTED MY ANSWERS TO THE QUESTIONS.
- ☐ THE TRIAL JUDGE COMPLETED THIS FORM FOR ME AND INSERTED MY ANSWERS TO THE QUESTIONS.
- (2) THE ANSWERS ARE TRUE AND CORRECT.
- (3) I UNDERSTAND THAT I MAY BE PROSECUTED FOR PERJURY IF I HAVE MADE ANY FALSE STATEMENTS TO THIS COURT.
- (4) AS WITNESSED BY THE DEFENDANT'S SIGNATURE BELOW.

STATEMENT OF DEFENSE COUNSEL:

I, THE UNDERSIGNED ATTORNEY FOR THE DEFENDANT, BELIEVE THE DEFENDANT UNDERSTANDS THE NATURE, PURPOSE AND CONSEQUENCES OF THIS PROCEEDING. HE / SHE IS ABLE TO ASSIST ME IN FORMULATING ANY DEFENSE TO THE CHARGE(S). I AM SATISFIED THAT THE DEFENDANT'S WAIVERS AND PLEA(S) OF GUILTY ARE VOLUNTARILY GIVEN AND HE / SHE HAS BEEN INFORMED OF ALL LEGAL AND CONSTITUTIONAL RIGHTS.

AS WITNESSED BY THE SIGNATURE OF DEFENSE COUNSEL BELOW

STATEMENT OF THE DISTRICT ATTORNEY AND WITNESSED BY MY SIGNATURE BELOW:

31. THE SENTENCE RECOMMENDATION IN QUESTION 19 IS CORRECTLY STATED. I BELIEVE THE RECOMMENDATION IS FAIR TO THE STATE OF OKLAHOMA.
32. OFFER OF PROOF BY THE DISTRICT ATTORNEY (NOLO CONTENDERE PLEA):

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

~~_____~~

THE COURT FINDS AS FOLLOWS:

- A. THE DEFENDANT WAS SWORN AND RESPONDED TO THE QUESTIONS UNDER OATH.
 B. THE DEFENDANT UNDERSTANDS THE NATURE, PURPOSE AND CONSEQUENCES OF THIS PROCEEDING.
 C. THE DEFENDANT'S PLEA(S) OF Guilty IS (ARE) KNOWINGLY AND VOLUNTARILY ENTERED AND ACCEPTED BY THE COURT.
 D. THE DEFENDANT IS COMPETENT FOR THE PURPOSE OF THIS HEARING.
 E. A FACTUAL BASIS EXISTS FOR THE PLEA(S) (AND FORMER CONVICTION(S), IF APPLICABLE).
 F. THE DEFENDANT IS GUILTY AS CHARGED:

- ☒ AFTER NO PRIOR FELONY CONVICTIONS.
☐ AFTER ONE (1) PRIOR FELONY CONVICTION.
☐ AFTER TWO (2) OR MORE PRIOR FELONY CONVICTIONS.

THE COURT ORDERS:

G. SENTENCING OR ORDER DEFERRING SENTENCING IS AS FOLLOWS:

- ☐ INSTANTER OR ☒ SENTENCING IS CONTINUED UNTIL:
2nd DAY OF April, 20 03 AT 9:00 (AM) / PM.

AND

- ☐ DEFENDANT IS COMMITTED TO ☐ THE RID PROGRAM. ☐ THE FORT PROGRAM.
☐ DEFENDANT IS COMMITTED TO THE DELAYED SENTENCING FOR YOUTHFUL OFFENDERS PROGRAM.

BY OUR SIGNATURES BELOW WE STATE THAT WE HAVE READ THE PLEA OF GUILTY AND SUMMARY OF FACTS AND UNDERSTAND THE CONTENTS AND ACKNOWLEDGE THAT IT IS TRUE AND CORRECT.

Brandon Warden

DEFENDANT

Janet L. Cox

ATTORNEY FOR THE DEFENDANT (PRINTED)

Janet L. Cox

ATTORNEY FOR THE DEFENDANT

Fern L. Smith

ASSISTANT DISTRICT ATTORNEY (PRINTED)

Fern L. Smith

ASSISTANT DISTRICT ATTORNEY

DONE IN OPEN COURT THIS 19th DAY OF February, 20 03.

Ray C. Elliott

JUDGE OF THE DISTRICT COURT

Ray C. Elliott

COURT REPORTER PRESENT

DEPUTY COURT CLERK

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FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

JUN 11 2003

STATE OF OKLAHOMA,)

PATRICIA FREDLEY, COURT CLERK

Plaintiff,)

By
Deputy

vs.)

Case No. CF-02-46

BRANDY LYNN WARDEN,)

Defendant.)

* * * * *

TRANSCRIPT OF PLEA OF GUILTY HAD ON THE 19th DAY OF

FEBRUARY, 2003 AND THE SENTENCING

HAD ON THE 18th DAY OF APRIL, 2003,

BEFORE THE

HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

* * * * *

APPEARANCES:

Ms. Fern Smith and Mr. George Burnett, Assistant District Attorneys, Oklahoma County District Attorney's Office, 320 Robert S. Kerr, Suite 505, Oklahoma City, Oklahoma, appearing on behalf of the state of Oklahoma.

Ms. Janet Cox, Assistant Public Defender, Oklahoma County Public Defender's Office, Oklahoma City, Oklahoma, appearing on behalf of the defendant, Brandy Warden.

REPORTED BY:

Barbara A. Ross, CSR, RPR
Official Court Reporter
Oklahoma County Courthouse
Oklahoma City, Oklahoma

COPY

1 FEBRUARY 19th, 2003

2 (Previous to this record there was a status
3 conference concerning this defendant and Defendant Bateman.)

4 THE COURT: For the record, we are still on
5 CF-02-46 as it applies to Defendant Warden. She is present
6 with counsel. The state is present by counsel. I have been
7 handed plea of guilty forms indicating there is a plea about
8 to be undertaken.

9 (Thereupon, the defendant was duly sworn.)

10 THE COURT: All right. Put your hand down.
11 State your full name and speak loudly enough she can hear
12 you.

13 THE DEFENDANT WARDEN: Brandy Lynn Warden.

14 THE COURT: Your social security number?

15 THE DEFENDANT WARDEN: [REDACTED]-2714.

16 THE COURT: Date of birth?

17 THE DEFENDANT WARDEN: [REDACTED]-81.

18 THE COURT: In CF-02-46 we are here on, Ms. Cox
19 standing to your right is your attorney; is that correct?

20 THE DEFENDANT WARDEN: Yes.

21 THE COURT: What is your current age?

22 THE DEFENDANT WARDEN: 21.

23 THE COURT: And the highest grade you completed
24 in school?

25 THE DEFENDANT WARDEN: I believe eighth.

1 THE COURT: You can read and write?

2 THE DEFENDANT WARDEN: Yes.

3 THE COURT: Okay. Are you currently taking any
4 medications or substances which affect your ability to
5 understand what we are doing today?

6 MS. COX: Judge, she is on Trazodone but it does
7 not affect her judgment for purposes of understanding what
8 is happening here today.

9 THE COURT: Okay. Do you feel like you agree
10 with that? You know what is going on today?

11 THE DEFENDANT WARDEN: Yes.

12 THE COURT: Okay. Have you been prescribed any
13 medication that you should be taking but are not taking at
14 this time?

15 THE DEFENDANT WARDEN: No, sir.

16 THE COURT: Have you ever been treated by a
17 doctor or health professional for mental illness or confined
18 in a mental hospital for mental illness?

19 THE DEFENDANT WARDEN: No.

20 THE COURT: Okay. Do you understand the nature
21 and consequences of this proceeding? In other words, you
22 understand what we are fixing to do?

23 THE DEFENDANT WARDEN: Yes, sir.

24 THE COURT: Okay. Have you received a copy of
25 the Information in the case and gone over it with your

1 lawyer? Do you know what you are charged with?

2 THE DEFENDANT WARDEN: Yes, sir.

3 THE COURT: You know what you are charged with
4 and you have talked to Ms. Cox about that; is that right?

5 THE DEFENDANT WARDEN: Yes, sir.

6 MS. COX: Judge, we need to change the next one
7 to show that only count two is dismissed. Not counts two
8 and three. I made changes but not at that portion.

9 THE COURT: Okay. So noted on the form. Does
10 the state have a motion?

11 MS. SMITH: Your Honor, the state moves to
12 dismiss count two, which was Robbery with a Dangerous
13 Weapon. We do not move to dismiss count three, which is
14 Conspiracy to Commit Robbery with a Dangerous Weapon.

15 THE COURT: What about the amended count one?

16 MS. SMITH: In count one, Judge, it was
17 originally charged as Murder in the First Degree. We move
18 to amend that as to this defendant only to Accessory After
19 the Fact of Murder in the First Degree.

20 MS. COX: Judge, that is 21 O.S., Section 175.5
21 with no prior felony convictions, Judge.

22 THE COURT: All right. That leaves you currently
23 charged in count one with Accessory to Murder After the
24 Fact. That carries five to 45 years in prison. And count
25 three, Conspiracy to Commit Robbery with a Dangerous Weapon.

1 That carries up to ten years; do you understand that?

2 THE DEFENDANT WARDEN: Yes, sir.

3 THE COURT: Amendments by the state will be
4 allowed. All right. You have the right to a speedy trial
5 before a jury for determination of whether you are guilty or
6 not guilty. And if you request, to determine the sentence.
7 Do you understand that you have a right to go to jury trial.
8 We are currently set March 10th. You have that right to do
9 that; do you understand?

10 THE DEFENDANT WARDEN: Yes, sir.

11 THE COURT: At that time you have the right to
12 have a lawyer represent you. Either one you hire or if you
13 are indigent the Court will appoint one for you. You are
14 presumed to be innocent of the charges. You may remain
15 silent or if you choose you may testify in your own behalf.
16 You have a right to see and hear all witnesses called to
17 testify against you. And the right to cross-examine those
18 witnesses. You may have your own witnesses ordered to
19 appear in court to testify and present evidence to any
20 defense you have to these charges.

21 The state is required to prove you guilty beyond
22 a reasonable doubt. The verdict of guilty or not guilty, if
23 decided by a jury, must be unanimous. However, you can
24 waive a jury trial. And if all parties agree the case may
25 be tried before me in what is called a non-jury trial. Do

1 you understand that?

2 THE DEFENDANT WARDEN: Yes, sir.

3 THE COURT: Okay. You understand by entering a
4 plea of guilty, you give up all of those rights I just read
5 to you?

6 THE DEFENDANT WARDEN: Yes, sir.

7 THE COURT: Okay. You understand that a
8 conviction on a plea of guilty or pleas of guilty could
9 increase the punishment for any future crimes you commit
10 after this plea? In other words, if you commit a crime way
11 down the road, several years from now, these charges can be
12 used against you.

13 THE DEFENDANT WARDEN: Yes, sir.

14 THE COURT: Do you believe your lawyer has
15 affectively assisted you in this case and are you satisfied
16 with her advice?

17 THE DEFENDANT WARDEN: Yes, sir.

18 THE COURT: I know you've had numerous
19 conversations with Ms. Cox in reference to this matter,
20 have you not?

21 THE DEFENDANT WARDEN: Yes, sir.

22 THE COURT: Is there anything that she talked to
23 you about that you did not understand and wish to ask me
24 about at this time?

25 THE DEFENDANT WARDEN: I don't think so.

1 THE COURT: You have to speak up a little louder.

2 THE DEFENDANT WARDEN: I am sorry. I don't

3 think so..

4 THE COURT: That is okay. Do you wish to change

5 your plea of not guilty to guilty and give up your rights to

6 a jury trial and all of the previously explained

7 constitutional rights? In other words, do you want to enter

8 a plea of guilty at this time?

9 THE DEFENDANT WARDEN: Yes, sir.

10 THE COURT: Okay. What do you understand the

11 plea agreement to be? What do you think is going to happen?

12 THE DEFENDANT WARDEN: I don't understand.

13 THE COURT: What is the punishment? What is the

14 agreement? What is the agreement that Ms. Cox and Ms. Smith

15 have worked out? What do you have to do?

16 MS. COX: Explain it is for truthful testimony

17 and what will happen.

18 THE DEFENDANT WARDEN: I plead for 45.

19 MS. COX: Years.

20 THE DEFENDANT WARDEN: Forty-five years,

21 non-violent conviction. And count three ten years.

22 THE COURT: Okay. To run concurrent with each

23 other at the same time, right?

24 THE DEFENDANT WARDEN: Yes, sir.

25 THE COURT: This form indicates in exchange for

1 that offer by the state you agree to testify truthfully.
2 That includes all statements made to Glen Ring in a taped
3 interview which you apparently just recently gave.

4 THE DEFENDANT WARDEN: Yes, sir.

5 THE COURT: Do you understand that?

6 THE DEFENDANT WARDEN: Yes.

7 THE COURT: The emphasis is truthful testimony.
8 The Supreme Court cases are clear that if you lie in any way
9 then this whole plea agreement is void. You will go back
10 with being charged with Murder One.

11 THE DEFENDANT WARDEN: Yes, sir.

12 THE COURT: Do you understand that?

13 THE DEFENDANT WARDEN: Yes, sir.

14 THE COURT: I am sure Ms. Cox talked to you about
15 that, right?

16 THE DEFENDANT WARDEN: Yes, sir.

17 THE COURT: Okay. What are your pleas to the two
18 charges, guilty or not guilty?

19 THE DEFENDANT WARDEN: Guilty.

20 THE COURT: As to both?

21 THE DEFENDANT WARDEN: Yes, sir.

22 THE COURT: Has anyone forced you, abused you,
23 mistreated you or promised you anything other than what has
24 been disclosed here to have you enter these pleas?

25 THE DEFENDANT WARDEN: No, sir.

1 THE COURT: In other words, Ms. Cox didn't make
2 you do it or no other inmate made you do it or anything?

3 THE DEFENDANT WARDEN: No, sir.

4 THE COURT: Okay. Are you doing this then of
5 your own free will without any coercion from anyone?

6 THE DEFENDANT WARDEN: Yes, sir.

7 THE COURT: Okay. This form indicates that you
8 do want to have a presentence report ordered, which we will.

9 Now, is there any -- all right. The Court finds
10 as follows: The defendant was sworn and has responded to my
11 questions under oath. The defendant does understand the
12 nature, purpose, and consequences of this proceeding. The
13 defendant's pleas are accepted by this Court finding they
14 are knowingly and voluntarily entered. The defendant is
15 competent for the purposes of this hearing. A factual basis
16 does exist for the pleas. Therefore, the defendant is
17 guilty as charged with no prior felonies.

18 Formal sentencing will be set over to the second
19 day of April. Second day of April at nine a.m.

20 Ms. Warden, on this line marked "Defendant" I
21 note you have already signed this. Is this your signature
22 on the line I am pointing to marked "Defendant"?

23 THE DEFENDANT WARDEN: Yes, sir.

24 THE COURT: Did you sign that after you went over
25 this form with Ms. Cox?

1 THE DEFENDANT WARDEN: Yes, sir.

2 THE COURT: Is there anything in the form that
3 you didn't understand that you wish to ask me about at this
4 time?

5 THE DEFENDANT WARDEN: I don't belief so, sir.

6 THE COURT: Okay. Anything else from the state?

7 MS. SMITH: Yes, your Honor. Since I have not
8 had an opportunity to talk with Ms. Warden, she did give an
9 interview to our investigator. But the investigator was not
10 aware of the facts of the case. He just kind of -- it was
11 kind of a narrative. He just let her talk. I would like to
12 make it clear for the record that when the defendant
13 testifies that she will be asked further questions, more
14 than what Glen Ring asked her. Because he was not aware of
15 the facts. And we want to make it clear that she has to
16 answer those questions truthfully. And there will more than
17 likely be additional evidence given in court more than was
18 just said on the videotape; is that true?

19 MS. COX: Judge, my client has been advised that
20 she will have to have additional conversations with both
21 Ms. Smith and Mr. Burnett in the event there are trials in
22 this case. She will be asked additional questions and every
23 answer must be truthful.

24 THE DEFENDANT WARDEN: Yes, sir.

25 THE COURT: You understand what Ms. Smith just

1 said and what Ms. Cox just said?

2 THE DEFENDANT WARDEN: Everything has to be
3 truthful.

4 THE COURT: Yes.

5 THE DEFENDANT WARDEN: Yes.

6 MS. COX: You will make yourself available and
7 visit with Ms. Smith and Mr. Burnett about all of the facts
8 in this case. Whatever the question is, you will answer it
9 truthfully.

10 THE DEFENDANT WARDEN: Yes.

11 THE COURT: If you don't, this plea agreement is
12 going away. The state will take away their plea bargain.
13 And you will then be charged with Murder in the First
14 Degree, Robbery with Firearms, and Conspiracy to Commit a
15 Felony; do you understand?

16 THE DEFENDANT WARDEN: Yes.

17 MS. COX: Do you understand the Woods' trial is
18 not set until September? But this will be testimony in any
19 proceedings that the state asks you to testify; do you
20 understand?

21 THE DEFENDANT WARDEN: Yes.

22 THE COURT: Anything else from the state?

23 MS. SMITH: Yes, Judge. I want her also to
24 understand that the videotape she gave to Glen Ring will not
25 be used against her in the event our plea agreement goes

1 away for some reason.

2 MS. COX: That is correct, Judge.

3 MS. SMITH: And I want her to understand that the
4 State of Oklahoma will never talk to her alone without her
5 attorney. So if someone shows up in the jail and purports
6 to be the State of Oklahoma, meaning the district attorney's
7 office, that is not going to happen. Myself or Mr. Burnett
8 will never come and talk to her without her attorney being
9 present. Not saying that it is okay for us to do it. We
10 will not talk to her without her attorney being present,
11 whoever that is.

12 THE COURT: Do you understand?

13 THE DEFENDANT WARDEN: Yes.

14 MS. COX: I appreciate that, Judge.

15 THE COURT: Anything else from the state?

16 MS. SMITH: Yes. I want her to tell the Court
17 whether or not if the defense attorneys come and talks to
18 her whether or not she wants her attorney to be present, if
19 they should come and talk to her.

20 MS. COX: I am not sure I understand that.

21 THE COURT: If the defense attorneys come up to
22 the jail to talk to her, does she wish you or whoever her
23 attorney is at that time to be present?

24 MS. COX: I think that, Judge, based on her level
25 of education, eighth grade education, and the severity of

1 these crimes, I would like to instruct her now, you do not
2 talk to anybody without counsel, me or whoever succeeds me
3 to represent your interest; do you understand that?

4 THE DEFENDANT WARDEN: Yes.

5 MS. SMITH: And the defendant, it is my
6 understanding, the defendant has a prior deferred sentence
7 out of Payne County and that has now expired; is that
8 correct?

9 MS. COX: That is correct, Judge.

10 MS. SMITH: That is not part of our plea
11 agreement to do anything with that. Because at this point
12 in time, it is my understanding it has expired. And we
13 cannot revoke that or do anything with that as a result of
14 her plea of guilty in this case.

15 THE COURT: Okay.

16 MS. COX: It is my understanding, Judge, that the
17 deferred sentence has expired. There was -- I think that
18 was close in time when this case was filed. And Payne
19 County never filed an application to revoke the case. I
20 assume it is too late to do it.

21 THE COURT: I am getting the jest is, the point
22 being, there was no agreement made in reference to that case
23 at all for any purpose.

24 MS. SMITH: Right.

25 MS. COX: Right.

1 MS. SMITH: That is correct. And I am asking
2 these questions for the reason I just got a case back from
3 the 10th Circuit. We didn't do anything with a deferred
4 sentence, even though we gave the person immunity from
5 Murder. And they criticized us for not doing something with
6 a deferred sentence, because of his testimony in that case.
7 I want to be clear on the record, I can't do anything with
8 it because it has expired.

9 THE COURT: Okay.

10 MS. SMITH: And it is in another county as well.

11 THE COURT: Okay.

12 MS. SMITH: Thank you, your Honor.

13 THE COURT: Anything else?

14 MS. SMITH: No.

15 THE COURT: From the defendant?

16 MS. COX: No, Judge.

17 THE COURT: Ms. Warden, is there any questions
18 you have of me or anything you don't understand at this time
19 that you would like to ask me?

20 THE DEFENDANT WARDEN: I don't believe so, sir.

21 THE COURT: Okay. Very good. That concludes the
22 record this date.

23 ***That ended the record this date***
24
25

1 APRIL 18th, 2003

2 (On this date, the defendant Brandy Lynn Warden
3 was represented by Public Defender Ms. Traci Rhone.)

4 THE COURT: This is case number CF-02-46, State
5 of Oklahoma versus Brandy Lynn Warden. Ms. Warden is
6 present in person and with counsel, Ms. Traci Rhone. The
7 state is present by ADA George Burnett. This comes on this
8 date, Friday, April 18th, 2003, for formal sentencing after
9 previous pleas of guilty. Raise your right hand, please,
10 ma'am.

11 (Thereupon, the defendant was duly sworn.)

12 THE COURT: Would you put your hand down and
13 state your full name.

14 THE DEFENDANT WARDEN: Brandy Lynn Warden.

15 THE COURT: Your social security number?

16 THE DEFENDANT WARDEN: [REDACTED]-2714.

17 THE COURT: Date of birth?

18 THE DEFENDANT WARDEN: [REDACTED]-81.

19 THE COURT: All right. Back on February 19th of
20 2003 you entered pleas of guilty to the amended charges of
21 conspiracy -- Assessory to Murder After the Fact in count
22 one. You were told it carried one to 45 years. Count two
23 was dismissed by the state. And count three was Conspiracy
24 to Commit a Felony that carries three to ten years and or a
25 fine of up to \$5,000.00; do you recall that?

1 THE DEFENDANT WARDEN: Yes.

2 THE COURT: Since then, you testified at a trial
3 before this Court and we set sentencing over to this date.
4 Does the state have anything to say?

5 MR. BURNETT: No, your Honor.

6 THE COURT: All right. Miss Rhone?

7 MS. RHONE: Yes, your Honor. Your Honor, in
8 defense of my client, she has provided a letter to the Court
9 that indicates her concern and remorse for the actions that
10 resulted in this case. She is indicating that she is aware
11 her actions did contribute to the death of this individual.
12 She was not in a position to assist that person. She was
13 not aware that that was going to take place. And she is
14 very sorry for being involved in the situation. The
15 individuals she was involved with, one, Termane Wood, is the
16 father of one of her children. And as a result of her
17 relationship she got herself in a situation that she would
18 not have normally been involved in. And she is very
19 remorseful for the life that was taken.

20 Additionally, in response to the pretrial report
21 that was submitted to this Court, the evaluator indicated he
22 felt that she was a threat both to herself and other
23 individuals and that she had had several contacts with the
24 juvenile department.

25 Your Honor, we would like to clarify, Ms. Warden

1 did not drop out of school as a result of any behavior that
2 she was having problems at home and problems outside of the
3 home. She left because she became pregnant at the age of
4 14. She dropped out so she could care for her child. In
5 addition to that, her mother was still living at the time
6 she dropped out of school. Her mother was assisting her,
7 but was beginning to become very ill. And at that time was
8 actually blind. When her mother did actually die, she then
9 left the home and became emancipated so she could care for
10 her child. She was the youngest of five children, as it
11 indicates in there. She took on the responsibility of
12 raising her child at that time.

13 She also wants the Court to be aware that the
14 truancy issues appear to be deceiving. She was taken out of
15 school because of problems with one of her teachers who did
16 something that was sexual in nature that caused her concern.
17 And her mother actually took her out of school and began to
18 home school her. And there was a dispute with the school
19 and her mother and the family as a result of this teacher.
20 It may have been reported as truancy when it was -- her
21 mother actually was home schooling her at that time.

22 Furthermore, the petit larceny charge, she was
23 unfortunately with some individuals that were shoplifting.
24 She was not involved. The charges were dismissed and
25 nothing was actually filed against her as a result of that.

1 She wants this Court to know she has attempted to
2 -- she has actually started taking classes and is taking
3 classes while in Cleveland County to continue getting her
4 GED -- in Oklahoma County. And then when she was
5 transferred because of the concern for her well being, she
6 was unable to continue in those classes.

7 The Court is well aware of what she has gone
8 through in order to testify in this case. And continues to
9 have concerns that when she is placed in a facility that
10 that may follow her and there may be some concern for her
11 safety. Even as recent as about two or three weeks ago she
12 had an incident involving a nurse in the Oklahoma County
13 Jail. Comments were made to her about her testifying and
14 causing -- possibly causing the death of one of the other
15 co-defendants. Later it was found out that that nurse was
16 servicing the two defendants, providing medicines to them,
17 and they had some kind of relationship. The jail handled
18 the situation. We understand that nurse may no longer be
19 with the Oklahoma County Jail or with the department at this
20 point as a result of her actions.

21 So as you see, she continues to be placed in
22 jeopardy. This Court is well aware, she has two trials yet
23 to testify in, if the co-defendants are able to sever their
24 cases. She is willing and very able to do that because she
25 wants to try to do what she can to make amends and provide

1 assistance to the state as well. And likewise may have to
2 testify in the trial in Cleveland County as a result of the
3 robbery. She is well aware of her responsibility and wants
4 the Court to consider that and take that into consideration.
5 And she will try to do the best she can to turn her life
6 around.

7 She has three young children she has to raise and
8 wants to be around them to raise them. We ask you take all
9 of that into consideration and allow her the opportunity to
10 get some type of opportunity to get out and to take care of
11 her children.

12 THE COURT: Okay. Ms. Warden, do you have
13 anything you wish to say? You don't have to speak if you
14 don't want to. I have read your letter that was presented
15 to me this morning. But if you want to add anything you
16 may.

17 THE DEFENDANT: My letter pretty much says it.

18 THE COURT: Okay. Anything else from the state?

19 MR. BURNETT: Just to follow our agreement, your
20 Honor, is all we ask for.

21 THE COURT: All right. Well, as all the parties
22 are aware, including Ms. Warden, I presided over the trial
23 in which she gave testimony. I am of the opinion it was
24 very powerful testimony. It certainly appeared to the Court
25 it was very truthful testimony. I think one might surmise

1 based upon the verdict of the jury in that case they felt
2 like it was very truthful testimony as well.

3 It is unfortunate, Ms. Warden, that you put
4 yourself in such a position at such a young age. Life is
5 full of choices. Sometimes we make good choices. Sometimes
6 we make bad choices. As you are well aware and as you
7 acknowledged in your letter, you made a horribly bad choice
8 on New Year's Eve. It is unfortunate for you and
9 unfortunate for the young man that lost his life and
10 unfortunate for your three children. But as you know and as
11 you have accepted the responsibility for, you have to pay
12 for that extremely poor choice you made. I will say this: I
13 am of the opinion and I have been in this courthouse working
14 on my 25th year now. You did the right thing when you
15 testified. That was probably the best choice you ever made
16 in your life it appears to me. So perhaps at age 21 you
17 have made the first choice that maybe may turn around the
18 rest of your life. I hope that is the case. I hope you
19 mean everything that was in the letter. Because if you do
20 and you continue to stay on that path, at some point you
21 will be able to assist in the raising of your children. But
22 make no doubt about it, you did the right thing when you
23 testified. If you have any second thoughts, any
24 reservations about that, I am of the opinion, based on my 25
25 years in this courthouse, you did the right thing.

1 All right. The agreement of the state was 45
2 years and ten years to run concurrent. You will be
3 sentenced pursuant to your agreement and they will be
4 allowed to run concurrent with each other. You will have to
5 pay the actual court costs, whatever those turn out to be.
6 The victim compensation assessment will be \$100.00, it is
7 \$50.00 per count. \$100.00. The Court appointed attorney
8 fee of \$175.00.

9 Now, you have the right to appeal your sentences
10 imposed by the Court. Did you read this paragraph or have
11 it read to you entitled "Notice of right to appeal"?

12 THE DEFENDANT WARDEN: Yes.

13 THE COURT: Did you understand it?

14 THE DEFENDANT WARDEN: Yes, I did.

15 THE COURT: Do you have any questions?

16 THE DEFENDANT WARDEN: No.

17 THE COURT: Are these your initials by the
18 circled answer yes?

19 THE DEFENDANT WARDEN: Yes.

20 THE COURT: All right. Once again I will
21 reiterate in my opinion, for whatever it is worth, you did
22 the right thing. You should not have any second guesses at
23 all about stepping up to the plate and doing what was right.
24 There will be somebody someday much, much greater than me
25 judge your actions. And I think if there is a ledger

1 somewhere you've got a huge check mark in your ledger by
2 doing the right thing. All right.

3 Now, as far as one of the issues that Ms. Rhone
4 mentioned, I know in the old days and I don't know about
5 today, but in the old days there was a reciprocal agreement
6 with the State of Colorado to house people in situations
7 such as Ms. Warden's. I don't know if that is still a
8 possibility. But if no one has looked into that, that might
9 be something that should be explored. And I would say one
10 could argue at least as quickly as possible. But that is
11 not for me to decide. Anything else from the state?

12 MR. BURNETT: We intend to do that.

13 THE COURT: Anything else from the defendant?

14 MS. RHONE: No, your Honor.

15 THE COURT: Okay. Good luck, young lady. Do
16 what you said in the letter. Okay. You are excused. I
17 guess I will see you again in the future.

18 ***That ends the hearing this date***
19
20
21
22
23
24
25

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA,)

4 PLAINTIFF,)

5 vs.) CF-2002-46.

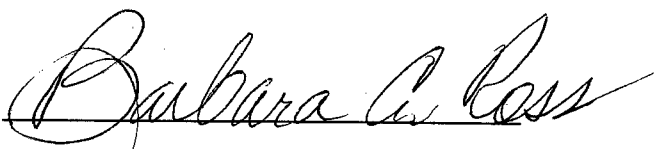
6 BRANDY LYNN WARDEN,)

7 DEFENDANT.)

8
9 CERTIFICATE OF THE COURT REPORTER.

10 I, BARBARA A. ROSS, CSR, RPR, Official Court
11 Reporter in and for the State of Oklahoma, Oklahoma County,
12 do hereby certify that the forgoing transcript in the
13 above-styled case is true, correct and a complete transcript
14 of my shorthand notes of the hearing in said cause.

15
16
17 DATED THIS 11th DAY OF JUNE, 2003.

18
19
20
21 

22 BARBARA A. ROSS, CSR, RPR

23 OFFICIAL COURT REPORTER

24 FOR THE STATE OF OKLAHOMA

25 COUNTY OF OKLAHOMA

Barbara Ross
Oklahoma Certified Shorthand Reporter
Certificate No. 0370
Exp. Date: December 31, 2004

FILED IN THE DISTRICT COURT
 IN THE DISTRICT COURT IN AND FOR OKLAHOMA
 STATE OF OKLAHOMA

AUG 06 2003

THE STATE OF OKLAHOMA,

Plaintiff,

vs.

ZJAITON TYRONE WOOD,

Defendant.

PATRICIA PRESLEY, COURT CLERK
 by  Deputy

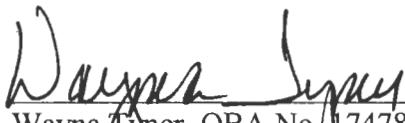
Case No. CF-2002-46

MOTION TO REVEAL ALL DEALS

Comes now the Defendant, Zjaiton Tyrone Wood, by and through his counsel undersigned below, and moves that the Court enter an Order directing the State of Oklahoma to reveal all deals, offers of leniency or favorable treatment of whatever form or nature and specifically any records which pertain to all State's witnesses. As grounds for this motion, Defendant states that such information is exculpatory and that it would tend to impeach the testimony of witnesses. United States v. Bagge, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985) and Brady v. Maryland, 373 U.S. 83 S.Ct. 1194, 10 L. Ed.2d 215 (1963). Due process clause of the 14th Amendment to the United States Constitution and corollary provisions of the Oklahoma Constitution require disclosure of any such promises of leniency, favorable treatment, monetary reward, whether expressed or implied. Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 Lawyers Add.2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); Binsz v. State, 675 P.2d 448 (Okla. Cr. 1984).

Wherefore, the Defendant prays that this motion be granted.

Respectfully submitted,
ZJAITON TYRONE WOOD

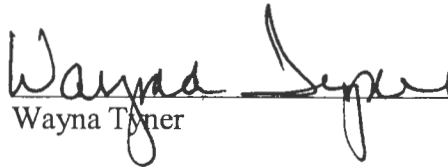


Wayna Tyner, OBA No. 17478
John D. Dalton, OBA No. 15381
G. Lynn Burch, OBA No. 14986

Attorneys for Defendant Zjaiton Tyrone Wood
Oklahoma Indigent Defense System (OIDS)
Tulsa Capital Trial Division
610 South Hiawatha
Sapulpa, Oklahoma 74066
Tel: 918.248.5026
Fax: 918.248.7751

CERTIFICATE OF SERVICE

I certify that on this 6th day of August, 2003, I delivered a full, true and correct copy of the foregoing to the Oklahoma County District Attorney's Office, Oklahoma County Courthouse, Oklahoma City, Oklahoma.



Wayna Tyner

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

THE STATE OF OKLAHOMA,
Plaintiff,

vs.

ZJAIRON TYRONE WOOD,
Defendant.

CASE NUMBER: CF 2002-46

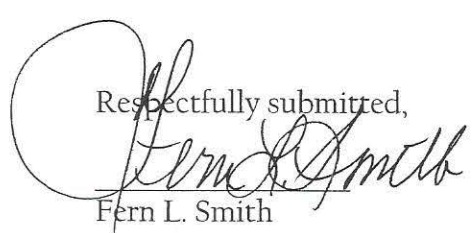
PATRICIA PRESLEY, COURT CLERK
by Deputy

AUG 18 2003

STATE'S RESPONSE TO DEFENDANT'S MOTION TO REVEAL ALL DEALS

COMES NOW the State of Oklahoma by and through C. Wesley Lane II, District Attorney for District Number Seven and moves this Court to rule Defendant's motion moot and the State has fully complied with 22 O.S. 2201, et. seq., and will continue to disclose any new evidence.

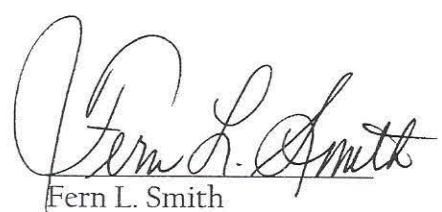
Respectfully submitted,


Fern L. Smith

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Order was served on Wayna Tyner by mailing or hand-delivering a copy on the 18 day of Aug, 2003 to the following address:

610 S. Hiawatha
Sapulpa, Oklahoma 74066


Fern L. Smith

Assistant District Attorney

Brandy Warden
D/S in Payne County.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLA.

STATE OF OKLAHOMA

SEP 30 2004

STATE OF OKLAHOMA,

)

PATRICIA FLEISHER, COURT CLERK

By

PLAINTIFF,

)

Vs.

)

Case No. CF-02-46

TERMANE WOOD,

)

04-550

ZJAITON WOOD,

)

DEFENDANTS.

)

TRANSCRIPT OF MOTION HEARINGS

HAD ON THE 28th DAY OF MAY, 2003, THE 16th of JULY, 2003,
THE 19TH DAY OF AUGUST, 2003, THE 20TH DAY OF AUGUST,
2003, THE 27TH DAY OF AUGUST, 2003, THE 3RD DAY OF
SEPTEMBER, 2003, THE 23RD DAY OF FEBRUARY, 2004 AND THE
26TH DAY OF FEBRUARY, 2004

BEFORE THE

HON. RAY C. ELLIOTT

FILED
IN COURT OF CRIMINAL APPEALS
DISTRICT JUDGE
STATE OF OKLAHOMA

NOV 23 2004

MICHAEL S. RICHIE
CLERK

Reported By:

BARBARA A. ROSS, CSR, RPR

OKLAHOMA COUNTY COURTHOUSE

PC COPY

COPY

1 SEPTEMBER 3rd, 2003

2 THE COURT: This is case number CF-02-46, State
3 of Oklahoma versus Zjaiton Wood. Mr. Wood is present in
4 person and by counsel, Miss Wayna Tyner, Mr. J. Dalton and
5 Mr. L. Burch.

6 Mr. Termene Wood is present in person and
7 represented by Mr. Lance Phillips.

8 The state is present by ADA George Burnett.

9 This comes on this date Wednesday, September 3rd,
10 2003, on previously scheduled motion hearings.

11 I received numerous motions from the defense. I
12 received a written response from the state on each
13 motion.

14 Mr. Burnett, although Ms. Smith filed responses,
15 are you prepared to argue them?

16 MR. BURNETT: Yes, your Honor.

17 THE COURT: The ones I need arguments on.

18 MR. BURNETT: Yes, your Honor.

19 THE COURT: I have read everything. I stayed up
20 until a little after midnight last night going over
21 everything again so we could start on time this morning.
22 But in light of that, I have read everything. I have them
23 numbered in order. Most of them -- all of them, I assume
24 you put your arguments you wanted to present and preserve
25 in your motions. There are very few of them I need

1 argument on. Most of them I can rule on the pleadings.

2 All right. The first one that I have and I will
3 go in the order I have got them in the book. So will give
4 you a moment to get yours in order if yours are not in the
5 same order I have.

6 The first one is Motion to Suppress. I will hear
7 brief argument on that one if you wish. Ms. Tyner or
8 whoever wishes to argue.

9 MS. TYNER: If Mr. Johnny Dalton could argue that
10 one.

11 THE COURT: You may. It doesn't matter to me.
12 Just take them however you want to present them.

13 MR. DALTON: Your Honor, this is a motion that
14 may require testimony if your Honor is inclined to listen
15 to the evidence regarding the standing. The state has
16 addressed that in their response, we lack standing to
17 challenge the lawfulness of the search for our client,
18 Zjaiton Wood, in a residence of a third person in Salasaw
19 in Sequoyah County.

20 I believe, your Honor, that is something that
21 needs further investigation based on some testimony at the
22 preliminary hearing regarding the owner of the residence
23 and her statements to or her testimony indicating that
24 she -- that my client, Mr. Zjaiton Wood, and the
25 co-defendant Teresa Bateman -- Lanita Bateman may have

1 actually received permission to go into her home or her
2 trailer home. But she couldn't remember because of the
3 circumstances of her physical condition after being
4 hospitalized after a car wreck.

5 THE COURT: What are you seeking to suppress?

6 MR. DALTON: I am seeking to suppress a statement
7 allegedly made by my client to officers when they actually
8 arrested him in that residence.

9 THE COURT: At the time of the arrest?

10 MR. DALTON: At the time of the arrest.

11 THE COURT: You don't make that very clear in
12 your motion. At least not clear to me.

13 MR. DALTON: I understand, your Honor. That
14 would be the first thing is the statement. It is
15 something to the effect that this officer testified that
16 or stated in his report that Mr. Zjaiton Wood said --

17 THE COURT: "Might as well shoot me now"?

18 MR. DALTON: Something to that effect. "Shoot
19 me. Kill me." That type of statements would be the one.
20 The other evidence, your Honor, is ---

21 THE COURT: Okay. Why don't we set that over and
22 I will give you leave to file an Amended Motion so you can
23 make it a little clearer what --

24 MR. DALTON: What evidence.

25 THE COURT: -- what you are seeking to suppress.

1 MR. DALTON: I will do that, your Honor.

2 THE COURT: So let's put that one on hold for now
3 and before we conclude the record today we will set a new
4 date, since we are going to continue this trial anyway for
5 reasons heretofore in the record. I will give you leave
6 to file an Amended Motion to Suppress and be a little more
7 specific for the Court. I will give the state a chance to
8 respond to the Amended, if they desire, and then we will
9 have further hearing. And if you want to present
10 evidence, have everybody here at that time ready to go.

11 MR. DALTON: Thank you, your Honor.

12 THE COURT: The next one, then, Motion to
13 Determine Co-defendant Brandy Warden as an Accomplice as a
14 Matter of Law. Who wants to present a brief argument on
15 that matter?

16 MS. TYNER: Your Honor, if I may.

17 THE COURT: You may.

18 MS. TYNER: As you -- I really don't know if I
19 need to add much more from my motion. Just to bring out,
20 your Honor, that the test, you know, sets out and it is on
21 my page three "as to determine whether a person is an
22 accomplice is the witness is an accomplice when he could
23 be indicted for the offense for which the accused is on
24 trial."

25 And your Honor, as I also stated in the motion, but

1 just to refresh your memory, Miss Brandy Warden was bound
2 over at a preliminary hearing on the same three charges
3 that Zjaiton Wood was bound over on. An indictment, as
4 you know, basically requires the same proof of evidence as
5 an indictment. So therefore, I think I submit to the
6 Court that it is clear that Ms. Warden is an accomplice in
7 this case. And when it is clear, Your Honor, that the
8 Court, itself, can make that determination as a matter of
9 law. Only when the facts conflict as to whether a witness
10 is an accomplice does that issue go to the jury.

11 THE COURT: In effect, you want me to instruct
12 the jury.

13 MS. TYNER: Yes, sir.

14 THE COURT: Pursuant to OUJI. Wouldn't it be
15 better held until we get to our instruction conference --

16 MS. TYNER: If the Court --

17 THE COURT: -- assuming she testifies.

18 MS. TYNER: If the Court -- if that is how the
19 Court wants it. But I would submit -- I mean the Court
20 has -- I submit she is an accomplice right now she is
21 bound over for trial. I don't know if necessarily ---

22 THE COURT: But unless she testifies, isn't it
23 moot? If she doesn't testify -- and of course that is up
24 to the attorneys not up to me. Unless she testifies it is
25 kind of moot is it not? If the state doesn't call her and

1 that is their option, if one of the attorneys or all of
2 the attorneys for the defense choose not to call her, it
3 is a moot issue, isn't it?

4 MS. TYNER: Your Honor, the reason why I submit
5 it early is I have a good faith belief that she will
6 testify. And if she doesn't, yes, it is moot. But if she
7 does --

8 THE COURT: I will hold in abeyance until when
9 and if she testifies. And we will hold it in abeyance,
10 one, when or if she testifies. And two, until the
11 instruction conference at the conclusion of the
12 proceedings, if we get to the instruction conference.
13 All right?

14 MS. TYNER: Thank you.

15 THE COURT: Motion to Strike One of the Alleged
16 After Former Felony Convictions on Page Two of the Amended
17 Information.

18 MS. TYNER: That is also my motion, your Honor.

19 THE COURT: Is that the one the state confesses?

20 MS. TYNER: No.

21 THE COURT: Okay. You are right. It is not. I
22 am sorry. I am confused.

23 MS. TYNER: I had to look as well. Your Honor,
24 again, it may not need more argument than what is
25 contained in the motion.

1 Basically, the issue is one of the alleged priors
2 listed on Page Two there is one case out of Oklahoma
3 County for Possession of a Firearm by a Convicted Felon.
4 And on the same day in Payne County he has a conviction.
5 The events arose on the same day. But he was also
6 convicted in Payne County for Possession of a Firearm
7 After Former Conviction of a Felony. It is the same
8 pistol, your Honor. What happened, as the Court I am sure
9 has read in the exhibits and I would point to the Court,
10 it is the same day that it occurred. I know the state
11 brings up they were different locations. However, it was
12 one process. He had the pistol, if the Court would under
13 the Affidavit of Probable Cause, which is exhibit C, out
14 of Payne County, an investigator Noah Bagwell discusses in
15 the Payne County case the basis of the Possession of the
16 Firearm was when Mr. Wood attempted -- went to a pawn shop
17 or something to try to sell it. On the same day, and I
18 don't know what time ---

19 THE COURT: I agree. Sustained.

20 MS. TYNER: Thank you, sir.

21 THE COURT: All right. The next one is a Motion
22 to Strike an Alleged Conviction. The state intends to
23 introduce to prove the prior violent felony aggravator.
24 This is the one the state confesses, sort of. They are
25 agreeing that the CF-97-519 was dismissed. But they are

1 not agreeing to strike the aggravator, per se. Are you
2 wanting them to go further than that? Am I getting
3 confused again?

4 MS. TYNER: I read it, your Honor, that the state
5 and Mr. Burnett I am sure can clear it up if I am wrong.
6 The state's moving to strike CF-97-519 from the More
7 Definite and Certain statement. I would ask it be
8 stricken from the Bill of Particulars, because that is
9 what would be read to the jury.

10 THE COURT: You agree with that, Mr. Burnett?

11 MR. BURNETT: What we attempt to do is introduce
12 evidence as part of the continuing threat, Judge. Not
13 necessarily the conviction.

14 MS. TYNER: But we ask that that particular
15 conviction be stricken from the Bill of Particulars that
16 is read to the jury, your Honor.

17 THE COURT: In any form or fashion? Or every
18 form or fashion?

19 MS. TYNER: Only under the prior violent felony.

20 THE COURT: You are agreeing to under the prior
21 violent felony?

22 MR. BURNETT: Yes, but the evidence of that, in
23 fact, is still part of the --

24 THE COURT: So the Motion to Strike an Alleged
25 Conviction the state intends to introduce to prove the

1 prior violent felony aggravator as it applies to CF-97-519
2 is sustained.

3 MS. TYNER: Thank you, your Honor.

4 THE COURT: The next one is Defendant's Motion
5 for Disclosure of Exculpatory Evidence and Notice to the
6 State of Specific Exculpatory Evidence Requested. That is
7 sustained. You are not arguing that you don't have to
8 give up exculpatory evidence, are you? The response
9 basically says, we have done it. We being you.

10 MR. BURNETT: Yes, your Honor.

11 THE COURT: I will show that sustained. If you
12 have done it, you have complied. If you haven't, you are
13 ordered to do it.

14 MR. BURNETT: Thank you, your Honor.

15 THE COURT: The next one is Motion to Compel
16 Disclosure of all Quote/Unquote Jailhouse Informants.
17 You're basically saying you complied. I will show it
18 sustained. If you complied, you are in compliance. If
19 you haven't, do it.

20 MS. TYNER: I would just request specifically as
21 Mr. Colman Givens or if there is any other, I know we have
22 received some information on Colman Givens.

23 THE COURT: Any and all jailhouse informants you
24 have got to disclose pursuant to the Dodd opinion.

25 MR. BURNETT: Yes, your Honor.

1 THE COURT: All right. The next one is a Motion
2 Requesting Production of all Statements of Co-defendants
3 Termane Wood, Lanita Bateman and Brandy Lynn Warden.
4 Again, your response indicates you complied. I show the
5 motion complied. If you already complied, you are in
6 compliance. If not, do it. Our discovery deadline is
7 already passed, right? Everybody agree with that?

8 MS. TYNER: Your Honor, I would for Mr. Wood, the
9 state during this period we may have some supplemental
10 witness list to turn in.

11 THE COURT: But everything that everybody
12 possesses now has been provided, pursuant to the previous
13 order, right?

14 MS. TYNER: On behalf of Mr. Wood, right.

15 MR. PHILLIPS: Other than I believe your Honor on
16 behalf of Mr. Termane Wood, I believe there is a new DNA
17 report we are expecting pretty quick.

18 THE COURT: The next one is entitled Motion to
19 Reveal all Deals. I guess "Deals" is a legal phrase.
20 Again your response indicates you complied. I show it
21 sustained. If you've already previously complied,
22 so be it. If not, do it.

23 MS. TYNER: Your Honor, if I could put on the
24 record, I am concerned about Miss Brandy Warden does have
25 an accelerated -- she is still on a deferred judgment and

1 sentence out of Payne County. That does not expire until
2 sometime in October of this year. I have been in the
3 process of trying to contact one of the prosecutors that
4 is on that case to determine whether or not she is going
5 to be accelerated. I also know right after this offense
6 allegedly occurred her probation officer, and I have a
7 report from January the 17th, indicating this offense as
8 an alleged violation and others in addition to that. And
9 the probation and parole requested that to be
10 accelerated. However, nothing has been done on behalf of
11 the prosecution. I am trying to find out what it is and
12 if there was any deal.

13 The other thing I would like to ask put on the
14 record is if Miss Bateman received any consideration
15 concerning the Cleveland County charge concerning the
16 pizza -- I'm sorry. Ms. Warden. If I said Ms. Bateman
17 I'm sorry. Miss Warden concerning in Cleveland County
18 about an alleged offense that occurred supposedly a few
19 hours before ours. Everybody that I can tell has been
20 charged except for Ms. Warden. Mr. Zjaiton Wood has a
21 case against him. Mr. Termane Wood and Ms. Lanita
22 Bateman. So I could also like to put that on the record
23 that I would like to know if she received any special
24 consideration in the Cleveland County case.

25 THE COURT: Any and all deals and/or agreements

1 that the DA's office of Oklahoma County has with any
2 witness must be disclosed. I am sustaining that. If the
3 Payne County DA on their own discretion decides not to
4 accelerate her and they haven't agreed or talked to them
5 in reference to that, then so be it. But any and all deals
6 that this DA's office has made with any other and all
7 other DA's offices anywhere in the world in reference to
8 any witness must be disclosed. If they haven't made a
9 deal, they obviously can't disclose anything. So
10 witnessess, any and all deals, including those you
11 mentioned in reference to any other deals, it will be
12 sustained.

13 The next one, Motion to Require the State --
14 excuse me -- Motion Requiring Disclosure of Criminal
15 History of State's Witnesses. Again that will be
16 sustained.

17 The next one is Motion to Require the State to
18 Produce Current Addresses. Again that is current as far
19 as they know. The best of their knowledge any and all
20 witnessess' addresses must be disclosed. That is pursuant
21 to the law. That will be sustained. The response
22 indicates they complied. If they have, that is good
23 enough. If they haven't, do it. I am assuming on those
24 type motions you are filing them for continuing. At this
25 point, you are not alleging any specific violations. You

1 are not claiming there is criminal history that you
2 haven't receive that they have.

3 MS. TYNER; Actually, your Honor, I don't believe
4 and I meant to ask Mr. Burnett about it when we met last
5 week. I know we have not received NCICs for all of the
6 state's witnesses. I was going to look back to see if
7 some of the first, you know, few main witnesses if we had
8 them. I don't think we have, your Honor. I know we
9 haven't received them for all.

10 THE COURT: If they don't have a criminal
11 history, then there may not be an NCIC. So again any and
12 all criminal history you are ordered to turn over.

13 MS. SMITH: My procedure is to try to check those
14 a month before. I know the problem we get into, if you
15 check them too early, we are not in compliance. If we are
16 too late, we are not in compliance. I try to get them
17 three or four weeks before the trial.

18 THE COURT: Okay. The next one is Motion for
19 Disclosure of any Mitigating Evidence. That will be
20 sustained. The response indicates you complied. If you
21 have, so be it. If you haven't, do it.

22 The next one is Motion for Discovery of Prior
23 Jury Service. I would like you to speak to exactly what
24 you mean there.

25 MR. BURCH: Your Honor, in other cases in other

1 counties we've come across the District Attorney's Office
2 sometimes keep records on individuals who have served on
3 juries in those jurisdictions. I know from Mr. Burnett's
4 response, he indicates they do not do that.

5 THE COURT: I am not aware of that in this county
6 having ever been done, because of the volume. I am
7 assuming you don't do that presently, do you?

8 MR. BURNETT: No, your Honor.

9 THE COURT: All right. And even if you did, I am
10 not sure you would be entitled to it unless you wanted to
11 pay part of the salary of the person that keeps those
12 records. But I will show it overruled. You don't have
13 them you made your record you asked for them. He
14 indicated on the record he doesn't have them. I will show
15 it overruled.

16 The next one is a Motion to Prohibit Jury
17 Disbursal and to Prohibit the Jury's Exposure to the
18 Victim's Family or Friends. You are not trying to contend
19 this is anything but an open courtroom, are you?

20 MR. BURCH: No, your Honor. This is basically a
21 motion that is filed as a matter of course. I understand
22 your Honor runs a tight courtroom. I am not -- I don't
23 have any outstanding concern about you making sure that
24 that kind of thing is taken care of.

25 THE COURT: I will show it overruled and

1 certainly all court rules will be expected to be followed
2 by all parties with the proper admonition from all of the
3 attending attorneys. So for the record, I will show it
4 overruled and the law be followed.

5 The next one is Motion to Enjoin Victims' Family
6 and/or Victims' Rights Advocates from Showing Emotion in
7 the Courtroom while Sitting as Spectators and brief in
8 support thereof. Once again, I suspect, based on previous
9 trials, there will be emotions displayed by all parties
10 both from the victims' families as well as the defendants'
11 families and perhaps even the defendants. Maybe even
12 witnesses. I think that is to be expected in a trial of
13 this nature where there is a death involve in which the
14 state is seek the ultimate punishment, to-wit, the death
15 penalty. Again, all court rules and procedures will be
16 followed. I will for the record, I will overrule your
17 motion but state on the record that all parties will be
18 expected to follow the rules no matter which side of the
19 bench they are sitting on.

20 All right the next one is Motion for Jury
21 Questionnaire and Brief in Support thereof. That will be
22 overruled. I think the law is clear you don't have an
23 absolute right to that. So it is at the discretion of the
24 court. It will be overruled.

25 The next one is Motion to Invoke Rule Prior to

1 Voir Dire to Prohibit Witnesses from Conversing and
2 Enjoining the District Attorney from Advising of Previous
3 Testimony. Again, I think the law is pretty clear the
4 rule may be invoked. But it is not applicable to voir
5 dire, and/or opening statements. Again if it is invoked
6 at the proper time, it will be allowed. And will be put
7 into effect. All parties, both the DA and all defense
8 attorneys, and all witnesses for all parties will be
9 expected to not discuss previous testimony. It will be up
10 to the individual lawyers. Since the Court does not know
11 the witnesses, it will be up to the individual lawyers for
12 all parties to advise your witnesses not to discuss
13 testimony pursuant to the rule. So it will be overruled
14 to the extent of invoking it prior to voir dire and/or
15 prior to opening statements. Again, the law will be
16 followed and certainly at the proper time the witnesses
17 and attorneys will be told to discuss with your individual
18 witnesses not to discuss the testimony. So it will be
19 overruled in part and I guess sustained in part to the
20 extent that not only the DA will be enjoined from advising
21 witnesses of previous testimony so will all of the
22 parties. Is it a clear enough ruling for your appellate
23 purposes?

24 MR. BURCH: Yes, your Honor.

25 THE COURT: The next one is Motion for Voir Dire

1 Regarding Sentencing. I think the law is pretty clear
2 there. I read your brief and your motion. I think the
3 law is pretty clear. Well, tell me what exactly you are
4 wanting there.

5 MR. BURCH: Your Honor, the main purpose of this
6 motion is that -- to be allowed to explore with
7 specificity the juror's attitude towards the various
8 sentencing options in this case. I think since this
9 motion has been filed there has been an opinion from the
10 Court of Criminal Appeals the Hanson v. State case which
11 talks about what are the proper parameters of the
12 specificity that you can get into when questioning the
13 jurors about their attitudes toward the death penalty and
14 the other various sentencing options such as this.
15 Basically the purpose of it is to be permitted ---

16 THE COURT: Are you asking me to follow the law?

17 MR. BURCH: Yes, sir, as stated by that case.

18 THE COURT: Sustained pursuant to the law. I
19 will put pursuant to current law. That ought to cover the
20 Hanson case.

21 All right. The next one is a Motion to Prohibit
22 Prosecution from Excluding Potential Jurors who Express
23 Reservations Regarding the Death Penalty and a brief in
24 support thereof. Again we show it sustained pursuant to
25 the current law. We are going to follow the law in voir

1 dire. And I expect all parties to attempt to follow the
2 law in voir dire. We will show it sustained pursuant to
3 the current law. Anybody want to argue that ruling or
4 discuss it further? All right. All right.

5 The next one is Motion to Strike the Death
6 Penalty Sentencing Procedure as Unconstitutional under
7 Ring versus Arizona and Strike the Bill of Particulars. I
8 think the law is clear there. That will be overrule.

9 The next one is Motion in Limine in Reference to
10 Remorse. I will hear you briefly on that.

11 MR. BURCH: Your Honor, from the state's
12 response, I think they may have misconstrued what the
13 point of this motion is. This goes to the first stage of
14 these proceedings. And the basic purpose is to keep or to
15 try to preclude the state from commenting on the
16 defendant's purported lack of remorse, if any, during
17 statements on his attitude or anything of that nature
18 prior to when that kind of thing can be properly taken
19 into account, which would be in the second stage of the
20 case. I know in the state's response they say it is
21 proper in the second stage. We don't have a quarrel with
22 that. This is going to the first stage, your Honor.

23 MR. BURNETT: Well, it is also my position that
24 we have to prove the intent of the defendant. So
25 anything -- we ought to be able to comment on any of his

1 behavior because we are trying to prove he committed a
2 homicide. His intent, his desire, or his motivation to
3 commit this felony murder that took place, we certainly
4 should be able to comment on anything that we see as a
5 part of his behavior as a part of that.

6 THE COURT: I will overrule it at this time, but
7 as you know, motion in limine rulings are advisory
8 rulings. You can bring them up at any time. At this
9 point, I will overrule it.

10 All right. The next one is a Motion in Limine in
11 Reference to Prosecutorial Misconduct. Again, this Court
12 intends to follow the law. I am pretty -- I believe have
13 a working understanding of the McCarty case and so forth,
14 the cases cited by the defense. So I will show it
15 sustained pursuant to the current law.

16 All right. The next one is Motion in Limine
17 Regarding Caldwell. I will hear you briefly there.

18 MR. BURCH: Yes, your Honor. This basically duck
19 tails with the prior motion about prosecutorial
20 misconduct. Basically this is intended to address any
21 comments by the prosecutor that would communicate to the
22 jury in anyway lessen the gravity of the decision they are
23 making in this case. Indicating that responsibility for
24 imposing the ultimate punishment in this state and
25 elsewhere is other than with the jury. The genesis of

1 that -- pardon me -- Is that there have been -- there
2 have been some cases from the Court of Criminal Appeals
3 where they say that the comments have been violative of
4 those and that is the purpose of this motion.

5 THE COURT: Any reason why I shouldn't sustain
6 that one at this point?

7 MR. BURNETT: Yes, your Honor. We stand on case
8 law.

9 THE COURT: Yes, there is a reason why?

10 MR. BURNETT: No.

11 THE COURT: All right. I will show it sustained
12 at this time.

13 All right. The next one is a Motion to Allow
14 Evidence of Life Without the Possibility of Parole. I
15 think that will be overruled.

16 The next one is a Motion to Charge Presumption of
17 a Life Sentence, a Life Without the Possibility of Parole
18 Sentence and a Death Sentence. What are you talking about
19 there? You want me to instruct the jury on all three
20 possible punishments?

21 MR. BURCH: Yes, your Honor, this is akin to how
22 there is a presumption of innocence in the first stage as
23 to the guilt or innocence of the crime charged. We
24 maintain there is a presumption that if and when they get
25 to the second stage and they are considering the

1 punishments. They start with the presumption of life or
2 life without parole and then move on towards the death
3 sentence in accordance with the burden of proof that is
4 put on the state through the instructions.

5 THE COURT: You are requesting what is commonly
6 referred to as a presumption of life instruction?

7 MR. BURCH: Yes, sir.

8 THE COURT: I think the Court of Criminal Appeals
9 have ruled pretty recently on that as well. I show that
10 overruled. Again, the jury will be instructed in
11 accordance with the law as to all three possible
12 punishments.

13 The next one is Motion to Strike Victim Impact
14 Statements as Unconstitutional and brief in support
15 thereof. Again, it is allowed by law. It will be
16 overruled. This Court will and has every intention of
17 following the dictates of the Cargle case.

18 The next one is Motion to Require the State to
19 Provide Victim Impact Statements Prior to Trial and
20 Request for an Evidentiary Hearing and brief in support
21 thereof. I think that is confessed in the response. And
22 I will show it sustained in dictates of the Cargle
23 Opinion will be followed by this Court.

24 The next one is Objection to Oklahoma Uniform
25 Jury Instructions Defining Mitigation. I think by law I

1 am required to follow the instructions until they are
2 changed or otherwise modified. I will show it overruled.
3 If it is modified between now and the time of the reading
4 to the jury, we will certainly reurge it.

5 The next one is Objection to Uniform Jury
6 Instruction Regarding Finding Unanimity with Respect to
7 Mitigating Circumstances. Again, this Court will follow
8 the OUJI instructions as I am bound to do until they are
9 otherwise modified or changed. I show that overruled.

10 The next one is Objection to Uniform Jury
11 Instructions Regarding the Weighing of Aggravating
12 Circumstances Against Mitigation. I will show it
13 overruled. This Court is bound to follow OUJI until they
14 are changed or modified.

15 The next one is Defendant's Objection to the
16 Verdict Form, in-re: Continuing Threat. Again the
17 verdict forms are provided and made a part of the OUJI
18 instructions, which this Court is bound to follow until
19 otherwise modified or changed. For purposes of the
20 ruling, I show it overruled.

21 The next one is motion for Brewer Hearing
22 Regarding Prior Violent Felony Aggravators. It is the
23 state's position they are not entitled to a Brewer
24 Hearing? The way I read the case, the Court must hold an
25 in-camera Brewer hearing. I will show it sustained. If

1 you later want to reconsider it, file a motion. For now,
2 I will show it sustained.

3 MR. BURNETT: Okay.

4 THE COURT: Certainly either side can, if they
5 have a good faith basis, can ask for a reconsideration of
6 any of my rulings today. So show it at this point
7 sustained.

8 The next one is Motion Requesting Production of
9 all Statements of the Accused. I will show that
10 sustained. Again the state in response contends they
11 complied. If you haven't, do it.

12 The next one is Motion for Individual Sequestered
13 Voir Dire of Jurors as far as Death Penalty is Concerned.
14 I don't think the current law is that no defendant is
15 entitled or has a right to individual sequestered voir
16 dire. At this point that will be overruled. If for some
17 reason during the process there appears to be some
18 necessity for that, certainly, you can reurge it at that
19 time. But at this point it will be overruled.

20 The next one is Motion to Strike Death Penalty
21 Sentencing Procedure as Unconstitutional. Again the Court
22 of Crims has ruled on this numerous times. I show it
23 overruled.

24 That is all of the pending motions that I show on
25 behalf of Zjaiton Wood. Did I miss one?

1 MR. BURCH: No, your Honor. That is all.

2 THE COURT: Okay. Does Termane Wood have any
3 motions pending we need to hear at this time?

4 MR. PHILLIPS: Not at this time, your Honor.

5 THE COURT: Does the state have any pending
6 motion you need me to hear at this time?

7 MR. BURNETT: No, your Honor.

8 THE COURT: I guess we need a trial date as to
9 Zjaiton Wood. Mr. Albert has informed my staff, and I
10 think you just did, that Termane Wood intends to file a
11 Motion for Continuance. You haven't done that yet. I
12 will not hear that until it is filed.

13 MR. PHILLIPS: It will be filed by today, your
14 Honor.

15 THE COURT: Based on my previous ruling in the
16 Zjaiton Wood case, then, let's go off the record. All of
17 the attorneys get your calendars and let's pick a date.
18 Then we will go back on the record once we have all agreed
19 off the record on a date.

20 (Thereupon, a short recess was taken and the
21 following occurred in open court.)

22 THE COURT: We are back on the record. We have
23 conversed briefly, less than five minutes, off the record
24 trying to arrive at an agreeable trial date amongst all
25 parties, which I believe we have done. This matter in

1 reference to Defendant Zjaiton Wood will be rescheduled
2 for jury trial Monday, March the 8th, 2004 at nine a.m.
3 With the call docket Friday, March the 5th, 2004, at
4 ten a.m. We also discussed amongst the lawyers off the
5 record that the call docket date may not be necessary and
6 we may at a later date, upon agreement of all parties,
7 strike that date, but we will set it at this time just in
8 case if it is needed we will have it.

9 Anything else from the state today as it applies
10 to Defendant Zjaiton Wood?

11 MR. BURNETT: Yes, your Honor, I have the
12 amended DNA report that I will provide counsel at this
13 time.

14 THE COURT: Okay.

15 MR. BURNETT: That is to both counsel.

16 THE COURT: Anything else?

17 MR. BURNETT: No, your Honor.

18 THE COURT: Anything else from defendant Zjaiton
19 Wood today?

20 MS. TYNER: Your Honor, I would just ask the
21 Court that between now and March if we need to file any
22 more motions we could reserve that right. There won't be
23 a bunch of them. But if something comes up.

24 THE COURT: Certainly you can file anything that
25 is ethically proper and you have a good faith basis to

1 file, yes.

2 MS. TYNER: Thank you, sir.

3 THE COURT: Again, I would appreciate it if you
4 do it before the last minute so we have got time to do it
5 and we can do it without 200 people in the room.

6 MS. TYNER: Yes, sir.

7 THE COURT: The same thing goes for the state.

8 MR. BURNETT: Yes, your Honor.

9 THE COURT: Anything else from Defendant Termane
10 Wood at this time?

11 MR. PHILLIPS: Not anything other than I have
12 already stated, your Honor. We intend to file a Motion
13 for Continuance today.

14 MR. BURNETT: We discussed that. We are --
15 because of the nature of the new discovery that is
16 agreeable.

17 THE COURT: Do we want to pick a date now while
18 we are here contingent upon you filing your written
19 motion?

20 MR. PHILLIPS: That would be my suggestion if I
21 could get an advisory from the Court what the Court may be
22 looking at so I could include that in my motion an order.

23 THE COURT: All Right. Let's go off the record
24 again and try to get a trial date that is agreeable to
25 all parties as to Defendant Termane Wood.

1 (A short recess was taken and the following
2 occurred in open court.)

3 THE COURT: We are back on the record as it
4 applies to Defendant Termene Wood. We had a brief, less
5 than five minutes, off the record discussion with defense
6 counsel and the state and we attempting to get an
7 agreeable jury trial date. We arrived on Monday, March
8 the 29th of 2004 at nine a.m. for jury trial. Friday
9 March 26th '04 at ten a.m. for call docket. Call docket
10 may not be necessary in this matter in light of all of the
11 previous and future status conferences to be had in this
12 case. If so, we've agreed off the record to perhaps
13 cancel the call docket date.

14 Now, anything else from the state as to the
15 Defendant Termene Wood?

16 MR. BURNETT: No, your Honor.

17 THE COURT: From the defense?

18 MR. PHILLIPS: Your Honor, I will file a
19 verified motion regarding the Court's agreement today as
20 well as provide an order signed by both myself and
21 Mr. Burnett memorializing that same information.

22 THE COURT: Very good. Anything else from any
23 party in reference to either defendant this date?

24 MR. DALTON: On behalf of Zjaiton Wood, would you
25 like to schedule a hearing date for argument on the Motion

1 to Suppress?

2 THE COURT: Yes, I'm glad you came back to that.

3 MR. DALTON: And also maybe just go ahead and set
4 a hearing date for whatever other motions are left.

5 THE COURT: Thanks for reminding me. Assuming
6 there has to be testimony, do you have any guesstimation
7 how long we are talking?

8 MR. DALTON: I may have three witnesses and they
9 should be short. Brief. I would say an hour and a half.

10 THE COURT: I mean, hopefully you are aware, we
11 are coming up on the season where it is tough to find
12 dates with Thanksgiving and Christmas holidays and trying
13 to cram six or eight more weeks of jury trial in. Is it
14 something you want done before January?

15 MR. DALTON: No.

16 THE COURT: In light of we now have a March 8th
17 trial date.

18 MR. DALTON: Sometimes in the month before.

19 THE COURT: I could probably squeeze it in early
20 in January.

21 MR. DALTON: February, your Honor. If that will
22 work for you.

23 THE COURT: Any problem from the state?

24 MR. BURNETT: Ms. Smith will be in trial. I
25 would kind of like her here. I can do it if we don't do

1 it before January the 12th. She will be getting ready
2 with that case. I can do it. I don't see any problem. I
3 am sure I can get my intern to assist me on the illegal
4 search and seizure part to assist me with that.

5 THE COURT: How about February 4th at 8:30?

6 MR. DALTON: Fine with me, your Honor.

7 MR. BURNETT: Yes, your Honor.

8 THE COURT: That gives us four good hours to
9 lunch.

10 MS. TYNER: That is for the motion hearings?

11 THE COURT: Yes. The Motion to Suppress that is
12 now on filed. And you will file an amended that is a
13 little more specific and any other motions that are
14 ethically and a good faith basis have those filed and we
15 will hear those on the same day from both sides.

16 MS. TYNER: Wait a minute. Maybe I
17 misunderstood. The cut off for filing any?

18 THE COURT: We will hear them on February the
19 4th. The cut off will be ten days before that because
20 they have got ten days to respond.

21 MS. TYNER: Okay.

22 THE COURT: Now anything else from the state?

23 MR. BURNETT: No, your Honor.

24 THE COURT: Anything else from either defendant?

25 MR. PHILLIPS: Not on behalf of Termane Wood,

1 your Honor.

2 MS. TYNER: No, your Honor.

3 THE COURT: That concludes the record this date.

4 ***That concludes the hearing this date***

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA,)

4 PLAINTIFF,)

5 Vs.) CF-02-46

6 TERMANE WOOD and)

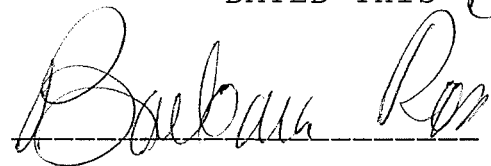
7 ZJAITON WOOD,)

8 DEFENDANTS.)

9
10 CERTIFICATE OF THE COURT REPORTER

11 I, BARBARA A. ROSS, CSR, RPR, Official Court
12 Reporter in and for the State of Oklahoma, Oklahoma
13 County, do hereby certify that the foregoing transcript in
14 the above-styled case is true, correct and a complete
15 transcript of my shorthand notes of the hearing in said
16 cause.

17
18
19 DATED THIS 29th DAY OF Sept, 2004.

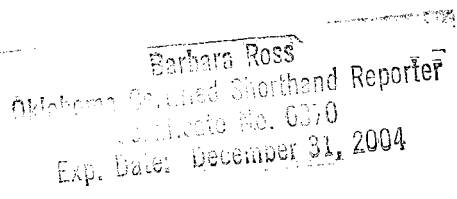
20 

22 BARBARA A. ROSS, CSR, RPR

23 OFFICIAL COURT REPORTER

24 FOR THE STATE OF OKLAHOMA

25 COUNTY OF OKLAHOMA



IN THE DISTRICT COURT OF PAYNE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,
Plaintiff,



vs.

BRANDY LYNN WARDEN,
Defendant.

Case no. CF-2000-202

FILED
COURT CLERK
PAYNE COUNTY, OKLA
03 OCT 31 AM 10:45

LISA S. LAMBERT
COURT CLERK

DEPUTY

MOTION TO DISMISS

COMES NOW, the State of Oklahoma, and moves the Court to dismiss the above entitled case for the following reason:

The Defendant has satisfactorily completed the probationary period.

THEREFORE, premises considered, the State of Oklahoma prays that said case be dismissed.

ROBERT L. HUDSON
DISTRICT ATTORNEY

By: Vincent Antonioli
Vincent Antonioli
Assistant District Attorney

ORDER OF DISMISSAL

NOW, on this 24th day of October, 2003, this case comes on to be heard before me, the undersigned Judge in and for Payne County, State of Oklahoma, and the Court being fully advised in the premises FINDS that said case should be, and the same is HEREBY DISMISSED at the costs to the Defendant; the Court having made no adjudication of Guilt, the Defendant's plea is Ordered expunged from the record and said charge is HEREBY DISMISSED with prejudice to any further action, and said Defendant is discharged and the bondsman is released from any liability herein.

Donald L. Worthington
DONALD L. WORTHINGTON
DISTRICT JUDGE

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)

PLAINTIFF,)

Vs.)

TERMANE WOOD,)

DEFENDANT.)

Case No. CF-02-46

04-550

TRANSCRIPT OF JURY TRIAL

HAD ON THE 1st DAY OF APRIL, 2004

BEFORE THE

HON. RAY C. ELLIOTT

DISTRICT JUDGE

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 23 2004

MICHAEL S. RICHIE
CLERK

ORIGINAL

APPEARANCES:

Ms. Fern Smith and Mr. George Burnett,
Assistant District Attornys, Oklahoma County District
Attorney's Office. Oklahoma County Office Building,
Oklahoma City, Oklahoma.

Mr. Johnny Albert, Attorney at Law, 204 north
Robinson, Oklahoma City, Oklahoma and Mr. Lance Phillips,
Attorney at Law, One North Hudson, Suite 700, Oklahoma
City, Oklahoma.

REPORTED BY: Barbara A. Ross, CSR, RPR. Oklahoma County
Courthouse, Suite 700, Oklahoma City, Oklahoma.

PG COPY

1 exited the courtroom. None are present. The defendant
2 remains present in person and with counsel. The state by
3 counsel. Anything else from the state before we break?

4 MS. SMITH: Are we going to have the Lanita
5 Bateman hearing? Are we going to hear about the
6 conflict? She is the next witness after Brandy Warden.

7 THE COURT: We will do it after Brandy Warden.
8 Anything else from the defendant?

9 MR. ALBERT: No, your Honor.

10 THE COURT: All right. Spectators are excused.
11 Court's in recess until ten minutes until one.

12 (Thereupon, a luncheon recess was taken and the
13 following was had in open court.)

14 THE COURT: Call your next witness.

15 MS. SMITH: The state calls Brandy Warden.

16 BRANDY WARDEN

17 (Thereupon, the witness was duly sworn.)

18 THE COURT: Have a seat and adjust that
19 microphone directly in front of you, please.

20 MR. ALBERT: May I approach briefly?

21 THE COURT: Yes.

22 (Thereupon, an up-to-the bench discussion was had
23 outside the hearing of the jury.)

24 MR. ALBERT: Your Honor, comes now the defendant
25 and submits that any testimony about the pizza robbery

1 would be something for the second stage of the trial not
2 the first stage, whether he committed this crime.

3 And secondly, any statements made by Zjaiton Wood
4 or Lanita, the other girl involved in this case, would be
5 co-conspirator hearsay and we object to that.

6 THE COURT: Okay. Sustained. Do not say
7 anything about the pizza robbery. And overruled as to any
8 co-conspirator statements.

9 (Thereupon the following was had in open court.)

10 DIRECT EXAMINATION

11 THE COURT: You may proceed when ready.

12 MS. SMITH: Thank you, your Honor.

13 Q. Will you tell the jury your name, please.

14 A. Brandy Warden.

15 Q. And you have to speak up so we can hear you. It
16 is important.

17 A. Brandy Warden.

18 Q. Ms. Warden, how old are you?

19 A. Twenty-two.

20 Q. Are you married?

21 A. No.

22 Q. Do you have children?

23 A. Yes, I do.

24 Q. How many children do you have?

25 A. Three.

1 Q. Their ages and names?

2 A. Demetria. She is seven. Brendon, five. And
3 Davon, two.

4 Q. Are any of those children fathered by the
5 defendant in this case Termane Wood?

6 A. Yes.

7 Q. Which child?

8 A. Brendon.

9 Q. And how old?

10 A. He is five.

11 Q. Are you represented by an attorney?

12 A. Yes, I am.

13 Q. What is her name?

14 A. Traci Rhone.

15 Q. This (indicating) lady who is standing right here
16 beside you?

17 A. Yes.

18 MS. SMITH: Judge, may I inquire of Ms. Rhone as
19 to whether or not she wants to stay there or sit?

20 THE COURT: Either one you prefer.

21 Q. (Ms. Smith) How long has Ms. Rhone been your
22 lawyer?

23 A. For like a year now.

24 Q. Now, before Ms. Rhone became your attorney, did
25 you have another lawyer?

1 A. Yes, I did.

2 Q. What was her name?

3 A. Janet Cox.

4 Q. Was she in the Public Defender's Office?

5 A. Yes.

6 Q. Is Ms. Rhone in the Public Defender's Office as
7 well?

8 A. Yes.

9 Q. Back in January of 2002 were you arrested for the
10 crime of Murder in the First Degree?

11 A. Yes.

12 Q. Where were you arrested?

13 A. At my sister's house.

14 Q. In what city?

15 A. In Stillwater.

16 Q. As a result of you being arrested, were you
17 brought to the Oklahoma County jail?

18 A. Yes, I was.

19 Q. And did Ms. Cox then become your attorney?

20 A. Yes.

21 Q. At some time, did you or did Ms. Cox come to the
22 District Attorney's Office and offer to have you testify
23 in order to get a good deal for you?

24 A. Yes, she did.

25 Q. And did the District Attorney's Office,

1 Mr. Burnett and myself, offer you some kind of a deal in
2 order for you to testify truthfully to the jury?

3 A. Yes.

4 Q. And will you tell the jury what that was, please?

5 A. Accessory to Murder After the Fact and Conspiracy
6 to Commit a Felony. Forty-five and ten years running
7 concurrent.

8 Q. So you basically got 45 years to do in the state
9 penitentiary for your part in the murder; is that right?

10 A. Yes.

11 Q. Are you here to tell the jury what your part and
12 what Mr. Termane Wood's part in the murder was?

13 A. Yes.

14 Q. Did Mr. Burnett or myself tell you to say
15 anything other than what actually happened?

16 A. No.

17 Q. In fact, have you talked to us without your
18 attorney present at any time?

19 A. No.

20 Q. Were you -- will you identify Mr. Termane Wood
21 for the jury, please.

22 A. Right there (indicating.)

23 Q. What is he wearing today?

24 MR. ALBERT: Your Honor, we will stipulate she
25 can identify him.

1 THE COURT: I can't hear you.

2 MR. ALBERT: We will stipulate she can identify
3 him.

4 THE COURT: The stipulation will be accepted that
5 the witness has identified the defendant Termene Wood.

6 Q. (Ms. Smith) Are you in love with Mr. Termene
7 Wood as you sit there today?

8 A. No.

9 Q. Were you in love with Mr. Termene Wood on
10 December 31st of 2001?

11 A. Yes.

12 Q. Were you living with him?

13 A. No, I wasn't.

14 Q. Where were you living?

15 A. My house in Stillwater with my children.

16 Q. Did you have a boyfriend at this time?

17 A. No, I didn't.

18 Q. Have you ever been married to Termene Wood?

19 A. No.

20 Q. Have you ever lived with him?

21 A. Yeah.

22 Q. When did you live with him?

23 A. He has kind of lived with me off and on whenever
24 he feels like it, I guess.

25 Q. For how many years?

1 A. Five maybe.

2 Q. Are you currently incarcerated in the Department
3 of Corrections?

4 A. Yes.

5 Q. And are you serving your 45 years?

6 A. Yes.

7 Q. Do you know a person by the name of Zjaiton Wood?

8 A. Yes.

9 Q. How do you know Mr. Zjaiton Wood?

10 A. Termene's brother.

11 Q. When did you become acquainted with Termene Wood?

12 A. When I was 13.

13 Q. How much older was he than you?

14 A. When I met him two years.

15 Q. And where did you meet him?

16 A. In Stillwater.

17 Q. Were you going to school?

18 A. No, I met him through another person.

19 Q. And how did you meet Zjaiton Wood?

20 A. Baby sitting for his mother.

21 Q. That would be Linda Wood?

22 A. Yes.

23 Q. Of the two brothers, Zjaiton Wood and Termene
24 Wood, which one is the larger?

25 A. Zjaiton.

1 Q. Is he quite a bit larger than Mr. Termene Wood?
2 A. Yes, yeah.
3 Q. Do you know a lady by the name of Lanita Bateman?
4 A. Yes.
5 Q. How do you know Lanita Bateman?
6 A. I know her as the girlfriend of Zjaiton.
7 Q. When did you first meet Lanita Bateman?
8 A. I met her once before December 31st.
9 Q. Where did you meet her?
10 A. At Linda Wood's house.
11 Q. And had you only seen her a couple of times then
12 on December 31st of 2001?
13 A. Yes.
14 Q. Had you ever lived in Oklahoma City?
15 A. Yes.
16 Q. How long did you live in Oklahoma City?
17 A. About seven months.
18 Q. What part of town did you live in?
19 A. Northwest.
20 Q. When you lived in Oklahoma City, did you have a
21 car?
22 A. Yes.
23 Q. So you are somewhat familiar with driving the
24 streets of Oklahoma City?
25 A. A little bit, yes.

1 Q. Let me refer you to December the 31st of 2001,
2 sometime in the evening, and ask you if you were at Linda
3 Wood's house?

4 A. Do what now?

5 Q. I'm sorry. December 31st of 2001, at sometime in
6 the evening hours, were you at Linda Wood's house?

7 A. Yes.

8 Q. Who was there?

9 A. Linda, Andre.

10 Q. Andre's last name?

11 A. Taylor, I think.

12 Q. Who is Andre Taylor?

13 A. Linda's roommate, girlfriend.

14 Q. Who else?

15 A. I don't know if the brother Andre was there or
16 not. I don't think he was. My children. And then
17 Termene and them showed up later on.

18 Q. When you say "Termene and them," who is them?

19 A. Termene, Zjaiton, and Lanita.

20 Q. Why were you at Linda Wood's house?

21 A. For Andre Wood's birthday.

22 Q. Do you know when his birthday is?

23 A. I can't remember now. The 30th or the 29th.
24 Something like that. I'm not sure though.

25 Q. You had come from Stillwater to celebrate his

1 birthday?

2 A. Yes.

3 Q. If his birthday was on the 29th, why were you
4 still around Oklahoma City at Linda Wood's house on the
5 31st?

6 A. I ended up staying for a few more days to visit.

7 Q. Did Termene Wood ask you for something that
8 evening?

9 A. Yes.

10 Q. What did he ask you for?

11 A. He asked me for money. And I told him all I had
12 was my checks. And he asked me if I would buy him
13 something. He didn't tell me what at that time.

14 Q. Was that in the evening time?

15 A. Yes.

16 Q. Do you know a lady by the name of Casey Odell?

17 A. Yes.

18 Q. What was her relationship to Termene Wood, if you
19 know?

20 A. That was the mother of his other child.

21 Q. Do you know how old that child was?

22 A. I'm not really sure.

23 Q. Is it a baby?

24 A. Yeah.

25 Q. Now, was Termene living with Casey Odell, if you

1 know?

2 A. Yes, he was.

3 Q. Do you know where they were living?

4 A. I have no idea.

5 Q. Had you ever been to Casey Odell's house before?

6 A. That night I did, once.

7 Q. Before that night, had you ever been to Casey
8 Odell's house?

9 A. No.

10 Q. Sometime late in the evening on December 31st of
11 2001, did you, Lanita Bateman, Zjaiton Wood and Termene
12 Wood go to a Wal-Mart store?

13 A. Yes, we did.

14 Q. And did Termene Wood ask you to buy something at
15 the Wal-Mart store?

16 A. Yes, he did.

17 Q. What did he ask you to buy?

18 A. He just brought it to me. He didn't tell me what
19 it was.

20 Q. What was it?

21 A. It was gloves and ski masks.

22 MS. SMITH: May I approach the witness, judge?

23 THE COURT: You may.

24 Q. (Ms. Smith) Let me hand you State's Exhibit No.
25 69 and ask you if this looks familiar.

1 A. Yes.

2 Q. And are these the kind of gloves he asked you to
3 buy?

4 A. I think so, yes.

5 Q. Let me hand you State's Exhibit No. 70 and ask
6 you if that looks familiar.

7 A. Yes.

8 Q. And how does that look familiar to you?

9 A. Like what I bought at Wal-Mart.

10 Q. When was the first time you saw those gloves and
11 ski masks?

12 A. Whenever he put them on the counter.

13 Q. You were already at the checkout stand when they
14 were brought there by Termene Wood?

15 A. We kind of met at the same time. He handed them
16 to me and I put them on the counter.

17 Q. Did Termene have them or did Zjaiton have them?

18 A. I believe Termene did.

19 Q. And how many pairs of gloves were there?

20 A. Two.

21 Q. And how many ski masks were there?

22 A. Two.

23 Q. How did you pay for those items?

24 A. By a check.

25 Q. On whose checking account?

1 A. On mine.

2 Q. Did you buy anything else?

3 A. We bought his mother, Linda Wood, some pads.

4 Q. And had you been asked to do that before you left
5 Linda Wood's house?

6 A. Yes.

7 MS. SMITH: May I approach, judge?

8 THE COURT: Yes.

9 Q (Ms. Smith) Let me hand you State's Exhibit No.
10 68. I will ask if you recognize that.

11 A. Yes.

12 Q. Tell the jury what that is, please.

13 A. It is a check to Wal-Mart signed by me.

14 Q. On your checking account?

15 A. Yes, it is.

16 Q. Did you write that check?

17 A. Yes, I did.

18 Q. Did you write that check on December the 31st of
19 2001?

20 A. Yes.

21 Q. What is the amount of the check?

22 A. 6.85.

23 Q. \$6.85?

24 A. Yes.

25 Q. Is that your signature on there?

1 A. Yes, it is.

2 Q. How did you get to Wal-Mart?

3 A. By Termane. He had Casey Odell's car.

4 Q. What color is Casey Odell's car?

5 A. It is white.

6 Q. Did you leave the Wal-Mart in Casey Odell's car
7 as well?

8 A. Yes.

9 Q. Who was driving?

10 A. I believe he let Lanita drive at that time. I
11 think.

12 Q. Are you sure about that? It is okay if you can't
13 remember.

14 A. I am not positive on it, but I think she drove at
15 that time.

16 Q. You are certain it was Casey Odell's car?

17 A. Yes.

18 Q. Had you ever ridden in Casey Odell's car before?

19 A. One other time I believe.

20 Q. When was that?

21 A. I'm not really sure.

22 Q. When you left the Wal-Mart, where did you go?

23 A. We went back to Linda's house.

24 Q. Why did you do that?

25 A. To give her the Tampax.

1 Q. Did you deliver those?

2 A. Yes.

3 Q. And what happened to the ski masks and the
4 gloves?

5 A. They stayed in the car. Everybody stayed in the
6 car.

7 Q. Who got out and delivered the pads to Linda Wood?

8 A. I did.

9 Q. How long were you in Linda Wood's house?

10 A. Just for a couple of minutes.

11 Q. Do you know about what time this was?

12 A. It was almost nine or almost ten.

13 Q. Sometime around nine or ten o'clock; would that
14 be fair?

15 A. Yes.

16 Q. Don't tell us what happened between nine or ten
17 o'clock and the time that you got to the Bricktown
18 Brewery; do you understand?

19 A. Yes.

20 Q. Okay. Now, at some time did the four of you,
21 that being Termane, Zjaiton, yourself, and Lanita go to
22 the Bricktown Brewery?

23 A. Yes, we did.

24 Q. How did you get to the Bricktown Brewery?

25 A. In Casey's car.

1 Q. Do you recall about what time you got there?

2 A. It would have to be ten or 11.

3 Q. Ten or 11 o'clock?

4 A. Yes.

5 Q. P.m.?

6 A. Yes.

7 Q. What happened when you got to the Bricktown
8 Brewery?

9 A. We were just there and kind of just went on our
10 own little way. They got us a beer.

11 Q. Who is they?

12 A. Zjaiton and Termane.

13 Q. Got who a beer?

14 A. They got all of them one and got me one.

15 Q. Did Lanita drink a beer as well?

16 A. Yes.

17 Q. Now, where did you drink that beer? What part of
18 the Bricktown Brewery? Upstairs or downstairs?

19 A. Upstairs.

20 Q. Were you aware that Casey Odell was working that
21 evening?

22 A. Yes.

23 Q. Did you see Casey Odell?

24 A. Yes.

25 Q. Did she see you?

1 A. Yes.

2 Q. Did anything happen, if you know, about the fact
3 that Termene had brought you to the Bricktown Brewery?

4 A. Not that I know of.

5 Q. Do you know whether or not Casey was mad about
6 it?

7 A. I believe she was mad about it.

8 Q. How did you know that?

9 A. Whenever I was standing there, she walked by and
10 he went over to talk to her. And she said something
11 smart. I don't remember. But he went to go talk to her.
12 So I believe it was because I was there.

13 Q. You were aware that there was a little tiff or
14 something going on between Termene Wood and Casey Odell;
15 is that right?

16 A. Yes.

17 Q. How many beers do you think you had that night?

18 A. I only had that one.

19 Q. Do you know how many Lanita had?

20 A. I don't know. I'm not sure.

21 Q. Do you know how many Termene or Zjaiton had?

22 A. I don't know.

23 Q. Were you intoxicated?

24 A. No.

25 Q. Was Lanita intoxicated?

1 A. I don't know. I know she had more than one beer
2 though.

3 Q. Did she act like she was drunk?

4 A. Kind of maybe.

5 Q. Was she able to walk?

6 A. Yeah. She was able to walk.

7 Q. Was she able to talk?

8 A. Yes.

9 Q. Was she coherent and understand what was going
10 on?

11 A. Yes.

12 Q. So she wasn't so drunk she didn't know what she
13 was doing?

14 A. No.

15 Q. Did you know what you were doing?

16 A. Yes.

17 Q. Did Zjaiton Wood and Termane Wood know what they
18 were doing?

19 A. Yes.

20 Q. Do you know how many beers they had?

21 A. I have no idea.

22 Q. How long were you actually at the Bricktown
23 Brewery?

24 A. Until they closed.

25 Q. Do you know what time it was?

1 A. I guess it closes at two. I'm not sure.

2 Q. If you had gotten there around to or 11, it would
3 be three or four hours?

4 A. Yes.

5 Q. What did you do for that three or four hours you
6 were at Bricktown Brewery?

7 A. Was just there.

8 Q. Were you dancing and talking? Flirting with some
9 guys?

10 A. Two guys came up to us, yes.

11 Q. Do you know those guys' names?

12 A. Ronnie Wipf and Arnold Kleinsasser.

13 Q. Kleinsasser?

14 A. Yeah.

15 Q. Now, tell us what transpired as a result of your
16 meeting with Ronnie and Arnie.

17 A. Ronnie came up to us first. He just asked us
18 what we were doing and asked us what we were doing after
19 it ended. He came up to us about when it was over.

20 Q. It was pretty close to two a.m. when you met
21 Ronnie?

22 A. Yes.

23 Q. Was Arnie with him at that time?

24 A. Not when he first approached us I don't think.

25 Q. Now, did you and Ronnie or Arnie have any

1 discussions about going to a motel?

2 A. Yes.

3 Q. Who did you have those discussions with first?

4 A. Ronnie.

5 Q. Do you remember whose idea it was to go to the
6 motel?

7 A. It was his idea to go to a motel. But he had
8 all his friends and he wanted to go with all of them.

9 Q. So it was more like a party than just a boy/girl
10 thing at that first point?

11 A. Yes.

12 Q. Did you meet any of his friends there? Did you
13 know who he was talking about when he said "I want to go
14 with my friends"?

15 A. Yes.

16 Q. Do you know how many of them there were?

17 A. I don't know. I knew there was quite a few of
18 them.

19 Q. Did you -- was Lanita aware of this conversation?

20 A. She was with me. She was part of it.

21 Q. So the both of you were talking to Ronnie Wipf?

22 A. Yes.

23 Q. Now, did either you or Lanita say, no, we are not
24 going to go with all of these guys to a party, but...what?

25 A. But we will go with you to one, yes. That was

1 the conversation.

2 Q. Tell us what was said about that.

3 A. He just asked us if we wanted to go with him,
4 with his friends, to a motel room. And we ended up
5 saying, yeah, we would, but we would with you all. And
6 Arnold was already over there with us. And he introduced
7 us to Arnold. We said we would go with them.

8 Q. After you had made arrangements or made an
9 agreement with Ronnie and Arnie to go to the motel, did
10 you just leave right then?

11 A. No.

12 Q. What did you do?

13 A. We went to go and get our coats and stuff and
14 Lanita went to the bathroom.

15 Q. Did you go to the bathroom?

16 A. No, I didn't go to the restroom.

17 Q. Where did you go?

18 A. After she came back, I went over to where she had
19 been. And that was where Jake and Termane were.

20 Q. Before we get there, how long was Lanita in the
21 bathroom?

22 A. Ten or 15 minutes maybe. I'm not really sure.

23 Q. Was she really in the bathroom?

24 A. No.

25 Q. Where was she, if you know?

1 A. I looked around the corner and she was talking to
2 Jake and Termene.

3 Q. That conversation went on for maybe ten or 15
4 minutes?

5 A. It felt like it, yes.

6 Q. What were you and Ronnie and Arnie doing during
7 this long time period?

8 A. We were waiting by the elevator for her.

9 Q. Okay. And when Lanita finally showed up at the
10 elevator, what happened?

11 A. She asked me if I needed to go to the restroom.
12 And by the way she looked at me, I went, knowing that they
13 wanted to talk to me.

14 Q. So she said, "Do you want to go to the bathroom?"
15 in such a manner you knew it was not really, do you want
16 to go to the bathroom? It was do you want to go talk to
17 the guys? Is that the impression you got?

18 A. Yeah. They wanted to talk to me.

19 Q. What is it that she did that caused you to
20 believe that?

21 A. Just the way she looked at me and kind of did her
22 head.

23 Q. Show the jury what you are talking about with
24 your head.

25 A. She just kind of did her eyes like that

1 (indicating) to let me know behind her.

2 Q. Now, when she did that and you got the message,
3 what did you do?

4 A. I went over there.

5 Q. How far away were Zjaiton and Termene from where
6 you all were waiting at the elevator?

7 A. They were kind of, I guess, by the bar.

8 Q. When you say "they" you are talking about
9 Zjaiton?

10 A. Zjaiton and Termene.

11 Q. What was said when you went over to the bar area?

12 A. Termene asked me what was wrong with me. I tried
13 to explain to him. And he told me to quit crying like a
14 big ass baby and suck it up.

15 Q. We can't understand you. Take a deep breath
16 now. When you went back over to the bar what did Termene
17 say to you?

18 A. He asked me what was wrong.

19 Q. How did he know something was wrong?

20 A. Because, I guess, I had tears in my eyes.

21 Q. Why did you have tears in your eyes?

22 A. Because I was scared.

23 Q. Why were you scared?

24 A. Because I had never went to a motel room with
25 guys before.

1 Q. These were strange guys to you?

2 A. Yes.

3 Q. Why did you agree to go that night?

4 A. I guess I knew they wanted money.

5 Q. You knew they wanted money?

6 A. Yes.

7 Q. Who is "they?"

8 A. Zjaiton and Termene.

9 Q. Had there been some discussion about that before
10 or is that just something you assumed?

11 A. I knew earlier that night.

12 Q. Okay. Got you -- now, did Zjaiton have a job?
13 Did he work?

14 A. Not that I know of.

15 Q. Did Termene have a job?

16 A. No.

17 Q. Was he like paying you regular child support or
18 anything like that?

19 A. No.

20 Q. Okay. So you knew that Termene didn't have any
21 money and you knew that Zjaiton didn't have any money;
22 would that be a fair assumption?

23 A. Yes.

24 Q. Now, what did Termene say to you after he saw you
25 tear up and you tried to tell us a while ago. We

1 couldn't understand because you were crying. Tell us what
2 he said.

3 A. He told me to quit crying like a big a-s-s baby
4 and suck it up.

5 Q. You said "A big a-s-s baby."

6 A. Yes.

7 Q. Did he say "big a-s-s baby" or did he say "Big
8 ass baby"?

9 A. He said "big ass baby".

10 Q. What did you do as a result of him saying that to
11 you?

12 A. I turned around to go and ran into his brother.

13 Q. What happened then?

14 A. His brother seen that I was crying.

15 Q. When you say "his brother," who are you talking
16 about?

17 A. Andre Wood.

18 Q. The brother that worked there in the Bricktown
19 Brewery?

20 A. Yes.

21 Q. What happened when you bumped into Andre?

22 A. He asked me what was wrong. I didn't say nothing
23 to him. He could tell something was wrong because he told
24 me to stay right there.

25 MR. ALBERT: Objection.

1 THE COURT: Sustained. Let's don't say what he
2 said. Just what you said.

3 THE WITNESS: Okay.

4 THE COURT: Don't tell them what Andre said.

5 Q. (Ms. Smith) What did you say to Andre?

6 A. I just shook my head when he asked me what was
7 wrong.

8 Q. Did you ultimately leave the Bricktown Brewery
9 with Arnie and Ronnie and Lanita?

10 A. Yes.

11 Q. How did you leave? What kind of a vehicle?

12 A. I think it was maroon.

13 Q. Who did it belong to?

14 A. To Ronnie Wipf.

15 Q. Did you have some difficulty locating the car?

16 A. Yes.

17 Q. Do you know why?

18 A. I thought it was because they were all kind of
19 intoxicated. But it was because he was from out of state,
20 I think.

21 Q. Do you know -- did you like go to different
22 places looking for the car?

23 A. Yes.

24 Q. And was Ronnie able to walk okay?

25 A. He was, yes.

1 Q. Was he able to know what he was doing?

2 A. Yes.

3 Q. And was Arnie the same? Did he walk okay and
4 know what he was doing?

5 A. Yes.

6 Q. And you and Lanita were not drunk either?

7 A. No.

8 Q. When you got into the car, who got in which
9 position?

10 A. I got in the driver's seat. Ronnie got in the
11 passenger's seat. Lanita and Arnold got in the back seat.

12 Q. Let me get back to one thing I forgot to ask.
13 You go back to the bar area when Termane was telling you
14 that you were a big ass baby. Did he do something to you?

15 A. He grabbed my face.

16 Q. Show the jury what he did to you.

17 A. Like that (indicating.)

18 Q. Squeezed your cheeks together?

19 A. Yeah.

20 Q. Was that at the time that he was calling you that
21 name?

22 A. Yes.

23 Q. Okay. Now, let's go back to the car. You were
24 driving the car?

25 A. Yes.

1 Q. Why were you driving?

2 A. Because I thought they had been drinking.

3 Q. And did you know that they were not from Oklahoma
4 City?

5 A. Not -- well, yeah, I did.

6 Q. How did you know that?

7 A. I think they told us that they were there on a
8 rodeo.

9 Q. Which one told you they were there on a rodeo?

10 A. I believe it was Ronnie.

11 Q. Did you notice that they didn't have Oklahoma
12 accents?

13 A. Kind of, yeah.

14 Q. Now, where did you go when you left the Bricktown
15 Brewery?

16 A. To a motel.

17 Q. Tell us the conversation that occurred between
18 the time you left the Bricktown Brewery and went to the
19 motel.

20 A. Lanita was giving me directions there. There was
21 a conversation about getting two motel rooms.

22 Q. Getting two motel rooms?

23 A. Yes.

24 Q. Who wanted to get two motel rooms?

25 A. The guys did.

1 Q. What did you girls want to do?

2 A. To be together.

3 Q. And did you convey that to Ronnie and Arnie?

4 A. Yes.

5 Q. Did they agree to do that?

6 A. Yes.

7 Q. Whose idea was it just to have one room, yours or
8 Lanita's? Or was it both of you?

9 A. I believe it was both of us, because I didn't
10 want to be alone.

11 Q. Who selected the motel?

12 A. Lanita.

13 Q. Had you ever been to that Ramada hotel before?

14 A. No.

15 Q. Did you know where it was?

16 A. No.

17 Q. Did you know how to get there?

18 A. No.

19 Q. And Lanita was giving you directions?

20 A. Yes.

21 Q. Is it fair to say that neither Arnie or Ronnie
22 knew how to get there?

23 A. Yes.

24 Q. When you arrived at the motel, what happened?

25 A. We went to go rent the room. But the guy that

1 was working said that they were under age. So one of us
2 girls had to give our ID, too.

3 Q. Who gave their ID?

4 A. I did.

5 Q. Did you know that when you did that you were on a
6 video camera and everything you were doing was taking a
7 picture of you?

8 A. I wasn't paying attention to it.

9 Q. What kind of ID did you give to the desk clerk
10 there?

11 A. I think it was my photo ID.

12 Q. Do you recall the name of the motel?

13 A. Ramada Inn or Ramada Limited.

14 MS. SMITH: May I approach the witness, judge?

15 THE COURT: You may.

16 Q. (Ms. Smith) Let me hand you State's Exhibit No.
17 110 and ask you if you recognize that.

18 A. Yes.

19 Q. What is that?

20 A. My ID and driver's license.

21 Q. The ID and driver's license you gave to the motel
22 clerk that night?

23 A. Yes.

24 Q. And do they bear your signatures?

25 A. Yes.

1 Q. Do they bear your photographs?

2 A. Yes.

3 MS. SMITH: Move to admit State's Exhibit No.
4 110.

5 THE COURT: Any objection?

6 MR. ALBERT: No, your Honor.

7 THE COURT: State's Exhibit 110 admitted without
8 objection. You may publish if you wish.

9 Q. (Ms. Smith) Let me show you now, so we can show
10 the jury, State's Exhibit No. 110. In the top picture
11 what is this?

12 A. That is an ID card.

13 Q. Is it right here (indicating) an Oklahoma ID
14 card?

15 A. Yes.

16 Q. Is this your picture (indicating) here?

17 A. Yes.

18 Q. Is this (indicating) your signature?

19 A. Yes.

20 Q. Let me show you now --

21 MS. SMITH: And for the record, Judge, No. 110
22 bears both photographs.

23 THE COURT: Thank you.

24 Q. (Ms. Smith) What is (indicating) this?

25 A. An Oklahoma driver's license.

1 Q. Is this your photograph?

2 A. Yes.

3 Q. Is this your signature?

4 A. Yes.

5 Q. Why, if you know, did you give the desk clerk
6 two forms of ID?

7 A. I have no idea.

8 Q. Did he ask you for it or did you volunteer it?

9 A. I don't believe he asked me for two IDs. I just
10 handed him two.

11 Q. Were you able to actually rent a room there at
12 the Ramada?

13 A. Yes.

14 Q. Who paid for it?

15 A. One -- either Arnold or Ronnie. I can't remember
16 which one.

17 Q. Now when you got to the room, do you remember
18 what room number it was?

19 A. I don't.

20 Q. Do you remember if it was upstairs or downstairs?

21 A. Upstairs.

22 Q. Did the four of you go to the motel room?

23 A. Yes.

24 Q. When you got to the motel room, what happened?

25 A. Ronnie had went to one bed and Arnold went to the

1 other one and Lanita sat down by the table.

2 Q. Okay. Did anyone take their clothes off?

3 A. Not at that time.

4 Q. Okay. When you all were sitting on the beds and
5 on the tables, was there some discussion going on?

6 A. We were just all talking and Ronnie asked Lanita
7 to come and sit by him. She started talking about money
8 and said that every minute counts.

9 Q. Do you know what she meant by that?

10 A. She was letting him know that he had to pay.

11 Q. Now, at some point in time, did someone take
12 their clothes off?

13 A. Yes.

14 Q. Who?

15 A. Ronnie.

16 Q. Did he take all of his clothes off?

17 A. He had his underwear on still.

18 Q. Okay. About how much time had you been in the
19 room when Ronnie took his clothes off down to his
20 underwear?

21 A. Not very long.

22 Q. Now, did the four of you there in the motel room
23 after you began to talk about money come to some agreement
24 as to the money situation?

25 A. Yes.

1 Q. What was that?

2 A. I think it was 200. It might not be right on the
3 dot. But it was somewhere around 200.

4 Q. And do the guys just give you the \$200.00?

5 A. No.

6 Q. Why not, if you know?

7 A. They didn't have it with them.

8 Q. So what did you do as a result of that?

9 A. We went to the -- me and Arnold we went to the
10 convenience store at the corner.

11 Q. Why did you go there?

12 A. To the ATM machine.

13 Q. Did you go with Arnie to the machine?

14 A. No.

15 Q. Did you wait in the car?

16 A. Yes.

17 Q. When he came back from the machine, did he have
18 the money?

19 A. Yes.

20 Q. Did he give it to you?

21 A. Yes.

22 Q. Did you keep it?

23 A. Yes.

24 Q. Before you left the motel room there to go get
25 the money, had Lanita done something inside the room

1 there?

2 A. She had used the phone.

3 Q. Did you overhear her conversation?

4 A. Kind of, sort of.

5 Q. Can you tell us what you remember Lanita saying.

6 A. She was talking to her mom. She was just telling
7 her that she was okay and she would be home soon and that
8 she loved her. And she was just, "Yes, mom, okay".

9 Q. Did she say "Mom, I love you"?

10 A. Yes.

11 Q. Did you hear Lanita make any other phone calls
12 before you left to go to the ATM machine?

13 A. No.

14 Q. Did you hear her make any phone calls after you
15 got back from the ATM machine?

16 A. The only other time I seen her pick up the phone
17 was to call the police.

18 Q. I will ask you about that in a minute. Between
19 that phone call that you've already talked about where she
20 said, "Mom, I love you" and the police phone call, there
21 were no other phone calls that you heard her make?

22 A. No.

23 Q. Do you know whether or not she made any phone
24 calls while you and Arnie were gone?

25 A. I have no idea.

1 Q. You have no way to know that, do you?

2 A. No.

3 Q. When you and Arnie got back to the motel room,
4 were Ronnie and Lanita still there?

5 A. Yes.

6 Q. What happened?

7 A. We went in and Arnold went back to the bed. I
8 sat on the chair where I was. Lanita was sitting on the
9 bed with Ronnie smoking.

10 Q. What were they smoking?

11 A. Marihuana.

12 Q. Did they have one joint or two joints?

13 A. Only one was lit.

14 Q. They were sharing it?

15 A. Uh-huh.

16 Q. What happened after they finished their joint?

17 A. She asked me and Arnold if we wanted some. And
18 we said, no. Then after she was done, I asked her to come
19 in the bathroom with me.

20 Q. Why did you do that?

21 A. Because I was ready to leave.

22 Q. You had just got \$200.00 to have sex with these
23 guys and you are going to run out and leave?

24 A. Yes.

25 Q. Whose idea was that?

1 A. Whose idea was it to leave?

2 Q. Yeah.

3 A. I wanted to leave.

4 Q. Okay. What was Lanita -- Do you know what Lanita
5 wanted to do?

6 A. I don't know. But whenever I went -- I know it
7 was -- we were supposed to get the money and leave.

8 Q. And where did you go in the motel room?

9 A. To the bathroom.

10 Q. And when you went into the bathroom, how long did
11 you stay?

12 A. Maybe five or ten minutes. I'm not sure.

13 Q. After that five or ten minutes, what happened?

14 A. After she said she would -- to hold on. She was
15 coming. We went back out and sat down. She was by the
16 bathroom. And I glanced in the mirror and I went and sat
17 down.

18 Q. Did something happen?

19 A. A knock happened at the door.

20 Q. Tell us about that knock.

21 A. When the knock happened at the door (witness
22 crying.)

23 Q. Wait a minute. We can't understand you.

24 A. I'm sorry.

25 THE COURT: If you need to take a break we can.

1 If you need to take a break you just tell me. You want to
2 take a little break?

3 THE WITNESS: I'm all right.

4 THE COURT: Just let me know.

5 Q. (Ms. Smith) Let me ask you another question for
6 just a second. Can you describe the knock? Was it a
7 little knock?

8 A. A hard knock. It was a hard knock.

9 Q. Was it a constant knock or one little knock?

10 A. It wasn't a constant knock. But it wasn't just a
11 little tap either.

12 Q. Okay. Was it intended for, from what you could
13 hear, to get someone's attention to come to the door?

14 A. Yes.

15 Q. Tell us what happened.

16 A. I got up to answer it. And Ronnie jumped up and
17 said, "No." He was going to get it. He looked through
18 the peep hole to see who it was, I guess.

19 Q. Had you heard the voices outside saying anything
20 before Ronnie went to the peep hole?

21 A. No.

22 Q. Did you ever hear any voices outside saying
23 anything?

24 A. Yes.

25 Q. When was that?

1 A. When Arnold -- I mean Ronnie was at the door and
2 he was standing there. And I was telling him to let me
3 out. And I heard Zjaiton's voice.

4 Q. Were you able to recognize it as Zjaiton's voice?

5 A. Yes.

6 Q. What did he say?

7 A. He said "Lanita, Brandy, it's your mama."

8 Q. "It's your mama"?

9 A. Yes.

10 Q. And what happened after you heard that?

11 A. There was just more knocking. They were trying
12 to get in. I believe they kicked the door once.
13 Eventually Ronnie told me to get out. And he unlocked the
14 door and let me out.

15 Q. Did he tell you he wanted his money back?

16 A. I don't recall that.

17 Q. Did he tell you to get out?

18 A. Yes. He could have said that. I'm not saying he
19 didn't. He could have. I was just trying to get out.

20 Q. What was Lanita doing?

21 A. At the point at the door, she and Ronnie had told
22 Arnold to call the police. When he went to go call the
23 police, she said, "I will." She picked up the phone and
24 called the police.

25 Q. At least you thought she was calling the police?

1 A. Yes.

2 Q. Did you overhear the conversation when she said
3 she was talking to the police?

4 A. She was giving them directions to the room.

5 Q. Like how? Did she say, "This is room 204" or
6 "You have to turn left or right" or all of this business?

7 A. I believe she had given directions. I'm not real
8 sure. But she gave the room number.

9 Q. Now, where was Arnie when Lanita was supposedly
10 on the telephone calling the police, if you know?

11 A. I think he was still by her. I'm not really sure
12 though.

13 Q. Where was Ronnie?

14 A. He was at the door.

15 Q. And where were you?

16 A. By the door.

17 Q. Did Ronnie open the door?

18 A. Yes, eventually.

19 Q. About how much time elapsed between the time the
20 banging on the door first began and the time that Ronnie
21 finally opened the door?

22 A. Maybe ten minutes. I'm not real sure.

23 Q. It seemed like ten minutes to you?

24 A. Yeah.

25 Q. A long time?

1 A. Yes.

2 Q. When the door opened, what happened?

3 A. I ran out and two ski-masked men went in.

4 Q. Who were those two ski-masked men that ran in?

5 A. Zjaiton and Termene.

6 Q. Zjaiton and Termene?

7 A. Yes.

8 Q. How do you know that?

9 A. I recognized Zjaiton's voice at the door. And
10 afterwards they came to the car.

11 Q. When you ran out of the motel room, did Lanita
12 run out with you?

13 A. She got behind me some time, yes.

14 Q. What did you and Lanita do?

15 A. I was running. And when I was running
16 downstairs, she ran down there. And she told me come on
17 this way. We ran and we went to the car.

18 Q. You went to the car? Whose car did you go to?

19 A. Casey Odell's car.

20 Q. Did you recognize it as being Casey Odell's car?

21 A. Yes.

22 Q. Where was that car parked?

23 A. On the side of the building. Just on the right-
24 hand side.

25 Q. Was it in the motel parking lot?

1 A. Yes.

2 Q. In the Ramada parking lot?

3 A. Yes.

4 Q. Now, when you went up there to room 204, did you
5 know that Casey Odell's car was parked there in the
6 parking lot?

7 A. No.

8 Q. How did you find Casey Odell's car?

9 A. Lanita said, "Come on this way" and I followed
10 her.

11 Q. Just ran and jumped in the car?

12 A. Uh-huh.

13 Q. Were the doors locked or unlocked?

14 A. They were unlocked.

15 Q. Which position did you get in?

16 A. The passenger's seat.

17 Q. Which position did Lanita get in?

18 A. The driver's seat.

19 Q. How much time elapsed between the time you and
20 Lanita got in Casey Odell's car until Termene and Zjaiton
21 showed up and jumped in?

22 A. I'm not real sure. Maybe ten minutes. It felt
23 like a long time. I don't know.

24 Q. There is no doubt in your mind that it was
25 Termene Wood and Zjaiton Wood that jumped in that car; is

1 that right?

2 A. Yes.

3 Q. Were they still wearing the ski masks when they
4 jumped in?

5 A. No.

6 Q. Were they still wearing the gloves when they
7 jumped in?

8 A. Not that I seen.

9 Q. What happened after they jumped in the car? Wait
10 a minute. Did you ever hear anything coming from room 204
11 as you were trying to get in Casey Odell's car?

12 A. No.

13 Q. Did you hear any screaming, any gunshots,
14 anything like that?

15 A. No.

16 Q. How far away from room 204 was Casey Odell's car
17 parked?

18 A. I don't know. When you go around the corner it
19 was kind of in the middle.

20 Q. Were there other cars parked there?

21 A. Yes. A lot of cars.

22 Q. Was this a busy night? Were there other people
23 out in the motel area running around that you saw?

24 A. Not that I seen.

25 Q. Did you see any other cars driving around in the

1 parking area?

2 A. I don't remember.

3 Q. What happened after Zjaiton and Termene jumped in
4 the car?

5 A. They told her to go.

6 Q. Told who to go?

7 A. Told Lanita to go.

8 Q. What did she do?

9 A. She took off.

10 Q. Where did she get the keys?

11 A. I don't know. I'm not sure.

12 Q. Where did you go?

13 A. Casey Odell's house.

14 Q. And who drove?

15 A. Lanita.

16 Q. Did you get out of the car at Casey Odell's
17 house?

18 A. No.

19 Q. Did anybody get out of the car at Casey Odell's
20 house?

21 A. Termene did.

22 Q. How long were you at Casey Odell's house?

23 A. Just for a minute. I had to move to the back
24 seat and Casey came to the car.

25 Q. You moved to the back seat and Lanita had been

1 driving. Where did she move to?

2 A. To the passenger side.

3 Q. And what happened?

4 A. I guess, they -- Termane told Casey to take us
5 back to Linda's house.

6 MR. ALBERT: Objection, your Honor.

7 MS. SMITH: Don't tell us what you guess.

8 THE COURT: Sustained.

9 MS. SMITH: If you don't know, say you don't
10 know.

11 THE WITNESS: She took us back to Linda's house.

12 Q. (Ms. Smith) Casey Odell came out of her house?

13 A. Yes.

14 Q. Did she have on her night clothes or was she
15 dressed?

16 A. I think she was dressed. I'm not sure though.

17 Q. She got in the car?

18 A. Yes.

19 Q. And where did you go?

20 A. We went to Linda's house.

21 Q. Linda Wood's house?

22 A. Yes.

23 Q. How much time does it take you to get from Casey
24 Odell's house to Linda Wood's house?

25 A. I don't know.

1 Q. Did you stop anywhere along the way?

2 A. No. She tried to stop at a gas station but
3 Zjaiton said, no.

4 Q. Did anybody give Linda Wood some money for -- I'm
5 sorry -- Casey Odell some money for gas?

6 A. Yes.

7 Q. Who did?

8 A. Zjaiton.

9 Q. Do you know how much he gave her?

10 A. I don't remember.

11 Q. Now, what happened when -- on the way from Casey
12 Odell's house to Linda Wood's house, where was Zjaiton?

13 A. He was in the back seat.

14 Q. And was he doing anything you thought to be
15 unusual?

16 A. He just had the window down. His hand was out.

17 Q. His hand? Was it -- which side of the car was he
18 on?

19 A. This hand (indicating.)

20 Q. His right hand was out the window or the left
21 hand?

22 A. Left.

23 Q. Left hand out the window? Do you know why his
24 left hand was out the window?

25 A. I didn't at the time, no.

1 Q. Did Casey Odell spend any time at Linda Wood's
2 house after you got there?

3 A. No. She just dropped us off.

4 Q. Did you ever see Casey Odell again that evening?

5 A. No.

6 Q. Did you ever see her again outside of being in
7 court?

8 A. No.

9 Q. When you got to Linda Wood's house, what did the
10 three of you do? That being you, Lanita Bateman and
11 Zjaiton Wood?

12 A. We went to the bedroom.

13 Q. One bedroom, the three of you?

14 A. Yeah.

15 Q. Why did you do that?

16 A. We were just in there.

17 Q. Did you go there and talk?

18 A. I guess so, yes.

19 Q. Did you have a particular place when you were at
20 Linda Wood's house you slept?

21 A. I usually slept on Andre's bed.

22 Q. Did you go to that bedroom or another bedroom?

23 A. We went to another bedroom.

24 Q. What happened inside the bedroom?

25 A. He had told me to be quiet and don't say nothing.

1 Q. Who told you that?

2 A. Zjaiton.

3 Q. Go ahead.

4 A. And that's when I saw his hand. Then Linda had
5 walked in.

6 Q. Tell me about the hand. What did you see on the
7 hand.

8 A. It was shot right here (indicating.)

9 Q. Shot? Did you say shot?

10 A. Yes.

11 Q. How do you know it was shot?

12 A. Well, I didn't at the time until he said that. I
13 guess the gun went off and he shot himself.

14 Q. Who told you that?

15 A. That is just what they were saying.

16 Q. Don't tell us what they were saying. Tell me who
17 said that.

18 A. Zjaiton.

19 Q. Said what?

20 A. He shot himself in the hand.

21 Q. And did you actually, physically, see what he was
22 talking about? When I say "he," I mean Zjaiton.

23 A. Yes. I seen his hand.

24 Q. Show the jury where it was that Zjaiton said he
25 had shot himself. Hold it up where they can see it.

1 A. Right here (indicating.)

2 Q. Right here in the web of the hand?

3 A. Yes.

4 Q. Was it a serious wound?

5 A. I don't think it was serious.

6 Q. Was he saying ouch or something like that about
7 it? Did it hurt?

8 A. He might have. I don't know. He might have. He
9 didn't say. I don't recall him saying.

10 Q. Tell us what you saw that corroborated what
11 Zjaiton had told you about shooting himself.

12 A. It was like a little hole and bloody.

13 Q. Did someone give him some medical attention,
14 bandage it up, put medicine on it or something like that?

15 A. Yes.

16 Q. Who did?

17 A. His mom.

18 Q. That being Linda Wood?

19 A. Yes.

20 Q. And do you know what kind of medicine Linda Wood
21 put on his hand?

22 A. I have no idea.

23 Q. Did you see her attend to it and try to help him?

24 A. Yes.

25 Q. Was that there in the bedroom area?

1 A. Yes.

2 Q. Who else was present when that occurred?

3 A. I think only Lanita.

4 Q. Lanita, Zjaiton, yourself and Linda Wood?

5 A. Yes.

6 Q. Did you all go to bed that night?

7 A. Yes.

8 Q. Did you see any other blood anywhere?

9 A. No.

10 Q. Did you see Termene again that night?

11 A. No.

12 Q. Did you see Termene any time after that?

13 A. No.

14 Q. What happened the next morning?

15 A. We woke up and Linda had called me to her room
16 because the news was on. And she --

17 MR. ALBERT: Objection, hearsay, your Honor.

18 THE COURT: Okay. Sustained. You can't tell us
19 what Ms. Wood said. Only what you saw her do or what you
20 said.

21 THE WITNESS: Okay.

22 Q. (Ms. Smith) Did you have a conversation with
23 Ms. Wood the next morning?

24 A. Yes.

25 Q. Excuse me just a minute. Did you have a

1 conversation with Linda Wood the next morning?

2 A. I talked to her the next morning, but I had a
3 conversation with her that night.

4 Q. What conversation did you have with her that
5 night?

6 A. That night it happened, I had went into her room.

7 Q. In her house?

8 A. Yes.

9 Q. Tell us what -- don't tell what she said. Tell
10 us what you said.

11 A. I went in there and I told her what I knew that
12 had happened.

13 Q. What did you tell her?

14 A. I told her that I went to the motel room and that
15 they had went in there with a knife and gun.

16 Q. How did you know they went in there with a knife
17 and a gun?

18 A. When they ran in, they had a knife and a gun.

19 Q. Which one had the knife?

20 A. The little one.

21 Q. That is Termane; is that right?

22 A. Yes.

23 Q. And Zjaiton had the gun?

24 A. Yes.

25 Q. And is it Zjaiton that had the gunshot wound to

1 his hand?

2 A. Yes.

3 Q. When they got in the car, did you see the gun or
4 knife again?

5 A. No.

6 MS. SMITH: May I approach the witness?

7 THE COURT: You may.

8 Q. (Ms. Smith) Let me show you State's Exhibit No.
9 73 and ask you if you have ever seen that before.

10 A. I --

11 Q. The jury needs to hear you.

12 A. Yes.

13 Q. Where have you seen that before?

14 A. That night. That's the knife he had.

15 Q. The knife who had?

16 A. The knife Termane had.

17 Q. Termane Wood had this knife on the night that
18 this murdered occurred?

19 A. Yes.

20 Q. How do you know that?

21 A. Because I seen him have it.

22 Q. When did you see him have it?

23 A. Whenever they were coming into the room earlier
24 that night.

25 Q. When had you seen it earlier that night?

1 MR. ALBERT: Your Honor, I object.

2 THE COURT: Overruled.

3 MR. ALBERT: May I approach.

4 THE COURT: Nope.

5 MR. ALBERT: You remember our previous --

6 THE COURT: I do. Go ahead. So does the state,
7 I'm sure. Let's move on. If we need to approach, let's
8 approach. Come on.

9 (Thereupon, the following up-to-the bench
10 discussion was had outside the hearing of the jury.)

11 THE COURT: I guess you are referring to pizza.

12 MS. SMITH: Judge, I was thinking that it was
13 some other time other than the pizza. I will withdraw the
14 question, because I'm not sure that that is what she was
15 referring to.

16 THE COURT: She didn't answer anything about the
17 pizza. There is nothing to withdraw at this point.

18 MS. SMITH: It might be the answer that she
19 gives. So I will withdraw it.

20 MR. ALBERT: Okay. May I say one thing while we
21 are up here?

22 THE COURT: Yes.

23 MR. ALBERT: On the transcript she has some
24 hearsay where she says Casey had told Lanita there was
25 blood in the car. I would object to using hearsay from

1 Casey. Casey is not a co-conspirator in this case.

2 MS. SMITH: I won't ask her.

3 MR. ALBERT: Okay.

4 (Thereupon, the following was had in open court.)

5 THE COURT: Ma'am, there is a cup of water if you
6 need it. Right here to your left.

7 Q. (Ms. Smith) Without telling us where you had
8 seen the knife earlier in the day or earlier that evening,
9 you had seen Termene with that knife?

10 A. Yes.

11 Q. Had you seen Zjaiton with the gun?

12 A. Yes.

13 Q. What happened the next day on January the 1st of
14 2002? Did you go back home?

15 A. No, not that day.

16 Q. That would have been New Year's Day. Did you go
17 back home the next day?

18 A. I went home on the 2nd.

19 Q. How did you get home?

20 A. Linda Wood.

21 Q. Linda Wood took you?

22 A. Yes.

23 Q. Did anybody go with you other than Linda Wood?

24 A. Andre Taylor.

25 Q. That is Linda Wood's girlfriend?

1 A. Yes.

2 MS. SMITH: May I approach the witness?

3 THE COURT: You may.

4 Q. (Ms. Smith) Let me hand you State's Exhibit No.
5 104 and ask if you recognize that.

6 A. Yes.

7 Q. What is that?

8 A. My check stub.

9 Q. Is that a true and accurate copy of a check stub
10 that belonged to you?

11 A. Yes.

12 MS. SMITH: Move to admit State's Exhibit 104.

13 MR. ALBERT: No objection.

14 THE COURT: State's Exhibit No. 104 admitted
15 without objection. You may publish it if you wish.

16 Q. (Ms. Smith) Let me hand you State's Exhibit No.
17 113 and 114 and ask if you recognize those.

18 A. I recognize them. I don't recognize that
19 (indicating) one.

20 Q. Okay. On State's Exhibit No. 113, do you
21 recognize the person depicted there?

22 A. Yes.

23 Q. Who is that?

24 A. That is Termene.

25 Q. This is Termene Wood?

1 A. Yes.

2 MS. SMITH: Move to admit State's Exhibit 113.

3 MR. ALBERT: May I approach?

4 THE COURT: Yes.

5 (Thereupon, the following was had at the
6 bench outside the hearing of the jury.)

7 MR. ALBERT: Judge, I would object to no
8 relevance. I think she is trying to get in the tattoos. I
9 don't think the tattoos are an issue in this case.

10 MS. SMITH: The relevance of this is this name
11 right (indicating) here T-Locc.

12 MR. ALBERT: I will stipulate to the jury, to
13 the Court, that he was known as T-Locc.

14 MS. SMITH: I want to prove it, judge. And the
15 way I can prove it is T-Locc is tattooed on him and on his
16 arm and we have a letter we intend to bring into evidence
17 at a later time. That letter is to Seven signed by Tloc.

18 MR. ALBERT: Judge, they have done a handwriting
19 analyses on that. It would be proper to do that with
20 them. I believe that is just to inflame the jury, to
21 prejudice my client by showing his tattoos.

22 THE COURT: Well, okay. At this point your
23 objection will be overruled. I will admit it
24 conditionally to tying it up later. I won't let you
25 publish it at this point. And then I will let you publish

1 it only if you tie it up later. So at this point the
2 objection to its admission is overruled. And it will be
3 admitted conditionally if they tied it up later.

4 MR. ALBERT: I appreciate that, your Honor. My
5 objection is they could have took a picture of his chest.
6 If she is wanting to show all of the tattoos. And she is
7 wanting to show the tattoo of the gun. She wants to show
8 the gang related tattoos. I think that is a picture of
9 that tattoo. And I am willing to stipulate that that is
10 what he goes by. I don't think this is necessary and I
11 believe it is prejudicial.

12 MS. SMITH: Judge, this one over here
13 (indicating,) this arm, that was the other exhibit. I
14 showed her State's Exhibit No. 113. She did not recognize
15 that. I do not intend to put in 113. But she could not
16 recognize 114, which also says T-Locc.

17 THE COURT: Let me see 114.

18 MS. SMITH: Okay. So I am kind of between a
19 rock and a hard place.

20 THE COURT: You want to stipulate that is your
21 client's arm as depicted in 114?

22 MR. ALBERT: Yes.

23 MS. SMITH: Well, the problem with that is I need
24 both of them because this one says T-Locc. This one says
25 T-L-o-c-c. The letter is signed T-l-o-c.

1 MR. ALBERT: What I am wondering, judge, is why
2 there is not a close-up of this tattoo.

3 THE COURT: I don't know. I wasn't there.

4 MR. ALBERT: I believe it is prejudicial.

5 THE COURT: Okay. The objection will be
6 overruled. 113 is admitted conditionally. The condition
7 being they tie it up later.

8 (Thereupon, the following was had in open court.)

9 MS. SMITH: Pass the witness.

10 THE COURT: Cross-examination will be a few
11 minutes?

12 MR. ALBERT: Yes.

13 THE COURT: Let's take just a small break. It is
14 two o'clock. Let's say ten minutes. Very quick. We will
15 take another one later, but we took an early lunch. We
16 will take two this afternoon instead of one long one.
17 The jury's excused for ten minutes. Ten minutes only.
18 That is ten after two. Remember the admonition? Anyone
19 need me to repeat it or do you have it memorized as well
20 as I do? If you need it repeated raise your hand. No
21 hands raised. It is in full force and effect. The jury
22 is excused until 2:10. 2:10. Everyone else remain.

23 (Thereupon, the jurors exited the courtroom.)

24 MS. SMITH: Spectators are excused. Court's in
25 recess until 2:10.

1 (Thereupon, a brief recess was taken and the
2 following occurred in open court.)

3 THE COURT: You want to wait for Mr. Burnett or
4 go ahead and proceed?

5 MS. SMITH: We don't need to wait.

6 THE COURT: You may proceed.

7 MR. ALBERT: Thank you, your Honor.

8 CROSS-EXAMINATION

9 MR. ALBERT:

10 Q. Ms. Warden, I am listening to you today and it is
11 Lanita did this and Lanita did that. You are still down-
12 playing your role in this, aren't you?

13 A. No, I'm not.

14 Q. Okay. You are the one that drove to the motel
15 room, right? You drove the car?

16 A. Yes.

17 Q. You helped negotiate the price of \$210.00, didn't
18 you?

19 A. Yes.

20 Q. You are the one that drove him to the ATM and got
21 \$200.00 out and kept it in your pocket, right?

22 A. Yes.

23 Q. When you got back to the room you asked him for
24 the extra \$10.00 and put that in your pocket, right?

25 A. I don't remember. But it might have happened.

1 Q. If he said that, you wouldn't argue with it,
2 would you?

3 A. If I said that?

4 Q. No. No. If Arnold said that. Mr. Kleinsasser?

5 A. No. I wouldn't argue with it.

6 Q. You used your ID to check into the motel, didn't
7 you?

8 A. Yes.

9 Q. You used your check at the Wal-Mart, didn't you?

10 A. Yes.

11 Q. After it was over, you didn't do anything but
12 ride back to Linda Wood's house with them, right? Stayed
13 the night at Linda Wood's house?

14 A. Yes, I did.

15 Q. And let Linda Wood take you home the next day,
16 right?

17 A. Yes.

18 Q. You didn't go call the police?

19 A. No.

20 Q. You didn't try to leave the house on your own,
21 did you?

22 A. No.

23 MR. ALBERT: May I turn on the video, Judge?

24 THE COURT: Yes.

25 Q. (Mr. Albert) You are crying a lot today watching

1 this (indicting) tape. Tell me if you were crying on the
2 night you helped check into this motel.

3 (Thereupon, a portion of State's Exhibit No. 67 was
4 played in open court.)

5 Q. (Mr. Albert) Is that you?

6 A. Yes, it is.

7 Q. Is that (indicating) Ms. Bateman?

8 A. Yes.

9 Q. She is not talking to them as much as you are, is
10 she?

11 A. She was talking to them. We were both talking to
12 them.

13 Q. As you give your ID, right?

14 A. Yes.

15 Q. You were not crying on that tape, were you?

16 A. No, I wasn't.

17 Q. You knew you were setting these men up, right?

18 A. I knew I was going to get some money from them.

19 Q. You weren't going to follow through with what you
20 were talking to them about, right?

21 A. No. I wasn't going to sleep with them.

22 Q. And without you setting this up, nothing could
23 have happened, right? Without you playing your part, none
24 of the bad things could have happened, right?

25 A. That's right.

1 Q. You talk about this 45-year sentence you got.
2 That is actually a non-violent sentence, isn't it?

3 A. Yes.

4 Q. You will get out faster than had you been
5 convicted of a violent crime, correct?

6 MS. SMITH: Judge, I object to that.

7 THE COURT: Sustained. We have no idea when she
8 will get out.

9 Q. (Mr. Albert) Your charge was reduced, right?

10 A. Yes.

11 Q. When you got back to Ms. Wood's house, Miss Linda
12 Wood's house, it was Zjaiton that told you to be quiet; is
13 that right?

14 A. Yes.

15 Q. He told you not to say anything; is that right?

16 A. Yes.

17 Q. What did this (indicating) man tell you to do?

18 A. He never spoke to me.

19 Q. It was Zjaiton that was bleeding; is that right?

20 A. Yes.

21 Q. Did he have blood all over him?

22 A. Not that I seen.

23 Q. Haven't you also testified his mother had to take
24 blood off his jacket?

25 A. That was the next day.

1 Q. Did you see that?

2 A. Yes.

3 Q. When they came back to the car, did you see blood
4 on Termene at all?

5 A. Not that I noticed.

6 Q. Okay. He sat in the car with you, right?

7 A. Yes.

8 Q. He went to the bar with you that night,
9 Mr. Termene Wood; is that right, the Bricktown Brewery?

10 A. As a couple?

11 Q. You went together, right?

12 A. We all drove in the same car.

13 Q. And Zjaiton and his girlfriend were in the car.

14 A. Yes.

15 Q. You were in the car with Mr. Wood; is that right?

16 A. Yes.

17 Q. He decided to stay at the bar with Ms. Odell; is
18 that right?

19 A. Yeah.

20 Q. You have a child with Mr. Wood; is that right?

21 A. Yes.

22 Q. She has a child with Mr. Wood.

23 A. Yes.

24 Q. Is that right? Were you jealous of her?

25 A. No.

1 Q. Were you mad because he stayed at the bar with
2 her?

3 A. No.

4 Q. You don't know what happened in that room at the
5 motel with the men because you had run out; is that right?

6 A. That's right.

7 Q. But you do know that when you got back to
8 Ms. Linda Wood's house with Zjaiton and his girlfriend and
9 you, there was a conversation in the bedroom; is that
10 right?

11 A. Yes.

12 Q. And is that one of the conversations where his
13 mother came in and helped clean his wound; is that right?

14 A. Yes. His mother helped him.

15 Q. Were you in there?

16 A. Yes.

17 Q. Did his mother say "What have you done now?" to
18 him?

19 A. She asked him what happened.

20 Q. Okay. Did he admit to killing a man?

21 A. No.

22 Q. Have you heard him admit to killing a man?

23 A. No.

24 MR. ALBERT: May I approach, judge?

25 THE COURT: The witness? Yes.

1 Q. (Mr. Albert) Ms. Warden, is this (indicating)
2 your handwriting? Do you know? Are those two letters in
3 your handwriting?

4 A. No.

5 Q. That is not your handwriting? Did you write
6 letters to Mr. Wood while he was in jail?

7 A. I have wrote letters.

8 Q. These are not your letters to him?

9 A. No.

10 Q. Do you call yourself Boo?

11 A. Yes.

12 Q. As a matter of fact, you have a tattoo that says
13 "Boo," don't you?

14 A. Yes.

15 Q. But these are not your letters to him?

16 A. They don't look like my writing.

17 MR. ALBERT: Judge, I hate to waste time, but can
18 she have a minute to read the letters to herself?

19 THE COURT: She says they are not her's so, no.

20 Q. (Mr. Albert) Are you sure these are not yours?

21 A. It is not my writing.

22 Q. Did you ever have anybody write letters for you
23 while you were in jail?

24 A. No.

25 Q. Have you written Termane Wood letters that says,

1 "I know you did not commit the murder."

2 A. I believe I have told him that, yes.

3 Q. In letters?

4 A. I don't really remember. Because I have talked
5 to him over the stool thing.

6 Q. The jury might not understand that but when you
7 are in jail you can actually clean out the toilet system
8 where people on different floors can talk to each other;
9 is that right?

10 A. Yes.

11 Q. Is that what you are talking about?

12 A. Yes.

13 Q. In those conversations did you tell him that you
14 know he did not commit the M?

15 A. At the very beginning, yes, I did.

16 Q. What do you mean by the M? What did you mean by
17 the letter M?

18 A. Murder.

19 Q. How did you know he didn't commit it?

20 A. Because in our papers, whenever you first go to
21 jail, I guess the arraignment papers, my arraignment
22 papers said that he was shot and killed. It didn't say he
23 was stabbed. And I found out later on in court what had
24 happened. So at that time I thought he was shot.

25 Q. You didn't see anything that happened in the

1 room. You said that?

2 A. Right.

3 Q. Any letters or any conversations you would have
4 had with him would have been before you struck your deal
5 with the district attorney; is that right?

6 A. Yes.

7 Q. You haven't talked to him since, correct?

8 A. No.

9 Q. If you were telling him that you knew he didn't
10 commit the M and he shouldn't take a murder charge because
11 you know he didn't do it, that would be before you made a
12 deal; is that right?

13 A. That was before I found out in court what had
14 happened.

15 Q. Okay. It would have also been before you made a
16 deal, correct?

17 A. Yes.

18 Q. You definitely are not going to come to court now
19 and try to help anybody, are you, except for yourself?

20 A. I'm not going to come and try to hurt somebody,
21 either.

22 Q. You are looking out for yourself at this point,
23 aren't you?

24 MS. SMITH: I will object to arguing with the
25 witness.

1 THE COURT: Sustained.

2 Q. (Mr. Albert) You have three small children; is
3 that right?

4 A. Yes.

5 Q. How old are they?

6 A. They are eight, five and two.

7 Q. One of their fathers is Mr. Wood; is that right?

8 A. Yes.

9 Q. The other two have different fathers?

10 A. Yes.

11 Q. You want to get out some day to see them?

12 A. Yes.

13 Q. That is why you reached your agreement, isn't it?

14 A. Yes.

15 Q. Ma'am, you are going to do whatever you have to
16 to keep your agreement, aren't you?

17 A. Yes.

18 Q. Let's talk about inside the car. Mr. Zjaiton
19 Wood was holding his hand out the window?

20 A. Yes.

21 Q. Was it bleeding?

22 A. I didn't even notice at that time.

23 Q. Was it cold outside?

24 A. Yes.

25 Q. He wasn't smoking a cigarette or anything, was

1 he?

2 A. No. Not that I recall.

3 Q. He had no other reason to have the window down,
4 did he?

5 A. No.

6 Q. What did he say, the conversation in the bedroom,
7 Mr. Zjaiton Wood?

8 A. Really, it was just talking about his hand.

9 MS. SMITH: I will object as hearsay.

10 THE COURT: Sustained.

11 MR. ALBERT: May I approach, your Honor?

12 THE COURT: Nope. Not on that issue.

13 MR. ALBERT: I can't make a record on that?

14 THE COURT: You can make a record if you have a
15 record to make. So come on up.

16 (Thereupon, the following was had at the bench
17 outside the hearing of the jury.)

18 MR. ALBERT: I apologize. Is your ruling that
19 hearsay cannot come out through another co-conspirator? I
20 am just trying --

21 THE COURT: The objection is hearsay and I
22 sustained it. I think that is plenty clear.

23 MR. ALBERT: Okay.

24 MS. SMITH: I think the conspiracy didn't end
25 with the act, itself.

1 MR. ALBERT: Okay.

2 (Thereupon, the following was had in open court.)

3 Q. (Mr. Albert) Termene did not take you back to
4 Stillwater, Oklahoma; is that right?

5 A. No.

6 Q. He never kept an eye on you, did he?

7 A. No.

8 Q. As a matter of fact, he went back to Casey
9 Odell's house and went inside and had her drive you over
10 to his mother, right?

11 A. Yes.

12 Q. He threatened you about this case?

13 A. Threatened me?

14 Q. About this case.

15 A. Only through the phone call at his mother's
16 house.

17 Q. What is that?

18 A. The day that his mother and Andre Taylor was
19 taking me to the attorney before they took me back to my
20 house in Stillwater, he called and had asked me what I was
21 going to say. And I told him, "The truth." He said,
22 "What is the truth?" I said, "The truth." He asked me
23 again and I said, "I don't know nothing." Then he called
24 again and talked to Andre Taylor.

25 Q. Well, you weren't in the room to know what the

1 truth was, were you?

2 A. No.

3 Q. Okay. Did you say there was a conversation the
4 next morning at Ms. Wood's house?

5 A. Yes.

6 Q. Who was in that conversation?

7 A. What conversation?

8 Q. You said there was one that night when she was
9 cleaning his wound; is that right?

10 A. When, yeah, there was a conversation between me
11 and her in her bedroom.

12 Q. Then was there a conversation the next day?

13 A. Just whenever we had found out what had happened
14 because we seen it on the news.

15 Q. Who did you talk to?

16 A. I was with Linda Wood in her room.

17 Q. Just you and her?

18 A. Me and my seven-month-old son was in my arms.

19 Q. Was Mr. Zjaiton Wood still in the house?

20 A. He was in the house, yes.

21 Q. Was he part of that conversation?

22 A. He became part of that conversation.

23 Q. Okay. What did you say in that conversation?

24 A. I don't really remember. I just know I was
25 crying.

1 Q. Was he confronted about the fact that a man had
2 died?

3 A. He really -- I believe, I am thinking he just
4 called his brother or his brother Termene called him.
5 They talked about it more than anybody. And they decided
6 to leave.

7 Q. You do know that Casey Odell is the one that took
8 Mr. Termene Wood to Texas, don't you?

9 A. Since being in court, yes.

10 Q. Does that make you mad?

11 A. No.

12 Q. When did you make your agreement with the State
13 of Oklahoma; do you remember?

14 A. I don't remember the date.

15 Q. You agree that you have to testify at every
16 trial; is that right?

17 A. Yes.

18 Q. This is number two?

19 A. Yes.

20 Q. If you violate your agreement, you could lose
21 your plea bargain, can't you?

22 A. Yes.

23 Q. If the state believes you are being untruthful,
24 you could lose your plea bargain, can't you?

25 A. Yes.

1 MR. ALBERT: That is all I have.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 MS. SMITH:

5 Q. Ms. Bateman, Mr. Albert asked you whether or not
6 you had testified before.

7 A Warden.

8 Q. I'm sorry. Warden. In fact, you testified at
9 Lanita Bateman's trial.

10 A. Yes.

11 Q. We have one to go, Mr. Zjaiton Wood.

12 A. Yes.

13 Q. You intend to testify at that?

14 A. Yes.

15 Q. Are you going to say anything different than what
16 you said today?

17 A. No, I am not.

18 Q. Even if it lessens the good of Mr. Zjaiton Wood,
19 you are going to say the same thing?

20 A. Yes.

21 Q. You are going to say that. And if you say that,
22 the State of Oklahoma, you know, is not going to do
23 anything to you; is that right? We are not going to take
24 away your plea bargain if you don't say something to
25 convict Mr. Zjaiton Wood.

1 A. That's right.

2 Q. Did you do all of the things that Mr. Albert
3 asked about like going to the motel, signing the register?

4 A. Yes.

5 Q. And you don't deny you did those things.

6 A. No.

7 Q. You don't deny you were involved in this murder,
8 do you?

9 A. No.

10 Q. And for that you got 45 years in prison.

11 A. Yes.

12 Q. Mr. Albert asked you if you called the police the
13 next day. Did Mr. Termane Wood call the police the next
14 day?

15 A. No, he didn't.

16 MR. ALBERT: Judge, I object.

17 THE COURT: What legal basis?

18 MR. ALBERT: You want me to make a speaking
19 objection?

20 THE COURT: No, I want you --

21 MR. ALBERT: Foundation. She wasn't with him
22 the next day. She never saw him again.

23 THE COURT: Sustained. All you have got to do is
24 say the legal basis.

25 Q. (Ms. Smith) You are not telling this jury that

1 Lanita did this by herself, are you?

2 A. No, sir. I am not.

3 Q. Mr. Albert said that none of this would have
4 happened had it been for you. Did you cause Termene Wood
5 to stab Ronnie Wipf?

6 A. No.

7 Q. When you told Termene Wood you knew he did not
8 commit the murder, that is because you thought Ronnie Wipf
9 had been shot rather than stabbed?

10 A. Yes.

11 Q. Because you knew that it was Termene Wood that
12 had the knife.

13 A. Yes.

14 Q. Is that why you believe that he didn't do it,
15 that Zjaiton did?

16 A. Yes.

17 Q. You knew Zjaiton had the gun and Termene Wood had
18 the knife?

19 A. Yes.

20 Q. When did you find out that Ronnie Wipf actually
21 died from a stab wound rather than a gunshot wound?

22 A. I believe it was at our thing before trial.

23 Q. Preliminary hearing?

24 A. Whenever you all brought the evidence.

25 Q. The preliminary hearing.

1 A. Uh-huh.

2 Q. Mr. Albert asked you about a Boo tattoo. Where
3 is your Boo tattoo?

4 A. On my right arm.

5 MS. SMITH: Pass the witness.

6 THE COURT: Recross?

7 MR. ALBERT: A couple.

8 RECROSS-EXAMINATION

9 Q. (Mr. Albert) She asked you if you came in here
10 and you didn't help convict Zjaiton you wouldn't lose your
11 deal; do you remember that?

12 A. Do what now?

13 Q. If you came in here and you said something and it
14 didn't hurt Zjaiton, you wouldn't lose your deal; do you
15 remember her asking that?

16 A. I remember.

17 Q. If you came in here and said you had written a
18 letter saying "I know you didn't commit a murder, I know
19 you didn't commit a murder" you would probably lose your
20 deal, wouldn't you?

21 MS. SMITH: Your Honor, I object to this. There
22 is no evidence of that.

23 THE COURT: Sustained.

24 Q. (Mr. Albert) Do you call him T-Locc?

25 A. Do I call him T-Locc? No.

1 Q. You do not call this man over here (indicating)
2 T-Locc?

3 A. I know he is called T-Locc, but no, me,
4 personally, I don't.

5 Q. Okay. Do you have a child named Davon Allen
6 Tyrone Warden?

7 A. Yes.

8 Q. Do you miss all three of your kids and pray for
9 them every day?

10 A. Yes, I do.

11 Q. You can't live without your three kids.

12 A. Can I live without --

13 MS. SMITH: I object.

14 MR. ALBERT: Do you want --

15 MS. SMITH: Outside the scope.

16 THE COURT: Sustained.

17 Q. (Mr. Albert) These don't sound like your
18 letters?

19 A. Those are things that I have said. But that is
20 not my handwriting.

21 MR. ALBERT: That is all I have.

22 THE COURT: Anything else?

23 MS. SMITH: Nothing from the state, your Honor.

24 THE COURT: Thank you, young lady. You may step
25 down. Call your next witness.

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA,)

4 PLAINTIFF,)

5 Vs.) CF-02-46

6 TERMANE WOOD,)

7 DEFENDANT.)

8
9 CERTIFICATE OF THE COURT REPORTER

10 I, BARBARA A. ROSS, CSR, RPR, Official Court
11 Reporter in and for the State of Oklahoma, Oklahoma
12 County, do hereby certify that the foregoing transcript in
13 the above-styled case is true, correct and a complete
14 transcript of my shorthand notes of the hearing in said
15 cause.

16
17
18
19 DATED THIS

20 29th DAY OF

21 Sept, 2004

22 Barbara Ross
23 BARBARA A. ROSS, CSR, RPR

24 OFFICIAL COURT REPORTER

25 FOR THE STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

Barbara Ross
Oklahoma Certified Shorthand Reporter
Certificate No. 0, 0
Exp. Date: December 31, 2004

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

FILED IN THE DISTRICT COURT
OF OKLAHOMA COUNTY, OKLA.

STATE OF OKLAHOMA

SEP 30 2004

STATE OF OKLAHOMA,

)

PATRICIA FRESELY, COURT CLERK

PLAINTIFF,

)

By

Deputy

Vs.

)

Case No. CF-02-46

TERMANE WOOD,

)

04-550

DEFENDANT.

)

COPY

TRANSCRIPT OF JURY TRIAL

HAD ON THE 5th DAY OF APRIL, 2004,

BEFORE THE

HON. RAY C. ELLIOTT

DISTRICT JUDGE

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

NOV 23 2004

MICHAEL S. RICHIE
CLERK

APPEARANCES:

Ms. Fern Smith and Mr. George Burnett,
Assistant District Attorneys, Oklahoma County District
Attorney's Office. Oklahoma County Office Building,
Oklahoma City, Oklahoma.

Mr. Johnny Albert, Attorney at Law, 204 North
Robinson, Oklahoma City, Oklahoma and Mr. Lance Phillips,
Attorney at Law, One North Hudson, Oklahoma City,
Oklahoma.

REPORTED BY: Barbara A. Ross, CSR, RPR. Oklahoma County
Courthouse, Suite 700, Oklahoma City, Oklahoma.

PC COPY

1 admitted has now been incorporated to this stage and will be
2 allowed for you to consider any and all evidence you feel is
3 appropriate and relevant for this portion of the trial. But
4 it is all part of this proceeding now.

5 MS. SMITH: Comes now the State of Oklahoma and
6 moves to admit State's Exhibit No. 118 and 118 A, judgment
7 and sentences in the name of Termane Wood. Case number
8 CF-98-668. And 118 A is a certified copy of the docket
9 sheet from Payne County in case number CF-98-668 in the name
10 of Termane Wood.

11 THE COURT: Any objection?

12 MR. ALBERT: Stipulate, your Honor.

13 THE COURT: State's 118 and 118 A as in Adam
14 admitted without objection.

15 MS. SMITH: State calls Brandy Warden.

16 BRANDY WARDEN

17 THE COURT: I remind you, you're still under oath
18 from your previous testimony. You may be seated.

19 DIRECT EXAMINATION

20 THE COURT: You may proceed when ready.

21 Q (Ms. Smith) Will you state your name, please.

22 A Brandy Warden.

23 Q Miss Warden, are you the same lady is has testified in
24 this same case a few days ago?

25 A Yes.

1 Q And you were under oath at that time and you are
2 still under oath now; do you understand?

3 A Yes.

4 Q Is your lawyer present with you in court today?

5 A Yes.

6 Q She is seated right here by the table?

7 A Yes.

8 Q Now, when you were testifying the other day, we were
9 not allowed to tell the jury what happened between say nine
10 p.m. that night and 11 p.m. that night; do you recall that?

11 A Yes.

12 Q So I am going to ask you now and refer you back to
13 sometime during that time period around 10 o'clock in the
14 evening on December 31st of 2001 and ask you if you were in
15 the accompany of Lanita Bateman, Zjaiton Wood and Termene
16 Wood?

17 A Yes.

18 Q Where were you about 10 p.m.?

19 A We went to Lanita's house.

20 Q Where did Lanita live?

21 A In an apartment place. I don't know where.

22 Q Was it north Oklahoma City, south Oklahoma City,
23 Moore? Do you know that?

24 A Moore.

25 Q Okay. Had you ever been there before?

- 1 A No.
- 2 Q Who was with you when you went to Lanita's house?
- 3 A Zjaiton, Lanita, me and Termane.
- 4 Q Was Lanita Bateman's mother there?
- 5 A I think so.
- 6 Q Do you not remember whether she was or not?
- 7 A I'm not real for sure. But I think she was.
- 8 Q Whose car were you in?
- 9 A In Casey Odell's.
- 10 Q Who was driving?
- 11 A Lanita.
- 12 Q At some point in time, did the four of you, that being
- 13 Lanita Bateman, Termane Wood, Zjaiton Wood, and yourself, go
- 14 to a pizza restaurant by the name of La Franca's Pizza?
- 15 A I don't know what it was called but, yes.
- 16 Q Was it a pizza restaurant?
- 17 A Yes.
- 18 Q Okay. Why did you go there?
- 19 A We went like two blocks away from there.
- 20 Q Okay. Why did you do that?
- 21 A Zjaiton and Termane was robbing the pizza place.
- 22 Q So you and Lanita stayed in the car?
- 23 A Yes.
- 24 Q Two blocks away?
- 25 A Yes.

1 Q Okay. Now, when you all drove from Lanita's house to
2 two blocks away from the pizza place were there any weapons
3 in the car?

4 A Yes.

5 Q What weapons?

6 A There was a knife and a gun.

7 Q Who had the gun?

8 A Zjaiton.

9 Q Who had the knife?

10 A Termene.

11 Q How far away from La Franca's Pizza is it to where
12 Lanita Bateman was living at the time?

13 A I don't think very far away but I'm not sure.

14 Q How was -- the pizza place that was robbed, who
15 selected that place?

16 A Whenever we were driving Lanita was -- I don't
17 remember what it was but she knows them somehow. And she
18 was telling them about it.

19 Q She know -- you say "she knows them," are you talking
20 about the people that ran the pizza place?

21 A The people that own it, I guess.

22 Q Now, who actually went into the pizza place and
23 committed the robbery?

24 A Zjaiton and Termene.

25 Q Did you ever go into the pizza place?

1 A No.

2 Q Did Lanita?

3 A No.

4 Q How long was were Zjaiton and Termane gone from the
5 car?

6 A Not very long. Maybe 15, ten minutes.

7 Q How much money did they get, if you know?

8 A If I remember right like \$40.00. Not very much.

9 Q How do you know that?

10 A When they got in the car, they said something about
11 it.

12 Q How were these two men acting, that being Termane and
13 Zjaiton, after they committed the pizza robbery?

14 A They just ran to the car and was jumping in and told
15 Lanita to go. She was driving fast and they were kind of
16 ducking in the floor.

17 Q Did either one of them say they were sorry that they
18 had caused injury to the pizza man?

19 A No.

20 Q Now, where did you go after the robbery occurred?

21 A We went to Casey Odell's house.

22 Q And how long did you stay there?

23 A Maybe ten minutes. Not very long.

24 Q Where did you go after you left Casey Odell's house?

25 A Bricktown Brewery.

1 MS. SMITH: Pass the witness.

2 THE COURT: Cross-examine?

3 CROSS-EXAMINATION

4 MR. ALBERT:

5 Q Ms. Warden, you have a child with Termane Wood, don't
6 you?

7 A Yes.

8 Q What is his name?

9 A Branden.

10 Q How old is he?

11 A Five.

12 Q When is his birthday?

13 A August 7th.

14 Q What year?

15 A '98.

16 Q Does Mr. Wood have any contact with him right now?

17 A No, he don't.

18 Q Who has him?

19 A My sister.

20 Q Does Mr. Wood's mother have any contact with your son?

21 A Not that I know of, no.

22 Q Linda Wood?

23 A No.

24 Q Did Mr. Termane Wood love your son?

25 A As far as I know, yes.

1 Q Does your son love him?

2 A I believe so.

3 Q Okay. This crime at the pizza place, are you charged
4 with that?

5 A Am I charged with it?

6 Q The robbery.

7 A Not that I know of. I don't know.

8 Q Is that part of your deal?

9 A Not that ---

10 Q Part of your plea agreement?

11 A Not that I know of.

12 Q Have you ever been to court on that at all?

13 A No.

14 Q Okay. Well, this is the same mask and gloves that you
15 bought at Wal-Mart, right?

16 A Yes.

17 Q You stayed with them after the first robbery, right?

18 A Yes.

19 Q Because if you hadn't stayed with them, you wouldn't
20 be around for the motel robbery, right?

21 A Yes.

22 Q The other day you acted, and tell me if I am wrong,
23 you acted like you didn't really know what was going on.
24 But there had already been a robbery previously in the day,
25 right?

1 A Yes. There was a robbery earlier, yes.

2 Q Would you agree with me the other day you acted like
3 you didn't know what was going to happen at the motel?

4 A I didn't know that they were going to come in, no.

5 Q Okay. You knew there was going to be a robbery at the
6 motel.

7 A I knew that me and Lanita was going to get money from
8 those guys.

9 Q After the first robbery, you didn't do anything to get
10 away from these people, did you?

11 A No.

12 Q You actually got ready like everyone else and went to
13 a bar with them.

14 A Yes.

15 Q Did you use that \$40.00 like they did to party at the
16 bar?

17 A No.

18 MR. ALBERT: That is all I have, Judge.

19 THE COURT: Redirect?

20 MS. SMITH: No, your Honor.

21 THE COURT: Thank you, young lady. You may step
22 down. Call your next witness.

23 MS. SMITH: Keramat Taghizadeh.

24 KERAMAT MOHAMMED TAGHIZADEH

25 (Thereupon, the witness was duly sworn.)

1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY

2 STATE OF OKLAHOMA

3 STATE OF OKLAHOMA,)

4 PLAINTIFF,)

5 Vs.) CF-02-46

6 TERMANE WOOD,)

7 DEFENDANT.)

8
9 CERTIFICATE OF THE COURT REPORTER

10 I, BARBARA A. ROSS, CSR, RPR, Official Court
11 Reporter in and for the State of Oklahoma, Oklahoma
12 County, do hereby certify that the foregoing transcript in
13 the above-styled case is true, correct and a complete
14 transcript of my shorthand notes of the hearing in said
15 cause.

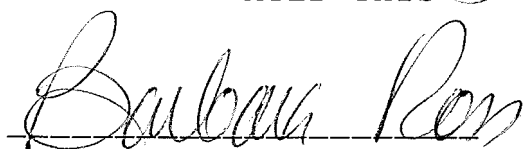
16
17
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19 DATED THIS

29th

DAY OF

Sept

, 2004

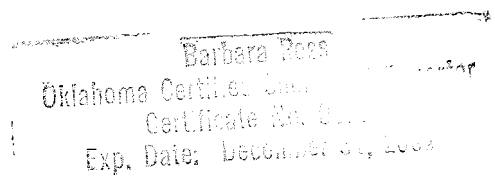
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21 

22 BARBARA A. ROSS, CSR, RPR

23 OFFICIAL COURT REPORTER

24 FOR THE STATE OF OKLAHOMA

25 COUNTY OF OKLAHOMA



IN THE DISTRICT COURT OF OKLAHOMA COUNTY DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

STATE OF OKLAHOMA

APR 15 2004

THE STATE OF OKLAHOMA,

PATRICIA PRESLEY COURT CLERK
by [Signature] Deputy

Plaintiff,

Vs.

NO. 02-2002-46

Brandy Starden

Defendant.

**ORDER GRANTING MODIFICATION OF
SENTENCE, AFTER HEARING**

This matter comes on for hearing on this 15th day of April, 2004, on the Defendant's application for modification of sentence, pursuant to the provisions of 22 O.S. Sec. 982 (a). After receiving testimony and other evidence, and being otherwise fully advised, the Court concludes that the requested modification should be granted.

IT IS THEREFORE ORDERED BY THE COURT that

45 year sentence modified to 35 year sentence;
10 year sentence remains the same. Counts to run
Concurrent

Dated this 15th day of April, 2004.

JUDGE

[Signature]

PERCIE-Byrd, M. L.

STATE'S
EXHIBIT
2-F

de

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLAHOMA

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APR 19 2004

PATRICIA PRESLEY, COURT CLERK

by Deputy

THE STATE OF OKLAHOMA,

Plaintiff,

vs.

BRANDY WARDEN,

Defendant.

Case No. CF-02-0046

ORDER GRANTING MODIFICATION OF SENTENCE, AFTER HEARING

This matter comes on for hearing on the 15th day of April, 2004, on the defendant's application for modification of sentence, pursuant to the provisions of 22 O.S. Sec. 982(a). After receiving testimony and other evidence, and being otherwise fully advised, the Court concludes that the requested modification should be granted over the strenuous objections of the State. In spite of the State's objections, the Court found the defendant cooperative and her testimony truthful and further found that the defendant had done the "right thing" by testifying.

THEREFORE IT IS ADJUDGED, ORDERED AND DECREED that the defendant's sentence be modified on Count one (1) from a forty-five (45) year sentence to a thirty-five (35) year sentence with Count three (3) remaining a ten (10) year sentence. The Counts are to run concurrent.

Traci L. Rhone

TRACI L. RHONE
Attorney for Defendant

Thad E. Brown
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Gregory E. Bennett
Assistant District Attorney