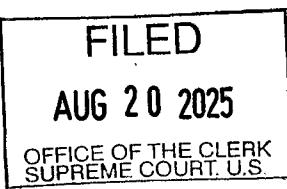


No. 25-6204

AUGUST 20, 2025



IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN NYCKELE TERRY, - PETITIONER

VS.

STATE OF OKLAHOMA, - RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

Petitioner, pro se:



Brian N. Terry #2015336
Great Plains Correctional Center
P.O. Box 700
Hinton, Ok 73047
(405) 778-7000

QUESTION(S) PRESENTED

This case involves a serious of important question about fair warning to United States citizens of a collateral and direct Fourth, Fifth, Sixth, and Fourteenth Amendment consequence and where the responsibility of fair warning lies, whether defense counsel assigned to prosecute and appeal from a criminal conviction has a constitutional duty to raise every nonfrivolous issue requested by the defendant, and the constitutional violation of the illegal Search and Seizure of a residences home, an claim appellate counsel failed to raise, and whether the U.S. Constitution provides at least equal, if not greater protections, to U.S. Citizens as it does to a Lawful Permanent Resident.

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Whether the taking of the cellphone under duress, with force, from the hand of one Suspected of crime, the cellphone belonging to him, of evidential value only, by A presentative of any branch or subdivision of the government of the United States, A violation of the Fourth Amendment..... 6

Whether a representative of any branch of subdivision of the government of the United States retrieves a DNA Buccal Swab from one suspected of a crime under Persuasion, force, or promises, is a violation of the Fourth Amendment..... 7

Whether the admission of such cellphone video in evidence against the same person When indicted for crime is a violation of the Fifth Amendment..... 9

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parities do not appear in the caption of the case on the cover page. A list
Of all parties to the proceeding in the court whose judgment is the subject of
This petition is as follows:

Gentner Drummond, Attorney General
Brenna C. Gibson, Asst. Att. General
313 N.E. 21th Street
Oklahoma City, 73105-4907

Clerk of the Supreme Court
of the United States
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Attorney At Law
1861 East 15th Street
Tulsa, OK 74104

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- . State of Oklahoma v. Brian N. Terry, No. Cf-22-1651
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CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the U.S. Constitution holds in part:

‘The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’

The Sixth Amendment of the U. S. Constitution holds in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to ...
The assistance of Counsel for his defence.

The Fourteenth Amendment of the U.S. Constitution holds in relevant part:

No State shall... deprive any person of life, liberty, or property, without Due process of law.

The part of the Fifth Amendment here involved reads:

‘No person ***shall be compelled in any criminal case to be a witness Against himself.’

STATUTORY PROVISIONS INVOLVED

22 O.S. § 1086 Provides that:

All grounds for relief available to an applicant under the post-Conviction Procedure Act, including claims challenging the jurisdiction of the trial Court, must be raised in his or her original supplemental or amended Application. Any ground finally adjudicated or not so raised, or knowingly, Voluntarily and intelligently waived in the proceeding that result in the Conviction or sentence or in any other proceeding the applicant has taken To secure relief may not be the basis for a subsequent application, unless Not asserted or was inadequately raised in the prior application.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
OPINIONS BELOW

[x] For cases from state courts:

The opinion of the highest state court to review the merits of mandamus appears at Appendix Still pending to the petition and is
[X] reported at The Supreme Court of Oklahoma; or
[] has been designated for publication but is not yet reported; or
[X] is unpublished.

The opinion of the Oklahoma Court of Criminal Appeals; or
Appears at Appendix A to the petition and is
[X] reported at Oklahoma Court of Criminal Appeals; or
[] has been designated for publication but is not yet reported; or
[X] is unpublished.

The opinion of the District Court of Tulsa County; or
Appears at Appendix B to the petition and is
[X] reported at the District Court of Tulsa County; or
[X] is unpublished.

JURISDICTION

[x] For cases from State Court:

The date on which the highest state court decided my case was May 22, 2025
A copy of that decision appears at Appendix A
[] A timely petition for rehearing was thereafter denied on the following
Date: N/A and a copy of the order denying rehearing appears at Appendix N/A
[] An extension of time to file the petition for a writ of certiorari was
Granted to and including N/A(date) on N/A in
Application No. N/A

The jurisdiction of this court invoked under 28 U.S.C. §1257(a)

District Courts Judgment and Sentence was entered on January 19, 2024; The OCCA
Affirmed the District Courts Judgment and Sentence on May 22, 2025 (approx. 1 year & 4 months
to rule).

Our Certiorari Jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides as follows: (3) By writ of certiorari, where any title, right privilege or immunity I specially set up or claimed under the Constitution, treaties or statutes of the United States. The provisions derives, albeit with import alterations, see, e.g., act of

December 23, 1914, c. 2, 38 Stat. 790; Act of June 25, 1948, c. 646, 62 Stat. 929, from the Judiciary Act of 1789, c. 20, § 25, 1 Stat. 85.

CHRONOLOGICAL ORDER OF EVENTS

March 7-8, 2022 Alleged crime happened

April 5, 2022 Detective Annalynn Cox took Mr. Terry's Cellphone and Swab

April 7, 2022 Thursday 1:57 p.m. Residential Search Warrant sent to Annalynn Cox

April 7, 2022 Affidavit for Search Warrant issued

April 11, 2022 Officer's Inventory Return issued

April 15, 2022 Mr. Terry arrested by SWAT Team – without arrest warrant

April 17, 2022 Mr. Terry made bond

April 18, 2022 Protective Order Served

April 19, 2022 Out of Custody Affidavit issued

May 4, 2022 Charge by Felony Information

August 30, 2022 Amended Felony Information

July 22, 2022 Preliminary Hearing was held on Protective Order

August 22, 2022 Preliminary Hearing was held on alleged crimes

January 8-11, 2024 Jury trial held

January 19, 2025 Appeal to the Oklahoma Court of Criminal Appeals

February 11, 2025 Writ of Mandamus to Supreme Court of Oklahoma

A state prisoner appearing *pro se* who's pleading are to be liberally construed acting without the benefit of appointed or retained counsel under the liberal interpretation of *Haines v. Kerner*, 404 U.S. 519; 92 S. Ct. 594; 30 L. Ed. 652 (1972).

STATEMENT OF THE CASE

Mr. Terry was tried by jury and convicted of three (3) counts of First-Degree Rape (counts 1-3)(21 OS 2021, § 1114(A); The trial court sustained demurrer to the First-Degree Rape charge in Count 4; three (3) Counts of Forcible Sodomy (Counts 5-7 (21 O.S 2021, § 888(A)); Kidnapping (Count 8) (21 O.S. 2021, § 741); and Stalking (misdemeanor) (Count 9) (21 O.S. 2021, § 1173) in (Count 8) (21 O.S. 2021, § 741); and Stalking (misdemeanor) (Count 9) (21 O.S. 2021, § 1173) in the District Court of Tulsa County No. CF-2022-1651. The jury returned sentence of imprisonment for five (5) years in each Counts 1 and 3; ten (10) years in Count 2; one year in each of Counts 5, 6, And 7; two (2) years in Count 8; and a one-thousand-dollar (\$1,000.00) fine in Count 9. (See

Judgment and Sentence Appendix B)

The trial court suspended the fine in Count 9, but otherwise sentenced accordingly, ordering the sentences to run consecutively with credit for time served. Petitioner must serve 85% of his sentence in Counts 1, 2, 3, 5, 6, and 7 before becoming eligible for consideration for parole. 21 O.S. 2021, § 13.1.

Mr. Terry was charged in Tulsa County by information on May 4, 2022, then a Amended Information August 30, 2022 (**Appendix C**) Case Number CF-2022-1651 with:

Count 1 – Rape in the 1st degree in violation of Okl. Stat. tit. 21, § 1114(A) – 5 years in DOC
Count 2 – Rape in the 1st degree in violation of Okl. Stat. tit. 21, § 1114(A) – 10 years in DOC
Count 3 – Rape in the 1st degree in violation of Okl. Stat. tit. 21, § 1114(A) – 5 years in DOC
Count 4 – Rape in the 1st degree in violation of Okl. Stat. tit. 21, § 1114(A) – Dismissed
Count 5 – Forcible Sodomy in violation of Okla. Stat. tit. 21, § 888(A) – 1 year in DOC
Count 6 – Forcible Sodomy in violation of Okla. Stat. tit. 21, § 888(A) – 1 year in DOC
Count 7 – Forcible Sodomy in violation of Okla. Stat. tit. 21, § 888(A) – 1 year in DOC
Count 8 - Kidnapping in violation of Okla. Stat. tit. 21, § 741 – 2 years in DOC
Count 9 – Stalking in violation of Okla. Stat. tit. 21, § 1173 – misdemeanor, \$10,000 fine¹

Mr. Terry's Preliminary Hearing was held on August 22, 2022, before the Honorable Tanya Wilson. The State was represented by Assistant District Attorney Assistant Nutt. Mr. Terry was represented by Tracy Tiernan. At the conclusion of the preliminary hearing, Judge Wilson found probable cause and bound Mr. Terry over for trial on Counts 1 – 8, but found the evidence on Count 9 to only support a misdemeanor charge and not a felony as originally charged. Also, count 4 had been dismissed and was not before the jury.

Mr. Terry was tried before a jury on January 8 - 11, 2024, before the Honorable Dawn Moody, District Judge. The State was represented by Assistant District Attorneys Ashley Nix and Mitchell Wells. Mr. Terry was represented by Beverly A. Atteberry. Ashley Stanford (AS) was the alleged victim, which was Mr. Terry's ex-girlfriend, that he allowed to live on his couch until she had found a job and an apartment. Mr. Terry was found guilty at the jury trial on all counts before them in Case No. CF-22-1651. **(Appendix B)** On January 19, 2024 a timely appeal was filed to the Court of Criminal Appeals (OCCA), Wyndi Thomas Hobbs was Mr. Terry's Direct Appeals Attorney, Case No. F-2024-85. OCCA issued a mandate and an opinion denying relief on May 22, 2025. **(Appendix A)** On February 11, 2025 Mr. Terry filed a Writ of Mandamus with the Supreme Court of Oklahoma because of Ineffective Assistance of Appellate Attorney for failure to include Mr. Terry's additional relevant propositions in his direct appeal. Even though counsel is not required to advance every argument, regardless of merit. **Cartwright v. State**, 708 P.2d 592 (Okl.Cr. 1985). (Mandamus still pending) Petitioner argues the fact that if counsel fails to raise all relevant issues on direct appeal they are barred by waiver or res judicata. Mr. Terry asserts that this rule is unfair and prejudicial to his first challenge of all the trial court errors solely because of appellate counsel's procedural error for failure to raise all relevant issues requested by Mr. Terry. **Thomas v. State**, 888 P.2d 522, 527 (Okl.Cr. 1995)

REASONS FOR GRANTING THE PETITION

Mr. Terry claims that the warrantless search and seizer was illegal; the taking of his personal work cellphone was illegal; the taking of his DNA buccal swab was illegal; the search of his home was illegal; all without a legal search warrant.

Mr. Terry claims that the Search Warrant that was discovered filled out by Detective Anna Cox and Notarized was deficient according to the Oklahoma Statutes, rules, and laws. Search warrant must be shown OK St. T. 22 §1221; Probable cause must be shown § 1223; Requisites of warrant § 1225; Form of search warrant § 1226; Service of search warrant § 1227; Search Warrant § 1266.8.

Mr. Terry claims that detective Anna Cox exceeded her authority by taking his Cellphone and DNA buccal swab without his approval, and under duress by her aggressive and forceful authority. OK St. T. 22 § 1240. See Process- searches seizures and confiscation-service of arrest warrant 11 Okl.St.Ann. § 28-121. All in violation of the Oklahoma Due process of law. OK Const.Art. 2, § 7

It would not be possible to add to the emphasis with which the framers of our Constitution and this court have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by the Fourth Amendment. The effect of the decisions cited is: That such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty and private property,' that they are to be regarded as of the very essence of constitutional liberty, and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen – the right to trial by jury, and to due process of law. It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent

stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous, executive officers. From Petitioner's conviction and sentence raises the following proposition of error caused by the officials of the state of Ok. This count should resolve the questions presented to prevent a miscarriage of Justice, because the questions presented in the petition concerns a matter of great importance.

PROPOSITION 1

ILLEGAL SEARCH AND SEIZURE

First, Challenge to an illegal search and seizure is in violation of 24 Vernon's Okla. Forms 2d, Crim. Prac. And Proc. §1320.8: Search and Seizures. U.S.Const. Amend. 4; Okla. Const. art. 2, § 30; Fed. Rules Crim. Proc. Rule 41(c), 18 U.S.C.A.

The first question, relating to the seizure of cellphone:

Whether the taking of the cellphone under duress, with force, from the hand of one Suspected of crime, of cellphone belonging to him, of evidential value only, by A representative of any branch of subdivision of the government of the United States, a violation of the Fourth Amendment?

The search and seizure were illegal because on April 5, 2022 detective Anna Cox, and another Lady Detective/officer came to Mr. Terry's house, knocked on the door and was allowed in. Then as Mr. Terry was standing in the living room, Ms. Cox took a tour of the house, made a sweep from room to room, the other Detective/officer stood at the door. (Name unknown).

The Detective found no hair samples from the bedroom, since the victim had testified that Mr. Terry had been pulling on her hair. (Tr pg. 451, L. 17-20) The Detective did not recover the bed sheets that the victim had said was poop on, even thought they were washed, still DNA

could have been detected. (Tr. pg. 501, L. 15-16) and (Tr. pg. 516, L. 15-19). The Detective found no container of "Cyanide" as was testified by victim. (Tr. pg. 482, L. 17-21). The Detective only took one cellphone, Mr. Terry's. (Never asked how many other cellphones were in the house). The Detective already had the victim's cellphone, because that's the cellphone Mr. Terry had used to talk to "Atavian Blakely," a person who had called (AS) the victim? (Tr. pg. 665, L. 2-12) The detective Without a warrant to search his house and confiscated these items. Mr. Terry had no idea what Detective Cox was looking for in his home. Detective Cox asked Mr. Terry about how he activated google assistance smart speaker. Mr. Terry Explained and pulled out his cellphone to show her how it worked. After Mr. Terry activated his cellphone. Detective Cox reached out and took Mr. Terry's cellphone out of his hand by force without his permission. Mr. Terry was currently working from home at the time detective Anna Cox came to visit Mr. Terry, and He expressed to her the need for his cellphone for work purposes, because the phone has an app. Provided by Mr. Terry's employer, that has to be in the vicinity of the Laptop. Without the phone it will not let Mr. Terry work on the Laptop. Once Ms. Cox took Mr. Terry's cellphone, he had no access to his Laptop to continue his work. But Ms. Cox told Mr. Terry if you give me a DNA swab I'll return it the next day. Mr. Terry had to agree with Detective Cox in order to get his work Cellphone back. There was no showing of a search warrant. But as a professional law agent that's supposed to know the law, she failed to inventory the cellphone, place it in a concealed container, and have the other detective verify the transaction, and have Mr. Terry sign a release.

The second question relating to the DNA buccal swab:

" Whether a representative of any branch or subdivision of the government of the United States retrieves a DNA Buccal Swab from one suspected of a crime under Persuasion, force, or promises, is a violation of the fourth Amendment?

Then there's the issue concerning the DNA swab taken from Mr. Terry. Ms. Cox failed to inventory it, and failed to use gloves to preserve the contents from being contaminated. Mr. Terry wants to point out that on the "return" of the search warrant was include the Number of the DNA swab BT 3565, but there was no mention of the Cellphone. Upon an evidentiary hearing Mr. Terry can testify that Ms. Cox took the DNA swab placed it in a cloth and put it in a tube container, without gloves which could have contaminated the contents of the DNA swab. The two detectives then left with the cellphone and DNA swab without a search warrant and without an inventory of what they took.

The cellphone in the possession of Ms. Cox for over 24 hours, had complete access to all information it contained, even the confidential information relating to the business that he was working for. Mr. Terry had advised his First Attorney Tracy Tiernan of the situation under the impression that after paying for his service \$10,000.00 he would file a motion to suppress. After he fired him, and hired Beverly Atteberry, he gave this information about the confiscation of the cellphone and DNA buccal swab without a search warrant. There was a Jackson v. Denno hearing held, but his attorney told him that he had to sit outside and wait for the results. When Ms. Atteberry came out, she explained that his Cellphone would not be used. Yet, during trial the District Attorney had the video from Mr. Terry's cellphone and showed it to the jury.

The prohibition of the Fourth Amendment is against all unreasonable searches and seizures and if for a government officer to obtain entrance to a man's house by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private cellphone would be an unreasonable and therefore a prohibited search and seizure; as it certainly

would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home and of the cellphone of the owner would be as much invaded and the search and seizure would be as much against his will in the one case as in the other, and it must therefore be regarded as equally in violation of his constitutional right of the Fourth Amendment.

The third question reads:

'Whether the admission of such cellphone video in evidence against the same person When Indicted for crime is a violation of the Fifth Amendment?'

One accused of crime, whether he be obliged to supply evidence against himself or whether such evidence be obtained by an illegal search of his premises and seizure of his private cellphone. In either case he is the unwilling source of the evidence, and the Fifth Amendment forbids that he shall be compelled to be a witness against himself in a criminal case by the use of the video from the confiscated cellphone.

An unreasonable search and seizure by State officers violates the Fourteenth Amendment, because freedom from unreasonable searches and seizures is a part of the concept of ordered liberty comprehended within Due Process of Law. **Wolf v. Colorado**, 338 U.S. 23, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949).

Accordingly, a search and seizure which substantively violates the Fourth Amendment likewise violates the Fourteenth.

In this brief petitioner presents these questions:

1. If the Court agrees with his contentions that (a) the evidence used against him was obtained in violation of his rights under the Constitution of the United States and that (b) such

Evidence is according inadmissible regardless of the original search and seizure by state officers, Reversal must follow, and it will be unnecessary to consider what was originally petitioner's first question, viz., whether the rule of **Rea v United States**, 350 U.S 214, is one comity.

PROPOSITION TWO DEFECTIVE SEARCH WARRANT

The previously disclosed deficient search warrant that was not signed by a Judge or dated; is in violation of 24 Vernon's Okla. Forms 2d, Crim. Prac. And Proc. § 1320.8: Search and Seizures. U.S. Const. Amend. 4; Okla. Const. art. 2, § 30; Fed. Rules Crim. Proc. Rule 41(c), 18 U.S.C.A.

The issue of this cellphone, that was seized from Mr. Terry's hand under a warrantless search on April 5, 2022. After Mr. Terry was released from jail on bond, his first lawyer Mr. Tracy L. Tiernan had given him a package containing the legal documents of discovery, which included a copy of an Affidavit for Search Warrant. Dated: April 7, 2022, Notarized by Shea Duff. (**Appendix D**) Also, a copy of the Search Warrant for Premises, Dated: Blank; and no signature of the magistrate or Judge, which would be void on its face. (**Appendix E**) There was a copy of Officers Return Dated: April 11, 2022, the inventory return had only one item this Number: BT 3565, pertaining to the DNA swab, but no mention of the Cellphone, The signature of Officer serving warrant is a scribbled line, name unknown. The box was checked: I found said property in the possession of one (wrote in) Brian Terry, and I made service of said writ by giving him/her a true and correct copy of said warrant. (**Appendix H**) That statement is incorrect. Mr. Terry received No copy of a Search Warrant.

To succeed on an overbreadth challenge, the defendant must establish that the "search warrant for premises," "Affidavit for Search Warrant," and Officers Return with in complete

Inventory were invalid because they failed to describe with specificity and particularity the place to be Searched and the items to be seized in violation of 37 Okla.St.Ann., § 89 return; U.S. Const. Amend. 4; Okla. Const. art. 2, § 30; Fed Rules Crim. Proc. Rules 41(c), 18 U.S.C.A.

By an exam of the search warrants at (**Appendix E and F**) this Court can verify their own opinion to validly of the warrants. As well as the affidavit at (**Appendix H**) this will show the violation of Due Process of Law and the Fourth Amendment of the United States.

Mr. Terry found a sheet from the "Tulsa Police Department Property Receipt" with a False Statement totally incorrect (**Appendix I**) the first statement:

Recovered on 11-APR-22 BUCCALSWAB
Given FROM SUSPECT BRIAN TERRY

Second statement:

Received on 11-APR-22 CELLPHONE
GIVEN BY SUSPECT BRIAN TERRY WITH SEARCH WARRANT

To show proof that these two statements are incorrect: These two statements are totally false, incorrect, and fabricated. To prove this fact Mr. Terry has included a letter that explains the exact date Detective Cox and the other Detective/ officer with her came to his house, which was April 4, 2022. Mr. Terry wasn't home, so they spoke with his neighbor Mrs. Feral Zaring address: 4612 south 23 West, Ave., Tulsa, Ok 74107 Phone No 918 855-7196 to corroborate this incident see Mrs. Feral's Zaring's sworn Affidavit and Brandon Jackson 918 645-6080 sworn Affidavit. (**Appendix k**) That will verify this Fact upon the approval of evidentiary hearing Mrs. Feral Zaring and Brandon Jackson will testify.

The Detective returned the next day to Mr. Terry's home. That would be April 5th and took Mr. Terry DNA swab and his work phone on that date. So now you can compare the dates between the Police Report's date of April 11,2022 (**Appendix I**) and April 5, 2022 Detective Cox visit cannot be true.

To further corroborate this fact; see form [EXTERNAL]: residential search warrant' 4608 S 23 WA." (**Appendix F**) that states:

TulsaSearch Warrant TulsaSearchWarrant@oscn.net
Thu 4/7/2022 2:28 PM
To: Cox, Annalyn

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This is to show the court and verify the fact that Detective Cox received the search warrant on the 4/11 and therefore on April 4th or 5th of 2022 when she came to his house and confiscated Mr. Terry's work cellphone and illegally ministered an unauthorized DNA BUCCAL SWAB was Incorrect and fabricated Mr. Terry sent a letter to judge Wilson to ask about the search warrant, as to date there's been no response. **(Appendix G)**

Whether the failure of the appellate attorney court to consider
Advancing this claim of search and seizure on direct appeal

Mr. Terry claims that with this information of proof of his appellate counsel was Ineffective for failing to raise this claim on direct appeal. **Strickland v Washington**, 466 U.S. 668 697, 104 S. Ct 2052, 2069, 80 L.Ed.2d 674 (1984). This was very prejudicial to the outcome of Mr. Terry's appeal. If his appellate attorney would have included this proposition there would be a probability that his case would have been overturned. Because of the fact the illegal video from Mr. Terry's cellphone would not have been used at trial, nor could the D.A. use the DNA buccal swab. Without this evidence the D.A. only had the victim's alleged testimony.

Now to show this Court how vindictive and biased Detective Cox was against Mr. Terry. On April 19, 2022 she filed another "Out of Custody Affidavit," and had it Notarized by Randall Armstrong.

(Appendix L) Now the truth is, "Randall Armstrong is another Detective with the Tulsa Police Department relevant page. **(Appendix M)** This shows cause and prejudice against Mr. Terry to try

and collect evidence any way possible to get a conviction. Perhaps that's why it took the D.A. so long to take Mr. Terry to trial from March 7-8, 2022 to January 8-11, 2024 they knew they had a very weak case.

Mr. Terry alleged that the search of his home without a warrant and the confiscation of his property the cellphone, and a DNA swab was illegally obtained. His Attorney Ms. Atteberry filed a Allen (Discovery) hearing (ADH) on Monday, May 15, 2023 at 9:00. Then she proceeded to have an Allen (Discovery) Hearing Jackson v Denno hearing on Monday, July 31, 2023 at 13:30 PM concerning a **Motion to Suppress** these items. Mr. Terry claims that he was present "but his lawyer would not let him attend the hearing's, " in violation of the due process Law of Oklahoma. OK Const.Art. 2,§ 7. Furthermore, the search warrant found in discovery does not comply with the Rules contained in U.S Const. Amend. 4; and Okla. Const art. 2, § 30. **Burns v State**, 92 Okla.Crim. 24, 22 P.2d 473 (1950) because it was deficient and void on its face.

In **Morrison v. State**, 88 Okla. Crim. 445, 204 P.2d 544 (1949) its states: A Search Warrant must conform strictly to constitutional and statutory provisions therefor and no presumptions of regularity are to be invoked in aid of process under which an officer obeying its command under takes to justify. This court should grant an evidentiary hearing to resolve this issue.

In **Kuhn, V. States**, where purported affidavit on which warrant for search for intoxicating liquors was issued, was not signed or verified before the justice of the peace who issued the warrant, and the affiant did not appear before the justice with the affidavit, but the affidavit was given to the justice by sheriff of county attorney, the affidavit was not sufficient under the constitution. Okl.st Ann., const. art 2,§ 30. See **Kuhn et. Al. V. state**, No A-9586 August 14, 1940 Court of Appeals of Oklahoma.

SEARCH WARRANT SHOULD HAVE INCLUDED THIS INFORMATION BUT FAILED TO INCLUDE IT, MAKING THE WARRANT DEFICIENT AND VOID ON ITS FACE

1. The search Warrant for Premises had no case number;
2. No signature of magistrate or judge on the Search Warrant for the Premises of the residence,

3. No Date on the Search Warrant for Premises;

4. The legal description of the house, and correct location of the residence, abstract resident's location and legal address 4608 S. 23rd WA, Tulsa, OK, was improper, NO zip code of the area. It had listed a house built of blue siding. The house is not built of blue siding it has blue siding over the frame work of the 2x4's & 2x6's. It lists the color of the roof gay colored. It does not say if it is asphalt singles, wood singles, tile singles, sheet metal, this an improper description and location of the residence;

5. Don't mention the names of the officers who were there for the search;

6. There was no exact time the warrant was served;

7. Failed to put all items in the warrant to be searched for, and each location in the house where items is to be seized.

8. No probable cause to take Defendant's cellphone out of his hand. The warrant stated the video maybe on the cellphone. Along with nude picture of women (none found). If the video was taken from Mr. Terry's cellphone it was totally illegal. The cellphone was the foundation of the video according to the warrant. See 37 Okl.St.Ann., §89;

9. Detective Cox stole the phone under the color of authority of law by taking the cellphone without the complete permission of Mr. Terry. The cellphone taken several days prior to the illegally alleged search warrant. Then the Detective returned the phone the next day to Mr. Terry, but while in her possession what information was taken from the cellphone? Was any of the private information concerning his job down loaded from the cellphone? Under these circumstances no one knows if or what was confiscated from the cellphone. Plus, anything could have been fabricated. Was it the true video from Mr. Terry's cellphone used at his trial? The final destination of Mr. Terry's cellphone was taken by a member of the SWAT Team upon his arrest, on Friday, April 15, 2022.

10. The warrant list the cellphone as something they are looking for without listing the color, make model, serial number, service provider, ownership of cellphone. Several people have a drawer full of cellphone's either broken, obsolete, or spares, the warrant does not give enough information for a reasonable person to find a cellphone among many;

11. The search warrant was Basically Blank. The day, month, year of the warrant served and the area for the time is left blank. This is unacceptable. It doesn't list when on the 11th of April 2022 they started serving the alleged search warrant or when they finished serving the warrant;

12. The State did not show that exigent circumstances justified a warrantless entry of Mr. Terry's home to conduct a protective sweep;

subpoenaed to verify this information? Because under oath he would have had to tell how he actually got the video, or even if he got it. This would require an evidentiary hearing to resolve this problem.

On the morning of April 5, 2022, two Detectives came to Mr. Terry's house in which they believed Mr. Terry was present. Mr. Terry was a suspect in a rape case against Ashley Nichole Stanford, that occurred on the morning of March 8, 2022. The detective's believed Mr. Terry was the one who assaulted the victim in the case, based on the victim's identification.

The detective's arrived at Mr. Terry's residence in response to a report from the victim. The detectives did not have a warrant for Mr. Terry's arrest, nor did they have a search warrant for the residence. Mr. Terry did not give the detective's permission to conduct a protective sweep of each room of his house. Nevertheless, the detective's knocked on the door, and announced who they were, detective Anna Cox, (the other detective unknown) and Mr. Terry let them in the house. After entering, one detective stood at the door, while detective Anna Cox searched the house. After the search detective Cox started questioning Mr. Terry about the Google system he had installed in his home. Mr. Terry explained it, and said it can be activated by his phone, and she said, "can you show me." Mr. Terry proceeded to put in his pass word and unlock his cellphone, and spoke to Google. At that time detective Cox reached over and by force took Mr. Terry's phone from his hand. Then stated, I'm confiscating your phone for evidence, Mr. Terry explained to detective Cox that he could not work without having his cellphone. Detective Cox said she will return it to him tomorrow . Then the two detective's left.

Mr. Terry assumed that the Detective Cox took his cellphone in the hope of finding other incriminating evidence to apply more charges. Or other evidence to corroborate the victim's

testimony. For a fact they found NO pictures of other naked women as AS said, "he made her look at," or they would have used that at trial to bolster his credibility.

Mr. Terry has shown cause and prejudice concerning the bad faith of the detective's search of Mr. Terry's residence, and the items illegally confiscated by Detective Anna Cox. Therefore Mr. Terry request an Evidentiary Hearing to resolve this issue. Alternatively request a new trial.

PROPOSITION THREE ILLEGAL ARREST WITHOUT WARRANT

Mr. Terry was at home, working on his laptop, it was on Friday April 15, 2022 a swat team of approximately 50 officers who surrounded Mr. Terry's residence. One office had called Mr. Terry on his cellphone while he was in his house, and asked Mr. Terry to come outside that they were waiting for him. Mr. Terry complied with the request and came outside to the officers without any incidence. The Officers placed Mr. Terry under arrest and placed him in an unmarked Chevy red truck. The officers never showed him an arrest warrant, or even mentioned that they had an arrest warrant. A Lady Officer took Mr. Terry's cellphone from him before they had put handcuffs on him. The cellphone has never been returned. He was illegally arrested without an arrest warrant and transported to the county jail.

ARGUMENTS AND AUTHORITIES

Under **Matthews v. State**, 953 P.2d 33, 61 (1998 OK CR 3) Arrest pursuant to warrant that was not based upon a proper finding of probable cause was illegal. Also, **Lowery v. State**, 792

P.2d 511 (1986 OK CR 177) found the arrest warrant was invalid. Mr. Terry claims that the arrest was illegal without a valid arrest warrant or probable cause would be considered a kidnapping of a United States citizen by the authorities of Tulsa County, and his attorney failed to address this issue, and failed to file a motion to dismiss because of illegal arrest.

The fact that Detective Cox had no concrete evidence to issue an arrest warrant. They had no physical evidence, the DNA evidence, "showed no Seminal fluid was not detected," from BT3565 1B through 1F. Very strange the Forensic Scientist, Nicole Gordon failed to examine this Item, [Biology Screening Results Item BT3565-1A – Known buccal swabs-Ashley Stanford] This item was not examined at this time. If this item was examined it would be the buccal swabs from her mouth, and she testified that Mr. Terry had anal sex with her, then had her suck the poop off his penis. This swab would have proved that was NOT TRUE!

Mr. Terry admits that he had consensual sex with AS on March 5, 2022 by her waking him up sucking on him, and then having sex. But there was NO sex on the 7th or 8th, so that could be the reason Item BT3565 – 1G Vaginal swabs showed Seminal Fluid was indicated.

TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE FOR FAILURE TO ALLOW THE ILLEGALLY SEIZED VIDEO PLAYED AT TRIAL TO JURY

Mr. Terry claims that Ms. Atteberry's deficient performance was very prejudicial by failing to object to the search and seizer of his cellphone and the taking of his DNA swab which was a violation of his sixth constitutional amendment rights by failing to allow Mr. Terry to be present at the Jackson v. Denno hearing to Suppress the illegal search warrant that was held under a secret conference. The Court has refused Mr. Terry a copy of the hearing, even after filing a Motion for Discovery on July 10, 2025.

Every person charged with crime is entitled to a fair trial in conformity to law, and it is a duty resting upon the courts to see that the constitutional rights of the accused are not violated.

The constitutional guaranties against unreasonable searches and seizures, should be liberally construed. Okl.St.Ann.Const. art. 2, §§ 21, 30.

PROPOSITION FOUR

WHETHER A CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT TO HAVE APPELLATE COUNSEL RAISE EVERY NONFRIVOLOUS ISSUE THAT THE DEFENDANT REQUEST

Mr. Terry's argument rested heavily on the assumption that his appellate counsel failed to include the claim on direct review, and on the assertion that he had urged appellate counsel to brief and argue that issue. *Jones v. Burns*, 463 U.S. 745, 103 S.Ct. 330, 877 L.Ed.2d 987 (1983).

The failure to assert the claim at trial or on appeal cannot preclude Mr. Terry from the assertion in this forum of the denial of constitutional right.

As to the failure to assert the claim at trial, there is no waiver.

Mr. Terry filed a notice of appeal and new counsel was appointed. On appeal, no contention was advanced that the search of Mr. Terry's home was illegal. Mr. Terry's appeal was argued on January 22, 2025. Thereafter, on February 22, 2025, Mr. Terry wrote a letter to appellate counsel, stating that he had discovered that the search of his home was illegal under **Preston v. United States**, 376 U.S. 364, and urging counsel to present that issue to the court. Counsel ignored the letter and failed to submit the claim on appeal. The court affirmed the conviction on May 22, 2025, without direct reference to the search and seizure claim.

In his *pro se* petition for a writ of certiorari, Mr. Terry contended that the search and seizure from his house was illegal.

Mr. Terry request an evidentiary hearing, which shall focus primarily, if not exclusively, on the suppression questions. With respect to the search and seizure claim, before Judge Dawn Moody in a

closed session asserts for relief that certain physical evidence was obtained by an unlawful search and seizure of Mr. Terry's home. In any event, this matter was not assigned as error on Mr. Terry's direct appeal and is not available as a ground for collateral attack on the writ of certiorari.

A challenge to the district court on a Post-Conviction would assumed that Mr. Terry could not raise the search and seizure claim collaterally because he had not assigned it as error on direct appeal for failure of appellate counsel's assistance.

Mr. Terry had moved to suppress the evidence at trial so it should not have precluded him from raising the issue on appeal, and therefore, it was available on collateral attack.

Fourth Amendment was designed by the Framers to protect privacy interests of the people in their persons, houses, papers, and effects from unwarranted intrusions by the government. As such, it operates in both the civil and criminal context. However, the Framers enacted an elaborate system of constitutional protections to afford protection against governmental oppression as one travels through the continuum of the criminal prosecutorial process. Within this constitutional continuum stands the Fourth Amendment, designed to operate within the pre-trial phase of the proceedings, protecting against unlawful searches and seizures.

The systemic responsibility for the end result of a criminal prosecution is borne by the trial Amendments – the Fifth Amendment, the Sixth Amendment, and the Due Process Clause. It is these Amendments that were designed to operate together within the trial phase of a criminal proceeding to ensure a fair trial and, therefore, a just result. As such, a writ of certiorari claims

regarding the end result – the conviction and confinement – are properly addressed to these Amendments.

In contrast, the Fourth Amendment's role is to relegate the pre-trial phase of the criminal justice system and the Fourth Amendment injury is complete upon the illegal search or seizure – the moment the privacy interest which the Fourth Amendment was designed to protect was offended. Moreover, the fruit of the Fourth Amendment violation is suppressed as a judicial sanction to deter the Fourth Amendment unconstitutional behavior of police officers. The exclusionary rule of the Fourth Amendment is not itself a constitutional right, it is a judicial remedy.

Since the evidence seized from Mr. Terry's home plainly affected the verdict, the court was required to give plenary consideration to Mr. Terry's claim, because he could establish that the search was illegal, he would be entitled to collateral review of his claim of illegal search and seizure. **Fay v. Noia**, 372 U.S. 391; **Katz v. United States**, 321 F.2d 7, certiorari denied, 375 U.S. 903; **Kaufman v. United States**, 350 F.2d 408, certiorari denied, 383 U.S. 951, (An unreasonable search and seizure by State officers violates the Fourteenth Amendment, because freedom from unreasonable searches and seizures is a part of the concept of ordered liberty comprehended within Due Process of Law). **Weeks v. United States**, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, L.R.A. 1915B, 834, Ann.Cas. 1915C 1177; ; **Kuhl v. United States**, 370 F.2d 20; **Mapp v. Ohio**, 367 U.S. 643.

Even though appellant does not have a constitutional duty to raise every nonfrivolous issue requested by defendant, Mr. Terry informed counsel of several claims that he felt should

be raised, but counsel rejected the suggested claims. Under **Anders v. California**, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 – which held that an appointed attorney must advocate his client's cause vigorously and may not withdraw from nonfrivolous arguments requested by his client. The Court of Appeals held that respondent's counsel had not met this standard in that he failed to present certain nonfrivolous claims, such as the search and seizure claim; items confiscated without warrant; and the warrantless arrest by approximately 50 SWAT Team officers, where Mr. Terry would have been willing to come to the jail on his own upon receiving the phone call.

Experienced advocates have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. Selecting the most promising issues for review has assumed a greater importance in an era when the time for oral argument is strictly limited in most courts and when page limits of Appeals' rule, is to the contrary; Anders recognized that the advocate's role “requires that he support his client's appeal to the best of his ability.” 386 U.S. at 744, 87 S.Ct., at 1400. The appointed counsel in this case failed to do that. **Jones v. Barns**, 463 U.S. 745, 103 S.Ct. 330, 887 L.Ed.2d 987 (1983).

Violation of the Fifth and Fourteenth Amendments of the U.S. Constitution and Article 11, §§ 7, 20 and 21 of the Oklahoma Constitution. Mr. Terry asserts that the cellphone video should have been excluded because it was confiscated without a valid search warrant, **Webster v. State**, 252 P.3d 259 (2011 OK CR 14). The video from Mr. Terry's phone was not subject to copying, nor for inspection without warrant. “No [search] warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, and the person or thing to be seized.” **Smith v. State**, 40 Okla.Crim. 336, 269 P. 376 (mem)(1928).

In New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985).

It is now beyond dispute that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." **Elkins v. United States**, 364 U.S. 206, 213, 80 S.Ct. 1437, 144, 24 L.Ed.2d 1669 (1960); accord, **Mapp v. Ohio**, 367 U.S. 643, 81 S.Ct. 168, 46 L.Ed.2d 1081 (1961).

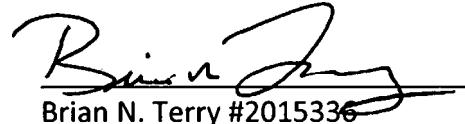
The basic principle was accepted by the court in **McNabb v. United States**, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819. There it was held that a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. 318 U.S. at page 345, 63 S.Ct. at page 615. Even less should the federal courts be accomplices in of a constitution they are sworn to uphold.

Therefore, Mr. Terry request this court to hold a oral hearing on the claims present in this writ of certiorari so he can present the evidence to the facts that's been raised

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted



Brian N. Terry #2015336