

Case Nos. 25-5997 & 25A494

CAPITAL CASE

In the
SUPREME COURT OF THE UNITED STATES

TREMANE WOOD,
Petitioner,

-vs-

STATE OF OKLAHOMA,
Respondent.

On Petition for Writ of Certiorari
To the Oklahoma Court of Criminal Appeals

BRIEF IN OPPOSITION

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November 7, 2025

QUESTIONS PRESENTED

This case bears no resemblance to *Glossip v. Oklahoma*, 604 U.S. 226 (2025). There, the State conceded that Glossip did not receive a fair trial. Here, the State proved at a three-day evidentiary hearing that Petitioner did receive a fair trial.

Petitioner's factual characterizations are misleading, at best. The evidence does not bear them out. The courts below correctly denied Petitioner's claims based on the uncontroverted evidence that prosecutors had no undisclosed agreements with any witness.

Further, unlike in *Glossip*, Petitioner's guilt did not hinge on the credibility of the witnesses at issue. In fact, Petitioner admits his guilt of felony murder. (Resp. App. at 1a-2a, excerpt from Petitioner's submission to the Oklahoma Pardon and Parole Board).

Finally, Petitioner's claim of judicial bias is belied by the record.

The Questions Presented are:

1. Whether this Court should reverse a long-final conviction based on Petitioner's misreading of the record below?
2. Whether a judge who fully discloses receipt of a communication unrelated to the matter at issue must recuse?

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CAPITAL CASE
EXECUTION SET: November 13, 2025, AT 10:00 A.M. CST
Nos. 25-5997 & 25A494

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

The State of Oklahoma respectfully urges this Court to deny Petitioner Tremane Wood’s Petition for a Writ of Certiorari to review the judgment and opinion of the Oklahoma Court of Criminal Appeals (“OCCA”) entered in this case on September 2, 2025. (Pet. App. 1 at 1a-23a).

STATEMENT OF THE CASE

A. Factual Background.

Petitioner has filed this petition for certiorari, and an application for a stay of execution, almost two months after the OCCA denied his Fifth Application for Post-Conviction Relief (“Fifth Application”). Petitioner is scheduled to be executed on November 13, 2025, for the murder of Ronnie Wipf; a murder he now admits he took part in. (Resp. App. at 1a-2a).

On December 31, 2001, Petitioner, his brother Zjaiton (“Jake”) Wood¹, Lanita Bateman (Jake’s girlfriend), and Brandy Warden (Petitioner’s ex-girlfriend) rang in the new year at Oklahoma City’s Bricktown Brewery. *Wood v. State*, 158 P.3d 467, 471 (Okla. Crim. App. 2007). Near closing time, Ms. Warden (who testified against Petitioner as part of a plea agreement) and Ms. Bateman began talking to the victims in this case, Ronnie Wipf and Arnold Kleinsasser, who believed “they were two

¹ For clarity, Petitioner’s brother will be referred to as “Jake.”

ordinary girls celebrating the new year together.” *Id.* Ultimately, the women agreed to accompany Mr. Wipf and Mr. Kleinsasser to a hotel under the guise of continuing the celebration; however, in reality, this was a ruse so that Petitioner and Jake could rob the men. *Id.*

Earlier that same evening, Petitioner and Jake had committed another armed robbery. The brothers, along with Ms. Warden and Ms. Bateman, left the home of Petitioner and Jake’s mother, Linda Wood, driving a white Chrysler Sierra owned by Petitioner’s then-girlfriend, Casey O’Dell. (4/1/04 JT Tr., 79). The group first stopped at Walmart, where surveillance video captured them purchasing two pairs of men’s gloves and two ski masks, which Ms. Warden paid for. (4/1/04 JT Tr., 5-23, 24-26, 35-36). It was Petitioner who chose the masks and gloves and asked Ms. Warden to purchase them. (4/1/04 JT Tr., 138).

Roughly an hour after leaving Walmart, the four drove to La Franca’s Pizza Restaurant, where Petitioner (wielding a knife) and Jake (wielding a gun) robbed the owner by physically threatening him with these weapons. (4/5/04 JT Tr., 24-25). The victim testified that, although he never saw his attackers’ faces, one of these men was physically larger than the other and the smaller man was wielding the knife. (4/5/04 JT Tr., 24). These details were significant, given it was undisputed that Jake was physically larger than Petitioner. (4/1/04 JT Tr., 34). Since his trial, Petitioner has conceded to the Oklahoma Pardon and Parole Board that he committed this robbery with Jake. (Resp. App. 1a-2a).

After the robbery, the group went to the Brewery from which, as mentioned, Ms. Warden and Ms. Bateman left with Mr. Wipf and Mr. Kleinsasser. Around the same time, Andre Wood, Petitioner and Jake's older brother, dropped Jake off at Petitioner's house while Petitioner waited at the Brewery for Ms. O'Dell to finish her shift. (4/1/04 JT Tr., 55-59). At approximately 2:30 a.m., Petitioner and Ms. O'Dell left the Brewery, picked up their son from a babysitter, and went home; however, Petitioner soon left the residence driving Ms. O'Dell's white car. (4/1/04 JT Tr., 78-79, 84-85, 116).

Meanwhile, after arriving at the hotel, Ms. Warden and Ms. Bateman informed Mr. Wipf and Mr. Kleinsasser that they were prostitutes and would not have sex with the men unless they were paid; based on this, the group negotiated a price of \$210.00 and Ms. Warden accompanied Mr. Kleinsasser to a local ATM to obtain the money, which he immediately gave her. (4/1/04 JT Tr., 159-61).

Between 2:39 and 2:43 a.m., four phone calls were made from the hotel room; one was to the residence Petitioner shared with Ms. O'Dell and the rest were made to Jake's pager. (3/31/04 JT Tr., 196-98; 4/1/04 JT Tr., 32-33, 45-47, 82-84; St. Ex. 80). Not long after Ms. Warden and Mr. Kleinsasser arrived back at the room, several loud knocks could be heard at the hotel room's door, coupled with a man asking if Ms. Warden was inside and if she was ready to leave. (3/31/04 JT Tr., 127-130; 4/1/04 JT Tr., 162-170).

Mr. Wipf demanded the money back and told the women to leave. (3/31/04 JT Tr., 131). When the hotel room's door eventually opened, Petitioner and Jake burst

in wearing ski masks, trench coats, and leather gloves. (3/31/04 JT Tr., 131; 4/1/04 JT Tr., 168). Mr. Kleinsasser testified that he could not see the men's faces, but one of them was physically smaller than the other and that the smaller man wielded a knife while the larger one carried a gun. (3/31/04 JT Tr., 131-33, 171-72, 176).

Once inside the room, Jake pointed his gun at Mr. Kleinsasser and demanded money while Petitioner began struggling with Mr. Wipf. (3/31/04 JT Tr., 131-35, 171-172, 176). At some point, Jake went to assist Petitioner in this struggle; Mr. Kleinsasser heard, "just shoot the bastard," and then a gunshot. (3/31/04 JT Tr., 138). Petitioner then came over to him, struck him on the head with the knife's heavy handle, and demanded more money. (3/31/04 JT Tr., 138-39, 173). Mr. Kleinsasser was able to flee the room when Petitioner then returned to help Jake with a bloody Ronnie Wipf who was screaming in pain or shock. (3/31/04 JT Tr., 139-40).

Evidence recovered after the murder revealed that Mr. Wipf was killed by a single stab wound to the chest; this wound was approximately five inches in depth and resulted in massive internal bleeding. (4/2/04 JT Tr., 11-12, 18). He also sustained multiple defensive wounds from the struggle. (4/1/04 JT Tr., 242; 4/2/04 JT Tr., 8-16). Mr. Wipf was not shot. (4/2/04 JT Tr., 18).

Coleman Givens, a witness staying near the hotel, heard a commotion from the hotel and saw two men enter one of the rooms. (3/31/04 JT Tr., 224-28). Two girls, whom Mr. Givens later identified as Ms. Warden and Ms. Bateman, exited the room. (3/31/04 JT Tr., 227-30). Mr. Givens later saw four individuals leave the hotel in a white car. (3/31/04 JT Tr., 233-34). After the murder, Mr. Givens ended up in the

county jail where he recognized Petitioner's voice as one of those he heard outside the hotel room. (3/31/04 JT Tr., 229-31, 244). Mr. Givens' observations corroborated Ms. Warden's recollection that after she and Ms. Bateman ran out of the hotel room, they got into Ms. O'Dell's vehicle parked in the lot and waited roughly ten minutes before Petitioner and Jake joined them, after which the four of them left the hotel. (4/1/04 JT Tr., 168-70).

The group then drove back to Ms. O'Dell's residence where Petitioner ordered her to drive Jake, Ms. Bateman, and Ms. Warden to the home of Petitioner's mother. (4/1/04 JT Tr., 85-87). During the ride, Jake had the window down, in spite of the cold, and was moaning in pain. (4/1/04 JT Tr., 89). Ms. Warden corroborated Ms. O'Dell's testimony in that regard and added that Jake said he had shot himself in the hand. (4/1/04 JT Tr., 172-76). At trial, Jake testified that he had shot himself in the hand during the robbery. (4/2/04 JT Tr., 85-109).

After the murder, Petitioner contacted Ms. Warden about what she was going to say about the incident, which she perceived as a threat. (4/1/04 JT Tr., 197). Additionally, after police contacted Ms. O'Dell regarding the murder, she contacted Petitioner, which resulted in him fleeing to Texas. (4/1/04 JT Tr., 94-100).

Police recovered a leather glove from the hotel room. (4/1/04 JT Tr., 252). Although no blood was detected on it, two cuttings from the glove revealed a DNA mixture from which Petitioner could not be excluded. (4/2/04 JT Tr., 33-37). This evidence appeared to concern Petitioner, given that while he and Jake were awaiting trial, Petitioner sent a "kite" to his brother which contained the following:

So any ways I need to know some things, you say you are pleading guilty, so what are you going to tell them [a]bout the glove? It was mine and you got it from my house that[']s why my D.N.A. is on it. Are you going to tell them that you called me and asked me to come picc [sic] you up at the store after the fact. Cuz it's just some shit I need to know.

(4/1/04 JT Tr. 259-60; St. Ex. 112).

During Petitioner's trial, Jake testified on his brother's behalf, attempting to take full responsibility for both the pizza restaurant robbery and the murder by claiming that he and an individual named "Alex"—a man Jake had never mentioned previously and whose last name he did not know—were the true culprits. (4/2/04 JT Tr., 101, 129). Jake's testimony was not credible, *Wood v. Trammell*, No. CIV-10-0829-HE, 2015 WL 6621397, at *22 (W.D. Okla. Oct. 30, 2015). In fact, Petitioner now admits that he committed this felony murder with his brother. (Resp. App. at 1a-2a). Petitioner also conceded, during his November 5, 2025, clemency hearing, his participation in the pizza restaurant robbery. Thus, the only fact in dispute is whether Petitioner or Jake stabbed Mr. Wipf (both were convicted of felony murder).

It was Petitioner. He does not contest that he used the knife when he and Jake robbed the pizza restaurant and he admitted during his clemency hearing that he had the knife when he and Jake forced their way into the hotel room. Rather, Petitioner claims that, during the struggle with Mr. Wipf, Jake grabbed the knife and **Jake was holding the knife and the gun while Jake fired a shot at Mr. Wipf**, after which Jake stabbed Mr. Wipf. This theory defies common sense and ignores Mr. Kleinsasser's testimony that he never saw the knife change hands and that, after Jake fired the shot, "the guy with the knife comes over to me. He thumps me on the head with the handle of the blade[.]" (3/31/04 JT Tr., 139, 176). The evidence

overwhelmingly establishes that Petitioner had the knife at all times and Petitioner stabbed Mr. Wipf.

B. Procedural Background.

Petitioner was convicted of first-degree felony murder and sentenced to death based on the jury's finding of three aggravating circumstances.² The OCCA affirmed his convictions and sentences on direct appeal, *see Wood v. State*, 158 P.3d 467 (Okla. Crim. App. 2007), *cert. denied Wood v. Oklahoma*, 552 U.S. 999 (2007), and then later denied his first application for post-conviction relief, *Wood v. State*, No. PCD-2005-143 (Okla. Crim. App. June 30, 2010) (unpublished). Petitioner then completed one full round of federal habeas review, obtaining no relief. *Wood*, 2015 WL 6621397, *aff'd sub nom. Wood v. Carpenter*, 899 F.3d 867 (10th Cir. 2018), *opinion modified and superseded on reh'g*, 907 F.3d 1279 (10th Cir. 2018), and *aff'd sub nom. Wood v. Carpenter*, 907 F.3d 1279 (10th Cir. 2018), *cert. denied Wood v. Carpenter*, 139 S. Ct. 2748 (2019).

From 2010 through 2022, Petitioner also filed four separate post-conviction relief applications, all of which were denied by the OCCA. *See Wood v. State*, No. PCD-2005-143 (Okla. Crim. App. June 30, 2010); *Wood v. State*, No. PCD-2011-590 (Okla. Crim. App. Sept. 30, 2011); *Wood v. State*, No. PCD-2017-653 (Okla. Crim. App. Aug. 28, 2017); *Wood v. State*, No. PCD-2022-550 (Okla. Crim. App. Aug. 18, 2022). Following the denials of his third and fourth post-conviction applications, Petitioner

² Petitioner was also convicted of Robbery with a Firearm (Count 2) and Conspiracy (Count 3), both after former conviction of a felony; he was sentenced to life on each count. *Wood*, 158 P.3d at 470 (citing OKLA. STAT. tit. 21, §§ 421, 801).

unsuccessfully sought certiorari from this Court. *Wood v. Oklahoma*, 586 U.S. 1126 (2019); *Wood v. Oklahoma*, 143 S. Ct. 1098 (2023).

In 2023, Petitioner attempted to reopen his federal habeas proceedings in the Western District Court of Oklahoma (“Western District”) pursuant to Federal Rule of Civil Procedure 60(b)(6). *Wood v. Quick*, Case No. CIV-10-829-HE. The Western District transferred the matter to the Tenth Circuit, finding that this filing amounted to a second or successive habeas petition. *Id.*, Case No. CIV-10-289-HE (W.D. Okla. Sept. 13, 2023). Petitioner appealed this decision to the Tenth Circuit and moved to remand his case back to the Western District; the Tenth Circuit subsequently denied both the appeal and the remand request, as well as requests for rehearing and en banc consideration. *In re Wood*, Case No. 23-6129, 2024 WL 2160180 (10th Cir. Jan. 8, 2024); *Wood v. Quick*, Case No. 23-6134, 2023 WL 10479488 (10th Cir. Nov. 6, 2023); *In re Wood*, No. 23-6129 (10th Cir. Feb. 9, 2024). This Court then denied a writ of certiorari to the Tenth Circuit as to both cases. *Wood v. Quick*, Case No. 23-7465 (2024); *Wood v. Quick*, Case No. 23-7066, 144 S. Ct. 2597 (2024).

1. Litigation Surrounding Petitioner’s Fifth Application for Post-Conviction Relief.

On November 5, 2024, Petitioner filed the Fifth Application that is the subject of the instant Petition. Petitioner raised the following due process claims in relation to the trial testimony of Brandy Warden: (1) prosecutors violated Petitioner’s right to due process by withholding evidence of an undisclosed agreement between Oklahoma and Payne County prosecutors to not accelerate a prior deferred sentence Ms. Warden received in Payne County, in contravention of *Brady v. Maryland*, 373 U.S. 83 (1963);

and (2) prosecutors failed to comply with the requirements of *Napue v. Illinois*, 360 U.S. 264 (1959), by “elicit[ing] and fail[ing] to correct Ms. Warden’s false testimony about the extent of the benefits she received in exchange for her cooperation with the State’s death penalty prosecution.” (Pet. App. 1 at 147a-148a).

These claims were based on a hand-written note on a copy of a pleading found in the file of the Oklahoma County District Attorney’s Office. The note, written on the bottom of the State’s response to Jake’s motion for disclosure of “all deals” (caps removed) is as follows: “Brandy Warden D/S [deferred sentence] in Payne County.” (Pet. App. 2 at 392a). According to Petitioner, this ambiguous note proved the existence of an undisclosed agreement by Payne County, at the request of Oklahoma County, to not accelerate Ms. Warden’s deferred sentence. (Pet. App. 1 at 85a) (excerpt from Petitioner’s Fifth Application: “This new evidence consists of a handwritten note located in recently obtained prosecutors’ files that documents a deal reached” by which Ms. Warden’s Payne County deferred sentence would not be accelerated).

On March 11, 2025, the OCCA remanded these claims for an evidentiary hearing in the Oklahoma County District Court (“District Court”). (Pet. App. 1 at 151a-153a). The evidentiary hearing was held on April 7-9, 2025.

Below, the State will thoroughly discuss the evidence adduced at that hearing. However, it needs to be said up front that there is no evidence to substantiate Petitioner’s claims. In fact, in this Court Petitioner only mentions one time the handwritten note that initially formed the pillar of his claim, stating that it “led [his]

counsel to **suspect** that Ms. Warden’s deal also included” the Payne County deferred sentence. (Pet. at 12) (emphasis added). Instead, based on evidence discovered shortly before and during the hearing, Petitioner now claims the State had an agreement by which Ms. Warden was sentenced to forty-five years with a promise that her sentence would later be modified to thirty-five years. (Pet. at 14-15). Petitioner spins a complex tale in which there was a “trilateral agreement” that led prosecutors to perform a “two-step maneuver,” explained in detail below. (Pet. at 15, 31). The truth, as it usually is, is much simpler.

The State first offered Ms. Warden a thirty-five-year sentence but then changed its mind. As document in Petitioner’s Appendix, Ms. Warden ultimately agreed to a forty-five-year sentence in a plea agreement that **expressly superseded the prior agreement**. (Pet. App. 2 at 363a). Petitioner has not presented one scintilla of evidence that information was withheld or false testimony was presented.

a. Relevant Evidentiary Hearing Testimony

Testimony Regarding Brandy Warden’s Deferred Sentence. In March of 2000, Ms. Warden was charged in Payne County with Larceny From a House. (Pet. App. 2 at 341a-342a). Per a plea agreement, she was placed on a three-year deferred sentence on October 27, 2000, with the proviso that if she successfully completed her probation, her case would be dismissed and expunged on October 23, 2003. (4/7/25 AM Tr., 44-45³; Pet. App. 2 at 343a-356a). Alternatively, if Ms. Warden violated the

³ There are two transcripts for each day of the evidentiary hearing. The State will designate the transcripts by date and time (AM for morning sessions and PM for afternoon sessions).

terms and conditions of her deferred sentence, the State could file a motion to accelerate the deferred sentence to a felony conviction. (4/7/25 AM Tr., 59-60).

Testimony of Tom Lee. On January 18, 2002, probation authorities submitted a violation report in Ms. Warden's case to the Payne County District Attorney's Office listing violations of multiple probationary rules, including her arrest for the murder of Mr. Wipf in Oklahoma County. (Pet. App. 2 at 357a-358a). Payne County Assistant District Attorney Tom Lee reviewed the report and affixed a sticky note to the first page with a directive to "hold off for a while on the application." (Pet. App. 2 at 359a; 4/7/25 AM Tr., 68-70, 83). During his testimony, Mr. Lee made clear that this decision was made for practical reasons, including: 1) the monetary costs of calling witnesses in association with the Oklahoma County charges; 2) problems associated with transferring Ms. Warden, a first-degree murder defendant, from Oklahoma County for an acceleration hearing; and 3) the difficulty of proving this particular probation violation because Ms. Warden had yet to be convicted and the State would have to present live testimony from Oklahoma County witnesses at the hearing. (4/7/25 AM Tr., 60-61, 84-85, 91). Mr. Lee's decision to "hold off" was not premised on any request from or communication with Oklahoma County prosecutors. (4/7/25 AM Tr., 68-70, 83, 91-92, 93).

Testimony of Jake Wood's Attorney, Wayna Tyner. Wayna Tyner, Jake Wood's attorney, testified that she learned about Ms. Warden's Payne County deferred sentence via the discovery provided by Oklahoma County. (Pet. App. 3 at 521a-522a). Ms. Tyner sought more information about the Payne County case,

looking for potential impeachment material, but never received any indication that Ms. Warden's plea agreement in Oklahoma County encompassed her Payne County deferred sentence. (Pet. App. 2 at 390a-392a, 403a-405a; Pet. App. 3 at 522a-528a, 545a-551a).

Testimony of Fern Smith, Brandy Warden, and George Burnett Regarding Ms. Warden's Plea Agreement. The prosecutors in Petitioner's case, Fern Smith and George Burnett, both affirmed that Ms. Warden's plea agreement did not encompass her Payne County case. Specifically, Ms. Smith repeatedly testified that Oklahoma County had no agreement with Payne County regarding Ms. Warden's deferred sentence. (4/8/25 PM Tr., 13, 29-30, 35, 54). Ms. Smith also stated that she did not know Tom Lee and that she never "at any time had contact with Payne County concerning [Ms. Warden's] deferred sentence" (4/8/25 PM Tr., 35).⁴

Mr. Burnett testified that plea negotiations with Ms. Warden resulted in the execution of a "cooperation memorandum,"⁵ signed by all parties, which delineated

⁴ Petitioner correctly notes that Ms. Smith was incorrect when she told the trial court which accepted Ms. Warden's plea in February of 2003 that Ms. Warden's Payne County deferred sentence had expired. (Pet. at 5 (citing Pet. App. 2 at 379a)). However, Ms. Smith was relying on Ms. Warden's attorney's own misunderstanding in that regard (Pet. App. 2 at 379a; 4/8/25 AM Tr., 96; 4/8/25 PM Tr., 9-13, 37-38).

⁵ Mr. Burnett indicated this agreement should have been placed in the State's prosecution file; however, in the time leading up to the evidentiary hearing, the State was unable to locate it. During the hearing, the District Court obtained a copy of this agreement by making a phone call to the public defender's office, which still had a copy. (Pet. at 14). Petitioner includes a copy of this memorandum on page 360a of the second volume of his appendix. However, someone has circled the words "of 35 years in" on Petitioner's copy. (Pet. App. 2 at 360a). This alteration was made after the exhibit was admitted at the hearing. (Resp. App. at 3a).

Ms. Warden's plea agreement and the State's expectations of her. (4/9/25 AM Tr., 9-11, 36-40; 4/9/25 PM Tr., 5; Resp. App. at 3a). This agreement contained no reference to Ms. Warden's Payne County deferred sentence and indicated that the State offered Ms. Warden a thirty-five-year sentence on a yet-to-be-determined reduced charge. (Resp. App. at 3a). The agreement was executed on February 4, 2003. (Resp. App. at 3a).

On February 19, 2003, Ms. Warden pled guilty to Accessory to Murder After the Fact and Conspiracy to Commit Robbery with a Dangerous Weapon, for which she was sentenced to forty-five years and ten years, respectively.⁶ (Pet. App. 2 at 361a-366a). Ms. Warden affirmed during her trial testimony, as well as her testimony at the evidentiary hearing, that her plea agreement provided for a forty-five-year sentence. (4/7/25 PM Tr., 58-59; 4/1/25 JT Tr., 132). The file-stamped copy of the plea paperwork Ms. Warden signed on February 19 expressly superseded "all previous plea agreements." (Pet. App. 2 at 363a). There was no secret deal. Ms. Warden was offered a thirty-five-year sentence but the agreement changed and she pled guilty in exchange for a forty-five-year sentence. (Pet. App. 2 at 363a, 373a (Ms. Warden stating, upon entering her plea, "I plead for 45 [years].")).⁷

⁶ Count Two, alleging Robbery with a Firearm, was dismissed per the plea agreement. (Pet. App. 2 at 361a-366a).

⁷ The State admittedly failed to recognize the significance of the notation on the plea form when the cooperation memorandum was discovered during the evidentiary hearing. Nonetheless, Ms. Warden's plea paperwork was part of the record as Petitioner's Exhibit 7.

At the evidentiary hearing, Ms. Warden testified that she did not recall her Oklahoma County plea agreement involving her Payne County case in any way. (4/7/25 PM Tr., 60). This coincided with Mr. Burnett's testimony that at no point during Ms. Warden's plea negotiations did he contact Payne County regarding the non-acceleration of her deferred sentence. (4/8/25 PM Tr., 90-91; *see also* 4/9/25 AM Tr., 15). Like Ms. Smith, Mr. Burnett repeatedly denied the existence of an undisclosed plea agreement involving Ms. Warden's Payne County case (4/8/25 PM Tr., 90-91, 98-100; 4/9/25 AM Tr. 12, 18; 4/9/25 PM Tr., 11, 14).

The testimony of these witnesses is consistent with representations made by Ms. Smith and Ms. Warden's attorney to the judge who accepted Ms. Warden's plea: "there was no agreement made in reference to that [Payne County] case at all for any purpose." (Pet. App. 2 at 379a).

Finally, with respect to the hand-written note that was the genesis for the Fifth Application, Mr. Burnett could not specifically recall having written it but he suspected that he probably wrote it during a motion hearing. (4/9/25 AM Tr. 15; 4/9/25 PM Tr., 20-21). The note did not "in any way indicate that there was some sort of agreement to not accelerate Brandy Warden's deferred sentence in Payne County[.]" (4/9/25 PM Tr., 21-22).

Testimony of Vincent Antonioli Regarding Brandy Warden. Former Payne County Assistant District Attorney Vincent Antonioli reviewed Ms. Warden's Payne County case file in the week leading up to her deferred expiration date, October 24, 2003; as standard procedure in Payne County, Ms. Warden's case was placed on

a disposition docket for the State to either move to accelerate the sentence or recommend dismissal and expungement. (4/9/25 PM Tr., 46-47, 63). Ultimately, Mr. Antonioli elected not to request acceleration of Ms. Warden's sentence, despite acknowledging that she had not successfully completed her probation. (4/9/25 PM Tr., 48-49, 55). In explanation, he indicated that he reviewed Mr. Lee's note to "hold off" filing an acceleration motion, a directive that, based on his file review, had not changed. (4/9/25 PM Tr., 56-57). Additionally, based on Ms. Tyner's attempts to contact the Payne County District Attorney's Office, there was another note in Ms. Warden's file indicating that she was a cooperating witness in Jake's case and had pleaded to a forty-five-year sentence. (See 4/9/25 PM Tr., 59, 61-62). Given this information, Mr. Antonioli requested dismissal of Ms. Warden's case which was granted by the Payne County District Court; he subsequently filed a "Motion to Dismiss" to memorialize this event. (4/9/25 PM Tr., 63-65, 68; Pet. App. 2 at 425a). He explained that, in light of Ms. Warden's forty-five-year sentence in Oklahoma County:

There was nothing more that we could do in Payne County on our dinky little property crime three-year deferred sentence that would've made any economic sense to have her writted from 75 miles away, have the Court Clerk's Office process paperwork, have the judge have to deal with it. . . . [W]e weren't going to get the restitution paid. She was in jail. So to answer your question, we didn't always file an application to accelerate, nor did we always let sentences lapse. It depended.

* * *

My belief now, and the way I . . . practiced as a prosecutor, was Brandy Warden had done all that she was ever going to do because of her incarceration. She was not going to be able to complete her probation. When applications to accel[erate] . . . get filed, the plan is to have the

defendant get caught up. In other words, get even with the house. Brandy was never going to get even with the house. She had paid approximately two-thirds of the restitution[,] as indicated by the restitution adjustment form. I would've said – the way I practiced, I would've said [']et's just call it good.['] Let's not invest anymore time in this.

(4/9/25 PM Tr., 64-66; *see also* 4/9/25 PM Tr., 67-68, 70). Mr. Antonioli affirmed that his decisions were not influenced by communication from Oklahoma County prosecutors. (4/9/25 PM Tr., 70-71).

Testimony of Ms. Smith and Mr. Burnett Regarding Coleman Givens.

After the murder of Ronnie Wipf, Coleman Givens (the witness who observed Petitioner and Jake enter the hotel room where the murder took place) wrote a bogus check in the amount of \$54.76. (Pet. App. 3 at 687a-691a). On July 26, 2002, Mr. Givens testified at Petitioner's preliminary hearing. That same day, he was released on a recognizance bond. (Pet. App. 3 at 692a). Mr. Burnett signed the bail agreement which included provisions requiring Mr. Givens to maintain contact with his attorney and be supervised by Pretrial Services. (Pet. App. 3 at 693a).

Mr. Givens was subsequently charged, on October 25, 2002, with making a false declaration of ownership to a pawnbroker. (Pet. App. 3 at 694a-698a). On December 8, 2003, he appeared in court for both cases. (Pet. App. 3 at 699a). The cases were continued by agreement because of Mr. Givens' anticipated testimony against Petitioner and Jake, and because he purported to have already paid restitution. (Pet. App. 3 at 699a). Mr. Givens testified against Petitioner on March 31, 2004. (3/31/04 JT Tr., 224-261). On July 8, 2004, Mr. Givens pled guilty to misdemeanor petit larceny in the false declaration case pursuant to a plea agreement

for dismissal of the bogus check case (for which Mr. Givens had paid restitution) and for a one-year deferred sentence for larceny. (Pet. App. 3 at 700a-704a).

At the evidentiary hearing, Mr. Burnett had no recollection of Mr. Givens' cases, nor could he recall the details of Mr. Givens' testimony against Petitioner. (4/9/25 AM Tr., 25-26, 30-31, 36, 40-41; 4/9/25 PM Tr., 23-24). However, Ms. Smith recalled that before Mr. Givens testified at Petitioner's preliminary hearing, he was threatened by Petitioner and/or Jake. (4/8/25 AM Tr., 89-90; 3/31/04 JT Tr., 259).

Ms. Smith and Mr. Burnett identified a series of writings between Ms. Smith, Mr. Burnett, and a third party who was possibly Mr. Givens' attorney. (4/8/25 AM Tr., 89-90; 4/9/25 AM Tr., 19-20). Ms. Smith and Mr. Burnett were in a hearing, likely the preliminary hearing, "and Mr. Givens was getting ready to testify and his lawyer sent this note wanting to OR [own recognizance] him out of the county jail because [Jake and Petitioner] were threatening to kill him." (4/8/25 AM Tr., 90). Ms. Smith wrote, "OR after he testifies[.]" (4/8/25 AM Tr., 87). Mr. Burnett wrote, "with pretrial conditions." (4/9/25 AM Tr., 19).

These notes, discovered shortly before the evidentiary hearing, prove that prosecutors agreed to release Mr. Givens after his preliminary hearing testimony for his own safety. As for Mr. Givens' eventual plea agreement, Petitioner claims it was "in exchange for his cooperation." (Pet. at 15, 17). However, Petitioner has never presented evidence to support that assertion.

b. The District Court's Findings of Fact and Conclusions of Law

Based on the evidence presented at the hearing, the District Court issued an

order finding that no agreement existed between Oklahoma and Payne County prosecutors to refrain from accelerating Ms. Warden’s deferred sentence. (Pet. App. 1 at 33a-34a, 39a, 44a-45a, 49a-53a, 58a-59a, 64a-68a). Petitioner claims the District Court “summarily adopted the state’s proposed findings of fact and conclusions of law, including the typographical and other obvious errors in that document. (App. 268a).” (Pet. at 16). The only support for this assertion is Petitioner’s citation to page 268a of his appendix: the introductory page from his post-hearing supplemental brief to the OCCA. (Pet. at 16; Pet. App. 1 at 268a). There, Petitioner claimed the District Court’s order was “cut-and-paste verbatim from the State’s proposed factual findings and legal conclusions[.]” (Pet. App. 1 at 1). This is false, as Petitioner’s counsel admitted in a hearing in which she testified on October 30, 2025.⁸ (Resp. App. 1 at 13a) (excerpts from Petitioner’s counsel’s testimony). There, Petitioner’s attorney testified that the District Court’s order was “largely identical” to the State’s proposed findings but there were “some small changes[.]” (Resp. App. at 13a). The District Court’s adoption of the State’s proposed findings is proper so long as the court confirmed their substantive correctness. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 571-73 (1985) (while not endorsing the practice of adopting a party’s proposed findings, noting that this Court’s cases suggest “that even when the trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if clearly erroneous” and finding under the circumstances “no reason to doubt

⁸ Petitioner’s attorney testified in support of Richard Glossip’s motion to recuse from Mr. Glossip’s retrial the District Court judge who presided over Petitioner’s evidentiary hearing. (Resp. App. 1 at 4a-7a).

that the findings issued by the District Court represent the judge's own considered conclusions"). Petitioner's counsel's admission that the District Court made changes proves the court reviewed and considered the correctness of the findings.

Petitioner's attempt to cast doubt on the District Court's order by mischaracterizing it should be rejected. The court's findings were fully supported by the record.

Regarding the note upon which Petitioner's claim depended ("Brandy Warden D/S in Payne County"), the District Court determined that Mr. Burnett likely penned this notation during pretrial proceedings on September 3, 2003, in Jake's case as the trial court was ruling on various motions, and thus, it was not indicative of any sort of covert plea agreement between Oklahoma and Payne Counties regarding Ms. Warden's deferred sentence. (Pet. App. 1 at 52a-53a).

The District Court also determined that "prosecutors did not withhold any evidence concerning the existence of an agreement with Ms. Warden not to accelerate her deferred sentence in Payne County[,] nor were any "other benefits extended to her outside of those she testified to at Petitioner's trial," such that "Ms. Warden's Payne County deferred sentence played no part in her plea agreement executed in Oklahoma County." (Pet. App. 1 at 59a). This conclusion was likewise drawn from the testimony of all prosecutors who testified at the hearing, as well as the fact that both Ms. Warden's Oklahoma County cooperation memorandum and plea paperwork only discussed her Oklahoma County case. (Pet. App. 1 at 33a-34a, 39a, 44a-45a, 49a-53a, 58a-59a, 64a-68a). The court also concluded that the cooperation memorandum did

“not reflect the true agreement between the State and Ms. Warden.” (Pet. App. 1 at 50a n.21).

Moreover, the District Court determined that even if such an agreement existed between Oklahoma and Payne Counties, it was not material for purposes of *Brady* or *Napue*. (Pet. App. 1 at 60a-61a, 69a-82a). Because it is easier for a defendant to obtain relief under *Napue*, the State will focus on the court’s conclusions in that regard. The District Court held that “any impeachment value that might have been derived from any alleged agreement between Oklahoma and Payne Counties would not have impacted Petitioner’s verdict or sentence.” (Pet. App. 1 at 69a).

To support its conclusions, the District Court noted: 1) the jury was already aware that Ms. Warden’s motivation for testifying against Petitioner was to avoid a potential life without parole sentence; 2) the content of Ms. Warden’s testimony served to corroborate other evidence and did not “make or break the State’s case;” 3) Ms. Warden’s testimony became much less impactful after Jake’s testimony; and 4) there was a multitude of strong evidence from other sources pointing to Petitioner’s guilt and supporting each aggravator. (Pet. App. 1 at 48a-49a, 69a-72a, 75a-76a, 78a-79a).

Regarding Mr. Givens, the District Court held that Mr. Givens’ release on a recognizance bond was based on concerns for his safety and not a consideration provided in exchange for his testimony against Petitioner. (Pet. App. 1 at 54a).

c. The OCCA’s Denial of Petitioner’s Fifth Application

The OCCA, in reviewing the District Court’s order, determined that

Petitioner's attempt to take three (3) unrelated notes [Mr. Lee's "hold off" note, Mr. Burnett's "D/S" note, and a note indicating Ms. Tyner called Payne County to ask about Ms. Warden's case] found in the prosecutor's files and conjure up a conspiracy between two separate District Attorney's Offices to hide evidence of an agreement in order to make Ms. Warden more credible is nothing but speculation and suspicion.

(Pet. App. 1 at 14a).

The OCCA further determined that even if the State had suppressed evidence of an agreement with Ms. Warden, "any impeachment value that might have been derived from any alleged agreement would not have impacted the verdict or sentence in Petitioner's case." (Pet. App. 1 at 17a). There existed "substantial evidence, separate and apart from" Ms. Warden's "testimony [that] connected Petitioner to the murder" and "the State's case against Petitioner was not dependent on her testimony." (Pet. App. 1 at 18a). Thus, "[a]ny (alleged) agreement not to accelerate Ms. Warden's deferred sentence for a larceny conviction would have added little to no impeachment value beyond her plea agreement to her Oklahoma County charges" and there was "nothing in the record supporting Petitioner's claim of a *Brady* violation." (Pet. App. 1 at 18a). As to Petitioner's *Napue* claim, the OCCA determined that "Petitioner would have been convicted even if [Ms. Warden] had been impeached in this regard or not testified at all." (Pet. App. 1 at 20a-21a).

As to the thirty-five-year sentence referenced in Ms. Warden's cooperation memorandum, the OCCA held that the memorandum "does not support that the

prosecutors in Oklahoma County and Payne County had any secret agreements regarding Ms. Warden’s testimony against Petitioner.” (Pet. App. 1 at 15a-16a n.7).⁹

Finally, regarding Mr. Givens, the OCCA “reviewed the record” and found the District Court’s conclusion that Mr. Givens was released from custody due to concerns for his safety and not in exchange for his testimony is well supported. . . . The record contains no evidence that prosecutors “sanitized” Mr. Givens’ record and suppressed and concealed the extent of his agreement to testify for the State.

(Pet. App. 1 at 16a).

d. Petitioner’s Attempt to Reopen Proceedings Below

On October 31, 2025, the State received notice of an email the District Court sent to Ms. Smith containing the District Court’s post-hearing order. (Resp. App. at 14a). This email was sent five days after the court’s post-hearing order was filed of record. (Resp. App. at 14a; Pet. App. at 24a). The State provided a copy of this email to Petitioner’s counsel.

On November 4, 2025, Petitioner filed a motion asking the OCCA to reassume jurisdiction over his Fifth Application and order a new evidentiary hearing based on the District Court’s alleged “intolerably high risk of the appearance of bias against [Petitioner].” *Wood v. Oklahoma*, No. PCD-2024-879, Motion Requesting the Court Reassume Jurisdiction, Recall the Mandate, and Grant a New Evidentiary Hearing on *Brady/Napue* Claims (Nov. 4, 2025). The motion is based on the email the court sent to Ms. Smith and the court’s friendship with Ms. Smith.

⁹ In fact, as explained *supra*, the agreement reflected in the cooperation memorandum was expressly superseded. (Pet. App. 2 at 363a).

Although this matter is not presently before this Court, the State wishes to dispel any semblance of impropriety. Petitioner's counsel knew of the friendship between the District Court and Ms. Smith because the District Court disclosed it before the hearing. (Resp. App. at 9a-12a). Yet, although Petitioner successfully sought the recusal of a different Oklahoma County District Court judge from presiding over his evidentiary hearing, Petitioner did not seek the District Court's recusal. (Resp. App. at 9a).

The District Court's provision to Ms. Smith of a courtesy copy of the order after the order was written and filed is not evidence of bias. Further, the District Court's decision to *sua sponte* locate the cooperation memorandum shows its dedication to fully considering the potential merits of Petitioner's claim.

REASONS FOR DENYING THE WRIT

Two weeks before his execution, and almost two months after the OCCA's decision, Petitioner asks this Court to reverse his convictions by disregarding the findings made by two state courts after an evidentiary hearing. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." SUP. CT. R. 10. This is exactly what Petitioner seeks. Yet, Petitioner's complaints rest on egregious misrepresentations of the record. This Court should deny certiorari.

Petitioner also alleges that OCCA Presiding Judge Gary L. Lumpkin should have recused from his Fifth Application due to emails he received from the State regarding the scheduling of Petitioner's execution. This claim is not compelling. *See*

SUP. CT. R. 10 (“A petition for a writ of certiorari will be granted only for compelling reasons.”). These emails were unrelated to the post-conviction application. Presiding Judge Lumpkin took no action on the emails. Instead, he provided them to the entire court and the court provided them to Petitioner and the public.

The Petition should be denied.

ARGUMENT AND AUTHORITY

Certiorari should be denied because Petitioner seeks mere error-correction based on false representations about the evidence.

Petitioner asks this Court to stay his execution and review the OCCA’s denial of his *Brady* and *Napue* claims. This Court rarely engages in the sort of error-correction Petitioner seeks. It should not do so here because there is no evidence to support Petitioner’s claims, which were fully and fairly addressed in state court.

A. Standard of Review

A criminal defendant may be entitled to relief if the State fails to disclose favorable information within the control of the prosecutor or law enforcement. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). However, the undisclosed evidence must be material. *Id.* That is, the defendant must establish a reasonable probability that, if not for the State’s failure to disclose, the result of the trial would have been different. *United States v. Bagley*, 473 U.S. 667, 681-82 (1985).

A defendant may also be entitled to relief if his conviction was “knowingly ‘obtained through use of false evidence[.]’” *Glossip*, 604 U.S. at 246 (quoting *Napue*, 360 U.S. at 269). That is, if the State knowingly solicited, or failed to correct, false

testimony. *Id.* Under *Napue*, the State must prove beyond a reasonable doubt that the alleged false testimony did not contribute to the verdict. *Id.* at 269-70.

Petitioner insinuates the OCCA did not follow this standard and instead required him to prove Ms. Warden's testimony was essential. (Pet. at 28-30). Petitioner is incorrect. The OCCA correctly set forth and applied the governing standards. (Pet. App. 1 at 9a (correctly recounting the *Brady* materiality standard), 18a-19a (Petitioner failed to show withheld evidence "was reasonably likely to have altered the outcome" of his trial), 19a (correctly recounting the *Napue* standard), 20a-21a (Petitioner would have been convicted had Ms. Warden's allegedly false testimony been corrected)).

B. Petitioner's Factual Contentions Find No Support in the Record.

In his Fifth Application, Petitioner insisted that Mr. Burnett's handwritten acknowledgment that Ms. Warden was on a deferred sentence in Payne County proved the existence of an undisclosed agreement that said sentence would not be accelerated in exchange for her testimony against Petitioner. (Pet. App. 1 at 85a). Now, the note is relegated to having "led [Petitioner's] counsel to suspect" the existence of an agreement. (Pet. at 12).

Petitioner's allegations, in every respect, are contradicted by the record. Petitioner claims this Court owes no deference to the state courts' factual findings. (Pet. at 23). The case he cites holds the opposite. In *Hurley*, this Court held that it owed no deference to the trial court's legal conclusion ("that their activity is indeed in the nature of protected speech") but its obligation of independent review "does not

limit our deference to a trial court on matters of witness credibility[.]” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 567 (1995) (citing *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989)); see *Harte-Hanks Communications, Inc.*, 491 U.S. at 688 (“credibility determinations are reviewed under the clearly-erroneous standard”). This Court then said that *in a First Amendment case*, it must “make a fresh examination of crucial facts.” *Id.* Petitioner’s citation to *Napue* establishes only that this Court does not owe deference to the state courts’ legal determinations. See *Napue*, 360 U.S. at 271-72 (declining to defer to the state court’s materiality finding).

The State recognizes that the cooperation memorandum and allegation regarding Mr. Givens’ recognizance bond were unavailable when Petitioner filed his Fifth Application. However, these claims were sufficiently adjudicated below for this Court to pass upon them.

The complex conspiracy conjured by Petitioner reveals the weakness of his position. Petitioner claims that Mr. Burnett “*admitted* that he knowingly failed to correct testimony” from Ms. Warden. (Pet. at I). Petitioner does not directly spell it out, but this appears to be his theory: (1) Oklahoma County promised Ms. Warden a thirty-five year sentence but wanted to trick the jury into believing she would receive a forty-five-year sentence so (2) Ms. Warden pled guilty with an agreed sentence of forty-five-years but with a promise that her sentence would later be modified to thirty-five-years and (3) Oklahoma County arranged for Payne County to not accelerate her deferred sentence because, per state statute, if she had a felony

conviction her sentence could not be modified then (4) the State strenuously objected, for appearance's sake, when Ms. Warden sought modification but (5) the judge granted modification anyway. It is unclear whether Petitioner's theory requires that the judge was "in on" the conspiracy. But it would have been quite a gamble for Ms. Warden to rest her hope on a favorable ruling from the judge.

This theory is absurd and contradicted by the evidence. Every witness denied the existence of an agreement with Payne County. (4/7/25 AM Tr., 68-70, 83, 91-92, 93; 4/7/25 PM Tr., 60; 4/8/25 PM Tr., 13, 29-30, 35, 54, 90-91, 98-100; 4/9/25 AM Tr., 12, 18; 4/9/25 PM Tr., 11, 14). Ms. Warden, Ms. Smith, and Mr. Burnett testified that Ms. Warden's agreement was for a forty-five-year sentence. (4/7/25 PM Tr., 58-59; 4/8/25 PM Tr., 36; 4/9/25 AM Tr., 9). Contemporaneous documentation, including the formal plea agreement and the colloquy with the judge, confirmed that Ms. Warden's plea agreement provided for a forty-five-year sentence. (Pet. App. 2 at 363a, 373a). The thirty-five-year agreement found in the cooperation memorandum was expressly superseded. (Pet. App. 2 at 363a). And the State strenuously objected when Ms. Warden sought a decreased sentence. (4/9/25 PM Tr., 37-38).

Petitioner claims Mr. Burnett admitted the cooperation memorandum, and not the written plea agreement, "reflect[ed] the prosecution's true deal with Ms. Warden." (Pet. at 14). This is partly true but Petitioner forgets that Mr. Burnett's memory had faded by time, (4/9/25 PM Tr., 28-29), and takes Mr. Burnett's words out of context.

When first asked what he had told Petitioner's attorney about the agreement with Ms. Warden, Mr. Burnett responded that he had not seen the cooperation

memorandum in years but the “gist of it was that [Ms. Warden] would testify truthfully and she’d receive a 45 year sentence on accessory I think it was. I can’t remember now. Something similar to that. But there’s several other conditions and [I] just don’t recall all of them.” (4/9/25 AM Tr., 9).

Mr. Burnett testified that the written plea agreement “memorialized the full extent of” the agreement with Ms. Warden. (4/9/25 AM Tr., 20-21). However, he later stated that “the full extent” of the agreement was in the cooperation memorandum, not the written plea agreement. (4/9/25 AM Tr., 36). By this, he meant that the “cooperation memorandum has conditions of her testimony.” (4/9/25 AM Tr., 36). “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.” (4/9/25 AM Tr., 37). The memorandum is “kind of a contract” that includes things like, “stay in touch with her lawyer, don’t get in trouble.” (4/9/25 AM Tr., 39). Mr. Burnett clarified that

The gist of her agreement, testify truthfully, you get 45 years, and it was accessory would be in the summary of facts [form used during the guilty plea] and it would be in that plea agreement. Everything else is just, you know, stay out of trouble and stay in touch with your lawyer. You know, it’s not the agreement. The agreement was 45 years, testify truthfully. That was the agreement. Is that helping any?

I can’t -- you know, everything else is just kind of standard language to get -- to make sure, you know, that they know they need to cooperate. You know, if we need to talk to you, you know, we call your lawyer. You come in and you talk to us. You know, it’s to manage them as a witness basically. You know. **It’s not the gist of what she’s going to get or what she’s going to testify to. It’s just mostly managing her as a witness.**

(4/9/25 AM Tr., 40) (emphasis added).

During a recess, the District Court obtained a copy of the cooperation memorandum from Ms. Warden's former attorneys. (4/9/25 PM Tr., 4; Court's Ex. 1). The memorandum states that on February 4, 2003, the State offered Ms. Warden a thirty-five-year sentence in exchange for a plea to a charge that would be determined.¹⁰ (Resp. App. at 3a). Ms. Warden was required to submit to an interview with an investigator, to tell the truth, and to testify truthfully against her co-defendants. (Resp. App. at 3a). Ms. Warden would be moved to a jail other than the one in Oklahoma County and placed in protective custody. (Resp. App. at 3a). Ms. Warden, her attorney, Ms. Smith, and Mr. Burnett signed the agreement. (Resp. App. at 3a).

The memorandum did not reference Ms. Warden's Payne County case. (4/9/25 AM Tr., 7; Resp. App. at 3a). Mr. Burnett testified that the memorandum is primarily designed as an enforcement mechanism. (4/9/25 AM Tr. 28-29). The following exchange was the last mention at the hearing of the memorandum:

Q (By [Petitioner's counsel]) Mr. Burnett, I'm handing you Court's Exhibit 1, the cooperation agreement –

A Yes.

Q -- executed with Brandy Warden.

A Yes.

¹⁰ The charge had to be amended because the only punishments for first degree murder are death, life without parole, and life with the possibility of parole. *See* OKLA. STAT. tit. 21, § 701.9(A).

Q Isn't it true that this cooperation agreement states that Brandy Warden is offered a term of 35 years?

A Yes.

Q And that's ultimately what she got after her sentence was modified down; correct?

A Yeah.

Q And the 35 years that she was promised according to this cooperation agreement is not in the written plea agreement, correct?^[11]

A Correct. Never underestimate my -- my ability to say something stupid to a jury. I mean, I -- I've made a mistake probably, best I can tell.

(4/9/25 AM Tr., 34-35). Finally, the District Court noted that the State “strenuous[ly] objected to the modification of Ms. Warden’s sentence.” (4/9/25 AM Tr., 37-38).¹² When the court asked why, Mr. Burnett responded that he was trying to avoid the perception that Ms. Warden had been promised a sentence reduction. (4/9/25 AM Tr., 38).¹³ Notably, there is no evidence that Ms. Warden’s attorney accused the State of violating its agreement by objecting to the modification. In fact, Ms. Warden waived

¹¹ Petitioner claims his attorney “asked Mr. Burnett to explain why he told Mr. Wood’s jury that Ms. Warden’s deal was for 45 years’ imprisonment when the cooperation memorandum” indicated otherwise. (Pet. at 15). This is false.

¹² Petitioner’s assertion that the State “**allowed** [Ms. Warden’s] sentence to be reduced” is false. (Pet. at 26) (emphasis added).

¹³ Petitioner accuses Mr. Burnett of admitting his objection was a subterfuge designed to conceal the secret “trilateral agreement with Payne County[.]” (Pet. at 16-17, 25, 31). On the contrary, Mr. Burnett testified that he objected to the modification (rather than agreeing to it or remaining silent) to make it clear the State did not agree to the modification and attempt to avoid future misunderstandings or misinterpretations of what transpired.

her right to a court reporter, (Pet. at 11 n.4), an unlikely action for a defendant who believed the State was violating its agreement with her.

Mr. Burnett's reference to "a jury" in response to the question about the cooperation memorandum is admittedly confusing. However, Mr. Burnett never testified that Ms. Warden's plea agreement was for thirty-five-years. Rather, he testified that the agreement was for a forty-five-year sentence, as did Ms. Warden and Ms. Smith. (4/7/25 PM Tr., 58; 4/8/25 PM Tr., 36; 4/9/25 AM Tr., 9-10, 40). And the plea paperwork showing the agreement in the cooperation memorandum was expressly superseded, (Pet. App. 2 at 363a), wholly refutes Petitioner's claim. There was no undisclosed plea agreement with Ms. Warden.

Nor is there evidence that Mr. Givens was given any undisclosed consideration for his testimony. Mr. Givens was released the day he testified at Petitioner's preliminary hearing because Petitioner and/or Jake had threatened him. (Pet. App. 3 at 692a; 4/8/25 AM Tr., 87, 90; 4/9/25 AM Tr., 19). After Petitioner's trial, Mr. Givens entered into a plea agreement by which a charge was dismissed involving a \$54.76 bogus check, for which he had paid restitution. (Pet. App. 3 at 687a-691a). Mr. Givens also pled guilty to a misdemeanor larceny charge in lieu of felony false statement of ownership to a pawnbroker. (Pet. App. 3 at 701a-704a). It is commonplace for low-value property crimes like these to be resolved by plea agreement. There is no evidence that Mr. Givens had an agreement to receive special treatment because he testified against Petitioner.

Petitioner's claims cannot be sustained by speculation. *See, e.g., United States v. Hilliard*, 851 F.3d 768, 782 (7th Cir. 2017) (denying *Brady* claim where the defendant "offer[ed] no evidence to call into question the government's position"); *United States v. Kerr*, 709 F. App'x 431, 434 (9th Cir. 2017) (unpublished) (denying "conclusory and speculative" *Napue* claim for failing to show the evidence was "actually false"); *Boyd v. Allen*, 592 F.3d 1274, 1307-08 (11th Cir. 2010) (denying relief for speculative *Napue* claim); *United States v. Edwards*, 442 F.3d 258, 266 (5th Cir. 2006) (denying *Brady* claim based on "speculative" "contentions" that found no support in the record). This Court should not disturb the lower courts' decisions which are supported by the evidence in favor of Petitioner's speculation and innuendo.

C. There is no Reasonable Likelihood Any Alleged Error Contributed to the Verdicts.

Petitioner is not entitled to relief even if his factual allegations are true. Because the *Napue* standard is more favorable to Petitioner, the State will not address *Brady* materiality. Instead, the State will show there is no reasonable likelihood Petitioner would have been acquitted if the allegedly false testimony had been corrected. *See Glossip*, 604 U.S. at 249.

Petitioner admits that he committed felony murder. (Resp. App. at 1a-2a). The evidence is so strong that he cannot deny it. Ms. Warden's first stage testimony was wholly corroborated such that, unlike in *Glossip*, her credibility was not determinative. *See Glossip*, 604 U.S. at 234 (noting the "extremely weak" corroboration of the key witness's testimony) (quoting *Glossip v. State*, 29 P.3d 597, 599 (Okla. Crim. App. 2001)); *id.* at 234-35 (noting inconsistencies within the key

witness's testimony and between his testimony and other evidence); *id.* at 236 (noting Glossip's consistent insistence of his innocence); *id.* at 240-41 (noting the State's concession of error and concern over cumulative errors); *id.* at 248 ("the jury's assessment of Sneed's credibility was necessarily determinative here. Besides Sneed, no other witness and no physical evidence" implicated Glossip).

As explained *supra*, Jake and Ms. Warden both admitted their involvement in the murder and implicated Ms. Bateman. Petitioner was with Jake, Ms. Warden, and Ms. Bateman all evening from the time he had Ms. Warden buy masks and gloves at Walmart until he woke Ms. O'Dell up and made her drive the others to his mother's home. The men who committed the robbery/murder wore masks and gloves. Petitioner was driving Ms. O'Dell's car that night. Ms. Warden and Mr. Givens confirmed that Ms. O'Dell's car, or a car like hers, left the hotel immediately after the murder. Petitioner fled the state. Petitioner threatened Ms. Warden and Mr. Givens. Petitioner could not be excluded as the contributor of DNA on a glove left in the hotel room. Petitioner wrote a note to Jake in jail coordinating a false defense. Jake's testimony corroborated Ms. Warden's in all material respects except that he essentially adopted the defense Petitioner offered him and invented a fictitious accomplice.

Jake's testimony was a turning point in the trial. Ms. Smith believed Ms. Warden's testimony became less impactful after the jury heard from Jake. (4/8/25 PM Tr., 15-16, 41-46). Mr. Burnett agreed. Before the trial, Mr. Burnett believed the State had a strong case without Ms. Warden but that she would provide certainty. (4/8/25

PM Tr., 75-79). During the trial, he felt that Jake’s testimony turned the case “upside down,” creating a “totally different dynamic” and causing Ms. Warden to “kind of become a side piece.” (4/8/25 PM Tr., 76-79; 4/9/25 AM Tr., 33-34; 4/9/25 PM Tr., 17-18).

Perhaps most importantly, Ms. Tyner shared the assessment made by the prosecutors. She testified at the recent evidentiary hearing that she was “in front of [Jake] next to the jury” during his testimony, which was “over the top.” (Pet. App. 3 at 553a-555a). Ms. Tyner believed Petitioner’s insistence that Jake testify (over Petitioner’s attorney’s objection) was “a fatal flaw” in Petitioner’s case (Pet. App. 3 at 569a). Ms. Tyner thought “the jury saw exactly what [she] saw. And that was an older brother sticking up for his younger brother. And juries don’t like to be lied to.” (Pet. App. 3 at 569a). Her first-hand account, untarnished by any potential bias in favor of the State, is damning to Petitioner’s claim.

Petitioner was convicted of felony murder. In light of the strong corroboration of Ms. Warden’s and Mr. Givens’ testimony, and given the obviously falsity of Jake’s testimony, there is no reasonable likelihood Petitioner would have been acquitted had the jury been informed that these two witnesses benefited from their testimony to a greater degree than they admitted.¹⁴ See *Sivak v. Hardison*, 658 F.3d 898, 911-14 (9th Cir. 2011) (denying relief in spite of false testimony, and where the evidence of guilt was “not quite as ‘overwhelming’ as the State” claimed, in light of the “strong

¹⁴ To be clear, there is no evidence of undisclosed benefits, but the State assumes, for purposes of this “materiality” analysis, that such evidence exists.

evidence” the petitioner was guilty of felony murder); *Rosencrantz v. Lafler*, 568 F.3d 577, 588-91 (6th Cir. 2009) (finding *Napue* error harmless as to “the prosecution’s star witness” in light of uncontradicted aspects of her testimony and the modest value of additional impeachment).

II

Certiorari should be denied because Petitioner seeks mere error-correction on his claim of judicial bias.

Petitioner sought Presiding Judge Lumpkin’s recusal after the State emailed him about the scheduling of Petitioner’s execution. He now claims Presiding Judge Lumpkin’s failure to recuse violated due process. (Pet. at 32-36). Petitioner’s request for error-correction does not present a compelling question for this Court’s review. *See* SUP. CT. R. 10.

A. Standard of Review

Judges are presumed to be impartial. *Bracy v. Gramley*, 520 U.S. 899, 909 (1997). “This Court’s precedents set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge ‘is too high to be constitutionally tolerable.’” *Williams v. Pennsylvania*, 579 U.S. 1, 4, (2016) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872 (2009)). “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Further, that a judge receives information from an extrajudicial source is not a sufficient condition for recusal. *Id.* at 554. Finally, mere “speculation,

beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters,” are insufficient. *Leatherwood v. Allbaugh*, 861 F.3d 1034, 1050 (10th Cir. 2017).

B. Petitioner’s Claim is not Compelling

On June 12, 2025, the State asked the OCCA to set an execution date for Petitioner on or after September 11, 2025. *Wood v. State*, No. D-2005-171, Notice Regarding Execution of Death Warrant (June 20, 2025). The State began preparing its clemency packet presuming that, if the court scheduled Petitioner’s execution for September 11, the Oklahoma Pardon and Parole Board would set a packet due date of July 30, 2025. In so doing, the State discovered that Petitioner possessed a contraband cell phone containing evidence that Petitioner and others (within prison and outside of prison) were engaged in “ongoing and extensive criminal activity[.]” (Pet. App. 2 at 312a). The Oklahoma State Bureau of Investigation (“OSBI”) was pursuing a criminal referral. (Pet. App. 2 at 312a).

On July 15, 2025, the State emailed Presiding Judge Lumpkin, requesting that the court not set Wood’s execution date for September 11, 2025. (Pet. App. 2 at 312a). The State had a “duty to fully brief the Pardon and Parole” Board about Petitioner’s crimes but was concerned that submission of its clemency packet to the Board, making it a public document, would alert potential suspects and lead to the destruction of evidence. (Pet. App. 2 at 312a).

Presiding Judge Lumpkin invited the State to submit its request via “a formal, properly filed request[.]” (Pet. App. 2 at 310a-311a). The State was concerned that such a filing would “likely tip off” Petitioner about the investigation and withdrew its

request.¹⁵ (Pet. App. 2 at 310a). The OCCA then ordered the State to show cause why the emails should not be filed of record. (Pet. App. 2 at 280a-282a). Ultimately, the OCCA denied the State's request to maintain the confidentiality of the emails, releasing them to Petitioner's counsel and making them available to the public. (Pet. App. 2 at 283a-295a).

Petitioner's allegations of judicial bias consist of "speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters." *See Leatherwood*, 861 F.3d at 1050. Petitioner alleges Presiding Judge Lumpkin was prejudiced by allegations of Petitioner's criminal wrongdoing but he does not contend that the other members of the OCCA, who were exposed to the exact same information, were required to recuse. In fact, Petitioner does not contend that even Presiding Judge Lumpkin would have been required to recuse if he had learned of the allegations through a pleading, as opposed to the email he received.

Petitioner's claim cannot succeed based solely on the damaging nature of the allegations in the email; allegations that had nothing to do with the *Brady* and *Napue* claims in his Fifth Application. Presiding Judge Lumpkin knew Petitioner committed two violent armed robberies in a single evening, ordered his brother to shoot Mr. Wipf, and personally stabbed Mr. Wipf. *Wood*, 158 P.3d at 470-72, 474, 476-77. Presiding

¹⁵ The State was not seeking an advantage over Petitioner, who would have learned of the investigation whether the packet was submitted on July 30 or thereafter. Nor was the State seeking more time to investigate **Petitioner**, whose crimes were fully documented on the cell phone data. The State was attempting to allow the investigation into other suspects to proceed before notifying Petitioner and the public of the investigation. (Pet. App. 2 at 310a-312a).

Judge Lumpkin’s knowledge of allegations that Petitioner has since committed additional crimes do not objectively pose so high a likelihood of bias as to require his recusal. *Cf. Liteky*, 510 U.S. at 552 (“Impartiality is not gullibility.”).

Nor did the ex parte manner in which Presiding Judge Lumpkin was exposed to the allegations require recusal. Presiding Judge Lumpkin shared the information in the emails with the rest of the court. (Pet. App. 2 at 280a-282a). The State then provided additional information, ex parte and under seal, to the rest of the court. (Pet. App. 2 at 296a-316a). Yet, Petitioner does not argue the participation of the other judges violated due process.

Thus, Petitioner is left with the nature of the communications.¹⁶ According to the Oklahoma Code of Judicial Conduct, a judge who receives an ex parte communication regarding scheduling or emergency matters may consider that communication so long as he (1) reasonably believes no party will gain an advantage therefrom and (2) promptly notifies the other parties and gives them an opportunity to respond. Rule 2.9(A), *Code of Judicial Conduct*, Okla. Stat. tit. 5, ch. 1, App. 4. If the communication “bear[s] upon the substance of the matter, the judge shall make provision promptly to notify the parties” and give them the opportunity to respond. Rule 2.9(B), *Code of Judicial Conduct*, Okla. Stat. tit. 5, ch. 1, App. 4. Presiding Judge

¹⁶ Although the State’s intent is irrelevant to Petitioner’s claim, the State’s communications concerned a scheduling matter involving a confidential law enforcement investigation and were entirely unrelated to Petitioner’s Fifth Application. *See* OKLA. STAT. tit. 74, § 150.5(D) (“All records relating to any investigation being conducted by the [Oklahoma State] Bureau [of Investigation] . . . shall be confidential[.]”).

Lumpkin notified the full court and Petitioner of the communications and gave the State the opportunity to show the full court that the information should remain confidential. The court then provided all of the information to Petitioner and made it publicly available. Presiding Judge Lumpkin proceeded in accordance with the law.

Respondent fails to understand the relevance to this claim of Presiding Judge Lumpkin's belief that the Department of Corrections should not need ninety days between executions. (Pet. at 33-34). The OCCA was required by statute to schedule Petitioner's execution, his Fifth Application notwithstanding. OKLA. STAT. tit. 22, § 1001.1(B) ("The filing of a second or subsequent petition or appeal in any court does not prevent the setting of an execution date."). Further, the OCCA scheduled Petitioner's execution two months later than the State had requested.

Nothing about Judge Lumpkin's response to the State and timely notification to Petitioner about the ex parte communications indicates that he held a bias toward Petitioner, or created the appearance thereof. Petitioner's claim is without merit. *See United States v. Brocato*, 4 F.4th 296 (5th Cir. 2021) (finding recusal not warranted where trial judge relied on extrajudicial source to determine that one defendant had committed perjury, because there was no actual or objective impression of bias); *cf. Bush v. State*, 2012 OK CR 9, ¶ 83, 280 P.3d 337, 351 ("[T]he presumption is that the trial court only relied on admissible evidence.").

Respondent respectfully asks this Court to deny the Petition.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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